

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 21st MAY 2014

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[9:30]

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

PUBLIC BUSINESS – resumption

1. Draft Public Elections (Expenditure and Donations) (Jersey) Law 201- (P.36/2014)

The Bailiff:

So, we come back to the Order Paper and the next matter is P.36: Draft Public Elections (Expenditure and Donations) (Jersey) Law, lodged by the Privileges and Procedures Committee. I will ask the Greffier to read the citation.

Senator P.F.C. Ozouf:

May I just confirm one thing? Can I just confirm that the order of business that we are now taking is P.36, P.28, P.40 and P.41?

The Bailiff:

And P.46.

Senator P.F.C. Ozouf:

And 46. Thank you very much.

The Bailiff:

Then we return to P.42.

Senator P.F.C. Ozouf:

Thank you.

The Greffier of the States:

Draft Public Elections (Expenditure and Donations) (Jersey) Law. A Law to regulate the expenditure of and donations towards the election expenses of a candidate in a public election. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

1.1 Deputy J.M. Maçon of St. Saviour (Chairman, Privileges and Procedures Committee):

This draft law with a few amendments that I will identify as the Assembly goes through the Articles, re-enacts the 2 sets of Triennial Regulations on election expenses that were approved in 2008 and 2011. The 2011 Regulations expire in July and it is important that replacement provisions are put in place before the elections in this autumn. Before 2008 there were no regulations of election expenses and I hope there is a general consensus that the system put in place in 2008 has worked successfully. The P.P.C. (Privileges and Procedures Committee) is not aware of any significant difficulties that have been identified with the system and it has undoubtedly prevented candidates spending excessive amounts on their campaign as occasionally happened in the past. The legislation has also introduced regulation of third party spending although P.P.C. is not aware of any significant spending by third parties in Jersey elections. I hope that all Members agree that it would be quite unacceptable to allow the Triennial Regulations to expire and not be renewed. I trust that Members will support this draft law today and I will summarise the revision as the Assembly deals with the Articles. I propose the principle.

The Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Yes, Senator Breckon.

1.1.1 Senator A. Breckon:

Some Members may wonder why this is necessary at all but I can say in 2002 I witnessed a Senatorial election where expenses were getting out of hand. We talked yesterday about whether Members may be paid a sum of money but there were some very, very serious amounts of money being spent. We are talking about an Island-wide mail shot in an envelope addressed with electoral roll numbers on, and there was a considerable amount of work went on behind the scenes to produce that and it was delivered by the Post Office on the Saturday before the election, to individualised to electors and they were very, very expensive combined with that. The reason I say that is because following on from that in 2005 there was another amount of money thrown at publicity and other things. What it was doing was if the ordinary person wanted to stand, and I am not saying necessarily that the electorate would believe all the publicity that was showered on them, but then an ordinary person may have taken the view that: "Well, I cannot compete with that. I am working, I do not have the time to do whatever else it is and I do not have the money to spend." At the time, I think, in 2002, the sum that was rumoured was £20,000 was spent on a campaign in a Senatorial election. That was getting to the stage where something had to be done and that is to remind Members of why this is in place because it restricts you. You do not have to spend anything like that at all, you do not have to spend anything at all if you do not want to, and P.P.C., not just this one but previous ones, have stepped in and ensured that whatever candidates have to say gets distributed throughout the Island without them having to go to a great deal of expense and some trouble in preparing that. So, I would just remind Members of that because, as I say, things were not in place. The other thing that was not in place was, I think it was called "Elect Jersey 2005" which is something that emerged. I think there was a meeting in a carnation nursery somewhere and some people threw some money in the pot to set up their website and do publicity for that, and again, none of this needed to be declared; who they were, what they were doing and whatever else. So it is good in some respects that this is now regulated because it was getting silly, you could not get past some roundabouts for posters the size of a furniture van. It needed to calm down a bit from where it was. I hope, bearing this in mind, that Members will also take this into consideration because the general public are not that stupid; with leaflets and being bombarded with stuff and adverts, perhaps they would just like to speak to you instead. So maybe Members would consider some of that as we run towards the end of the year and bear this in mind; although amounts are in there, in the various Articles, you do not have to spend that, you do not have to spend any, you can do it fairly basically and maybe there is an argument for not just giving it to others to have this publicity machine and to get back to basics. It used to be that family and friends used to go around and distribute stuff like that, and hopefully Members will bear that in mind and we will get back to where we were because I think it is wrong if Members who can afford it and other people who are standing throw money at the elections because that is not the way, I do not believe, it should be done. It should be back to basics. So I think this is worthwhile but I hope Members find that useful. That is the reason we have got here because it was getting silly. We had people with lots of money who were to prepared to spend it which was, in my opinion, wrong. So these things are very necessary. Thank you.

1.1.2 Deputy N.B. Le Cornu of St. Helier:

I would hope, at the nominations, that it is indicated to candidates exactly how much they are allowed to spend and that these Regulations are brought to their notice. I think it is very important that perhaps a letter is handed to the individuals so that they know that that is very, very clear and then there will be no possible breach. Thank you.

The Bailiff:

Does any other Member wish to speak on the principles? No, then I invite the Chairman to reply.

1.1.3 Deputy J.M. Maçon:

Can I begin by thanking Senator Breckon for providing some of the background to these Regulations and that is welcome. As for the request from Deputy Le Cornu, it is my understanding that normally most candidates are advised about what the election expenses are but I am quite happy to go back and double-check and make sure that that is the case in the future. But I am certain that is probably the case as it is.

The Bailiff:

Very well. All those in favour of adopting the principles, please show? Those against? They are adopted. This is a matter for the Corporate Services Scrutiny Panel, the Chairman of which is Senator Ferguson. Is there a Vice-Chairman?

The Deputy of St. Ouen (Vice-Chairman, Corporate Services Scrutiny Panel):

On behalf of the Corporate Services Panel, we do not wish to scrutinise this.

The Bailiff:

Thank you, Deputy. Then, Chairman, how do you wish to propose the Articles?

1.2 Deputy J.M. Maçon:

Can we start with Articles 1 and 2 and the schedule, please?

The Bailiff:

Yes.

Deputy J.M. Maçon:

Thank you. Article 1 sets out the definition and it should be noted in particular that the legislation only applies to election for Members of the States and not for public elections for Centeniers or Procureurs du Bien Public, for example. Article 2 gives effect to the schedule and the schedule defines donations and expenses. There are no changes of substance in the 2011 Regulations, and I would just point out a few key points. Goods and services provided at below market value are treated as a donation and must be assessed as part of the candidate's expenses. It is nevertheless worth noting that paragraph 6 of the schedule allows volunteers to continue to provide assistance for candidates to preserve the long tradition of this assistance provided to candidates. In addition, if a candidate reuses material that was declared in an earlier election, there is no need to declare these again as part of the expenses for election when they are reused. I would like to propose those parts.

[9:45]

The Bailiff:

Very well. Are Articles 1 and 2 in the schedule seconded? **[Seconded]** Does any Member wish to speak on those Articles? All those in favour of adopting Articles 1 and 2 in the schedule, please show? Against? They are adopted.

1.3 Deputy J.M. Maçon:

If I can take Articles 3 to 8 now. Thank you. These Articles define election expenses as any expenditure to promote the candidate's own election or to prejudice the chances of other candidates. The actual monetary limits in Article 4 have been increased in line with inflation from the 2011 amounts. There is a new regulation-making power that will enable the amounts to be uprated at regular intervals, no doubt before every general election. This part of the law also sets out the requirements to make a declaration of expenses after the election so that expenses incurred

by candidates are in the public domain and can be verified if necessary. Thank you. I would like to propose Articles 3 to 8.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? Very well. All those in favour of adopting Articles 3 to 8, please show? Those against? They are adopted.

1.4 Deputy J.M. Maçon:

If I can then take Articles 9 to 13. These Articles mirror the provisions for candidates but in relation to third parties. It is important to explain the definition of a third party. If a person gives money or help to a candidate with the candidate's knowledge, the expenditure in those cases is part of the candidate's expenses and not a third party spending. Third party spending only occurs when a third party spends money to promote the chance of a candidate or prejudice the chance of another without the knowledge of the candidates concerned. There is, in practice, no evidence of any significant spending of this nature in Jersey in the past elections but failure to regulate third party spending would leave a significant loophole in the legislation. Article 10 indicates that third parties can spend up to 50 per cent of the amounts that candidates in the election concerned are allowed to spend. As with candidates, a declaration of third party spending must be made to the Judicial Greffier. I propose Articles 9 to 13.

The Bailiff:

Are they seconded? **[Seconded]** Does anyone wish to speak on Articles 9 to 13? Very well. All those in favour of adopting Articles 9 to 13, kindly show? Those against? They are adopted.

1.5 Deputy J.M. Maçon:

If we can now take Articles 14 to 20. These Articles contain provisions about offences and also set out in Article 16 that the Judicial Greffier must make the declarations available for public inspection so there is transparency in the system. Article 17 sets out the arrangements that P.P.C. must make to circulate manifestos and I can confirm that this will be done again in 2014, and through the website - and I hope those listening will take this down - of the www.vote.je website which we hope will become a centre for people trying to find out about election information. Though I again just remind that a hard copy as usual will be delivered to all households as is the normal practice. Article 18 contains important new provision about the consequences of conviction. This provision could not be included in the Triennial Regulations but is included in this draft law. As can be seen, a person who has been elected but who is convicted of an offence of breaching this law will be disqualified from office. P.P.C. considered whether a discretion should be given to the courts to judge the seriousness of the offence but concluded this would not be appropriate and would put the court in a difficult position as it would be given the power to determine whether or not a person should remain a States Member which could be seen as drawing the court into the political arena. On balance, P.P.C. concluded that it would be better to make the disqualification automatic but to include the provisions in Article 18(3), that a person disqualified can stand again in the subsequent election. This would allow the electorate to judge the seriousness of the offence committed. P.P.C. is confident that, if approved today, this law will be sanctioned by the Privy Council in July and be in force this autumn but the commensurate provision will fall back to the provision in case there is a delay. If this happened, P.P.C. would ask the Assembly to renew the Triennial Regulations in September to ensure that the regulations of expenses remain in place for the elections. I propose the remaining Articles.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on any of Articles 14 to 20? Deputy Le Hérissier.

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

I would like to speak about Article 18. I find one of the most excruciating parts of the current process is where people are - not invited - but are basically asked to state their criminal convictions in front of the electorate which then becomes some kind of quasi-jury in deciding - assuming it is not a totally forbidding proposition - whether that person is suitable. I have always had doubts about that although I was involved in the Legislation Committee when that was originally suggested, and it strikes me that Article 18 has resonance in that respect. I think, quite frankly, it is very wrong. Either the breaking of the law in that respect is seen as absolutely wrong in terms of running for election or it is not. But to give the discretion, in a sense, to a public meeting to make up their mind whether or not a person, having been forbidden to run ... sorry, having been expelled and then having provoked a by-election by that expulsion, to then say: "Well, you can get another chance and put yourself forward to see whether the public feel, as some kind of quasi-jury, you are okay to run again." I think is very wrong and I think we should be up front with people and say one way or the other and not lead to this, quite frankly, excruciating public kind of debate. Thank you.

The Bailiff:

Does any other Member wish to speak on these Articles?

Senator L.J. Farnham:

Are we not dealing with the schedule now?

The Bailiff:

No, the schedule has already been dealt with. Does any other Member wish to speak on any of those Articles? No, then I invite the Chairman to reply.

1.5.2 Deputy J.M. Maçon:

With regards to the comments of Deputy Le Hérissier, just to be clear that the actual announcing of a conviction at a public meeting is under the Public Elections Law and is not under this particular law, although I appreciate I think the Deputy did know that but I just wanted to clarify that for Members. Again, it is a very difficult situation to decide in order to make sure that these Regulations have teeth and have some effect to hold candidates to behave in a proper manner, and there has to be some sort of consequence. After consideration, P.P.C. came to this particular mechanism. If Members disagree with this particular mechanism, they do have the opportunity to vote against it. But again, through it all I think it is very difficult to come up with a better model unless you particularly want to debar someone, when it can be the case that perhaps they have only spent 50 pence over the maximum limit.

Male Speaker:

Why charge them?

Deputy J.M. Maçon:

Why charge them? Again, because we discussed this and if you were to leave some sort of discretionary amount, say for example there would be a discretion of perhaps plus 10 per cent, then the new threshold will just become plus 10 per cent, and therefore all you are doing is increasing the overall amount. On the other hand, if you were to leave it in the court's discretion, as I tried to outline, again, you could be dragging the court into a political arena which is why P.P.C. came to the decision that have a fixed amount and if ... I would also like to draw Members' attention that under Article 15, with defences to that in Article 14, it does point out that there is a defence. So,

for example, if a candidate did everything reasonable, so, for example, got an estimate of how much their posters would cost and put that down as their election expenses, and subsequent to the election that came to over the amount, then there is a defence to say reasonably, the candidate did everything reasonable in order to prevent that. So there is a defence, it is not entirely a guillotine motion in that regard. So, this is what P.P.C. is proposing and I ask Members to adopt it. I maintain the Articles.

The Bailiff:

Do you wish to have Article 18 voted on separately?

Deputy R.G. Le Hérissier:

Yes, please, Sir.

The Bailiff:

Yes. Very well. Well, then, we will take, first of all, Articles 14 to 17 inclusive. All those in favour of adopting those Articles, please show? Those against? They are adopted. Then we come to Article 18 which is the matter upon which Deputy Le Hérissier spoke. All those in favour of adopting Article ... the appel is called for then in relation to Article 18. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 35		CONTRE: 3		ABSTAIN: 0
Senator P.F. Routier		Deputy R.G. Le Hérissier (S)		
Senator A. Breckon		Deputy M.R. Higgins (H)		
Senator A.J.H. Maclean		Deputy G.C.L. Baudains (C)		
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				

Deputy R.J. Rondel (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mezec (H)				

The Bailiff:

Then Articles 19 and 20 we will take together. All those in favour of adopting those 2 Articles, kindly show? Those against? They are adopted. Do you propose the Bill in Third Reading, Chairman?

1.6 Deputy J.M. Maçon:

Yes. I would just like to thank all of the offers of support that have been put in to bring this all together, from the Greffier to the Law Officers' Department. I maintain the proposition and ask the Members to support it in Third Reading.

The Bailiff:

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

1.6.1 Senator L.J. Farnham:

I am not sure if I am just going slightly off the beaten track but while welcoming these changes I was wondering if the P.P.C. were planning on bringing similar in to govern the expenses in relation to referenda.

1.6.2 Senator A. Breckon:

Just to congratulate the Privileges and Procedures Committee. Obviously there is a lot of work gone into this to bring it to where it is, and it is good and sensible to have that framework because generally people play by the rules, as it were. But I hope we are not moving away from some of the traditional things where family and friends help with candidates running around and whatever they are doing, but what has crept in is the public relations, the PR, the spin, the technology and things like that and it would be a shame if that took over. It is not always easy to identify, if somebody provides some support like that to someone, what it is worth. But I think it is probably better to keep it to basics. Finally, the Privileges and Procedures Committee, through gov.je, do provide basic facilities for candidates to get their information out there, and the thing about that is it is a level playing field. Candidates do not have to pay for it and each gets the same opportunity whether it is a picture or a number of words or whatever they want to say. That comes back to where I started from about not throwing money at the elections, and there are some restrictions in there, but those are maximums of course, nobody has to spend anything like that amount although it is there. Perhaps sitting Members of this Assembly could set an example with that; good rather than bad, and hold that up as a beacon to other candidates to say: "Well, if you want to stand you do not need to have thousands of pounds to be able to do so, you can do with your own endeavour, as it were, and be on a fairly equal basis." So I think this is welcome and it will be on the statute and it is something that will move forward. But I would ask Members to bear in mind what I have said because I think that is the sensible way to proceed. Thank you.

1.6.3 Deputy R.G. Le Hérissier:

Just a minor point and I am breaking the rules again. I notice you can reuse rosettes and election literature. Is the Committee going to outlaw the use of old photographs? **[Laughter]**

The Bailiff:

Does any other Member wish to speak? Yes, then I invite the Chairman to reply.

1.6.4 Deputy J.M. Maçon:

With regard to Senator Farnham's question, the Committee is undertaking work of reviewing and looking at the Referendum Law at the moment, however we do not have any proposals to regulate the spending at this time, though I am thankful to the Senator for raising that point and I will go back to the Committee and ask them to consider that aspect. Again, I thank Senator Breckon for his comments, and with regard to Deputy Le Hérissier, again I think it is down to the public to decide how accurate a photograph is or is not, and therefore, I propose in Third Reading these Articles of the law.

[10:00]

The Bailiff:

All those in favour of adopting the Bill in Third Reading, please show? Those against? The Bill is adopted in Third Reading.

2. Draft Public Employees (Pensions) (Jersey) Law 201- (P.28/2014)

The Bailiff:

So we come next to P.28: Draft Public Employees (Pensions) (Jersey) Law, lodged by the States Employment Board, and I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Public Employees (Pensions) (Jersey) Law. A Law to make new provision in relation to pensions and other benefits payable to or in respect of certain employees and for collective purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

2.1 Senator I.J. Gorst (The Chief Minister):

I will start with some good news and then I am afraid the rest of my speech is not so positive. Today, more of us can expect to live into our 80s and 90s. In case you were wondering, that is the good news. [Laughter]

Male Speaker:

Not if we have to be here.

Senator I.J. Gorst:

I will ignore the comments to the side of me. Some of us may feel we are approaching that age, the length of time we have been sitting in here. But we are living longer, and of course while that is positive, it is putting funding pressures on our pension schemes. I believe that we need to face up to how these demographic pressures are impacting pensions and our public services, and today this law looks at how those demographic pressures are impacting the Public Employees Contributory Retirement Scheme, which I will refer hereto as P.E.C.R.S. (Public Employees Contributory Retirement Scheme). The States Employment Board - again, I will refer to them hereto as S.E.B. (States Employment Board) - have considered the issue and it is clear that urgent action needs to be taken to address an underfunding situation which sadly is getting worse. In August 2012, the S.E.B. established a technical working group to develop options for change to P.E.C.R.S. We requested that any proposal should be sustainable, affordable and fair for the longer term. For 2 years work has been ongoing to develop, negotiate and bring forward proposals that were intended to address these issues. The proposals developed have wide implications for employees, for the States and of course thereby for taxpayers. This Pension Law that we are debating today is an

enabling law which will enable the issues affecting the pension scheme to be addressed within future Regulations. As I have said, the remit was that any changes need to be sustainable, provide proper risk sharing arrangements and a fixed contribution cap for the employer, and I believe and S.E.B. believe that this law will achieve just that. I hope that Members will forgive me for speaking longer than usual because these are important changes. It is important that Members and the public and staff understand them. So what is the problem? Well, P.E.C.R.S. is no longer sustainable in its current form. Over the last 30 years the cost of providing pensions has increased by around 30 per cent. In 1980 the average 60 year-old man could expect to live to be 76. Today the same man could expect to live to be 87, an extra 11 years in retirement, and from that simple example we see that people are spending much longer in retirement, yet this scheme and the contributions into the scheme have not changed over this time. This is no longer, therefore, sustainable. There is a contribution shortfall for every new member joining the scheme. The problem is growing and needs to be addressed, and, we believe, needs to be addressed urgently. In 2011 the shortfall was estimated to be 1 per cent of pensionable salaries for every new entrant. It is now estimated to have grown to 4 per cent of pensionable salaries. Pension benefits are being promised which are not being paid for and this is unsustainable, and this new scheme addresses that unsustainability. So what process have we gone through over those 2 years? In 2011, the then S.E.B. asked the Treasurer of the States to establish a technical working group to develop options for change. Through joint working of representatives of the P.E.C.R.S. Committee of Management and the Treasury, these proposals have been developed, of course, with the steer and policy direction from S.E.B. So, this morning I would like to take this opportunity to thank the retiring Chairman of P.E.C.R.S. Committee of Management. He has overseen the development of these proposals and he has contributed in that role to this scheme over the last 24 years, and I have had the pleasure of working alongside him on the Committee of Management. I know that we are grateful for his knowledge and expertise which have been invaluable over this period. I would also like to thank the Treasurer of the States and the Chair of the Joint Negotiating Group together with the contributions of the members of the Technical Working Group who have led us to this point today. So the Technical Working Group proposals were brought back to S.E.B. in November 2012, and over the last year positive negotiations have been ongoing with that group, with the Joint Negotiating Group, offering changes and refinement of that benefit package until we arrive at the final proposals within the cost envelope which was initially set by S.E.B. Members might be aware that trade unions are currently balloting on the final offer. So, to the law. Pensions are currently linked to final salary. What we are proposing today is to link public servants' pensions, that is all States employees, with the exception of teachers, to the actual average earnings over their career, and this scheme is called a Career Average Revalued Earnings scheme. This law provides for the introduction of that scheme and the protection of accrued rights earned up to the date of change. As I have said, it is an enabling law. The benefits to be provided will be specified in the Regulations, which we hope will be lodged in July, and we hope to debate those in September. However, that is, as I have said to Scrutiny, a challenging timeline and we will see how that goes. We need to progress with the law at this time so that we can deal with the growing funding pressures, as I have said, with some urgency. The introduction of a career average scheme will not, on its own, deliver an affordable pension scheme; other things need to change, and of course there are implications for staff from those changes and for the States, and therefore, by default, the taxpayer. As people are now living longer it is necessary for retirement ages to increase. In future, the retirement age for non-uniform members in the scheme will be linked to the State retirement age, which is due to rise to 67 years, and the law provides for these changes to be linked to that age increase. Currently over 3,500 scheme members can retire at age 60 with unreduced benefits. This needs to change. In future, the earliest retirement age at which non-uniform members will be able to receive unreduced benefits will be 65, and over 4,100 current employees will have their retirement age increased to 67. The scheme was designed in an era when most people came to work full-time for the States on

leaving school and stayed working for the States often getting promotional increases until the day they retired. That is the existing P.E.C.R.S. scheme. It was designed in a time, of course, when more people got married and more people stayed married. Today people have more varied lives and careers, working part-time or term-time, taking career breaks and moving jobs between the private and public sectors. Also, not everyone gets married these days and more people get married after retirement. The pension scheme therefore needs to adapt to the way people live and work today. We believe the proposed changes will modernise the scheme in many ways so that cohabiting partners and marriages after retirement will be recognised, and the Career Average Pension Scheme will better be able to deal with this wide range of employment patterns and wide range of social living that we see today. The cost of providing pensions has increased and it is necessary for scheme members to contribute more towards the benefits that they will receive in later life. Under the detailed proposals, non-uniform employees will see their contribution increase from 5 per cent of pensionable pay to 8 per cent, and uniform members from 5 per cent currently to over 10 per cent. Increases will be phased-in over a period of between 3 and 5 years for existing staff, and new staff employed after 1 January 2015 will pay the higher contribution rates immediately. That obviously means that we need to do the other work that I talked about earlier. Employees will pay more, work for longer and receive a pension based on their career average salary. It is right that employees are asked to contribute in these ways; we need to do this now to address the affordability issues that the scheme faces. As I have said, of course, these changes will also need to be affordable to the States and to taxpayers. The employer is currently committed to paying 15.6 per cent of pensionable salaries to fund public service pensions. At present, 2 per cent of this is being used to repay something that we call the pre-1987 debt, but the intention has always been that this would go to funding benefits once that debt had been repaid. At the time of that agreement the arrangement was affordable. This, as I have said, is no longer the case. The full 15.6 per cent of pensionable salaries is now required to fund the benefits package. In fact, 16 per cent is required for the C.A.R.E. (Career Average Revalued Earnings) proposals. This is an additional 0.4 per cent of pensionable salaries. A further 2 per cent of pensionable salaries is required to fund the existing States commitment to repay the pre-1987 debt. In total, therefore, an additional £6 million per annum is required under the proposals. This, we have agreed with departments, will be funded by corresponding departmental savings, and therefore there will be no additional cost to the taxpayer from the proposals. Of course, there will be the opportunity cost of those saving amounts. New risk sharing arrangements will be introduced which, for the first time, put a formal cap on the employer contribution. The employer contribution, it is intended, will not rise above this cap. The employer cost cap will be 16.5 per cent of pensionable earnings, and I have an amendment and Deputy Noel has a subsequent amendment to the law to give effect to that so I will not speak about that now. The proposals include in-built mechanisms to deal with the risks of managing the pension scheme. These risk sharing arrangements have been carefully planned and work as a package to provide a sustainable scheme. In future, surpluses will be retained to provide a buffer against future deficit and the scheme will be able to reduce the inflationary increase to pensioners and the future benefits could be reduced to maintain affordability. These are useful tools to keep the scheme sustainable. A wide range of professionals are covered by the scheme, including engineers, police officers, hospital consultants, nurses, doctors, allied health professionals and many others but not teachers, as I have said. The Island relies on the ability to attract staff from the U.K. (United Kingdom) for healthcare provision. This law will change the public service pension scheme in Jersey in a way that is consistent with the changes being implemented in the U.K. It will enable the Island to continue to attract the workers it needs to provide key public services. We need to provide decent public service pensions. The scheme, of course, as well is of macroeconomic significance for the Island as around one in 3 households in Jersey have some reliance on a public service pension scheme. The median pension paid from P.E.C.R.S. last year was around £8,700 per annum. If we do not provide decent public

service pensions, of course, costs may raise in other areas of public service provision. I am very grateful to the work that Scrutiny have undertaken in reviewing these proposals. I know that they have a very busy workload and I am, as I have said, extremely grateful for the way that they have reviewed these proposals, for the work of their expert advisers and the way that they have done it in a very timely manner. I am very grateful for that. I know that the Chairman is not here but the Vice-Chairman is and I wish to thank him for the way that they have led that review and supported these proposals. Of course, I expect they will be saying something during the course of this debate, so if I can paraphrase their extensive, detailed and good report, I think it says we should accept this law but they will have something to say and they will be keeping a very close watching eye on the Regulations in due course when they come forward where most of the detail is contained.

[10:15]

I am grateful for that because I know that we will get a better scheme as a result of that. The need for these changes has become urgent. During the last 2 years, as I have said, the contributions shortfall for new entrants has widened, and widened significantly. The scheme is promising benefits which are not affordable and which are not being paid for. We must therefore deal with the issue and deal with it now to prevent further deficits, which, under the current Regulations, the States could be asked to pay for. It is only by modernising the scheme through a combination of introducing a more affordable and fairer career average pension scheme, raising retirement ages and increasing contributions that it can be sustainable, affordable and fair, and we believe that that is the sort of pension that we should be providing for our employees. I have said, of course, it has changed to reflect the way that we live and the way that we work today. I strongly recommend this law, and, of course when I get to it, our amendment in due course. Thank you.

The Bailiff:

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

Deputy J.H. Young of St. Brelade:

Sir, may I ask your guidance on the issue of conflict of interest? Obviously myself as being a member of the existing scheme which there will be a transfer arrangement for. Do Members who have that ...

The Bailiff:

The position, as I understand it, is that there is no conflict of interest for those who are in receipt of a pension. They will not be affected by these changes at all. However, those who are still working and therefore accruing a pension contribution will be affected by the Regulations when they come into force, and it is clear from this law that the whole purpose of this law is to allow these Regulations to be made to change the system. So I consider that anyone who is still working and therefore earning, will be affected by these, therefore there is a direct financial interest either for somebody who themselves or their wife or co-habitee is a current employee of the States and paying into the pension scheme.

Deputy J.H. Young:

So just to clarify then. If a family member then is currently working within the scheme and paying pension contributions, then the Member has a conflict.

The Bailiff:

When you say "family member" the Standing Orders referred to a spouse or co-habitee.

Deputy J.H. Young:

Yes, but if they are not actually paying pension contributions but might be in the scheme, do they have a conflict of interest? Not currently paying contributions, not in the scheme because of zero hours contracts, but then may come into the scheme.

The Bailiff:

It is very difficult to talk in the abstract there as to how likely it is, but in essence, anyone who is now in the scheme clearly has an interest. I cannot tell from your question how likely it is that such a person may go in the scheme in the future. I suppose anyone might take up employment with the States in the future; they clearly do not have an interest.

Senator L.J. Farnham:

Can I just check P.P.C. are not going to be lodging the proposition to put States Members in the scheme any time soon?

Senator I.J. Gorst:

It was remiss of me in light of Deputy Young's comment. My wife is on the Nursing Bank and so therefore may be affected by these changes should she do any future work there. Of course, this is worsening benefits and asking for staff to pay more.

The Bailiff:

Yes, but, Chief Minister, if I may say so, that is not the point because somebody might vote against the proposition for that reason. So there is a financial interest.

Senator I.J. Gorst:

I will not be one of those people.

The Bailiff:

So I think that if you have a spouse or co-habitee who is currently in the scheme and contributing to the scheme, then there is a direct financial interest. Otherwise, it seems to me, there is not.

Senator L.J. Farnham:

To be clear, do Members just have to register that interest?

The Bailiff:

No, they cannot vote they must, for the moment, withdraw.

Senator A. Breckon:

Could I say that, I think we did exchange notes, I think I may possibly fall into that category and rather than be any grey areas I would rather not take part in this debate and declare that interest.

The Bailiff:

Very well.

Senator I.J. Gorst:

Sorry, could I just ask you to restate your advice? Did you say that such a Member would need to withdraw?

The Bailiff:

If the spouse is currently a member of the scheme **[Laughter]** and is paying in, so that she, in your case, will be affected by any changes, then I think there is a direct financial interest. But from what you have told me at the moment, she is not.

Senator I.J. Gorst:

I just wondered if the Chair was a member of the scheme.

The Bailiff:

The Chair, luckily, will not be affected by these changes. **[Laughter]** I did consider it but the Chair will be in receipt of a pension, he hopes, by the time these changes come into effect. **[Laughter]**

Senator I.J. Gorst:

I fear that your ruling gives me a slight difficulty because, although I do not wish to talk about my wife's personal circumstances, she has a contract of employment with another institution which is not the States and they are her, at this point, main employer, but her name does remain on the Nursing Bank at the hospital. So technically, they could call upon her to do a night shift this evening, for example, and I fear that part of that remuneration may go into a pension. I will have to find out because I do not know if that is the case or not. So if I could just refer to my officers, it may be that I need to call upon the Vice-Chair to act as rapporteur during the summing up but I will do my best to find that out.

The Bailiff:

Just to be clear, it is only where there may be a direct financial impact on a spouse or co-habitee as a result of these changes. Whether the changes are beneficial or not is beside the point because it may be perceived as affecting the way in which a Member votes.

Deputy R.G. Bryans of St. Helier:

Can I just clarify, because my wife is employed and would be in that circumstance. But as an ex-pension expert from my background, because I used to serve on the P.E.C.R.S. board as well, I was wondering if it is still possible to make comment as opposed to voting on the actual thing?

The Bailiff:

I fear not. It says you must withdraw where it is a direct financial interest.

Deputy R.C. Duhamel of St. Saviour:

Could I declare an interest on behalf of my wife and withdraw?

The Bailiff:

Yes. Very well. Now, does any Member wish to speak on the principles?

2.1.1 Deputy J.H. Young:

Thank you for clearing that up. Just for the record, my wife does work but she is on a zero hours contract and, at the moment, tells me she has no intention of seeking a permanent one. But zero hours do not pay pensions. So I consider I can carry on under your ruling. I think this new scheme is an excellent plan. I think all of us have realised that the world has changed, and clearly the model is the exemplary model of the Hutton Report. I am not quite sure of Lord Hutton's history but clearly he is an expert and over a very long period of time ...

The Bailiff:

Sorry, we are not quorate, Deputy. I have asked the Usher to call back Members. We are now quorate, yes. Very well, please continue, Deputy.

Deputy J.H. Young:

Thank you very much. Just to say, the principles of the Hutton Report, which are set out in page 6 of the proposition, are clearly exemplary ones. Obviously the entire purpose is to make sure that there is a long-term fund for the long-term funding of people in retirement and provide for benefits for those people whose circumstances in life where personal disasters strike down and people unfortunately die in service, or find themselves unable to work through ill health, the scheme makes provisions for those exceptional cases. I think Jersey has been well ahead of this under the existing pensions rules. Of course it has been a member of the transfer club which is this body of pension providers, principally, I think, in the public sector, I do not know whether it is exclusive to the public sector, in fact I remind myself it is not, where the idea of transferability is really important. That people can travel through life, take up different employments and take their benefits with them in a serious way, and that is very important because I think statistics show that people that do not do that, who travel through life, do not have pension transfer arrangements, end up with less than half the benefits of those where proper arrangements apply. So, I think some people may have a view: "Well, all this is being done at public expense." I would argue, not so, because if there are failures in occupational health schemes, what that means is that the final costs of supporting people in retirement falls on the taxpayer. Falls on the taxpayer and, in our case, the Social Security Fund. So I think everybody has a vested interest whichever part of life they are employed in, whether in the public sector or the private sector, to take up occupational pension schemes. Of course, in Jersey, the public sector and the various bodies which are listed in the appendix, including a number of the companies and so on that we have created, wholly-owned businesses to take on public services, including those, they are all ... it is much bigger than the public sector elsewhere. So it is a very, very significant thing economically. But I have got to make a comment here. I think it is very important that in this coming forward that we do recognise the desperate need to have in place some sort of occupational arrangements for those who do not fall within the scope of this scheme. I know I have raised that several times with the Minister for Social Security. I think he accepts that on principle but he tells me it is down the list, at the moment it is not a priority. We have a fantastic hard working Minister for Social Security but I really hope that when this is adopted, which I feel sure it will be, that the next Minister for Social Security will bring it up the priorities because we need decent occupational health schemes in Jersey for those people who are not in the public sector.

The Bailiff:

I am so sorry, Deputy, I think we have just gone inquorate again. Very well, I think we are quorate again if the Chief Minister thinks he can stay. If I may just say to Members, I am sure that all the States employees would regard this as a pretty important debate [**Approbation**] and I would have thought they would be a little disappointed if States Members did not show more interest by being here.

Deputy J.H. Young:

Thank you. Perhaps I ought to apologise for the House. It seems every time I start to speak the House goes inquorate. But I do think this is a desperately important subject. There are millions of pounds involved here. There are thousands of people involved in the scheme, and their families and their dependents all depend on it. What I am saying is that we have got an excellent model here and I am trying to celebrate that, I think. We have to adjust it through the changed circumstances, there is no question, because the final salary scheme, of which I personally, in my life, have benefited from, is unsustainable. We all have to accept that now, and therefore the change to a career average scheme is absolutely vital for the future.

[10:30]

So that in the future, those principles that I have spoken about, about benefit availability and all those things, all are there for future generations. Of course, the great thing in here under the Hutton Report, this is not being done by disadvantaging those people who have carried through their working life in the expectation that there would be final salary schemes, or final salary benefits. Those accrued benefits are clearly protected under the Hutton principles, and in my understanding of this law, they are going to be protected under this scheme. So we have people under these rules, as I understand it, what will happen is that once the Regulations are passed, on the operative day, those current employees will start to accrue pensions on the basis of a career average scheme and the pensions that they have accrued on final salary will be in the bank. They will get 2 pensions. So I have made my point that I think this needs to be mirrored in some way by some occupational pension scheme for those people who are not in the public sector and that can only come from Social Security. I know that because in my time in the private sector in Jersey I obviously discovered that it is really difficult to find pension schemes in Jersey, private sector cash contribution schemes, that pay a decent rate. I have a real question mark here. We all know we get a quarter of a per cent bank interest. When you get your statements on those cash contribution pension schemes the results look very poor, and yet when we look at the States accounts we find, oh, we can get investments on the Strategic Reserve. I do not know what it is, 11, 12, 14, 20 per cent. So the world seems to have created a situation where corporate players can get big gains and, of course, where is it coming from? It is people's money. It is coming from people's money.

The Bailiff:

Are we drifting a little?

Deputy J.H. Young:

Yes, sorry, okay. Sorry, Sir, I will get back on track. There is a problem with private schemes so it is another reason why the principles of this scheme have wider application. Focusing in on a particular issue, this question of this scheme and risk caps, I would like the Chief Minister when he responds to tell us why is it that we need a contributions cap on members? Now, I can see the argument and we are obviously going to have that when we get to the amendments under Article 7... sorry, I do not want to break the rules. I will talk generally. There is a contributions cap in here and clearly the Chief Minister has told us that there needs to be a contribution cap to protect the States' public cost. Of course, what we are also seeing here, this draft also includes a cap on members' contributions. Why have that, I ask. I would like the Chief Minister to explain that because I do believe that people should be able to put higher contribution levels into the scheme according to their circumstances. For example, under the tax rules, I cannot remember, over 50 or 55, you can put 50 per cent of your income into a scheme. You can do that on the cash contribution system and get tax relief on it. So I really want to be clearer about this question of this members' cap. Why do we need it? Is the Minister going to make sure that if it is approved the Regulations that come allow an arrangement that allows members to adjust their contributions to their own circumstances? I think really this is an excellent scheme and obviously its purpose is to make sure that the scheme continues for the future. I am 100 per cent behind it. The devil I think will be when we get to the Regulations. Obviously, we may have those this year, we may not, from the Chief Minister, but nonetheless I support the law.

2.1.2 The Deputy of St. Ouen:

First of all, I think as you have rightly said, Sir, you have already highlighted the importance of this particular proposition and, indeed, the debate because this is possibly one of the most significant pension reforms that the States has considered for many, many years. It is all credit to the States Employment Board and all of those involved, including employee representatives, to have been able to come to an agreement about how to deal with this particular issue. I would also like to

thank the Chief Minister for his comments regarding the Corporate Services Scrutiny Panel and the work that we have undertaken. I think it is just worth reminding Members that this proposition was lodged on 11th March. A decision was taken very quickly by the Corporate Services Scrutiny Panel that this was a matter that should be the subject of a review. An adviser was appointed on 4th April. A number of public meetings were held with key stakeholders and, indeed, the review was completed and a report published on 12th May. That was really very difficult to achieve and my thanks must go to not only the scrutiny officers but, indeed, the expert adviser that we engaged to help us review the matter and, indeed, also the individuals who contributed towards the review and attended public hearings. I hope Members have had time to consider the report that we produced, but the first thing I must say is we believe that the rationale behind the adoption of the draft law is compelling and, indeed, it would effectively provide in principle approval if this is agreed for the move from a final salary scheme to a career average revalued earnings scheme. I think the one problem we had, and I do not believe it was necessarily because of the limited time that we were able to undertake this review, but there was certain evidence that we sought that was not there or that we could not lay our hands on. One of the issues, which we will possibly discuss in more detail later, is around the proposed employer's contribution cap and what the impact may or may not be in the long term. Also, we identified that further clarity is required around Article 8(1) and I will again try and restrict my comments until we debate the Article on that particular matter. I think, more importantly, there is an issue about when the Regulations will be considered by this Assembly. I acknowledge the desire to move forward quickly and be able to implement the new scheme on 1st January 2015. However, as the Chief Minister has already said, unions are in discussions with their members around the proposals and the draft law and everyone who has been involved with the development of this law also has asked for sufficient time that the Regulations can be considered before finally being debated in this Assembly. I think it is extremely important that although there is a pressure to start the scheme on 1st January 2015, that should not necessarily dictate how employees and others are involved in the discussions to ensure that the Regulations that are brought in to support this law are absolutely right and appropriate and will meet the needs of both the employer and the employee. As I say, because of the time constraints, what we have not benefited by is any Ministerial response to our review and the recommendations that were contained within it and also, equally, the States Members have not seen that response. One hopes and one draws from the comments made by the Chief Minister with regards to our review that he seems to be supportive of the work we have undertaken and hopefully in summing up he will comment on some of the findings and recommendations that are contained in the report. These are what I believe to be very constructive recommendations that have been not only produced and promoted by the panel but equally matters that the expert adviser that we engaged has raised, which we believe should be properly dealt with. Finally, the last comment that I would like to make is that when undertaking this review we came to identify that the P.E.C.R.S. and C.A.R.E. (career average revalued earnings) Scheme Committee of Management and the States Employment Board as the employer were receiving actuarial advice from the same actuarial firm, albeit that there was a suggestion that some Chinese walls were separating the different types of advice. Certainly, it is something that is not ideal and it is something that we highlight and suggest should be dealt with in pretty short order. Obviously, we all await the outcome of the ballot from the unions, but in the hope that they will support the views of the different groups that have been involved, then I do stand to support the principles.

2.1.3 Deputy R.G. Le Hérisier:

Yes, I think it is a significant moment and I think it reflects a fantastic amount of work for which the group ought to be praised. I think we have to bear in mind the kind of issues raised by Deputy Young. There is no doubt, and it was alluded to by Deputy Le Cornu when he referred to this book that has become very popular at dinner parties by this French economist, Monsieur Picketty:

growing divisions in society. I think there is a real issue that we have a divided labour force and it is increasingly accelerating this tendency. People who are not in the pensionable sector, largely the private sector, the zero-hour contract people, they are increasingly going to find it difficult to put together a pension, let alone to put together a pension that represents different phases of their life. I think we have to be very careful if we are not to have a major growing division in society between those who are very well looked after in the public sector and those who are at the fragmented end of the labour market. That is growing in a big way and those are the people, remember, if they were earning enough are paying the taxes to pay for the public sector pensions in part. That could well lead to growing social resentment where you have this kind of division in society, and I think it has to be managed very carefully. That is why I am a great supporter - it is only a start; it will not stop the inequality totally growing - of schemes like auto enrolment, which I know in his very busy schedule the Minister for Social Security will, I am sure, before 15th October ... maybe he will not introduce it, but he will certainly, no doubt, study it very seriously. I really think we may have underestimated that because no one knows where the Jersey economy is going to go. It is in the nature of the kind of world that we live in now that it is a much riskier world. It is a world where there is not economic predictability as there used to be. You only have to look at countries like France which have wonderful welfare systems but there are real issues about how much longer they can keep paying for them. The next issue is I think there is another interesting issue within the provision itself. There is an assumption that manual workers, for example, can work longer and I do not think that is going to work. The notion that you can be digging trenches until you are 67 is just not on. There have to be other ways to manage that situation. We joke about T.T.S. (Transport and Technical Services) - not the Minister who we all know to be an exceptionally fine individual - but it is not on that kind of work people can keep up the same rate doing that kind of work. It is simply not on and we have to come up with innovative solutions. Similarly, there is no doubt and I have had constituents tell me that they worked in the emergency services and they are now spending more time on pension than they spent working in the service. That is illustrated in this report.

[10:45]

But again, the issue has to be looked at rather than cold turkey and people being told at 55 or 60: "It is now time to retire" because of this notion that you are no longer up to the physical challenge of the job, no longer up to the kinds of fights that were reflected in "Happy Valley" if anyone saw that police thriller last night where the sergeant got a real lambasting, the woman sergeant, several actually. It was all a bit compressed. So the idea that you cannot deal any longer with these physical challenges, again there has to be much more innovative thinking about the transitional jobs, the jobs as people move to retirement and move out of the front line. I do not think we have thought of that to the extent that we should have. We have simply said they are very generous pensions and we have to stop the cross-subsidies and so forth. As I said, there have to be more imaginative solutions. I do praise the group for this intense and immense amount of work, but I do hope they realise that there could be all sorts of consequences, foreseen and unforeseen.

2.1.4 Deputy A.K.F. Green of St. Helier:

Before I start, I would just like to, first of all, apologise but also correct the Deputy of St. Ouen because the S.E.B. sent out comments, albeit at the very last minute, last night. Well, yesterday afternoon, in fact. So we did make comments and I do apologise but Members do know that we have had a very, very hectic schedule. I am in a position, I think, to make several comments about the scheme, not only as a member of S.E.B. but also - and we have not heard this expression for a while because Deputy Fox used to use it a lot - in a former life I had experience of working with some excellent people in the public sector, for which the current scheme, the scheme that we are about to change, was not fair, is not fair and did not work. I refer to particularly ladies. I worked

with a workforce of 400. The greater majority of people were ladies who worked, say, full-time up until they had their children and then went part-time. Their pension under the current scheme never reflected the contributions that they made while they were working full-time. It was only based on when they worked part-time because that was the last thing they were doing before they retired. So that was grossly unfair and this puts that right. It is interesting that Deputy Le Hérissier said something about people working in trenches until 67. Of course, the retirement age does change in line with longevity and all the rest of it, but this C.A.R.E. system, this new system, allows some more flexibility because people would have struggled on, if we can put it, in the trenches until retirement age. They could now legitimately choose to do something that pays a little bit less, a different job, or even go part-time, knowing full well that they have banked that money when they were working full-time that will be reflected in their pension. It is a career average, not a final salary. It is much, much fairer. Many of the rules that we have applying to the pension schemes go right back 200 years. I talk generally not just of Jersey but in the U.K. They are just not appropriate today. This system is much fairer. It is much more affordable but, for me, it is the fairness that it gives. There are other unfairnesses being put right in this. For the best of intentions, when the pension scheme changed some time in the 1980s the existing employees were getting 60ths. For every year they worked, they got a 60th of their pension and the new employees got an 80th, and yet they were working alongside each other. It was down to the day you started work. You could have started work 2 days earlier and been receiving 60ths, and the person who started 2 days later was receiving 80ths. That was not fair. It was done with the best of intentions, it was not fair then, it is not fair now, and at least this new system puts everybody on the same accrual rate. I think that is another fairness. I would like to pick up also on whether we are creating inequity within the public sector versus the private sector. I think the public sector has to be a model employer and what we should be doing is encouraging the private sector employers, and there are some good ones who provide good schemes, to look at providing and assisting their staff in getting pensions into the future. I would like to pick up on a couple of other things as well. The comment from Scrutiny, I welcomed the Scrutiny report. It was an excellent report and I know that they are very positive overall about what we are doing. The fact that we had the same “company” advising us and the other group, there were not only Chinese walls in place. They were geographically separated by several hundred miles. This is a great improvement, but I would like Members to understand we are not giving our staff anything. This is part of their employment package. I saw my pension when I was contributing to it. I saw it as deferred pay. Lots of our public sector employees who work very hard decide to forego higher paid jobs sometimes outside because of that whole package. Now, I know there are all sorts of myths about people being overpaid, but generally in the public sector the most skilled people are receiving less than they could get outside. This is part of the package that they see and that is certainly one of the reasons why I stayed where I was. So, this is a much better scheme. This is a much fairer scheme. This is a much more affordable scheme and I urge Members to support it, to support it not only because it is the right thing to do, but to show our employees that we really do care about them, that we want them to have the right pension scheme and we want to have a pension scheme that will take them and any new employees on into the future.

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

Just in very general terms, can I thank the Chief Minister and the board and the other various teams as well as the Scrutiny Panel that has looked at this very important issue? I am glad they have come to address it because it is something which, in my view, needed to have been done sooner, but we are where we are. We are here now and we are looking at it. Certain Ministers will know that I have specific concerns about members of the uniformed services and how this will affect them, but I can return to that later. It is good to hear from Deputy Green that we are going to be flexible and that is the way we should be going. I would also agree with Deputy Le Hérissier about being

innovative, and certainly I have witnessed for myself the French system, which has issues of its own but does have a means of easing people into retirement. I think we all realise that people who work very hard, week in, week out, year after year, and suddenly find themselves waking up on a Monday morning after 30 or 40 years of service without a job and without something to get up for can be very, very difficult to cope with. So I am pleased that there will be some flexibility shown, and maybe we should look at ways of helping our employees to do that. I just want to finish up by saying that it is important to provide meaningful pensions for all those people who work so hard on our behalf, but it is equally important to make sure that we as the person who contributes and pays out that pension finally do not live beyond our means. We need to make good at all times on the guarantee that we give those workers that there will be a pension for them at the end of their working life. There is absolutely no point in promising something that we cannot deliver many years into the future. I go back again to the beginning and thank the Chief Minister and those people who have brought this to us today, which I see as a good and positive move.

2.1.6 Deputy S. Pinel of St. Clement:

Just briefly, I am standing in support of this career evaluated scheme with the regret, like the Deputy of St. Martin mentioned, that the situation was not addressed some 10 years ago when the potential shortfall became apparent. When Brig-y-Don Children's Home, as an admitted body, was forced to close in 2009 due to lack of grant funding from H. and S.S. (Health and Social Services), I as chairman had to find over £300,000 to satisfy the P.E.C.R.S. debt for staff members on the scheme to secure their future pensions, a considerable amount for a virtually penniless, at that stage, charity. However, it was achieved and, as all will know, with Brig-y-Don the phoenix rose from the ashes. Jersey Post on incorporation had to find £22 million for similar reasons to fill the pre-1987 debt hole, which is an unsustainable situation. The detailed proposals outlined in this enabling law as described by the Chief Minister are welcome and long overdue. I hope the proposition will be accepted to allow debate on the Regulations in September to facilitate implementation of the C.A.R.E. scheme in January 2015. I would also ask that great attention is paid to the communication of the details, something that we are not very good at, of this very complicated scheme to those involved in the transition from P.E.C.R.S.

2.1.7 Deputy A.E. Pryke of Trinity:

As the department with the largest number of public sector workers, all of which work extremely hard to provide care to all Islanders, as you would expect I will be supporting this proposition. It is our responsibility to ensure that all our staff have access to a pension pot when they retire which is affordable and fair, not only for this generation but for the next generation. In this Assembly, we have had many debates to ensure that we are ready to cope with all of us living longer and this is just one of them to ensure that we are fit and ready for it. We also need to ensure that we remain attractive to recruitment of nurses, doctors and other staff. As Health and Social Services move forward, we need to ensure that we are modern, fit and have a scheme for that. It is a tough topic sometimes that when you are just starting out in your career you do not think about the pension, but I know when you reach 60-plus - that can come quicker than you wish - having a pension pot that will fund all of your retirement years is vital. I would like to praise the staff, especially of my department, and the union who have worked with S.E.B. to achieve this scheme that is modern and fit for purpose for future generations. I think within Health and Social Services this scheme will allow staff to be more flexible towards retirement age because, as said, sometimes being active on the wards at 65 or 67 is hard going, but being more flexible will mean that the staff can work part-time but also be the important part they have to play in the workforce, which we will need going forward. I have no compunction to support this proposition.

2.1.8 Deputy M. Tadier St. Brelade:

Sorry, I am coming into this debate fairly late and it is just a question really for the Member who will sum up. Yes, I can see him smiling. It is really just to address the issue, if it can be addressed, about women when they retire. As we have seen from the figures included in the report, and also what we know anecdotally and factually, women are more likely to face pensioner hardship and pensioner poverty in their retirement due to the fact that by the nature of family life they often have holes in their contributions. I am wondering if there is anything which is being done to address that issue, given the fact that obviously women, when they are at home rearing children and having to take breaks and perhaps facing more precarious work anyway, and also facing lower wages because we do not have equality of pay for women, whether they are being effectively discriminated against when they face pension. I think we all agree that we do not want to see any pensioners, whatever the gender, unnecessarily becoming dependent on the state when they have spent their whole lives working, not necessarily working for remuneration but definitely for the social cohesion and material strengthening of society. So if the Chief Minister can say if any work is being done in that area I think that would be useful.

The Bailiff:

Does any other Member wish to speak on the principles? Then I invite the Chief Minister to reply.

[11:00]

2.1.9 Senator I.J. Gorst:

Perhaps we could deal with the issue of whether I should be here or not first. I have been informed that any person working on the nursing bank, those shifts are non-pensionable and, therefore, any remuneration received is not going towards any pension. I have also checked that my wife has no current liability with regard to the scheme and her main employer, as I said earlier, they are not admitted members into the scheme either, just for clarity. I thank Members who have spoken during this debate and the broad acceptance of the need for these changes. As I said, we set out on this track to create a scheme which was affordable, sustainable and fair, and the States Employment Board believe that it is just that. In fact, one or 2 Members perhaps spoke about not this scheme but those who were not employees of the States and the pensions in our community at large and the differential between the scheme as it stands now and pensionable arrangements which may be available to others. This change goes some way to dealing with that differential and that is another important reason why we should accept it today. The other issue in that regard is that the Treasury are working very hard on the issues of ensuring that people in our community do have appropriate pensions and making it easier for them to save and looking at the provision available and changes in the tax system which need to be made to provide for that. We very shortly will be making those announcements about the work that we are doing, which will be brought forward later this year. Perhaps we could simply say, however, that on U.K. budget day when the U.K. Chancellor made his announcement about budgets, we thought that he had been reading from internal documents in the Jersey Treasury and the Council of Ministers, but we shall wait another day to make those announcements because it is an important issue that we do deal with that differential and that perceived division. Equally, I think it is important that Members of this Assembly do not talk up a division where there is not one because, as I said in my opening comments, one in 3 Jersey households are affected and at some level are recipients or have members in them who are recipients of the States employee scheme. It is important that, yes, we keep those things under review but that we do not try and make a transposition from another community into our community because we know that it is never that straightforward. We have a responsibility to deal with these issues in a balanced way. I apologise to the Deputy of St. Ouen. A response to their review was agreed and finalised yesterday. The States Employment Board met during the lunch break and finalised that response. I believe that officers from my department emailed it to Members overnight. I think it was possibly at the end of the States sitting yesterday, or yesterday

afternoon. I apologise that it was not able to come forward in the normal way. It will be put into a report in the normal way. I am not sure whether that is going to be the course of today or tomorrow. We appreciate that the Greffe and officers there are working both ends of the candle, as it were, and therefore it just was not able to put that report out. Hopefully, Members have had time to look at it and we accept the recommendations and it gives more detail of our responses there. As I said, we are extremely grateful for the work that that group have done and, as the Vice-Chairman reminded us, in a very, very timely way. I am very thankful and they should be congratulated for that. There were a couple of detailed questions. I think it was Deputy Young that wanted to ask about members' contribution cap. It is important that this scheme is affordable for all, for members, for the States and thereby for taxpayers. That is why we felt it was important to have that employee cap on there, but there is, of course, a "get out" clause for employees. They can negotiate with the employer to pay a higher rate than the cap and, of course, any individual member can also opt to pay additional voluntary contributions and that is not impacted by the cap either. So there is a "get out" but it has to be done on a case by case basis and negotiated with the employer in order to do that. I am also grateful for the words of the Deputy of St. Martin. He is right, we struggled with how we would create flexibility for some of those in the uniformed services and we hope that by mirroring a scheme that Scotland will be proposing we will have gone a very long way to dealing with those understandable concerns. Deputy Le Hérissier also on the one hand talked about division in society and division in pensionable provisions; he also then went on to say that he did not think that we could expect manual workers to work longer. So, on the one hand he seemed to be saying there was a division and on the other hand he seemed to be supporting its continuation if there is the division, which I do not quite accept. His point about us coming forward with new ideas about how people who can no longer do the job that they have been doing but can move into other productive employment and remain in employment was a very well made point and it is something that the States Employment Board are very well aware of, but it will take time to develop that flexibility as departments get used to understanding that they need to redeploy people not just within department but right across the departments. That is some of the issues that will, of course, fall out of the reform and redesign programme as well. Deputy Tadier, as he said, came in during the course of the debate and asked me a question about female participation in pension schemes. He made a very valid point by nature that females may be out of the workplace more than the males, bringing up a family, during maternity, and I know that it is an issue of concern. We currently, of course, have maternity provision for States employees so that goes some way to dealing with his concerns, but there is no proposal in this scheme to change anything other than where we currently are in that regard. Of course, there is the issue that he spoke about, which is equality of pay across the sectors. That is a very important issue and, again, that issue is being addressed with the reform and redesign and equal pay for equal work. That is a very important part of that piece of work because it cannot be acceptable that, dependent on sex, one individual gets paid less for a job that another individual who is doing an identical job gets paid more for. So in this I do not think any right-thinking person in this Assembly would think that was acceptable, but it is a big piece of work that is being undertaken and is part of that moving on the pay spine and, as I said, part of the reform and redesign. It is long overdue. It is absolutely necessary and I hope Members today will give this their full support and then we can talk about some of the detail of the Articles.

The Bailiff:

Yes, the appel is called for then in relation to the principles of Projet 28, the Draft Public Employees (Pensions) (Jersey) Law. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 35		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				

Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mezec (H)				

The Bailiff:

Yes, the one abstention is Deputy Bryans, I gather? Yes. Deputy, technically I think the Standing Orders says Members should withdraw and that includes the vote, but no harm done. Well, it is now over. No, you have to withdraw again because, of course, we are still debating it. Very well, Deputy of St. Ouen, I take it you do not wish this matter referred to your Scrutiny Panel because you have already looked at it. So we then move to the individual Articles, Chief Minister. How do you wish to take them?

Senator I.J. Gorst:

Could I do Articles 1 to 6 because I have an amendment to Article 7, as does Deputy Noel?

The Bailiff:

Very well.

2.2 Senator I.J. Gorst:

Article 1 is the interpretation. Article 2 enables the States to establish a new pension scheme by Regulations. It enables the States to make Regulations for the career average scheme and also any transitional arrangements. Article 3 is the power to extend the application of the scheme around admitted bodies. There are currently 24 admitted bodies, including the Parishes, and those admitted bodies need to be able to continue into the new scheme. Article 4 enhances the governance of the scheme and covers the management of the scheme. Article 5 says that the scheme will remain a funded scheme with contributions invested to fund benefits in future years and the appointment of the scheme actuary and investment managers. Article 6 is about valuations and says that the scheme needs to undergo an actuarial valuation every 3 years. It makes it a requirement that those actuarial valuations will continue.

The Bailiff:

Very well, and you propose schedule 1 in connection with Article 2 I take it?

Senator I.J. Gorst:

If I may, thank you.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak then on any of Articles 1 to 6 or schedule 1? The Deputy of St. Ouen.

2.2.1 The Deputy of St. Ouen:

I am struggling to work out whether this matter is dealt with in these first 6 Articles, but perhaps you will give me some guidance if it is not. It is the issue about what mechanism would be in place and how this legislation provides for any of the admitted bodies that may wish to leave the scheme. Because that was one of the issues that were identified by our adviser and to my knowledge certainly the panel is still unclear about what procedures and process would be followed in that particular case.

2.2.2 Deputy J.H. Young:

Article 3 about admitted bodies, I wonder if the Chief Minister could just explain a bit in that if one looks at appendix 2 to the report, which is a list of the current admitted bodies which would be covered by Article 3, obviously it includes a number of limited companies which are wholly-owned businesses of the States of Jersey, which are obviously free to set their own pay and conditions, which are different to those which are generally applicable to States employees. For example, I think they receive bonus payments in those companies. So, on the issue of fairness I wonder if the Chief Minister could explain how Article 3 is intended to work. Particularly, for example, is it right that where we have these bodies admitted in the scheme are all the employer contributions made or generated wholly by that company, for example, S.O.J.D.C. (States of Jersey Development Company)? Do they generate all of their employer contributions or is there any cross-subsidy between those admitted bodies and the States revenues generally? It is the issue of fairness about, for example, will the Regulations when they come provide for bonuses or will they exclude bonuses from pensions for parity with States employees, and are there any cross-subsidies of employer contributions between the States and the bodies?

The Bailiff:

Does any other Member wish to speak on Articles 1 to 6? No, then I invite the Chief Minister to reply.

[11:15]

2.2.3 Senator I.J. Gorst:

Yes, both speakers were asking about admitted bodies. The process for leaving that the Deputy of St. Ouen asked about will, of course, be decided in Regulations which are still to be specified, and that is exactly the same way as it is now. Although I have not yet considered the details of those Regulations, I do not see any need to change them majorly from where they are now. There has to be a consultation process for being admitted but it is only right that any admitted body that wishes to leave should do so provided they have met fully any liabilities that they have created within the scheme. That seems absolutely appropriate. Deputy Young asked about whether there was any cross-subsidy between the States and admitted bodies. No, there is no cross-subsidy. All the costs are considered at the point of entry into the scheme and that, I believe, is as Members would expect. He asked me a question about bonuses. Of course, that is a matter for those individual admitted bodies whether they wish to pay their staff bonuses or not and whether they wish them to be pensionable or not. That is not connected with the scheme rules that we are deciding today. That is a question that would need to be asked by those individual admitted bodies. I suspect some pay bonuses. I do not have to hand whether any of those bonuses are pensionable or not but it is a matter for them. Of course, when we talk about the entry of admitted bodies into the scheme and making sure that all the costs and liabilities are met, same with the exit, they are determined on an actuarial basis as one would expect. So the amounts are determined by the actuaries and agreed by actuaries so that it is a neutral act almost between the scheme and either the to-be-admitted or the leaving admitted body.

The Bailiff:

Very well, all those in favour in adopting Articles 1 to 6 and schedule 1 please show? Those against? They are adopted.

2.3 Draft Public Employees (Pensions) (Jersey) Law 201- (P.28/2014): amendment (P.28/2014 Amd.)

The Bailiff:

We then come to Article 7. Do you wish to propose Article 7 in its amended form, Chief Minister?

Senator I.J. Gorst:

If I may, yes.

The Bailiff:

I will ask the Greffier then to read the Chief Minister's amendment just so that we have that in front of us.

The Greffier of the States:

Page 30, Article 7 - in Article 7, for paragraph (2) substitute the following paragraph - "(2) The caps referred to in paragraph (1) shall be rates expressed as a percentage of pensionable earnings of contributing members of the respective schemes, provided that in the case of the employer contribution cost cap, the rate that is set shall not exceed 16.5 per cent of pensionable earnings.

2.3.1 Senator I.J. Gorst:

Article 7 obviously, as the Greffier has just made clear, introduces an employer and an employee cap into the scheme and I have said why in response to Deputy Young's question about contribution caps. It is important that we make sure that this scheme is affordable not only for the employee, which is important, but also for the employer and thereby the taxpayer. As you can see from the fact that the States Employment Board are proposing one cap and a member of the States Employment Board is proposing a different cap, this is an issue which we have considered at length and ultimately we were not able to agree. So the States Employment Board does agree that it is in

the interests of all that the cap is stipulated in the primary legislation. That is what the amendment does. We simply disagree on whether we need the half per cent flexibility and I will come on to why I think that is the case after Deputy Noel has moved his amendment to the Article.

The Bailiff:

Is Article 7 seconded? [**Seconded**]

2.4 Draft Public Employees (Pensions) (Jersey) Law 201- (P.28/2014): amendment (P.28/2014 Amd.) – amendment (P.28/2014 Amd.Amd.)

The Bailiff:

Then, as the Chief Minister has said, we have an amendment to Article 7 or technically an amendment to the amendment lodged by Deputy Noel. I will ask the Greffier to read it.

The Greffier of the States:

Page 2 - in substituted Article 7(2), for the words “16.5 per cent of pensionable earnings” substitute the words “16 per cent of pensionable earnings.”

2.4.1 Deputy E.J. Noel of St. Lawrence:

To begin with, Members may find it strange that a member of S.E.B. is bringing forward an amendment to an S.E.B. proposal. I am purely doing so as a matter of principle. What I hope to demonstrate to Members is that the proposed C.A.R.E. scheme needs to be sustainable, affordable and fair not only for those members of the scheme but also for those taxpayers who are not participants of the scheme. The proposed C.A.R.E. scheme is a viable solution but equity and fairness does not only have to apply to those participating in the scheme. The so-called traditional risk-sharing arrangements of a ratio of 2 to 1 employer to employee contributions needs to be challenged. Going forward, there needs to be certainty on behalf of all taxpayers, which is why S.E.B. are in full agreement that the employer cap should be in the primary law. Throughout the negotiations taking place between the J.N.G. (Joint Negotiating Group) and officers on S.E.B.’s behalf, I have been challenging, along with other political members of S.E.B., the proposed replacement C.A.R.E. scheme arguing that the 3 core values of sustainability, affordability and fairness also need to be reflected in terms of those taxpayers who are not involved in the scheme. In the very beginning, S.E.B. set a maximum total contribution envelope of 24 per cent split 16 per cent for the employer and 8 per cent for the employee. My amendment is attempting to uphold the employer element of that maximum limit which was communicated at the very outset. Adjusting the cap from 16.5 per cent to 16 per cent delivers the fundamental line in the sand on behalf of those taxpayers not involved in the scheme. If I may refer briefly to the email received from the chair of the J.N.G. to States Members yesterday, the S.E.B. were clear in their upper limit of an overall cost of 24 per cent, as I have mentioned being 16 per cent for the employer. S.E.B. were almost but not quite presented with a *fait accompli* when a cap of 18 per cent was brought back to us and it was strongly rejected. I have been consistent throughout the past 2 years on this matter and my line in the sand has been 16 per cent. The J.N.G. are fully aware of this and have been throughout the negotiations. As I have already mentioned, this is a matter of principle on my part. The general public are expecting us to replace the final salary scheme with a more affordable scheme. Many, in fact, would have wanted us to introduce a defined contribution scheme, which gives more certainty as to the costs but increases the uncertainty for the participants within the scheme. However, a D.C. (defined contribution) scheme would make recruitment of certain States employees very difficult, particularly in the Health and Social Services Department where a vast majority of off-Island recruits are transferring from U.K. defined benefit schemes. In addition, and more importantly going forward, to offer 2 different types of schemes, one defined contributions and one defined benefits, would cause a rift within the public sector and would act, in fact, as a

barrier to transfer staff between different areas of the public sector, which is something that we wish as S.E.B. to encourage in the future. The C.A.R.E. scheme being proposed is a reasonable solution but it is not going to reduce the cost of providing pensions to States employees. In fact, because of the arrangements around the pre-1987 P.E.C.R.S. debt and because for new entrants the current scheme is already underfunded, the overall cost to taxpayers will increase. The current final salary scheme could be described by some as an 18-carat gold-plated scheme, which is simply unaffordable in the world that we now live in. The proposed C.A.R.E. scheme still could be described as a gold-plated scheme but it is gold plated as 9 carat, not 18 carat. Those in the private sector, if they are fortunate enough to be in a part-funded employer scheme, would most likely be in a defined contribution scheme where the employer contributes typically around 10 per cent of their pensionable pay. For many, particularly those not in financial services employment or for those who are self-employed, they are not in a scheme at all. What we are proposing for States employees is an employer contribution rate significantly higher at a maximum of 16 per cent if my amendment is accepted or 16.5 per cent if it is not. As a Government we must encourage all Islanders to save during their working lives to fund their retirement years if we are to avoid increased income support costs and to allow individuals to have sufficient funds to enjoy a reasonable quality of life in their retirement years. It can be argued that the employer pension contributions are a form of deferred remuneration and as such what is being proposed is, in fact, a 2.4 per cent increase in remuneration levels for States employees. Currently, as employees of the States, the States contribute a total of 15.6 per cent into P.E.C.R.S. and by agreement with the Committee of Management 2 per cent is used to repay the pre-1987 debt and 13.6 per cent is used to fund the remainder of the scheme. However, we already know that this 13.6 per cent is not enough to fund future pensions for new entrants into the scheme along with their current - which is typically 5 per cent for non-uniform members - own employee contributions. The new proposals are suggesting that the employer makes a contribution cap initially set at 16 per cent and, if unamended, with an upper cap of 16.5 per cent, but this excludes the contributions for paying off the pre-1987 debt. Therefore, to keep the repayment of pre-1987 debt at its current levels, a further 2 per cent will have to be found, which is an increase from 15.6 per cent, the total employer contributions, to 18 per cent total employer contributions. It is proposed that this extra 2 per cent for the pre-1987 debt will come *pro rata* from departments' budgets and will be released by way of efficiency savings and not any increase in taxation. The employer cap will only be introduced after steps 1 and 2 in the second slide that I produce in my report have been implemented. Just for clarification, the first step is if previous surpluses will be used up first and if there are no surpluses then there is a possibility to reduce benefits. It is only after these 2 factors have taken place that the increase to the cap will be considered. However, S.E.B. have been advised that the new C.A.R.E. scheme would have to be at a funding level of some 60 to 65 per cent of what is required by the time we reach level 3. To put it simply, the C.A.R.E. scheme at this point would be effectively broken and would need significant amendment or, indeed, replacement. This can be argued in one of 2 ways. The first is that the cap of 16.5 per cent is perfectly acceptable because we would not increase the employer contribution to 16.5 per cent. We would instead revise or replace the scheme. But the flipside of this is equally valid in that you could set a cap at 16 per cent because if you did reach stage 3 then you would have to significantly revise the scheme. However, there is one significant argument in favour of setting the cap at 16 per cent and that is it is compliant with our line in the sand. It sets the upper maximum employer contributions at the original limit of 16 per cent and it sends a strong message to all taxpayers, both those employed in the public sector and those not employed in the public sector, that the employer liability is certain. By moving from the current scheme to C.A.R.E. we will not reduce the cost to the public but we will avoid future additional costs and in doing so provide adequate funding to provide an appropriate level of pensions for all States employees. The proposed scheme attempts to strike a balance between the public sector staff and the taxpayer, ensuring that States staff will continue to have good pensions

while taxpayers benefit from a meaningful cap on their exposure to current and future costs. What I am proposing continues to be fair to all parties and I hope Members will see that this is a small but significant amendment which sends out an important message to all concerned. That message is that we have an obligation to provide appropriate levels of funding for States employees' pensions but that we have to be mindful of the exposure to taxpayers. I propose my amendment.

The Bailiff:

Is the amendment seconded? **[Seconded]** Senator Farnham.

[11:30]

2.4.2 Senator L.J. Farnham:

Listening to the comments on the main proposition, I felt that sometimes the Assembly was congratulating itself a little bit too much on introducing a new pension scheme when we must remember what we are doing is restructuring a pension scheme and arguably - well, not arguably - reducing some of the existing benefits. I do not think we should lose sight of that, but equally, if we do not do that, then the scheme is clearly not sustainable and the ramifications are unacceptable. Now, I admire Deputy Noel for bringing this. It cannot have been an easy decision bearing in mind he is a member of the States Employment Board and has been party to the negotiations and I understand this is not only an important matter of principle for Deputy Noel, but it also is an attempt to retain some responsibility and generosity on behalf of the employer with some extra insurance on the sustainability of the pension fund. I have a couple of questions. It might be something the Chief Minister may need to answer later but yesterday, Members received a letter from the Chairman of the Joint Negotiating Group, which among its contents highlighted that the cap would not start until after the first 2 valuations. I wonder if the Deputy could just confirm the position on that. Does that mean there is no cap for the relevant period of time? The letter we received also stated that if this Assembly were to accept Deputy Noel's amendment, then an important part of the risk sharing arrangements and the key to the sustainability of the scheme would be undermined. Could the Deputy explain how this would be undermined? Also, there is the issue of once the States has made the decision the Joint Negotiating Group will seek support from its membership by a ballot. Can the Deputy or the Chief Minister - whether it is at 16.5 or 16 per cent, whatever the Assembly decides to accept - what would be the position if a ballot did not accept the proposal? I do understand from reading between the lines of the accompanying paperwork and the letter that was distributed yesterday that obviously a 16.5 per cent cap would have more chance of success but if the States Assembly did accept Deputy Noel's amendment and the ballot then rejected that, what is the position? Where does that put us? Also, finally, Deputy Noel, mentioned the pre-1987 debt and Members may remember that I brought a proposition to the Assembly in 2012 that asked the Minister for Treasury and Resources to investigate paying off that debt even quicker than the Treasury are currently planning to do. Are there any ramifications in relation to that depending on what cap we decide on today?

2.4.3 Senator I.J. Gorst:

As I indicated when I was moving the Article initially, Deputy Noel supports the creation of the New Care Scheme and we have robustly considered all the elements that we are now proposing for the new scheme. The only thing that we disagreed upon is whether there should be, right at the very top, an element of flexibility to manage any future difficulties within the scheme. Deputy Noel is taking, as we have just heard, the view that the mandate was 16 per cent and we should stick to that 16 per cent. Unfortunately said Member cannot be here today and she does send her apologies, but she decided that the acceptance of an, albeit small, level of flexibility in the scheme was important to ensure that managing the risk was done in an appropriate way. The reason, of course, that we have put it into the actual law is because we think it is important that certainty is

given to the States about what they can be expected to pay in the future. What we have tried to do in developing this scheme, pension/long term instruments, but even long-term instruments need to adjust from time to time as actual outcomes might change from assumptions. It is that requirement that has brought us to the point that we are today. We want this scheme to meet the requirements that we set, that affordability, sustainability and fairness and we want that to be able to have longevity of between 20 and 30 years. One of the reasons that we ultimately accepted the 16.5 per cent, we accept Deputy Noel's point of view that it is unlikely that we are going to need to use the cap but we need to have the flexibility in case we need to manage deficits and we need to manage them ... it is also an element of timing because it might be that we need that flexibility to manage a deficit over a short period of time until we are able to adjust benefits or ultimately just employee contributions into the scheme. So it might be that we just use it over a short period of time but it is that flexibility that we believe is important, which will mean that this scheme can have the longevity of between 20 and 30 years. We also go back to this idea that we have been negotiating and consulting and coming up with the scheme for 2 years and it is that, with the current half per cent flexibility in the scheme that scheme members are now negotiating with their representative bodies and going out to ballot. They are expecting, albeit we have said that this Assembly makes the final decision and I am sure that is what Deputy Noel will say in his closing remarks. It is this Assembly that makes the final decision but the employees, after that long negotiation, are expecting that there will be that element of flexibility and they have committed to an element of flexibility in their contribution cap as well, as Members will see from the report. Members will also have received an email yesterday from the Chairman of the Joint Negotiating Group and that individual also sat on the Technical Working Group. I have to say that this robust discussion, this challenge, has been 2 ways and if any Members of the Assembly have heard the media interviews and round that were undertaken when we first lodged this proposition, they will know that on behalf of taxpayers, I felt my job was to try and limit taxpayers' liability into this scheme and at the same time, I would be asking members of the scheme to pay more into the future. I have the utmost respect for the way that the Chairman of the Joint Negotiating Group and the members of his group and the employee bodies have handled these negotiations and this consultation because they have accepted that the scheme needs to change. They have accepted that they are going to have to pay a greater contribution and they have accepted that they are going to have to work longer. Yes, they have probably accepted with reluctance but they have accepted it and so when we look around how other governments have negotiated with their employee reps, yes we still have to go to ballot, but I think that we are working together now as an employer and as employees in a way that many other countries look at and wish that they had that engagement and that buy-in from those employee reps. It is in no small way thanks to the way that the unions have engaged and been prepared to accept compromises and been prepared to accept that they are going to pay more, all things that on the surface you could have expected them to fight pretty strongly against. At the same time, of course, as the employer, we have accepted that we are going to have to pay a bit more as well. I believe that this scheme hangs together. It is important that we share the risk but it is important that there is an element of flexibility for times of difficulty that we hope the scheme will not get into but we know that returns are uncertain and the scheme might get into. We heard Deputy Noel give his assessment of that; his assessment of how difficult he thought the scheme would have to be in before we got to use that element of flexibility. The other point that Senator Farnham asked about was when will this extra flexibility be used? We have said to staff that we will not use it during the first 2 actuarial valuations. Possibly at a time when we might expect some vulnerabilities to the scheme because of all the transferring over and the changing in assumptions to prudent assumptions and other very important changes within the scheme. But because we wanted to protect the taxpayer and we wanted to give some certainty in the short term of a new scheme, we said that we would not want and that flexibility could not be used during the first 2 actuarial valuations. In the medium term, we accept that it might be needed to deal with what we believe will be short-term

issues. So I find myself in an unusual position of not supporting my good colleague, Deputy Noel, when I find myself politically mostly very supportive of the positions he takes, because looking at the negotiations that we have had to do on balance, the coming to the table of the Employee Side, the acceptance by them that they needed to change and it would be to their detriment, largely these changes, that we have to meet them somewhere and give them this small element of flexibility. Of course we know that they were asking for 2 per cent worth of flexibility. We did not accept that as their email says but we have found ourselves in a position of accepting a 0.5 per cent. So I ask that Members of the Assembly do not accept the amendment but do meet the unions where they are half way, as it were, where one could argue strongly that they have moved more than half way and I do not think that at this stage it would be good for us to accept the amendment. I ask Members to stay with the 16.5 per cent.

The Deputy of St. Martin:

On a point of clarification, the Chief Minister mentioned flexibility in the employees' contribution and that specifically was mentioned in the report. Could he point that reference to me, please?

Senator I.J. Gorst:

I cannot point to the page because I have just sat down but I could have a look. It is the 0.25 per cent.

2.4.4 Senator F. du H. Le Gresley:

I find this debate rather strange and the reason for that is if we look at page 1, this proposition is brought by the States Employment Board. The Chief Minister does not bring it; it is brought by a board that is appointed by this Assembly. We have just discovered that not only is Deputy Noel a member of the S.E.B., but the person who seconded his proposition is also a member of the S.E.B., i.e. the Deputy of St. Mary. So we now know that there was a 3:2 (I assume) split in the S.E.B. with regards to this cap. I could be a detective [Laughter] but I have come to that conclusion. But really this is no laughing matter because only yesterday, the same 2 Members who are supporting this amendment signed-up to collective responsibility. [Approbation]

[11:45]

They were voting for collective responsibility and yet, here we have a clear example of a board negotiating, as the Chief Minister has said, for over 2 years to come up with a sudden change because they are not happy with the outcome of the negotiations. That is not collective responsibility. That is doing a disservice to the process of negotiation. I do feel that the Chairman of the Joint Negotiating Group's email should command the attention of all States Members, because what he is saying is that this is reneging on promises, it is going to possibly lead to the breakdown of the negotiations, which have taken years, and as Deputy Pinel said earlier, we have been waiting for this for a long time. Why, at the eleventh hour, the States should be being asked by 2 members of the S.E.B. to change the terms to me is totally unacceptable and I encourage Members to throw this out.

2.4.5 Deputy A.K.F. Green:

I am pleased to follow the Minister for Social Security because I too will encourage Members to throw this out because, as the Minister said, this is 2 years of negotiations in good faith with our trade union representatives. They came back not too far in the distant past with a suggested change that they would like us to look at and as a board, unanimously, we rejected that and said: "No, we have reached an agreement. We are ready now to go to the States. We cannot agree to you suddenly making that change." Here we are at the very last minute with 2 members of the board making a different change but making a change. If we are to have integrity and if people are going to be open and negotiate with us, we must stick to what we have agreed and, therefore, I urge

Members to throw this out. Let us have the cap that the Chief Minister has proposed and that was proposed not only by considering what the Joint Negotiating Board from the union side came up with but also talking to the board of management about how it would work for them and how we could help them ensure that we have a going forward sustainable scheme. I urge Members to throw this amendment out.

2.4.6 The Deputy of St. Ouen:

First of all, I would like to challenge Deputy Noel to show us and tell us where is the evidence, the real evidence, to support his view that the cost cut should be set at 16 per cent rather than 16.5 per cent. We have had the Chief Minister and others, and Deputy Noel is well aware that the present scheme is suffering severe funding pressures. The proposal of setting a cap at 16.5 per cent is not far higher than the contribution that is going to be made and is currently being made by the employer now. We have a pre-1987 debt that we have had to deal with because of the lack of sustainable funding. We now have a pre-2015 debt that needs to be dealt with and we have got a new reform that has been negotiated - and I pick up the point again - with all groups to find a satisfactory answer. I would also point the Deputy, if he is looking for evidence, to look at our report. In fact, our adviser's executive summary, which is on page 19 at the back of our Scrutiny report, clearly says: "If the cost assumptions are not sufficiently prudent, then the 24 per cent cost envelope will not be adequate to meet the funding costs." So you talk about lines in the sand, there is already a marker put down by our adviser but what is being proposed and all of the assumptions that are being included and used to work out the 24 per cent cost envelope and the way it is going to be split could be challenging and may not necessarily be affordable to the taxpayer in the long term. Indeed, they go as far as to say they have not seen any evidence that 16.5 per cent or even 16 cost cut would be affordable in the longer term. So rather than come out with this: "Oh well, let us have 16 rather than 16.5", you know, let us see if you are going to put forward these sorts of proposals, bearing in mind your responsibility as the Assistant Minister for the Department of Treasury and Resources, then bring us proper evidence provided to the States department, which demonstrate why you can seemingly have a different view from the States Employment Board and the proposals that are in front of us today.

2.4.7 Senator P.F.C. Ozouf:

First of all, if I may just spring to the defence of my Assistant Minister in the remarks that Senator Le Gresley made. If we were to have collective responsibility, which we do not have at present, what would effectively have happened is that in a Ministerial sense, then a Minister or an Assistant Minister who did not agree would resign and of course, a parliamentary democracy would allow that Member to effectively bring the amendment that they felt strongly about. So it is worth just saying that I do not think it would be entirely right or appropriate to chastise Deputy Noel for effectively bringing an amendment. It is just the process in future with collective responsibility would be different but we still may be here. I would recognise and thank all the Members of S.E.B. but particularly Deputy Noel for the work that he has done as a member of S.E.B. **[Approbation]** He has a responsibility, he is the Treasury representative on the S.E.B. if I could be described as that, and of course he will be thinking about the financial implications of these changes, of which they are significant. They are more significant if we do not do anything about it so it is right and proper that there is a challenge in relation to the costs to taxpayers. Senator Farnham raised a number of issues, which I think probably do need answering. They are not directly relevant to the amendment but if they need answering in his decision about whether to support the amendment or not. It is just worth saying that we are here having this debate today because another example of this Council of Ministers and this Assembly tackling problems that needed to be tackled and had previously been significantly left unresolved. In resolution of issues, there are challenging decisions to be made. This Assembly, I would say to Senator Farnham, and I will be making some

further announcements later today in relation to private pensions and what we are doing, but in terms of public pensions, we fixed the past liability and I think Senator Farnham might have conflated the issues of a pre-1987 debt with the future issues. I just remind Senator Farnham that this Assembly has made some important decisions on fixing what the current Treasury team regard as effectively a liability that was not appropriately being paid off in an appropriate period of time. We are grateful for this Assembly's very significant decisions to further fund the pre-1987 debt, which instead of being repaid over effectively ... and Deputy Noel is the accountant but I did do accounting exams at one stage and I did understand the matching concept, where the repayment of that debt was not matched to an appropriate longevity of those liabilities. So an Assembly that has fixed something that we inherited and fixed it in a much better way. In terms of these difficult decisions, it is worth reflecting and I am absolutely alert to the difficulty of the negotiation with staff. Staff are going to pay additional contributions and so is the employer and what we are talking about here is a potential ... and Deputy Noel's arguments are worth listening to. I think he knows that I think I have to vote with the S.E.B. line and he and I have a great relationship and I am very appreciative and respectful for the work that he is doing. He is right to bring to the floor of this Assembly a concern about taxpayers' liability to the pension scheme. If it is not already being spelt-out, taxpayers will be putting an approximate figure of £6 million more into the pension scheme for the care scheme. That is, as the Chief Minister said, going to be dealt with by savings but that is a very substantial amount of money. Now, I support the fact that in order put a proper, fair, affordable, attractive for recruitment pension scheme, we have to put more money into the scheme. That is right and proper but I say to Members, that is going to be one of the important and difficult decisions that the next Assembly and the next M.T.F.P. (Medium-Term Financial Plan) is going to have to deal with. We are effectively making the next stage of the decisions of having to fund public pensions by an additional £6 million. Deputy Noel is saying that he believes, and it is an argument that is perfectly entitled to bring forward and to be listened to and for Members to make their decisions based upon the information, as to whether or not that employer liability could be even greater than that £6 million in certain circumstances where there is a deficit and effectively taxpayers would have to find what is about an additional £1.25 million. Now, Deputy Noel would not be doing his job effectively as a tester of the financial position if he were not to bring it. He is right to bring it, I respect his right to bring it, there has been a negotiation, and these are difficult issues for employees. I am grateful for the engagement, as other Members have said and the Chief Minister said, for the very co-operative way in which negotiations have been carried out for the responsible way in which union representatives have dealt with these very difficult issues but effectively this issue is about the taxpayers' contribution to the pension scheme. He is right to bring it, it is good and proper to have a debate, it is right that we deal with matters of significant public spending, which these issues will of course follow. I will be supporting the S.E.B. scheme because I think that collective responsibility requires - to Senator Le Gresley - the fact that I support the Chief Minister on this, but I support Deputy Noel's raising of this issue and having this debate and allowing Members to test whether or not the end point of the negotiation is the right balanced interest for employees but most importantly also for taxpayers. I hope those observations are helpful.

2.4.8 Deputy R.G. Le Hérisier:

Very briefly, I am totally confused. The Minister for Treasury and Resources has given a speech in the tradition of which he often accuses me of looking in several directions at the same time. If Deputy Noel - and good luck to him - has a fundamental disagreement, we are all members of groups, we are all members of committees, we argue it out, we win some, we lose some. If it is vital, we resign, if not, we do in an informal sense, acknowledge collective responsibility. I find this unbelievably confusing.

2.4.9 Deputy J.A. Martin of St. Helier:

I think I was where Deputy Le Hérisier is and I think I probably still am but just on the matter of principle, I mean, who sits on S.E.B., and I know under this system he is totally right. We have just heard under the new system, if he wanted to bring ... he would have to resign, but that is for another day. There would be quite clear information from the Minister for Treasury and Resources. To me it is a point of principle. I think it is taxpayers, we are the employee, the employee is paid by ... the employer pays money out from the taxpayers' pocket. The people in the scheme are also majority taxpayers. I know there are people in the scheme or not. It is interesting to hear when employer contribution is being capped at a slightly lower rate, when the Minister for Treasury and Resources stands up and tells us we will be bringing you the private equivalent or information later. This probably has no effect on that but it will mirror, probably, the public one. We will see. But to me, it is a matter of principle that I do think the States employees have in the last couple of years, and I sat with the Constable of St. Helier on the Manual Workers Joint Council, which went around and around and in the end got disbanded because it had its sell-by date and it was being replaced by other people. Many around that table wanted to negotiate, they knew some of the practices were long overdue to be updated and they had been doing this for 18 months to 2 years.

[12:00]

They have trusted in the negotiations with the States Employment Board and they thought, up until the beginning of April - or end of April because it was obviously the end of April, that they had a compromise - a percentage either way but when you are talking about thousands and thousands of pounds, millions, is quite a lot of money and I do ask the Deputy at the end, he says in his ... again, he says there are no financial implications in his ... surely, if we agree to the Deputy's amendment, there would be a financial saving for the taxpayer and the States. I mean, I think he needs to emphasise this because there is a saving somewhere, someone is paying it, and it would be the employee. Now, that is fundamentally down to your politics or your principles, but the principle here was, for months and months - 18 months, 2 years - you negotiated this. This was the stand and, you want to carry on negotiating with these people on terms and conditions, this is massive in their terms and conditions, but today you want to turn around and say: "No, we are going to make it just a little bit less for the employer". I think, be very careful to accept this amendment. I understand what I think the Deputy is doing. I would like to know the savings, because I do think there must be a saving before the people who are not in it, the employer and the taxpayer, and somebody has to pay it. So it would be the employee. The way I read it, if I am reading it wrong, I apologise, but fundamentally, the principle was negotiated and it is too late now. It probably, as the Deputy of St. Ouen says, will be a few years and it will go up. Nothing ever really goes down. Thank you.

2.4.10 Deputy M. Tadier:

The issue we have as an Assembly is that we need to know whether or not Deputy Noel is right. When we hear the Minister for Treasury and Resources... his Minister and the Assistant Minister obviously are a team, usually they are as thick as thieves, they work very closely together. There is an issue, because it sounds like now we have collective responsibility or we are going to move to that. We have the logical consequence of that; the logical incongruity is that the Minister for Treasury and Resources stands up essentially, as I heard it, to say: "I agree with the Assistant Minister but I have to vote with the Chief Minister, with the Council of Ministers." Are we going to see more and more speeches like that, saying: "The person is right. Logically, absolutely, it is the correct thing to do, but because of this constraint that we put ourselves under, I just simply now, automatically have to push the button." Maybe the Chief Minister will have a series of buttons which he will just press himself, while the Ministers are out doing work in the departments. I will not dwell on that, because that is obviously not the main part of what we are talking about, but it is interesting. We need to find out, because the Assistant Minister is obviously on S.E.B. I would

imagine, for his expertise and as a representative of the Treasury, and if the Treasury do not think this is a sustainable plan going forward, then Members need to listen to that. They either need to say the Treasury is right and give reasons why they are ignoring them, which I think is what the Chief Minister tried to do (pragmatic reasons) or to say that the Treasury is wrong. If they are wrong, then that does not bode well for other areas of policy. What I am concerned about is, if we read the Deputy's report, there is a paragraph where it says: "As a Government, we must encourage all Islanders to save during their working lives to fund their retirement years if we are to avoid increased income support costs, and also to allow individuals to have sufficient funds", *et cetera*. The issue is, if we are capping and reducing the employer's contribution, the taxpayer's contribution, that makes it much more likely that the individuals on those schemes are going to have their pensions proportionately cut to reflect that, or they are going to have to pay more from their own pockets. Either way, they are going to be worse off themselves and would do the opposite of what Deputy Noel is asking for here, which would put more pressure on the income support system if there are not sufficient funds being paid into the pot in the first place. It means that pensioners may well require income support to top-up their pensions rather than the other way around. I wanted to raise that as an issue. I also think it is important that the Deputy and the Treasury, if they acknowledge the fact that this scheme is perhaps not sustainable, but they also hopefully would acknowledge the sensitivities around the negotiations that the Chief Minister outlined, is simply to find new ways to tax capital and wealth. Jersey is not a poor island. We know that there are many people in the Island who are extremely comfortable, who are extremely well off. The vast majority, though, increasingly are not. There needs to be a way to have sustainable tax arrangements, sustainable pension arrangements, so that it can all work out for the greater good. We know that people who work in the public sector often give up many aspirations that others in the private sector might choose to work for: material aspirations; the possibility of virtually unlimited earnings in some sectors. They do that because they are working for the public good and it is a vocation, and it should of course have some benefits to compensate for that, so I would remind the Deputy of that. Hopefully, he knows that already, and to look at ways of making the scheme ultimately more successful, more sustainable, not necessarily by reducing the employer's contribution, but by having a fairer, more progressive tax system, *et cetera*, in the first place.

2.4.11 The Deputy of St. Martin:

I would just like to speak very briefly about principles, in 3 different forms. Firstly, when we debated the principles originally, I said that I thought it was important not only that we guarantee the pension scheme for our employees into the future, but one that we could afford to pay. When I read the Deputy's amendment I was obviously interested. It is important that we have a scheme that we can afford to pay. But the thing that got me interested when Deputy Noel spoke was when he said it was a point of principle, the ratio of 2 to 1. I was very interested in that, because if at all times over the past years we have negotiated on the basis that we will always put in twice what the employee will put in, I wonder why, if we are changing the cap, we have not proposed raising our cap, if necessary, to 70 and asking the employees to contribute an extra half per cent. So we would take one and they would take a half. I was interested in why we had gone away from this very important principle of 2 to 1, and I can see why I would like to maintain that into the future. It gives both sides a definite certainty as to what their proportion is as opposed to the other one. But finally, I would like to talk about the principle of negotiation. I am now in a very confused and difficult position, because as much as I would like to support Deputy Noel and his principle of 2 to 1 ratio, I hear, and I would like to believe I hear, that we have negotiated on the basis and reached an agreement on the basis that we will increase our cap to 16.5 per cent. I find it very difficult in any way, shape or form to go back on a word that we have given if we have completed negotiations on that basis. **[Approbation]** As much as I would like to support Deputy Noel, unless somebody

can prove to me that we have not given our word on 16.5 per cent, there is certainly no way that I could go back and vote in favour of changing our minds at the eleventh hour.

2.4.12 Deputy G.P. Southern of St. Helier:

I stand to support the previous speaker, who has queries about the negotiation process and going back on it. As a trained trade union negotiator, I learnt very early on about the basic rules of negotiation, and one of the fundamentals of negotiation is that you negotiate in good faith. When you leave the table having negotiated and agreed something, a way forward, it does not matter how badly you feel about that, whether that negotiation was win-win or win-lose and you feel like you have lost, in good faith you do not double negotiate. You do not come back to the table and say: "I have changed my mind." That is fundamental breaking of basic rules of civilised society. You do not conduct yourself like that, and we should not be being asked to conduct ourselves like that. You do not double negotiate. You have to reject this.

2.4.13 Deputy T.A. Vallois of St. Saviour:

I think it is important to reflect what the Members of the Committee of Management or the Jersey negotiating group's views were before the Corporate Services Scrutiny Panel, and I think it has much relevance to this particular amendment. Particularly it has some relevance to myself because the Public Accounts Committee focus on corporate governance and governance within the States. We will just say that it is not up to probably the standard that most of us would expect. I am going to read out what one of the Members who were in front of the Corporate Services Panel said, and I think this leads to helping us understand the reasoning for the 16.5 rather than the 16. I will quote from what the gentleman said: "We would like to think that there is such good governance going forward with the new scheme that to have to increase contributions and achieve that element of going up to the cap becomes highly unlikely. Something has gone wrong if we are doing that. It is unlikely that we would go to the cap." From the Jersey negotiating group's perspective, then, if something does go wrong, we would like that buffer zone there. If the buffer zone is not there and you do reach the cap, then what happens is the benefits get cut. That is employees' benefits and obviously the employer does not have to share that burden. So I wonder if Deputy Noel could explain that if his amendment were to be approved, what would be the buffer zone then? What would be in place for negotiations for the employees then? What would be on the table?

The Bailiff:

Does any other Member wish to speak? Then I call upon Deputy Noel to reply.

2.4.14 Deputy E.J. Noel:

As I stated at the beginning of my speech, for me this is a matter of principle, my line in the sand. At the very outset, we set a cap of 16 per cent and the negotiations were to take place within that 16 per cent. I have been clear throughout with fellow members of S.E.B. and with the J.N.G. when they came to have discussions directly with S.E.B. That was my line in the sand and that I would bring an amendment forward on this, so I have been completely clear throughout. I am not going to address all the Members' points individually, but I will say is that I agree wholeheartedly with Senator Gorst, our Chief Minister, with one exception. That is about flexibility, because I do believe that the flexibility arrangements that we have, that I have reproduced in my report, would be sufficient going forward, without step 3, which would be putting the cap at 16.5 per cent as opposed to 16 per cent. The other 3 measures there do provide the flexibility to make sure that this scheme continues into longevity. I have this point of concern because I have one eye on the future long-term revenue plan and future States expenditure. We do have to maintain balanced budgets and I can see the pressures on our expenditure coming down the line. This is the main reason why I have this point here, we have to put all taxpayers, those that are employed in the public sector and those that are outside of the public sector... we do need to make sure that our finances going

forward are balanced, that we do not overpromise and under-deliver, and that is why I have this line in the sand. I readily admit that my amendment will be defeated today, but I am not apologetic by bringing it, because I believe this matter does need to be at the forefront of our minds when we consider our public finances going forward. We must live within our means. I am merely going to repeat that what I am proposing continues to be fair to all parties, those within the scheme and those outside the scheme. I hope Members will see that this is a small but significant amendment which sends out an important message to everybody, a message that we have an obligation to provide appropriate levels of funding for States employees' pensions, but we have to be mindful of the exposure to taxpayers.

[12:15]

We are moving already from paying into the pension scheme, from 13.6 per cent to 16 per cent. The employer is already giving an additional 2.4 per cent in contributions to fund the pensions going forward. On top of that, we will have to address the pre-87 debt and I agree with Senator Farnham, we do need to find ways of reducing that debt down quicker. But it comes back to my fundamental point that we have to ... with the eye on the ageing population and the stresses of public finances going forward, we do need to be mindful of our expenditure, and I maintain my amendment.

The Bailiff:

The appel is called for, then, in relation to the amendment of Deputy Noel. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 2	CONTRE: 35	ABSTAIN: 0
Deputy E.J. Noel (L)	Senator P.F. Routier	
Deputy of St. Mary	Senator P.F.C. Ozouf	
	Senator A.J.H. Maclean	
	Senator B.I. Le Marquand	
	Senator F.du H. Le Gresley	
	Senator I.J. Gorst	
	Senator L.J. Farnham	
	Senator P.M. Bailhache	
	Connétable of Trinity	
	Connétable of St. Clement	
	Connétable of St. Peter	
	Connétable of St. Mary	
	Connétable of St. John	
	Connétable of St. Ouen	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of Grouville	
	Deputy R.G. Le Hérisier (S)	
	Deputy J.A. Martin (H)	
	Deputy G.P. Southern (H)	
	Deputy of St. Ouen	
	Deputy J.A. Hilton (H)	
	Deputy of Trinity	
	Deputy K.C. Lewis (S)	
	Deputy M. Tadier (B)	
	Deputy T.A. Vallois (S)	
	Deputy M.R. Higgins (H)	
	Deputy A.K.F. Green (H)	

		Deputy J.M. Maçon (S)		
		Deputy G.C.L. Baudains (C)		
		Deputy J.H. Young (B)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy R.J. Rondel (H)		
		Deputy N.B. Le Cornu (H)		

2.5 Draft Public Employees (Pensions) (Jersey) Law 201- (P.28/2014): amendment (P.28/2014 Amd.) – resumption

The Bailiff:

We return now to Article 7 in the form in which it was proposed by the Chief Minister. Does any Member wish to speak?

2.5.1 The Deputy of St. Ouen:

I am sorry. I have just put my light on, Sir. I would like to make a couple of general points. First of all, we hear all sorts of different reasons for dealing with all sorts of different matters in this House when it comes to primary legislation and regulation. This last week we were told, you do not need to maintain the principle of the Troy rule in primary legislation, it can be dealt with in legislation. We are told in another debate that we have to have policies to support actions that the department are taking. Yet, when we start looking at these matters, some of the things we are told which relate to one thing are different to another. Here it is clear that we are told, this needs to be put in primary legislation. This is to make it absolutely clear to the employees and the taxpayers, and indeed the employer, that 16.5 per cent is going to be the cap, and in Regulations they are going to set it at a lower figure because 16 per cent is deemed to be a reasonable contribution currently to deal with the demand. Maybe when the Chief Minister stands up to sum up, he can maybe explain to us all why there seems to be a variation in dealing with some of what I would call the key principles that many of the States Members hold dear, even outside of this particular one. The other thing is, this contributions cap will have an impact, because it does limit the risk of the States of Jersey. It is going to be applied to all combined contributions required for future service benefits, to the extent that such deficits cannot be eliminated through reduced benefit increases. In future, benefits, together with the required deficit contributions cannot be met if they cannot be met within the contribution cap. Future service benefits would be reduced. This, I hasten to add, is understood by all of the parties that have been involved in the discussions and negotiations, and reaching the point that they are all generally supportive of the proposed primary legislation. But the one thing that has been acknowledged... and I know there have been trade-offs in the negotiations, and we speak about fairness; it could be argued that those who are close to reaching retirement within a 7-year period are going to gain and benefit from the negotiations. However, new members signing-up and being introduced into the scheme will have possibly, potentially be required to pick up and deal with, through their contributions, any deficit that may arise from the scheme. This is why this States Assembly are placing a significant reliance on the States Employment Board and the Chief Minister, because when we are being asked now to agree a cap of 16.5 per cent as a limit, it is not proposed that 16.5 per cent will somehow turn into 17 or 18 per cent at a later date. We have to be reliant on the fact that the Chief Minister has done the work, because as panels, although we have seen significant amount of work that has been undertaken, we cannot stand up today and confirm that our 16.5 per cent cap will be sufficient for the funding over the next 25 years.

2.5.2 The Deputy of St. Martin:

When the Chief Minister sums up, there are 2 questions I would like him to answer, if he could. The first one is, could he clarify exactly the situation over the 16 and the 16.5 per cent, and where the changes came in the chronology of the discussions? Also, could he clarify for the Assembly now, as to whether we have now gone away from the 2 and 1 ratio, which we will never return to?

2.5.3 Deputy J.H. Young:

I wonder, on the contribution cap, if the Chief Minister could inform us, if it turns out that the fears or the potential for risk that the Deputy of St. Ouen spoke of came to reality, and that the scheme was running out of money and benefits had to be cut, what would be the order of where those cuts would come from? There must be, presumably, a hierarchy somewhere in these rules which would... those existing benefits, future benefits and so on. Does this law include that or is that going to be covered in subsequent Regulations?

The Bailiff:

Does anyone wish to speak on Article 7? Then I invite the Chief Minister to reply.

2.5.4 Senator I.J. Gorst:

I think the first thing I wanted to say, which I know is on the amendment, I do not think that the number of votes that the amendment received in any way reflects upon the merits of the arguments put forward. I think it is important that this Assembly realises that it was a fine balance, as Senator Le Gresley indicated, about whether it would be a 16 per cent or 16.5 per cent, and I think that Deputy Noel very clearly made a strong case for 16 but on balance we felt that 16.5 per cent was the right approach. These issues are often balanced in nature. The reason I say that is because the Deputy of St. Ouen then went on to say in his comments, he could not be certain that he thought that 16.5 was the right number, whether it could be 17 or 18 per cent or more. The reason I said that about Deputy Noel's amendment was that States Employment Board were very concerned about limiting future liability, when it came to employer's contribution, and we felt that it was important that this Assembly, as far as it is possible - of course, it is always possible for some other Government to come forward at a future date and say: "We want to increase that rate", for all sorts of reasons - but we wanted to get as much certainty as possible at this stage, and thereby put this cap in the primary law, something else which the Deputy of St. Ouen spoke about. It was for those reasons, to give certainty, to ensure that as far as we possibly could, we were capping the liability and the contribution that the employer would have to put into the scheme, and I think that that is why we, around the States Employment Board table, decided that on reflection it was better to put that cap in the primary legislation. We simply disagreed on what number we were going to insert. But I am absolutely convinced that putting it in primary legislation is the right thing to do for all those reasons. The other issue that the Deputy of St. Ouen spoke about is an issue which we discussed at length as well. In the initial proposals that we put to the Joint Negotiating Group there were no elements of protection in the scheme, because of the very reasons that the Deputy of St. Ouen has clearly articulated. There is an imbalance between those who are coming up for retirement in the next 7 years and those who are new into the scheme and will be future members of the scheme. We only accepted those changes in the scheme because the union side were absolutely adamant that in order to deliver changes to the scheme they had to have that protection in place. If I were a member of the union, I would be saying to you this afternoon that there was protection offered in the U.K. scheme outside of the proposals, and therefore after much soul-searching we accepted that the protection should be included, but it does lead to the imbalance which the Deputy of St. Ouen spoke about. This was a fluid negotiation and we considered many of these issues over a number of meetings and over many months, so I do not have the exact chronology in front of me that Deputy Young was asking for, but it was only, I suppose, reasonably late in the day that we accepted that there should be an element of flexibility and that we were going to accept the 0.5 per

cent, for all the reasons that Deputy Noel said in his amendment, and that is why it was a finely balanced judgment, that we came down on one side rather than the other. We discussed those at a number of meetings and we came down in the way that we did. These things take time and it took time to reach our decision. Of course, the 2 to 1 ratio is currently maintained, but it was our intention that in these Regulations we did not ... in this law we made it so that it did not need to be maintained into the future. The Deputy is right, it has been the historical position, but we felt that we did not necessarily want to tie any future employer to have to maintain that 2 to 1 contribution, and there were all sorts of reasons about that, some of which were articulated in earlier debate by Deputy Le Hérisier. The order is not, unless I am ... yes, the order of dealing with the deficit would of course depend on where the deficit occurred. If it was on past service, then pension increases would be impacted. If it was a future service deficit, it would be the revaluation rate during employment that would be impacted. Deputy Noel, again, spoke about that order in his amendment, and he made the important point that there were a number of processes that would be gone through before we needed to use that flexibility, which was probably - although the Assembly perhaps did not realise what Deputy Noel was saying - was that was the strongest point of his argument, but no other Member picked that up. I maintain Article 7.

[12:30]

The Bailiff:

All those in favour of adopting Article 7, please show it. Those against? Article 7 is adopted. Do you wish to propose the remaining articles, Chief Minister?

2.6 Senator I.J. Gorst:

If I may, Sir. I know that some Members have already questioned Article 8, and I hope that the Attorney General will be rejoining us in the Assembly shortly for any questions on that. But if I quickly go through them, Article 8 covers the need for Regulations to deal with retrospective provisions. Article 9 links the normal pensionable age within the scheme to what will become the pensionable age in the Old Age Pension Scheme. Article 10 deals with the closure of the 1967 scheme and transitional provisions. Article 11 deals with the 1967 scheme and protection of the link to final earnings. We discussed protection as I was summing up with Article 7. Article 12 is the amendment of some necessary enactments, changes to the 1967 Law and Article 13 is the citation and commencement.

The Bailiff:

Very well. Are Articles 8 to 13 and Schedule 2 seconded? **[Seconded]** Does any Member wish to speak?

2.6.1 The Deputy of St. Ouen:

I would like to just focus on Article 8 and some of the issues surrounding it that were identified when we undertook our Scrutiny Review. The first is that in one of our key findings we stated that further clarity is required regarding the manner in which Article 8(1) of the draft law would be applied. In fact, they are supporting that finding with a recommendation that the States Employment Board themselves should clarify the policy that would be followed in the application of the Article. It stems from concerns raised by our adviser in her report, which can be found on pages 59 and 60 of our Scrutiny review report. It talks about a retrospective provision. Article 8 of the draft law covers the requirement to seek the consent of persons who might be adversely affected by retrospective changes to the pension arrangements. It is obviously an important safeguard, but the adviser questioned whether the wording is currently framed in too subjective a way. In particular, where it states in Article 8(1) where scheme regulations propose making retrospective provision which appears to the Minister (a) to have significant adverse affects in relation to ... and it

then goes on. (1)(b) applies a different procedure where the affects are not significantly adverse but are unfavourable. Now when it comes to legislation and implementing or dealing with matters that are affected by legislation, wording is important. The issues raised by our expert adviser that the distinction between “significantly adverse” and “unfavourable” could be a very difficult judgment to make in practice. In addition, this judgment appears to be based solely on the opinion of the Chief Minister who, I would not suggest, is necessarily going to be an expert in primary legislation to do with our pension matters. I think that there were 2 things that the adviser went on to recommend. They raise the issue of the actual text itself, whether it was appropriate and right, recognising that obviously the Law Draftsmen have been very involved in developing the legislation. It was all around the ambiguity of interpreting “significantly adverse.” The other thing is where is the link, or where does it put the right to write checks and balances in the legislation to ensure that the Chief Minister before making decisions around this particular matter, is required to seek appropriate legal or actuarial advice, dependent on the particular service provided. We, or at least we and indeed our adviser, could not find those that we believe to be necessary checks and balances. So perhaps when the Minister sums up he will deal with these issues that not only have been raised in our report, but I have hopefully explained to them.

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

My query relates to my lack of understanding of the mechanics of the changeover. So hopefully in the summing up the Chief Minister will be able to deal with it. Having looked through Articles 8 to 10, and maybe 11 applies as well, I do not at the moment understand exactly how this scheme will come into being. Is it the case that a person retiring before the act is adopted would stay on the present final salary scheme, and one retiring the day after goes on to the new scheme, or does everybody go on to the new scheme? I think to clarify that I would be grateful.

2.6.3 The Deputy of St. Martin:

I just want to mention very briefly the linking of the pensionable age to the old age pension. I did mention earlier that the other Ministers were aware that I have been concerned about the effects on some of the uniformed services, especially those that were required to maintain a very strenuous level of physical fitness right up until the day they retire. I am very keen that we engage in this flexible approach that the Chief Minister mentioned when we debated the principles. I would just like another assurance from him that he will be sympathetic to those people who may be put in a position where they are almost forced to retire because they can no longer attain a very high level of physical fitness.

2.6.4 Deputy J.H. Young:

Following up from the Deputy of St. Ouen, the Article 8 suggests - obviously requires - the Chief Minister making judgments on individual matters. Can I ask the Chief Minister in his reply to say where the appeals arrangements against those decisions will be provided for? Would this go to the Committee of Management under the Regulations? Obviously if we have those decisions matters and decisions are required between what is unfavourable and what is seriously detrimental, as it were, significant adverse affects to make that judgment, it sounds a bit like Planning to me, that is likely to give rise to appeals. So where would those appeals go to and where would the rules for that be?

The Bailiff:

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

2.6.5 Senator I.J. Gorst:

Perhaps I could try and deal with Deputy Baudains first. The initial intention was that people would move to the new scheme on the day that the scheme came into effect. But as they said

earlier, the unions have now negotiated that there would be protection and I think that protection is for 7 years. So the people who are coming up for retirement in the next 7 years once the scheme comes into effect will continue on their existing scheme and will not be affected by this. Others that will be affected by it will in effect have 2 blocks of pensions. They will have old block and then they will get a new block which will comply with these Articles in the new Fee Average Scheme. The Deputy of St. Martin reiterated his concern about some who might struggle with the pensionable age being linked to the States pensionable age and as I said we are intending to mirror a scheme for dealing with that which is not in action in Scotland yet but it is what they are proposing. So we will be mirroring that when it is expected to be in action by the time that we need to come to it. The other questions about Article 8, they are good questions and I asked the Attorney General to come in in case there was any legal definition required. But we have to put in place provision to deal with any changes that might need to be made going forward from a retrospective angle. I suppose it is a legal explanation for the difference between the 2 words. Changes, as it says, will need to be negotiated with those parties involved and neither side would want to make changes without the support of legal and actuarial advice. That is exactly how everyone deals with pensions. You do not make changes to pensions without that legal advice, without actuarial advice. I suppose it is from my experience of dealing with pensions. For me it is an absolute given and the thought that you would deal with a pension or a change and deliver a retrospective regulation without those is incomprehensible, because you just do not deal with pensions without those 2 pieces of advice. They are the first things that anyone asking for a change would ask for. With regard to appeals, that is a very good question and it is my understanding that currently the appeal process would involve S.E.B., so for anybody who is dissatisfied it would go through the normal channels. In my experience the vast majority of cases are dealt with, but then if somebody was not satisfied then that would be escalated to S.E.B. and again legal advice would be sought upon that request for a reconsideration. I do not think I have anything else to add in that regard unless the Attorney General has.

The Bailiff:

Attorney, is there anything you want to add?

Mr. T.J. Le Cocq Q.C., The Attorney General:

Perhaps for the information of the Assembly, this provision is very largely based on the equivalent provision under the pensions legislation in the United Kingdom. So to the extent that there is any definition that we need, we would have the comfort of looking to case law within the United Kingdom to the extent that there has been a dispute. The Minister, of course, in exercising any kind of judgment under this legislation must act as any public authority must act, reasonably and appropriately, and consequently it might reasonably be said, I suppose, if he has not taken proper advice and properly informed himself before exercising he will not have been acting reasonably. If someone in a public authority acts unreasonably they are amenable to judicial review before the courts, irrespective of any other appeal provisions up to S.E.B. or otherwise.

The Deputy of St. Ouen:

Could I just ask the official advice from the Attorney General and that is that he cites the U.K. legislation? Could he just confirm whether the U.K. legislation draws a distinction between “significantly adverse” and “unfavourable”?

The Attorney General:

I am afraid I do not have the text of the United Kingdom legislation in front of me, so I probably cannot be definitive in that. My understanding of it is that these provisions are slightly broader than the U.K. legislation. In other words, there is more obligation to consult or to consult in a wider range of circumstances than are provided for strictly within the U.K. legislation. But I am

afraid I would have to go back and find the original source material to be any more helpful than that. Sorry.

The Deputy of St. Ouen:

One final point. If the Attorney General cannot rely necessarily or solely on the U.K. legislation, can he just explain to us how he, or a court, would draw a distinction between “significantly adverse” and “unfavourable”?

[12:45]

The Attorney General:

I think the courts are very well experienced indeed in grappling with nuances within meanings and where something fits within a range of possible decisions. I think though the court would largely rely on the evidence available to it - the actuarial evidence, the legal evidence or the legal submissions made to it as to the effect of these things and would form its view as to whether this was significantly adverse, or whether it was merely unfavourable. The distinction between the 2, though, is of course significant for “adverse” requires the absolute consent, but there is still a consultation requirement for the “unfavourable” element of things. So it is not as if decisions will be made without some measure of consultation.

The Deputy of St. Ouen:

I would like to thank the Attorney General.

Deputy G.P. Southern:

Could I seek a point of clarification from the Chief Minister who described the appeal mechanism as going to S.E.B.? In what way is S.E.B. an independent body in this particular case? Because surely an appeal must go to an independent body, otherwise it is breaching human rights?

The Bailiff:

I am not sure that is a point of clarification.

Senator I.J. Gorst:

I do not think it is a point of clarification. These are employees of the States and therefore if they have got issues with their employment’s terms and conditions they would of course one expects in the first instance to raise them with the employer body.

Deputy G.P. Southern:

Thereafter, where would the appeal go? The question was from Deputy Young.

The Bailiff:

The answer has been given. It goes to S.E.B., and thereafter to review.

Deputy J.H. Young:

I think the Chief Minister’s clarification requires me to follow up for further clarification. What about pensioners then? Yes, employees, I can understand that being to S.E.B., current employee.

The Bailiff:

I am sorry, Deputy, we cannot continue this debate. You did not ask a question earlier and so we cannot have new Members popping up with new points all the time. So all those in favour of adopting Articles 8 to 13 in schedule 2 kindly show. Those against. They are adopted. Do you propose the Bill in Third Reading, Chief Minister?

2.7 Senator I.J. Gorst:

I do, and I thank Members for their support and I want to thank all officers both on Staff Side and representing both employer and employee. They have worked hard to get to this point. There is a lot of work still to be undertaken, but I thank them for their work. These are important changes to make the pension scheme affordable, sustainable and fair, and I ask that Members give it their full support in Third Reading.

The Bailiff:

The appel is called for then. Does any Member wish to speak in Third Reading?

2.7.1 The Deputy of St. Ouen:

Very briefly. I would like to again thank all of those involved for dealing with the pension issue. As many Members have said, it has been around for a long time. I also thank the forbearance of the employee representatives and the other parties involved and the Committee of Management and the Joint Negotiating Group for their involvement. I would ask and implore the Chief Minister to allow all of the bodies involved to have sufficient time to consider the draft Regulations in detail before they are brought to this Assembly. I accept that timescale may slip, but bearing in mind the way that this matter has been dealt with up to now and the relationship that has developed between those parties, I think it is well worth allowing, as I say, any additional time that is necessary to finalise this matter once and for all before bringing it to this Assembly.

The Bailiff:

Does any other Member wish to speak to Third Reading? Do you wish to reply, Chief Minister?

2.7.2 Senator I.J. Gorst:

I cannot resist the temptation to reply. I think that is the first time in 2½ years of the Deputy of St. Ouen rather than challenging me for not meeting a deadline has openly encouraged me not to meet the deadline but to give it appropriate consideration. On a serious note, of course, I did indicate that it may take longer than we had initially envisaged in my opening remarks moving the principles. The Deputy makes a good point. But it is urgent. There are problems with the scheme now. So we will be working as quickly as we possibly can, which is why the negotiation period has dealt with a lot of the detail. But rightly everyone will want to see the Regulations and appropriately consider those Regulations that they give effect to the detail of the negotiation. I ask that Members support this wholeheartedly in Third Reading.

The Bailiff:

Very well. The appel has been called for then for the adoption of the Bill in Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 32		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				

Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.J. Rondel (H)				

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

The adjournment is proposed, so we will reconvene at 2.15 p.m. when the next matter to be dealt with is Project 40.

[12:51]

LUNCHEON ADJOURNMENT

[14:15]

The Greffier of the States (in the Chair):

Usher, would you summon Members from the ante-rooms? Members will be aware that the new provision requires the roll to be taken by electronic votes. I will allow 30 seconds. If the Assembly remains inquorate the Assembly will be adjourned as Members are aware. Very well, Greffier, will you open the voting? Members can push any button to record their presence. The Greffier will close the voting. The Assembly remains inquorate. I have no alternative but to adjourn the Assembly. I will adjourn the Assembly until 2.30 p.m.

[14:17]

[14:29]

The Greffier of the States (in the Chair):

Very well, the Assembly appears to be quorate.

Deputy J.M. Maçon:

Sir, can we have that last vote read out please?

The Greffier of the States (in the Chair):

Yes, Deputy Greffier, can you read the names of Members who were present at 2.15 p.m. when summoned.

Deputy Greffier of the States:

Senator A. Breckon
Senator B.I. Le Marquand
Senator I.J. Gorst
Connétable of Trinity
Connétable of St. Mary
Connétable of St. John
Connétable of St. Ouen
Connétable of St. Brelade
Connétable of St. Martin
Connétable of Grouville
Deputy G.P. Southern (H)
Deputy of St. Ouen
Deputy J.A. Hilton (H)
Deputy K.C. Lewis (S)
Deputy E.J. Noel (L)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy J.M. Maçon (S)
Deputy G.C.L. Baudains (C)
Deputy of St. Mary
Deputy of St. Martin
Deputy R.G. Bryans (H)

The Greffier of the States (in the Chair):

If I could just repeat what the Bailiff said this morning I am sure that the public would find it outrageous that Members are summoned at quarter-past 2 and we waste 15 minutes of valuable time because Members were not present.

3. Draft Freedom of Information and Data Protection (Amendments) (Jersey) Law 201-(P.40/2014)

The Greffier of the States (in the Chair):

Very well. Chief Minister, we come to P.40/2014: Draft Freedom of Information and Data Protection (Amendments) (Jersey) Law 201- lodged by the Chief Minister and I will ask the Deputy Greffier to read the citation.

The Deputy Greffier of the States:

Draft Freedom of Information and Data Protection (Amendments) (Jersey) Law 201-. A Law to amend further the Freedom of Information (Jersey) Law 2011 and Data Protection (Jersey) Law 2005. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

The Greffier of the States (in the Chair):

Chief Minister.

3.1 Senator I.J. Gorst:

Thank you, Sir. I will try and very briefly speak through the principles as I think the more important debates will be around the articles and I will speak more on those. This is a law amending the Freedom of Information Law and the Data Protection Law, and what it does it has 3 aims in mind. One: to ensure a cap on the amount of times and costs that could be incurred whilst answering requests can be determined separately from the way any fee may be calculated. Secondly, to provide an additional appeal ground concerning compliance with the law. Third, to provide the Royal Court on appeal with the power to substitute its own decision for that of the Information Commissioner and to provide an expressed power to make certain Rules of Court; and fourth, to modify the definition of “Data” in the Data Protection Law so it covers information recorded on paper and held by a public authority. Thank you, Sir.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles of the law?

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

I would just like first of all to ask the Chief Minister, rather than just do a specific Article, we have all been waiting for the introduction of the Freedom of Information Law and the Data Protection Law has been working for a number of years although there are problems with it, certainly in terms of the response of certain agencies to subject access requests. Whereas the law lays down a maximum period of time for responding, some departments are not responding to these requests either within the timescale or in some cases even taking a year. So we have got a cultural problem that people, although the public have a right to their own information subject to access requests and other information under the Data Protection Law, and we are planning on bringing in the Freedom of Information Law, we need to make sure that the culture in the States is one of openness. I am concerned and I will mention at this particular point, because I have been advising people who have been dealing with the Planning and Environment Department to put in subject access requests to get hold of information. In the case of one individual, the person was prosecuted by the department and found guilty in the Magistrates Court and fined. Subsequently we did a lot of work on it and it went to the Royal Court on appeal and the conviction was quashed. Now the reason I am mentioning this is the fact that I am not even convinced that we would have got that conviction quashed had it not been for information that came from the department. What I am trying to say here is that the Planning and Environment Department in the past supplied the information which, I say, enabled this conviction to be overturned and at the present time they are indicating that they do not want to provide information on active cases - that is, court cases. That is why I am saying it is court cases. It may not be active; we will have to find out. But they are saying if there is an active case going on they do not want to supply subject access information. The information that was discovered was not provided by the prosecutors. So in other words, they are supposed to supply information of everything whether it supports their case or does not support their case. It was not supplied. It was only an application to the Royal Court later, once we had had subject access and discovered information had not been disclosed that a full disclosure was given. So I am concerned and I am raising it now that I do not want to see anything that would cause the departments to withhold information. I highlight this about the Planning Department. There are quite a number of people who have issues with them and I want to make sure that there is nothing in this law, and I have the Chief Minister’s assurance, there is nothing in this law that will prevent people getting the information they require even if there is an active court case going on.

3.1.2 The Deputy of St. Ouen:

Maybe the Chief Minister in his summing up can explain to the Assembly why he believes that as stated in the report there are no financial or manpower implications for the States arising from the adoption of these amendments?

The Greffier of the States (in the Chair):

I call on the Chief Minister to reply.

3.1.3 Senator I.J. Gorst:

If I can deal with the first one first. That is, in its simplest form, the advice that I have received. These are amendments to the existing law to make it work more effectively. It is the actual law itself which will give rise to and have cost and manpower implications and they are quite clear and I have made them quite clear in the past that I am advised that there is no specific additional financial or manpower implications from approving these amendments. The financial and manpower implications have already been agreed by adopting the law as it currently stands. So with regard to whether information will be available from departments to requestors if it is the subject of a court case, I think that is beyond my remit and I perhaps bow to the superior knowledge of the learned Attorney.

The Greffier of the States (in the Chair):

Attorney, can you assist the Assembly?

The Attorney General:

There is, as far as I can tell, nothing in the amendment documents that are proposed that will change the existing statutory or legal position where that was concerned.

The Greffier of the States (in the Chair):

Have you concluded your remarks, Chief Minister?

Senator I.J. Gorst:

I have, thank you.

The Greffier of the States (in the Chair):

All those in favour of adopting the principles, kindly show? Against? They are adopted. The Deputy of St. Ouen, this is a matter that falls in the remit of the Corporate Services Panel.

The Deputy of St. Ouen (Vice-Chairman, Corporate Services Scrutiny Panel):

I do not believe that the Corporate Services Panel wish to scrutinise this particular piece of legislation.

The Greffier of the States (in the Chair):

Chief Minister, how do you wish to propose the Articles? Take them in 2 parts, perhaps, or another arrangement as you wish.

Senator I.J. Gorst:

I am quite happy to ... **[Interruption]** listen to a tune. **[Laughter]**

The Greffier of the States (in the Chair):

Senator Farnham's phone sounds quite happy as well.

Senator L.J. Farnham:

Guilty as charged, Sir.

The Greffier of the States (in the Chair):

Sorry, you were saying, Chief Minister, before you were rudely interrupted?

3.2 Senator I.J. Gorst:

I wonder if we might take them all together and I will speak in regard to the 4 aims that I said, albeit of course there are 2 separate amendments, one being freedom of information and data protection, but if you are happy with that.

The Greffier of the States (in the Chair):

Yes, very well, if you want to propose 1 to 12 together and speak to the Articles.

Senator I.J. Gorst:

I will do the shortened version. If there are questions then I will have to revert to the much longer version kindly provided by the Law Officers' Department, but I will try the shorter version first. With regard to the first key aim of these changes, Ministers have agreed that there will be no charge for access to information as long as the request takes no longer than a given amount of time to answer, and the Council have proposed 12.5 hours. This, of course, requires the amendment to Article 2 which is before Members. If a request for information exceeds the cost limit and the requester is prepared to pay for this provision then, of course, the department may provide it. A cost limit is important to ensure that responding to freedom of information requests does not interfere with the provision of public services. Throughout these amendments to the Articles Members may wish to follow in the provided consolidated version which has already been circulated to them. I am not sure whether Members would find it helpful if I refer to the particular area, but if they were to look at the consolidated version that has been circulated, they will see how Article 16(1) of the law has been reworded to achieve this amendment. Of course the actual cost levels will come back to the States for consideration as draft Regulations. One of the reasons that we need to hopefully approve these amendments so that they can go to the July Privy Council and then we can get on and debate the Regulations prior to the election. But time is now critical. Secondly, the amendments are regarding the grounds for appeal, that is Article 3. This amendment is to ensure that the requirements of part 2 of the law, an appeal to the Information Commissioner about the time taken to answer a request or whether the information has been supplied by reasonable means are subject to appeal. Again, if Members look at the consolidated version they will see how Article 46(1) and 46(2) have been amended to enable this amendment. Article 4 is with regard to Royal Court powers on appeal. If the Information Commissioner upholds the public authorities' decision with a request or appeal against an aspect of a request then on appeal the Royal Court will be able to make a decision that is contrary to the Information Commissioner's decision. This will avoid the bureaucracy of stating that the Information Commissioner was unreasonable without providing a remedy. In effect, providing a remedy so that appeals do not continually go round in circles, which would not be good for the Information Commissioner. Again, if Members look at the consolidated version they will see Article 47 as being amended to describe the remedies available to the Royal Court. Article 5 amends Article 48; it specifies in the use of paragraph (5) that the Royal Court may substitute a decision for the decision of the Information Commissioner. Again, Article 6 deals with changes to the rules of the Royal Court. Then part 2, the remaining Articles deal with data protection. So the need to modify the definition of data in the Data Protection Law. Firstly, it is important that the Freedom of Information Law and the Data Protection Law can operate hand in hand. The existing definition of data does not include personal data held in unstructured filing systems, like paper files. In the Freedom of Information Law, however, there is an exemption in relation to personal data. This amendment will ensure that personal data held in a public authorities' paper files will be data for the purpose of the Data Protection Law and that the exemption in Article 25 of the Freedom of Information Law can

be engaged. Secondly, the amendment could affect the application of the Data Protection Law to all personal data of this type, which is not an intended consequence. Therefore the application of the Data Protection Law to this type of data has been limited by the new Article 33A. Thirdly, any data protection request for subject access to unstructured public files must (a) expressly describe the information required in the request in place of the usual position where access is given to all of the persons data and (b) fall within the cost limit to be approved by Regulation that were the subject of earlier Articles. Again, if Members look at the consolidated version they will see that the definition of data has been updated. New Article 33A of the Data Protection Law recognises that the general application of the Data Protection Law to all personal information held by public authorities in paper files is not an intended by-product of the change to Article 1 and therefore this Article limits the application of the law to that type of data. It is unlikely that all historic files could be managed so they comply with all aspects of Data Protection Law and in acknowledging that this limits the data controller's data protection obligations in respect of paper files. A requester will still have the right to access their own information. Finally, a new Article 9A to the Data Protection Law has been included which deals with unstructured personal data and, in particular, includes the requirement on a requester under the Data Protection Law to describe the data requester instead of simply asking for data as happens in structured files, and adds a cost limit on the provision of data from unstructured files in line with the cost limits that will be set out in due course by regulation under the Freedom of Information law. As I said, I hope that has given some clarification but I will endeavour to answer any questions that Members may have.

[14:45]

The Greffier of the States (in the Chair):

Are the Articles seconded? [**Seconded**] Does any Member wish to speak on any of Articles 1 to 12? The Constable of St. Mary.

3.2.1 Connétable J. Gallichan of St. Mary:

I was just hoping to formulate my question which only became apparent during the Minister's proposition. If the Minister will forgive my hesitancy. In responding, could he go into more detail on the Articles concerning the cost limit? I just seek assurance because having been the person who presented the law when it came to the States, P.P.C. had spent a lot of time looking at costs, *et cetera*. I would just like some assurance that when the Regulations come forward there will be cognisance given to the fact that not every public authority will have the same resources. Basically I am just a little concerned that the Ministers have decided what a time cost could be but that for a smaller public authority 12 hours of perhaps a single staff member's time would be perhaps prohibitive to the nature of the organisation.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? If not, I will call on the Chief Minister to reply.

3.2.2 Senator I.J. Gorst:

I thank the Connétable for her comments. They were very well made. This, of course, is a fairly contentious area about whether fees should be charged. If fees are not to be charged there still ought to be some mechanism that would consider the cost of gathering the information against the benefit that the information would be provided and the Council of Ministers considered this issue on more than one occasion, let us put it like that. The position that we came to in calculating the 12.5 hours was a calculation of basically saying we considered it to be excessive if the cost of gathering the answer to the information was more than £500, and we based that on an hourly rate of £40 per person per hour to be used, which is why we came to the 12.5 hours. I see that the Connétable is suggesting that that might be an extremely difficult situation for the Parishes;

obviously we are not agreeing that today but that was our thinking and I have no doubt, and I give the commitment, that officers will attend upon the Comité to understand the concerns that they might have and it might be that we need to bring a different level for the Parishes than we are expecting for central government. I should say, of course, there is a different level in the United Kingdom between central government and what is considered an excessive cost recovery charge, to local authorities. Not that the Parishes fit into a U.K. model at all but I do think we need to understand if there are concerns and try and address them before we draft the Regulations and bring them forward. But I think the Connétable was saying she accepts the principle, but she is perhaps saying that we are a little bit too generous in the latitude that we might be putting into our system and we need to consider how that would impact on the Parishes and we are more than happy to do that.

The Greffier of the States (in the Chair):

All Members in favour of adopting Articles 1 to 12, kindly show? Against? The Articles are adopted. Do you propose the draft law in Third Reading, Chief Minister?

3.3 Senator I.J. Gorst:

If I may, I hope that these amendments will lead to improvements and clarity, and I hope Members will continue to support them

The Greffier of the States (in the Chair):

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting the draft law in Third Reading ... the appel is called for in Third Reading. If Members are in their designated seats, the Greffier will open the voting.

POUR: 38		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				

Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mezec (H)				

4. Draft Companies (Amendment No.11) (Jersey) Law 201- (P.41/2014)

The Greffier of the States (in the Chair):

We come now to the Draft Companies (Amendment No. 11) (Jersey Law) and I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Companies (Amendment No. 11) (Jersey) Law 201-. A Law to amend further the Companies (Jersey) Law 1991. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

The Greffier of the States (in the Chair):

Assistant Chief Minister, are you acting as rapporteur?

4.1 Senator P.F.C. Ozouf (Assistant Chief Minister - rapporteur):

I believe I am, and happy to do so. The purpose of this draft law is to amend, as some Members will be aware, the Island's Company Law, designed to improve and strengthen the competitiveness of our financial services and indeed all of the organisations that use companies. Making these changes are a key part of the recommendations of the financial framework that Members will have seen a few weeks ago and this is one of the key deliveries that is part of that delivery plan. Indeed the work on this was started by the Minister for Economic Development almost 18 months ago and I am grateful for his work in terms of the consultation that has led to these changes. It is important that we keep Jersey competitive. It is our antidote, if you like, to the decisive multi-Ministerial response to the worldwide financial downturn and its effect on our economy. One of the key attributes of our financial services industry that has been demonstrated over many decades is an innovative and flexible, resilient approach to a fast-changing global economy which requires a company law to meet those demands. As one of the world's leading international finance centres, our continued success depends on identifying opportunities to grow and to make our competitive offering more attractive. One of the things that we have learned is that in order to succeed against what is regarded as increasingly aggressive competition from ambitious new financial centres around the world is that we have to keep ahead. We have to be innovative and we have to move swiftly, but of course we have to move carefully. One of the key products of our financial services and business offering is that cutting edge Companies Law. The Companies Law is one of the key tools used by the finance industry in many ways. The changes for Members take into account the need of both local and international practitioners to maintain Jersey's position as one of the most progressive company law frameworks. The Companies Law is a considerable asset to Jersey. One of those assets is the fact that our Companies Law allows for listing of Jersey companies on foreign exchanges. It is often regarded as almost one of the fourth pillars of the financial services industry.

Jersey companies are, I think to a great degree of pride for Jersey, now listed as principal vehicles on exchanges around the world. The London Stock Exchange, Hong Kong, and indeed we hope other exchanges around the world. Officials have worked extremely hard with leading industry experts to progress a number of amendments to improve the robustness of our law. More than that, there has been an extensive consultation with experts in relations to these matters. So I can well understand that Members may not be experts in company law and certainly with 30 amendments on something which is already a complicated law is something that Members, I am sure, while they have read, may not be experts on. I can give Members some considerable assurance I hope that the extensive consultations on this law, reviewed by the J.F.S.C. (Jersey Financial Services Commission), 2 experts in company law and a steering group gives the Assembly assurance of the robustness of the process before a law is lodged in the Assembly for approval. There has been a Green and White Paper, as I think I have said. That has been comprehensively responded to by a further White Paper. That Green Paper was published on 5th February 2013 and then a response was done in December 2013, and then there was a further consultation which was conducted during the early part of this year. This law will make about 30 miscellaneous but important amendments to the company law. In brief the changes are: improving the provisions for the buying and selling of shares through the medium of depository receipts. Currently Jersey companies are listed on many stock exchanges and the use of depository receipts is the way that listing is achieved in order to comply with the listing requirements of other exchanges which have different regimes for listing. Improving the definition of distributions is to ensure that actions taken, such as giving upstream guarantees for companies that are never called upon, are not classed as distributions. Some that are complicated but are important. This improvement will ensure that the legal and accounting treatments are better aligned than at present and makes the company law in Jersey more competitive and, it has to be said, more understandable. Making the company law more flexible by introducing the ability to pass written resolutions by majority voting is also something that is achieved by this law. Simplifying the rules and enabling a reduction of capital via an out of court route involving a solvency statement while retaining the existing core group for businesses that seek the reassurance of a court judgment. I am pleased to say that one of the key consultations was indeed the Law Officers' Department and they have opined that the law is human rights compatible, and they have also conducted their own review as they always do of the law, and we are grateful for their work. The proposition has been referred to the Economic Affairs Scrutiny Panel and I understand that the panel had no comments at the time of proposing the law. This is a complicated piece of legislation but is a really important part of positioning Jersey as a jurisdiction that is open for business and ensuring that we have got the tools for our finance industry to maintain our cutting edge and highly competitive offering. I think we can be proud of the history of innovation and progressive work that has led to the Jersey company law being used across the world in transactions in many jurisdictions. These changes build upon that success, their solid foundations and keep our company law at the cutting edge of the world of company law. I am pleased to propose the principles.

The Greffier of the States (in the Chair):

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles? Members in favour of adopting the principles, kindly show? Those against? They are adopted. I understand this has already been referred to the Economic Affairs Scrutiny Panel?

The Deputy of St. Martin (Chairman, Economic Affairs Scrutiny Panel):

We do not need to review it.

The Greffier of the States (in the Chair):

How do you wish to propose the Articles, Minister.

4.2 Senator P.F.C. Ozouf:

I suspect fairly quickly even though they are important. I think, as the Chief Minister did in the last proposition, I will run through what I think are the important points and then ask for any Members' questions. This is important legislation but I will do it extremely fast.

The Greffier of the States (in the Chair):

So you are proposing 1 to 47?

Senator P.F.C. Ozouf:

Yes, exactly. I think that is order. So Article 1 interpretation; Article 2 makes administration change to the prospectus requirements; Article 3 clarification of amendments of what is a market traded company. Articles 4 to 6 relate to the fact that companies can be public or private; Article 5 clarifies the date of changes from status of one to another; Articles 4 and 6, the criteria to move directors or employees of companies in the same group from the accounting of a 30-member company rule which is a matter which is a description of whether a company is private or public. Article 6 confers the power on the States to remove that 30-member limit for private companies by Regulations. That is an important aspect that we had a response from the consultation that revealed widespread support for removing that limit for private companies. Articles 7 to 8, these Articles update the law as a result of a modern approach to creditor protection, which is all now about an insolvency statement, which is almost a better and clearer way that you can describe the solvency of a company. There is also the removal of a number of prohibitions in the original Articles 35 and 36, which are basically provisions that are now regarded as unnecessary and unduly restrictive given the changes in the global standards and arrangements for company law. Articles 8 and 9 generally permit internal reorganisations of the assets of a company without solvency statements, however distributions out of the company will have to be subject to a solvency statement to protect creditors. Articles 10 to 16: Article 10 permits a company to maintain a branch register in any country, territory or place outside Jersey to enter names of all the members on that register. This is because certain exchanges require a register of all members to be held within that territory. Articles 12 and 13 improve the mechanism by where Jersey company law can be listed. These provisions improve on something called redemption and repurchase in the original law. Articles 14 and 15 are designed to follow the U.K. position where a reduction in capital for a private company is not subject to the sanction of a court, although there is an optional court procedure. These Articles extend the principles to public as well as private companies. Article 15 sets out the solvency statement procedures that I mentioned, which is the new approach in relation to effectively explaining what the capital arrangements of the company are.

[15:00]

Articles 11 to 16 are clarification provisions. There are various important provisions there. Articles 18 and 19 broadly speak to the retention of the current procedures for unanimous ratification of an original article in the law but it adds the procedure that the ratification by ordinary resolution is permitted. The new procedure puts in place a greater safeguard when there is not unanimity to ensure that one director and members connected to the director are not entitled to vote to ratify acts and brings the law in arrangements with the U.K. law. Articles 20 to 27 amend the rules relating to the holding of an A.G.M. (Annual General Meeting). This requirement can be currently dispensed with with agreement between all the members of private companies. Very few private companies in fact hold annual general meetings these days. Article 20 amends the requirement only to have an A.G.M. applies only to a public company and a relevant private company. This is a term which is a new paragraph explaining the definition between public and private. Article 21 clarifies the company's articles may be specifically different from a majority of different resolutions. Articles 24 and 25 are resolving the uncertainty over an issue which has

arisen in the original law which permits resolutions in writing to be passed by the number of members entitled to vote. Articles 26 and onwards: Article 26 ensures that weekends and bank holidays are left out of the account for purposes of calculating any notice period imposed by a company article; Articles 29 and 30 require former officers of the company, current and former employees who appear to be in possession of relevant information or documents to give that necessary information and explanation to the auditors in the form to fulfil their duties; Article 31 amends the definition of a distribution to include any transaction which does not result in a reduction in the net assets of the company. Articles 32 and 33 introduce a court process to ratify inadvertent distributions without solvency statement where the court considers it is in the interests of justice to make that provision. Article 34 addresses some difficulty as sometimes encountered in a takeover offer which must be made to every shareholder on identical terms. Article 34 now in fact mirrors the arrangements in the U.K. Companies Act 2006, which makes a specific provision for the situation. Articles 35 to 42, these are various amendments in relation to mergers, and among other things a design to standardise the period of time for various parties to apply to court from 28 to 21 days. Articles 43 to 47 as proposed in the Green Paper by the Minister for Economic Development, this updates something called the relevant supervisory authority and achieves a certain consistency with other parts of the law. Article 45 inserts a new Article in the principal law which already confers on the registrar the power to strike-off for other reasons, for example, the failure to deliver an annual return and digital powers. I propose all the Articles *en bloc* and am happy to attempt to answer any Members' questions on what I hope Members will know is something complicated but has received an awful lot of attention.

The Greffier of the States (in the Chair):

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

4.2.1 Deputy R.G. Le Hérisssier:

Just a broad question. I wonder if the Minister for Treasury and Resources could confirm to the House of the full weight of all these Articles, which no doubt are long awaited by the business, fall upon companies which are formed out of share transfer properties and, if so, how will they avoid the incredible heaviness of this law.

4.2.2 Deputy J.H. Young:

On the very last page Article 46 deals with the offences, fines and imprisonment for people that do things they should not do under this law. Obviously there are a huge number of provisions. The very last one, point (e), deals with Article 113 in the substantive law, which is an offence at the moment that a company officer or secretary, if they give false information to an auditor obviously under the current law they commit an offence. That is where, of course, there is an audit. Here we are changing the company officer or secretary, which one understands because they are part of the company to a relevant person, so relevant persons are now caught by an offence. I could not find where the relevant person is defined. Can you tell us what a relevant person that they would get caught by this law?

4.2.3 Deputy M. Tadier:

It is just a question about Article 10, which amends Article 49(1). The Senator did obviously allude to it, it is just really to find out if he can expand on the implications and the context of what is being asked in Article 1. In particular the wording says that it would permit a company maintaining a branch in another country, *et cetera*, to include that information on the register. It does not say that it requires them to do that and I understand obviously the explanation. Can he say whether there was any thought given to changing "permit" to "require" and whether or not, in the way things are going, there is a general move to require companies to provide that kind of information, if it is all

tied-up to ultimate beneficial owners. What are the scenarios in which they would be required to provide that information and who would be checking, would it be the home territories, the ones with whom we have exchange agreements, *et cetera*? So in what scenarios would that Article become invoked?

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the Articles? I call upon the Assistant Chief Minister to reply.

4.2.4 Senator P.F.C. Ozouf:

The first question from Deputy Le Hérissier. I am not sure what the difficulties are he has in relation to share transfer properties. The first thing is that this is Jersey's company law and as consolidated will affect all companies that operate under the Companies Law. I do not quite know what his particular questions are or difficulties are in relation to share transfer. Certainly there are various different things that assist the functioning of the Companies Law, I am not sure this affects, frankly, anything to do with the share transfer. Companies are formed for share transfer for the specific purpose of owning a property and these changes do not alter effectively the proportionate arrangements that are in place for companies to own and have the right to effectively *de facto* own property. So nothing really changes in relation to that. There are issues of solvency and other things which could be affected but effectively it does not change that. I would be interested perhaps outside the Assembly to understand what Deputy Le Hérissier has said in relation ... his concerns are in relation to the function of share transfer because it should work pretty well in Jersey. The officials in the Chief Minister's Department always consult the Attorney General on the issue of offences. It is a matter which is advised by the Attorney General so perhaps if I may either give him notice that perhaps he could answer the issue of Deputy Young of the level of offences and also perhaps just assist me in relation to the issue of the individual. Is the Attorney ready to deal with that now?

The Attorney General:

Under Article 46 of the amending legislation we will see that: "In the entry relating to Article 113C(2) in the second column for the words 'company officer to secretary' substitute the word 'relevant person'." I do not think there is a definition within the law of relevant person. I think that would be a person who is relevant to what should have taken place, in other words that if that is an individual who should have been providing correct information, that will be a relevant person for the purposes of the law. I have to confess that I have not focused on that particular aspect previously and I am looking through, as I speak, for any further definition or assistance but that is as far as I can say I think so far unless the Deputy can clarify the question a little.

Senator P.F.C. Ozouf:

If I may assist the Attorney General in relation to the definition of persons, this means that what is additionally covered, as I think I explained in my opening remarks, that former officers, subject to certain safeguards, present and former employees and other persons are now specified persons. That is the extension to which the specified persons is there. I am just getting up the full consolidated issue of the law to get any other comments, but that is the extension of the specified persons. Perhaps the Attorney could answer the question in relation to the level of sanctions or fines?

The Attorney General:

The Minister is entirely correct when it comes to sanctions. I sign off personally on an appropriate sanction in respect of each offence and the way that we assess that is by comparison either to pre-existing legislation, which is similar or by looking to other jurisdictions to ensure a fair amount of

homogeneity across the board. But that is the process by which sanctions are assessed and that would have been the same under this law as for all other legislation that we put before the Assembly.

Deputy J.H. Young:

Just a clarification, for either the Minister or the Attorney General, would I be correct that means that a person could commit an offence in giving incorrect information to an auditor that they are not part of the company, it might be a former employee or anything like that nature, and they are no longer part of the company they just happened to get caught accidentally. Could that fall within this offence and relevant persons?

The Attorney General:

I do apologise, I wonder if the Deputy could refer me to the specific provision that he originally raised his question in respect of because I am afraid when I was listening to the debate I did not note that down and so I am floundering a little in the schedule at the end.

Deputy J.H. Young:

It is on page 40 of the amending law and it is Article 46 which amends schedule 1. Schedule 1 lists all the various offences down with different Articles, and it is one very bottom one, (e), which deals with Article 113C(2), which is the substantive requirement of the law for giving information to auditors of a company where there is an audit required. I cannot see, either in the main law or in this amendment that there is any guidance at all on what a relevant person ...

The Greffier of the States (in the Chair):

I think you may also need to look Article 29 on top of page 35 which the Attorney will confirm appears to be relevant.

Senator P.F.C. Ozouf:

If I may, I am no lawyer but I have the benefit of a lawyer sitting next to me. I am grateful for Senator Le Marquand. We did send Members the full consolidated law and how that change... this is effectively amending the Article which says that effectively there are changes. It is entitled to require from the company ... formally it is removing the words “from the company’s officers or secretary” to “any relevant person” and the definition of “any relevant person” now extends to any person who is or at any relevant time was an officer or secretary of the company. Any person who is or at any relevant time was an employee of the company and who appears to possess information which the auditor thinks necessary for the performance of the auditor’s duties. Any person who holds or is accountable for or at any time for the relevant time was accountable for any of the company’s records, any information, explanation provided by that person may not be used in evidence against the person in criminal proceedings except proceedings for an offence under Article 113. That is the safeguard that I was speaking about. Nothing in this paragraph compels a person to provide any information or explanation which the person would be entitled to refuse to provide in the proceedings in a court on the grounds of legal professional privilege. So I hope that explanation explains that it is perfectly ... I understand Deputy Young did work in the finance industry for while, where an auditor is requiring information this now extends that. Previously the law just simply said “an officer of the company”, now this has an ability to say that there is certainly people that had that information in the past. I think I am correct in saying that.

The Attorney General:

Yes, in fact to assist, and I apologise I was not able to bounce straight back with this answer, if one looks at 113B (4A) of the consolidated law there is a definition of relevant person for statutory purposes of that Article and the Article that follows, which is the relevant one.

Senator P.F.C. Ozouf:

I hope that assists and gives comfort to Deputy Young. In other words, there is an extension of it and there are safeguards in it but it is right and proper that that is extended in the way in which I have described. Dealing with Deputy Tadier, he raises almost a related issue on the issue of beneficial ownership and he asks particularly about what the issue was concerning beneficial ownership.

[15:15]

If Members want to turn to page 19 and look at the wording ... no, I have confused myself and gone to the wrong Article. Deputy Tadier's Article, I will just explain it because I know what it means. The issue is that a company can effectively transact business out of Jersey. It can have its head office in others. I would say to Deputy Tadier that is something quite normal. There is something called a *société européenne*, which is a new European company that can change its head office. So it is quite normal for companies to be able to effectively have places of establishment, head offices or other arrangements in other countries. What that does not do in Jersey uniquely is avoid the ability for us to have beneficial information on effectively the beneficiaries of a company that is set up. Jersey, as the Deputy will know, is one of the only jurisdictions in the world that holds beneficial information. That is the distinguishing factor between Jersey and all the other Crown Dependencies and overseas territory which the Prime Minister in writing to the Chief Minister said. The U.K. themselves now are doing that central registry of beneficial ownership. I am pleased he raised it because, of course, it makes the point that Jersey is a leading jurisdiction in relation to the issue of beneficial ownership and matters. It is not really related to the issue that is effectively in Article 10. Of course the whole issue of beneficial ownership, the Deputy will know if he is concerned about it, there is a consultation underway on that and there is an international debate going on as to the extent to which countries should have beneficial ownership registers and indeed the issue of the access to that for law enforcement agencies, *et cetera*. I hope that answers the Deputy's questions and I call for the appel.

Deputy M. Tadier:

I do not think it has answered the question. The question was really, even though what was said was interesting and useful genuinely, it has been worded in such a way so as to permit this information to be recorded but that is not a compulsion. So is it the case, for example, before it was not permitted to list this information and how obviously it is permitted? What are the circumstances under which that information would have to be listed and who would be the one providing that compulsion for the information, if it was required to be put in there?

Senator P.F.C. Ozouf:

It is all very relevant because effectively what Deputy Tadier is asking for, and I think his concern, is effectively the issue ... he raised the question in the context of the company law beneficial ownership issue, which is the international debate. This is operations of the company of holding of records. His question is about beneficial ownership and nothing in this law, nothing in any of our arrangements here, both in terms of the J.F.S.C. law or anything else changes that. This is effectively the good administration of the records of the company. That is completely different from the issue that he raised in relation to beneficial ownership. I am happy to talk to him outside about it. I know it is complicated but effectively beneficial ownership is unchanged by this law. The fact that Jersey companies can be quoted, hold records, have places of establishment, have branches, and conduct business around the world, that is an entirely different matter. I ask for the appel.

The Greffier of the States (in the Chair):

The appel is called for on Articles 1 to 47. If Members are in their seats the Greffier will open the voting.

POUR: 39		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mezec (H)				

The Greffier of the States (in the Chair):

Do you propose the draft in the Third Reading?

Senator P.F.C. Ozouf:

If I may.

The Greffier of the States (in the Chair):

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting the Bill in Third Reading, kindly show? Against? It is adopted in Third Reading.

5. Draft Public Elections (Amendment No. 5) (Jersey) Law 201- (P.46/2014)

The Greffier of the States (in the Chair):

Now for the Draft Public Elections (Amendment No. 5) (Jersey) Law: I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Public Elections (Amendment No. 5) (Jersey) Law 201-. A Law to amend further the Public Elections (Jersey) Law 2002. The States, subject to the sanction of Her Most Excellency Majesty in Council, have adopted the following Law.

5.1 Deputy J.M. Maçon (Chairman, Privileges and Procedures Committee):

I will try and keep the debate on the principles to a minimum because we are not here talking about all aspects of the Public Elections Law, we are just talking about the small amendments that we will be talking to and I hope that we can address that as we go through the law. So this law gives effect to the recommendations of the Public Elections Sub-Committee that were debated and agreed in principle by the States on 6th November 2013. The Sub-Committee was set up to review the operation of the Public Elections (Jersey) 2002 Law with a view to improve the voting process and remove any unnecessary impediments to voting. I would like at this stage to pay tribute to the work of the Sub-Committee, ably chaired by Deputy Martin, which worked for many months on this difficult issue. Therefore I maintain the principles and ask Members to support the propositions.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Those in favour of adopting the principles, kindly show? The appel is called for on the principles. If Members are in their seats the Greffier will open the voting.

POUR: 39		CONTRE: 1		ABSTAIN: 0
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				

Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mezec (H)				

The Greffier of the States (in the Chair):

The Deputy of St. Ouen, not a matter your panel wishes to review?

The Deputy of St. Ouen (Vice-Chairman, Corporate Services Scrutiny Panel):

Again, Sir, we will choose to decline to look at this one.

The Greffier of the States (in the Chair):

Chairman, there is an amendment to Article 2 so perhaps in the interests of good order you should simply formally propose Article 1 first?

5.2 Deputy J.M. Maçon:

Yes. Article 1 is fairly self-explanatory and I so propose.

The Greffier of the States (in the Chair):

Is Article 1 seconded? **[Seconded]** Does any Member wish to speak on Article 1? All those in favour of adopting Article 1, kindly show, and against. It is adopted. May I ask you to propose Article 2, Chairman?

5.3 Deputy J.M. Maçon:

Article 2 arrives out of the principal debate that we had and makes an important change to the administration of elections. At present, the Parish Constable is largely responsible for the preparation of the electoral register in his or her Parish, for making all practical arrangements for the holding of elections in the Parish. With the introduction of the single election day, it was considered that it may not be appropriate for the Constable, who may be a candidate in the elections, to fulfil this role and therefore that is why we do have the amendment as drafted before us. Subsequent to that, after receiving further submissions from the Parish secretaries and the Comité des Connétables, the P.P.C. has reflected on what it was trying to propose, and after recanvassing the Committee, we are minded to accept the amendment of the Comité des Connétables and will ask for them to propose.

5.4 Draft Public Elections (Amendment No. 5) (Jersey) Law 201- (P.46/2014): amendment (P.46/2014 Amd.)

The Greffier of the States (in the Chair):

Is Article 2 seconded? **[Seconded]** Very well. Now, there is an amendment, it is quite a lengthy amendment. I am sure Members will not want the Greffier to read part 1 of the amendment of the Comité des Connétables, but I will ask the Chairman or his rapporteur to propose it.

5.4.1 Connétable J.L.S. of Gallichan of Trinity (Chairman, Comité des Connétables):

I will be very brief, as the P.P.C. have agreed to accept. The reasons for proposing the amendment are set out in the report and I do not intend to repeat them all. The difficulties with proposing the Parish secretaries and electoral administrator is that person is an employee rather than an officer of the Parish. There is also no provision in the event that the Parish secretary stands for election as Senator, Connétable or Deputy, as I am aware on 4 occasions, such instances before this, has happened in the last 14 years. The amendment provides the answer to these difficulties. It does so by providing the Procureur du Bien Public replaces the Connétable as electoral administrator when the Connétable is a candidate in an election. This achieves the original aim in ensuring that the Connétable is not involved with the arrangement for the public election when he or she is a candidate. That includes preparing the electoral register for the use in election and also all practical arrangements for the poll. It also provides in the event that the Senior Procureur du Bien Public is standing, the other Procureur could also take over or the Connétable stays in office to run the election. I propose the amendment.

The Greffier of the States (in the Chair):

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment? All those in favour of adopting the amendment, kindly show, and against. The amendment is adopted.

5.5 Draft Public Elections (Amendment No. 5) (Jersey) Law 201- (P.46/2014) as amended - resumption

The Greffier of the States (in the Chair):

Does any Member wish to speak on Article 2 as amended? Deputy Tadier.

5.5.1 Deputy M. Tadier:

Just an observation. I know that obviously we had no real problem with that amendment, that has been dealt with. It will become necessary when the roles are being defined in that the perception and everything which we know that has already been dealt with, I know in, for example, the individual who is sitting in front of me, the Member, had an unusual scenario whereby a Procureur was chairing the nomination meeting and the Procureur had also signed 3 of the 4 candidates' papers. Now, clearly it was ill-judged from the Procureur, not so much to get involved in politics, but because he chose the wrong 3 candidates, and the one that he did not choose obviously got elected. But I think that is something that I do not know whether it needs to be prescribed in law or what the provisions are, but that kind of scenario does not seem helpful and there may well be provisions already in law so that if the Procureur is to be the one running the election, chairing meetings so that the Constable does not appear to be conflicted, it is obviously also entirely wrong that the Procureur himself should be getting involved and signing nomination papers and then chairing meetings, *et cetera*. I am sure that is not the general practice, it is probably just something which happened and would not happen in many of the decent well-run country and St. Brelade Parishes.

5.5.2 The Connétable of Trinity:

I totally agree with that. Certainly in my Parish, the one thing that I ensure is that you keep all public officials out of the election, because whoever is the candidate, whoever gets elected, you have to work with them in the future and so I always make sure that Honorary Police and that keep well away, and if they do want to support a candidate, then they are completely out of everything while the election is taking place. I think that is a well-known procedure throughout the Island. Obviously in the last election, someone did make a mistake, but I would have thought that really that should be for the Connétable to point out to his public trustees or any one of his Honorary Police: “If you do commit to the supporting of a candidate, then you have to withdraw from everything that is during that election period.”

The Greffier of the States (in the Chair):

Does any Member wish to speak on Article 2? Do you wish to say anything in reply, Chairman?

5.5.3 Deputy J.M. Maçon:

Just to answer Deputy Tadier’s questions. At the moment, there is nothing in legislation in order to prevent that from happening, but I think we have heard a good response from the Chairman of the Comité des Connétables and I think perhaps again it may be useful just to send a memo around to all the Constables, because there are one or 2 missing, perhaps just to clarify that procedure, but other than that. I maintain the Articles.

The Greffier of the States (in the Chair):

All those Members in favour of adopting Article 2, kindly show. The appel is called for on Article 2 as amended by the amendment of the Comité des Connétables. If Members are in their seats, the Greffier will open the voting.

POUR: 40		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				

Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mezec (H)				

The Greffier of the States (in the Chair):

Chairman, would it be convenient, there is an amendment to Article 6, to ask you to perhaps propose 3, 4 and 5 together?

5.6 Deputy J.M. Maçon:

Yes, Sir, thank you. Article 3: this Article improves the pre-poll system by introducing an out-of-town voting on at least 2 Saturdays before polling day. The changes that were made before the 2011 elections opened up pre-poll voting to all electors, not only those who, as previously was the case, were unable to vote in person on polling day. The P.P.C. believes that anything that can be done to make voting easier is desirable and the introduction of the pre-poll voting on Saturday will provide further improvements. The second change made by this Article makes it clear that pre-poll voting can take place at a location other than the Judicial Greffe to formalise the present position where the location is in a central St. Helier location. It also will allow us to get a sounding about how members of the public feel about voting on a weekend day, just to get a sample of how in future that might be a way forward, so it is in that sense a bit of a pilot scheme and I think Members will find themselves able to support Article 3. Article 4: this Article makes a small technical amendment to the law. At present, prisoners on remand, and therefore still innocent, are able to vote, but there is no clear mechanism for them to do so, as they clearly cannot attend the polling station. This Article allows prisoners to pre-poll vote and the Judicial Greffier will need to make the necessary arrangements. Article 5 removes the current requirement for a declaration of identity on postal votes to be witnessed by a third party. Postal voting is now significantly restricted and the Sub-Committee recognised that it is inconvenient for some voters to have to find a witness on the declaration.

[15:30]

P.P.C. believes that there are enough existing safeguards in relation to postal voting and sees no reason to maintain the requirement for witnesses and this is line with the decision that the States took and therefore I propose those Articles.

The Greffier of the States (in the Chair):

Are Articles 3, 4 and 5 seconded? **[Seconded]** Does any Member wish to speak on any of these Articles? Constable of St. John.

5.6.1 Connétable P.J. Rondel of St. John:

Could we be told what safeguards are in place, please?

5.6.2 Deputy G.P. Southern:

Can I just ask whether it is the case, as I understand it, that whereas it is perfectly acceptable for a candidate to give a lift to a voter down to the polling station on the election day, it is illegal to give a lift to a voter to the pre-polling station before election day?

5.6.3 Deputy G.C.L. Baudains:

I have some concerns about Article 3, which seems like a jolly good idea at face value, but the concern that I have is where it is on at least 2 Saturdays. Presumably that means consecutive Saturdays, which means the first one will be at least 11 days before the election, and my concern is that will the electorate be making an informed decision, because it is quite likely the candidate will not have had a chance to canvass in the area where the voter lives and may not even have been able to complete the delivery of literature, so I am wondering if it is quite such a good idea as it purports to be. In fact, I would ask the proposer if we could vote on Article 3 separately.

5.6.4 Senator P.M. Bailhache:

I have no difficulty with the increased facility for pre-poll voting, but like Deputy Baudains, I think I have some concerns about postal voting, because unless one is very careful, it is possible to open the door to abuse. I thought I recalled, but I have been unable to find it, an email from you forwarding an email from the Judicial Greffier very recently giving some views of the Jurats. I do not know, perhaps I am entirely off-beam, but it would have come to all Members and I am wondering if the Chairman recalls that. Some concerns were being expressed by the Jurats about some aspect of the proposed reforms and because the Jurats have enormous experience in the administration of public elections, their views are entitled to very great respect and I do not know whether the Chairman can help me on that. The second point that I wanted to make was in relation to Article 4, where the provision is made for the enabling of voting by prisoners who are remanded in custody, but no provision is made for convicted prisoners and I seem to recall, and perhaps the Attorney General will be better informed than me, that there was a case not very long ago before the European Court of Human Rights which found that it was contrary to the convention to prevent convicted prisoners *en bloc* from voting in public elections. Some restrictions were acceptable, but to have a blanket block, as it were, on prisoners voting in public elections was held by the European Court to be contrary to the convention. I would like to ask the Chairman whether he is satisfied that the Public Elections Law in Jersey complies with the European Convention on Human Rights and if he is not satisfied, what the Committee is going to do about it.

5.6.5 Deputy M. Tadier:

It is just to really touch first of all on the issue of postal votes. I think the Senator will know, and he spent some time on P.P.C. in its previous manifestation, but there was a big debate previously about postal votes, that concerns were raised as well about the possible breaches of integrity and it is known now that postal votes have been scaled back, so they are not being used as much, but I think it is important to say that proportionality is really the key word in this. There are 2 issues to balance, of course. One is that the elimination of the possibility for any voter fraud, or even if it is not fraud *per se*, but having somebody else in the room who is looking at you when you cast your vote, *et cetera*, but it has not really been demonstrated that Jersey has high levels of voter fraud. I do not think there is electoral fraud; that has not been demonstrated. What has been demonstrated quite clearly and what is a key issue for P.P.C., and hopefully for States Members as well, is the fact that we do have very high levels of abstentionism and that is for various reasons. If we can supply more than one way of voting, which includes the establishment of out-of-town pre-poll centres, in-town pre-poll centres, postal votes and also sick votes on the day, then there needs to be mechanisms. Of course that is not going to solve the underlying issues for abstentionism, and we also have to remember, I am being told by one of my colleagues, is that there are those who are off-

Island, of course, and it is important that students ... yes, only those who are off-Island can vote by post anyway, so there is an element of proportionality in there and we would not want to presume that all students or whoever happens to be abroad should be denied a vote simply because a very small minority might theoretically be tempted to commit some kind of postal fraud. Similarly, if everybody was to use sick votes on the day, that would put a pressure on, but that is the current situation anyway. With regard to prisoners who have been convicted, quite clearly we know it is an issue, it is an issue which the U.K. has not been willing to grapple with because it is populist to know that prisoners are bad, they are inferior people and when they are in prison they are not a priority for politicians or the public, but there are rulings, the Senator is quite correct. I would pose the question back to him, as our Minister for Foreign Affairs, will he be engaging with P.P.C. to make sure that Jersey ... it is a matter for the Chief Minister's Department and his department to make sure that Jersey is fulfilling its international human rights obligations and of course we would like to work very closely with him as P.P.C., but it is something that he also needs to be working on. I am not sure if his personal view is that prisoners should be given the vote or whether they should all be given the vote or some of them should be given the vote or whether it should be a blanket, because that is the issue obviously they are grappling with in the U.K. at the moment, so I think - and I am sure I do not need to speak for the Chairman - but as a P.P.C. member, we would welcome his input on this very thorny issue, because it is not one that will be resolved if it is simply left to public opinion.

5.6.6 Senator P.F.C. Ozouf:

I hope the Chairman will forgive me, but I would like, if I may, just to ask him, in his summing-up the question has been raised about postal voting and while Deputy Tadier is no doubt right, we hope that there has not been abuse of postal voting, postal voting is a major issue in terms of electoral fraud in most jurisdictions and has received a particular focus of attention in the United Kingdom. I took it upon myself to understand exactly how the arrangements for postal voting work and what the safeguards are. In summing up, could the Chairman explain what safeguards there are for postal voting in terms of the information that an individual must provide? I have seen a postal vote in the U.K. It comes with an envelope which says "postal vote" which I find an odd security issue. I find also that in filling out the postal voting form, one sits on somebody's doormat and it alerts other people in the multi-occupancy house that there is a postal vote that has been received. I find that odd. Secondly, I have looked at the inside of the postal vote and seen how that works in the United Kingdom. There are safeguards, for example, of needing to provide identity and needing to have an absolute plain English explanation of the rights of the individual. The Chairman, not having examined this, could he say what he has done to ensure that the postal voting process is as secure as it possibly could be and what will be on the postal form that is going to be sent to the householder for return, and particularly that issue of identification, and would he agree with me that postal forms should not have postal vote documentation on the front of the envelope which heightens the fraud issue? If he is not able to answer today those issues, could he come back and explain them and give Members reassurance by email? But I hope he would know, because I am sure he is in touch and very *au fait* with these arrangements as the rapporteur. Normally I say that we need to talk nicely to the Constables about matters, and I know what I am just about to say is going to raise some hackles with the Constables, I note that this amendment does not provide for the issue which I have asked for for many years, which is there is an issue about how it is funded. I am going to raise 2 issues, why it is not here and what he is going to do about it is first of all the persistence of getting people on the electoral register. At the moment, I understand the law is that a form is sent, but in the United Kingdom and other jurisdictions - and I am sure Deputy Mézec will be aware, because I think I have seen him putting some tweets about this in the past, which is a good thing - that you need to go and knock on a door, and there is a legal obligation to go and knock on a door by electoral officials to ensure that people are registered in the event of a non-

return of a form. Now, I understand that St. Helier does that and they have been particularly successful - and forgive me if I do not know other Constables that have also invoked those informal arrangements - but what is P.P.C. doing to ensure that registration is not only simply answered on this but going further? Has he got an informal arrangement or is he bringing an arrangement, and why is the issue of a compulsory polling card, which gives an elector information about an election, not sent, even though that might be having to be funded centrally? I would be grateful if he would answer those points, whether they are covered or not.

The Greffier of the States (in the Chair):

I was just about to say, Senator, we cannot have a wide-ranging debate about what is not here. We are supposed to be debating Articles 3 to 5. Deputy of St. Martin.

5.6.7 The Deputy of St. Martin:

I would just like to say, I think if we asked members of the general public, especially after our recent performance, whether they would prefer a large amount of money in their bank account or their favourite politician sitting in this Assembly which way they would go, but yet it is easy to go home at night and transfer large amounts of money via the internet while it is still impossible to vote using that medium, so my question to the Chairman would be what progress are we making? We should be making progress in this direction.

The Greffier of the States (in the Chair):

We must try to concentrate the debate on what we are debating. We cannot just have a wide-ranging thing on what is not here and what may be here. Deputy Le Hérissier, you have some comments on Articles 3 to 5?

5.6.8 Deputy R.G. Le Hérissier:

It is about pre-postal voting, the issue that Senator Bailhache set running. I was on the Sub-Committee and of course it was a highly contentious issue. I was more relaxed perhaps than some other Members. Guernsey does allow it, for example, but I wonder - I am going to be naughty here - if the Chairman could confirm that if we were to move to postal voting, would the Member who covers La Moye benefit from the cast votes?

5.6.9 Senator L.J. Farnham:

A stab in the dark here, whether this is in the right ... but I just wondered if a voter had to have a reason to request voting by postal?

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

Following on from some of the points that Senator Ozouf raised, I voted by post in the last election because I was studying at university at the time and it is not a nice experience, to be honest, voting by post, because when you put your ballot paper into the envelope and put it in the post box, you have got no idea that it ever counts for anything, because there could be a mistake in the post.

[15:45]

It could end up never arriving in Jersey or it could get lost somewhere along the way, so it is a very imperfect process and it is worth bearing that in mind. In terms of publicising postal votes, I have got absolutely no idea how many other university students from Jersey in the U.K. utilised postal votes for that election. I suspect it was virtually none. In fact, I would not be surprised if I was the only one, because I know I could not convince lots of my Jersey friends there to do it. I think that is a forum that really needs to be utilised in terms of publicising postal votes, because there will be hundreds of Jersey students studying outside of the Island who should be getting a postal vote. I never signed-up my email address to anything like Careers Jersey or anything like that when I was

a student, but somehow they managed to have my email address and my home address and knew that I was a student and could send me information about graduate jobs and whatever, so if that can be done then I cannot see a reason why the Judicial Greffe cannot also use that information to let students in the U.K. know that they have a postal vote and do have the opportunity to use it. So I would like to know if the Chairman can say anything about that. The last point is that ultimately it is our responsibility as Members to give something worth voting for to people when they want to vote, when they are thinking about voting, because voting, at the end of the day, is not difficult, people can do it if they want to, they just need to be motivated, and that is our job to do that.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the Articles? Very well, I call on the Chairman to reply.

5.6.11 Deputy J.M. Maçon:

Where to begin? I thank Members for their contribution, they have raised some very good points. I would just reiterate the fact that we are just looking at the Articles as proposed here, so some of the other processes, for example, as Deputy Mézec said, perhaps liaising with Careers Jersey would create another thing. It does not affect the Articles here, but I am more than happy to take those points and see if we can work on something further towards that, but at the moment that does not impact on the Articles before us. If I can just look at the questions surrounding the Articles which are posed to me, Senator Ozouf made some interesting points about a potential card. We will get to that in Article 7. The Deputy of St. Martin asked about online voting. Again, that is not covered in these Regulations. It is something that the Committee considered that at this moment we were able to push for and we will come into that later about preparing for at least online registration, which is a self-declaration process, so we are moving in that direction. Senator Bailhache asked whether what I was proposing is human rights compliant. I have made the declaration that the amendments which I am proposing today are human rights compliant and as Deputy Tadier - and I thank him for his contribution - did comment about the position of the Committee, which was we were cognisant of what was going on in the U.K. and we were waiting to see what changes there were there, although it was quite interesting to note on our fact-finding mission to Guernsey, they have pre-poll/postal voting for all prisoners and that is just how they have done it. So it is definitely a political choice, but of course at the moment we are just looking at making the provision available for those on remand. Deputy Baudains asked or raised a concern about the potential pre-polling without an elector being fully aware of what candidates stood for. There is another element, because while we are just proposing this, 3 weeks before the election date anyone can pre-poll vote. All we are doing is allowing for that to occur on a weekend in these particular amendments, so there is nothing further we could do to ensure that people are as informed as perhaps we would like them to be. That has to be down to the individual who is passing a vote. Deputy Southern asked about aspects around transport for pre-postal voting. Again, these Articles do not touch that. I think perhaps if that were wanted to be pursued, we would have to ask for the Attorney General to advise, but these Articles do not tackle the transport issue, so I cannot really comment on that. Senator Ozouf and the Constable of St. John did ask about the arrangements around postal voting, and again, Deputy Tadier did comment that this Assembly rejected the Sub-Committee's proposal to widen the scope of postal voting, so at the moment it is restricted to those who are not going to be on the Island. We are changing absolutely nothing in the restrictions around the internal procedures that the Judicial Greffe go through in order to look at the safeguards around those processes. They are as they currently are now. If Members do want more information around those particular processes, I am more than happy to ask for that to be provided and circulated to Members, but the processes, as I say, are as they are now. We are just asking for the counter-signature perhaps to be removed and therefore make it much like the registration form where it is a self-declaration process and if there is any fraud or anything with that, then it is the same type of

consequences that happen an inaccurate declaration is made. I hope that that answers the questions that Members raised. If not, I am sure they will remind me if I have missed anything, but I maintain the Articles.

Senator F. du H. Le Gresley:

With respect to the Chairman, I do not think he did answer my questions. I appreciate that the draft law is human rights compliant because he has given that declaration on legal advice, no doubt, but my question to him was in the context of prisoners voting and we are about to cast a vote on prisoners' voting rights. Was he satisfied that the Public Elections Law was human rights compliant? It is not a trick question, because I think we all know that it is not human rights compliant and my second question was what does the P.P.C. propose to do about it? I have not had an answer to that question.

Deputy M. Tadier:

May I ask a point of order? It is that whose portfolio does it fall under to ensure that our laws are human rights compliant in this context? Is it for P.P.C. or ...

The Greffier of the States (in the Chair):

Well, it is for every Minister or committee with responsibility for the particular piece of legislation. Is there anything you wish to add, Mr. Attorney, on the issue of prisoners' voting rights?

The Attorney General:

No. In connection with the point made by Senator Bailhache, it is indeed correct that the current state of European jurisprudence, it would not appear that a blanket ban on prisoners from voting is human rights compliant, but other than confirming that, I am afraid I cannot say more.

The Greffier of the States (in the Chair):

Is there anything you wish to add, Chairman?

Deputy J.M. Maçon:

Simply to thank the A.G. (Attorney General) for that response. Obviously Senator Bailhache is well aware of the situation and, as I did suggest, we are waiting for the U.K. to make a decision and take their guidance forward, and that is where the Committee decided to go.

Deputy R.G. Le Hérisier:

I did ask given there will be pre-postal voting with prisoners, what is the domicile of a person if they do vote?

Deputy J.M. Maçon:

Quite simply, it is where they have registered to vote, so, for example, given that on remand prisoners are still seen as having an address, they will be registered to vote in the area where they have registered.

The Greffier of the States (in the Chair):

Deputy Baudains, you were seeking a separate vote on Article 3. Do you wish to maintain that? Very well, we will vote separately initially on Article 3. Do you wish the appel, Deputy? The appel is called for on Article 3 relating to pre-poll voting arrangements. If Members are in their seats, the Greffier will open the voting.

POUR: 40		CONTRE: 2		ABSTAIN: 0
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf		Deputy G.C.L. Baudains (C)		

Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of Grouville				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mezec (H)				

The Greffier of the States (in the Chair):

We come now to Article 4. All those in favour of adopting Article 4, kindly show, and against. Article 4 is adopted and all those in favour of adopting Article 5, kindly show, and against. Article 5 is adopted. There is an amendment to Article 6, and I will firstly ask you, Chairman, to propose Article 6.

5.7 Deputy J.M. Maçon:

This Article makes some very important changes to the process of electoral registration. At present the electoral register closes at noon on the day before the nomination meeting, meaning there is no scope at all for a person who has forgotten or may not have already added themselves to the register to do so once the name of candidates are known. It is very likely that many people have in the past

been frustrated to find that they would really like to vote for or against a particular candidate who has been nominated, only to find that they are too late to register. This Article therefore introduces the concept of a supplementary register that will close 7 days before the poll and the reason why we have had to cut it off 7 days before the poll is simply for administrative reasons. We would have liked to have gone further, but it would not have been practical in order to have it any closer to the election date at this time, as I say, because it would not have been practical for the Judicial Greffe to deal with the register on this supplementary register for pre-poll and postal voting purposes. Therefore, if you are on the supplementary register, it will only be possible for people to vote in person on polling day at a polling station. The second important change made by this Article is the introduction of an ability to register in advance for people who are about to reach the age of 16 or who are about to meet the necessary residency requirement. These people will be able to register in advance, but will of course be eligible to vote only when they meet the necessary requirements. A note will be made in the register to indicate the day on which the elector will be qualified to vote. The date for the required age limit and residency criteria to be met is moved to before or on election day to the person who is, for example, 16 on election day can register in advance and vote in the elections. This will correct the current anomaly that a person may be 16 on election day or may have just met the 2-year residency requirement but still be unable to vote because they did not meet the required criteria when the register closed before nomination day. Again, I would just like to advise the Assembly that the Committee will be accepting the amendment of the Comité des Connétables.

5.8 Draft Public Elections (Amendment No. 5) (Jersey) Law 201- (P.46/2014): amendment (P.46/2014 Amd.)

The Greffier of the States (in the Chair):

Is Article 6 seconded? [**Seconded**] There is an amendment, part 2 of the amendment of the Comité des Connétables. I will ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Article 6, paragraph 1: delete paragraph 5, paragraph 2. In paragraph 7, the inserted Article 9A(5), substitute the following paragraph: “(5) Where during the late registration period an electoral administrator for a Parish is required by Article 7(1) to include the name of a person on the electoral register for an electoral district, the electoral administrator shall also include the person’s name in the supplementary electoral register if that person’s name is not included in any electoral register in force for any electoral district for the elections referred to in paragraph (1).”

5.8.1 The Connétable of Trinity:

I think that is quite simple. [**Laughter**] No, I think where the Connétables had the concern previously to move people from other Parishes on to the electoral list because they may have moved Parish, they could propose someone at a nomination meeting, then decide to move Parish and then say: “Can I be on the late register?” All we are saying is only those who are not on the register anywhere in the Island will be permitted to put their name on the list. This was agreed by the States in our first amendment and it is just really to clarify that situation. In other words, anyone who is not on the list will be put on the list of that Parish, but they will not be able ... say, for instance, if you lived in St. Helier and you moved to Trinity, you would have the right to vote at St. Helier, which is more advantageous because there are more people to vote for than maybe in Trinity [**Laughter**] ...

The Greffier of the States (in the Chair):

Do you mean it the other way, Constable?

The Connétable of Trinity:

Yes, it could be the other way. Yes, Sir. So I propose the amendment.

The Greffier of the States (in the Chair):

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment? All those in favour of adopting the amendment, kindly show, and against. The amendment is adopted.

5.9 Draft Public Elections (Amendment No. 5) (Jersey) Law 201- (P.46/2014) as amended - resumption

The Greffier of the States (in the Chair):

The debate therefore resumes on Article 6 as amended. Does any Member wish to speak on the Article 6 as amended?

5.9.1 Senator P.F.C. Ozouf:

I apologise for my earlier remarks. I thought we were proposing the matters *en bloc* so I do apologise to the Chairman. In relation to this electoral register, okay, we are making changes to get the changes for the electoral register to be passed, as has already been explained, but what has P.P.C. done with the Connétables to ensure that the point at which the electoral register is confirmed is as accurate as possible?

[16:00]

In saying that this Article is as far as he is wanting to go, would he give some comfort to me that this issue of ensuring that notwithstanding the notice, but the follow-up procedures are there and engage in dialogue, because we have not put this provision in this law. I have always thought that it should be there. I understand the costs associated with it. I think that that is an issue for public funding, if necessary, if it is a particular issue, even though St. Helier has made particular issues. Could you just help me in relation to this important issue, notwithstanding the integrity of the electoral register, how do we get it and to be improved from what we have got here?

5.9.2 The Connétable of St. Mary:

I was just going to ask the Chairman if he could confirm whether he is aware when he sums up of the “Tell Us Once” principles the Parishes have already adopted, whereby anybody moving to the Parish or within the Parish is asked for extra information concerning their electoral status. Thank you.

The Greffier of the States (in the Chair):

I call on the Chairman to reply.

5.9.3 Deputy J.M. Maçon:

I thank the Constable of St. Mary for raising that point. I was not aware of that, but I think that is absolutely brilliant and I believe that the States as a whole through the e-government process are again trying to adopt that route as well, and I think that will be very beneficial where that can happen as well within the Parish networks. Senator Ozouf has asked about accuracy and I do wish he had waited for the next Article, because it would have been easier to tackle that particular matter. At the moment, the process of our 4-year rolling register is such that there is that accuracy measure in that people do have an ability to confirm that. The States did also approve the pilot study to allow certain electoral registers to be compared with the population register, which we can start looking at the accuracy, comparing the different registers. So we are working on that particular aspect and I will go into more detail when I propose the next Article, Sir.

The Greffier of the States (in the Chair):

All those in favour of adopting Article 6 as amended, kindly show. The appel is called for on Article 6 as amended. If Members are in their seats, the Greffier will open the voting.

POUR: 39	CONTRE: 1	ABSTAIN: 0
Senator P.F. Routier	Connétable of St. John	
Senator P.F.C. Ozouf		
Senator A. Breckon		
Senator A.J.H. Maclean		
Senator B.I. Le Marquand		
Senator F.du H. Le Gresley		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Connétable of Trinity		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Mary		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Deputy R.C. Duhamel (S)		
Deputy R.G. Le Hérisssier (S)		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of St. Ouen		
Deputy J.A. Hilton (H)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy T.A. Vallois (S)		
Deputy M.R. Higgins (H)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		
Deputy G.C.L. Baudains (C)		
Deputy of St. John		
Deputy J.H. Young (B)		
Deputy S.J. Pinel (C)		
Deputy of St. Mary		
Deputy of St. Martin		
Deputy R.G. Bryans (H)		
Deputy R.J. Rondel (H)		
Deputy N.B. Le Cornu (H)		
Deputy S.Y. Mezec (H)		

The Greffier of the States (in the Chair):

We come back to Article 7 which is subject to an amendment by the Committee. Would Members be content to allow the Chairman to propose the Article as amended? Very well, I will ask the Greffier then for good order to read the amendment.

The Deputy Greffier of the States:

Article 7 - (1) At the beginning of the Article insert the paragraph number “(1)”. (2) After paragraph (1) add the following paragraph – “(2) In Article 15 – (a) in paragraph (1) for the words

“paragraph (2) provides” there shall be substituted the words “paragraphs (2) and (3) provide”; (b) after paragraph (2) there shall be added the following paragraph – ‘(3) The costs of sending out notices under Article 7A shall be met by the States.’”

The Greffier of the States (in the Chair):

Chairman, do you wish to propose Article 7 as amended?

5.10 Deputy J.M. Maçon:

This Article introduces a new requirement for each Parish to send out in early August in an election year a card to every household setting out the names of those who are on the electoral register. This will act as a timely reminder to any people in the household who have forgotten to register to do so before the election, or in the situation where perhaps people have moved between properties, therefore to remind new residents that it might be appropriate for them to get on and register with the Parish Hall. P.P.C.’s amendment makes it clear that the cost of sending out this card will be met by the States as part of the overall election costs, given that it will still involve the election of a Senator, whereas at the moment, the elections for Deputies and Constables are met by the Parishes and therefore the view of P.P.C. was because the election card would still be applicable to the election for Senator, it was appropriate that as the precedent has always been that the election of Senator has always been paid for by the States, given that we have decided that this is the process, how we think it should be funded. The exact layout and form of this particular card is still open for discussion. That has not closed. It also will allow the Parishes to send out to addresses to remind people if there is no one registered at a household to put that on the card as well so that everyone does have that reminder beforehand. I propose the Article.

The Greffier of the States (in the Chair):

Is Article 7 as amended seconded? **[Seconded]** Does any Member wish to speak on Article 7? Constable of Trinity.

5.10.1 The Connétable of Trinity:

Just briefly on behalf of the committee, could I just thank ... we are delighted to see this change in view that the States should pay for this. I think we will help as much as we can, but this is a vast expense for Parishes, the postal side of it, and if you want to get everyone, we will obviously do our best with that, but I would say the main thing is it is part of an election. I think we have said it should be only for the elections that are held on an Island-wide mandate rather than just parochial, so I think this is helpful and we thank the committee for bringing this forward and hopefully it will be accepted by the Assembly.

5.10.2 Deputy N.B. Le Cornu:

When I lived in London 20 years ago, it was commonplace to receive such a notice. It is lamentable that in Jersey we are doing this so late and we know that the problem in Jersey is that we have 60 to 70 per cent of voter abstention. Part of that is of course political, the rest is technical and it is unfortunate that the Connétables, whose responsibility it is to compile rolls and ensure that the electoral registers are accurate, have not taken it upon themselves independently to do so. The reason is now apparent in that it is the cost. Democracy should not be detained, deterred by such a small amount and I am very pleased that we now have it and that it will happen.

5.10.3 Senator P.F.C. Ozouf:

I am sorry to be a persistent pain to the Chairman, but this is important and I am sorry not to have made the points at the right time. The point is here this is a notice effectively to every household saying who is on the register. It is a function of ensuring that the update is required. That is what this notice is, as I understand it, so it is to the householder. It is not the issue that has been

requested previously, which is the fact that if the householder is lacking in diligence in protecting the co-habitees of a household, then the fact is it could be ignored. Some people just simply ignore that issue. That is where the additional step of where there is no registered household, and I appreciate the comment that the Chairman made about a pilot. Can he just assure us that the further steps, informal or otherwise or by encouragement or funding arrangement can be made, that as a result of this, that action would be taken where there are people not on the electoral register from a household, because we do not ... and the reason I am raising this is that we do know that while best endeavours have been made and Constables have fulfilled their legal requirement, there is a significant amount of under-registration for people in Jersey. My view is that that is a serious issue and Guernsey, if I may say, is not the right comparative jurisdiction, because their electoral registration numbers, upon examination, are ... well, Members can look at the numbers. They are not as up-to-date as they should be and we should be regarded as a leading jurisdiction in terms of getting people entitled to vote so we can get real voter turnout.

5.10.4 The Connétable of St. Mary:

Can the Chairman advise whether there is any legal sanction for not registering, as was done in the past, if he is aware if that has been removed, why it was removed, and will he also advise whether it is not the case that anyone can register to vote at any time, it is not just simply on receipt of a form, anybody can proactively register and that essentially there is a comprehensive voter registration programme run under the direction of vote.je?

The Greffier of the States (in the Chair):

Does any other Member wish to speak on Article 7? Very well, I call on the Chairman to reply.

5.10.5 Deputy J.M. Maçon:

With regards to the question of the Constable of St. Mary about legal sanction, it was my understanding that when the Constable was Chairman of P.P.C., they removed - or was it beforehand? Beforehand - the legal requirement to be registered on the electoral register when we went out to public consultation for feedback on this matter, it certainly was not raised for that to be brought back, so therefore not only did it not come from the public, certainly when we had the in principle debate, no States Member amended our proposition to ask for that provision to be brought back, so at the moment, no, there is no legal sanction, as far as I am aware. Senator Ozouf raised a very good point. The problem which we have is we cannot send a card to an individual to say: "You are not registered at this address" if we do not know that they are there in the first place. Therefore to get around that, the decision was taken to send it to the household. It is probably not as far as perhaps we would like it to go, but at the moment, this is an improvement from where we are at the moment and I hope that the Senator will be willing to support the step forward. The Senator raised the issue about under-registration within the Island. My understanding is the problem is we are very good at getting people registered in Jersey. The problem is we are not so good at the follow-through and getting them to turn out to vote. **[Approbation]** I believe that the figures estimate that we are something around 80 per cent uptake on voter registration in Jersey, which I think is very good. With regard to the comparison to Guernsey, I personally did not compare us to the registration rate in Guernsey. I did talk about other practices that go on in Guernsey. Of course there was an issue when we went to visit Guernsey on their electoral register. It is when they changed their system, they completely wiped their old electoral register and started anew, which means what happened was while it was heralded as a very high voter turnout, because they had wiped their old register, it meant that only those who had registered recently were counted, so it gave the appearance that there was a high voter turnout in Guernsey but that is only because they had removed a lot of people off their electoral register beforehand. This is why when you compare to the Jersey system we get such discrepancies in comparison, because we are very

good at getting people registered in general. But that does not mean that we can be complacent, it does not mean that we cannot do anything, it does not mean that there is not more to be done. Again, I would like to thank the comments of the Constable of St. Mary, whereby again the promotion work that we are going to do with the vote.je website, which not only will encourage people to register, also we hope will help people to vote, but also give information to candidates who want to stand, which we hope that by promoting that particular aspect will improve all those underlying things. I maintain the Article.

Senator P.F.C. Ozouf:

Just a point of clarification, if I may. The Chairman mentioned 80 per cent and, if I may say, his number is incorrect, because it is 80 per cent of the number of people who are in the Island, and a rolling register, Guernsey may have been right or wrong, but 80 per cent is the number of people, also including leaving the Island. There are lots of people on the registers because of the 3-year rolling register that have left.

Deputy N.B. Le Cornu:

On a further point, could I make the point that I did a calculation comparing ...

The Greffier of the States (in the Chair):

I am afraid you cannot make a second speech.

Deputy N.B. Le Cornu:

Can I not? Okay, I will make it later.

The Greffier of the States (in the Chair):

All those in favour of adopting Article 7, kindly show, those against. Article 7 is adopted. Chairman, it may be convenient for you to propose Articles 8 to 11 if you wish to speak individually to them, so we can take them together.

5.11 Deputy J.M. Maçon:

Yes, I would like to take them *en bloc*, Sir. Article 8 introduces an enabling power to introduce online registration. It has not been possible, unfortunately, to do this for this year's election, but the enabling power will make it easier for it to be introduced in the future when the necessary security concerns to ensure that no fraud occurs have been addressed. So we are putting something in place to allow this to happen. Article 9 addresses the concern of the Royal Court in that the current rules on recounts are not clear. In 2011, the Royal Court agreed to recount the votes in St. Helier No. 1 District, but expressed the view in its judgment that the grounds the candidates requested a recount were not clear in the law. This Article therefore introduces grounds in which a recount can be requested. I will not go into the precise detail, to save Members time, but I would point out pages 7, 8 and 9 that explain the provision in detail.

[16:15]

I would point out that under the revised provisions, the Autorisé will be required in elections for Deputies and Constables to show the result to the candidates before it is announced publicly so that they can decide a request to request a recount, which was the decision of the States. Article 10: this Article extends the time that the Judicial Greffier must keep papers relating to an election from 6 months to 12 months, which will ensure that they are available for longer in case of any legal challenges to the election. Article 11: this is the commensurate provision that hopefully is self-explanatory. It is clearly important that the law either comes into force in good time for this autumn's elections or does not come into force until after the elections. It would be unsatisfactory if it were sanctioned by the Privy Council and brought into force during the actual election period.

P.P.C. is hopeful that if the law is adopted today, it can be sanctioned in July and will be in force in October. If that is not the case, the commencement date will be deferred until January 2015. I hope that explains the Articles. I maintain them and propose them.

The Greffier of the States (in the Chair):

Are Articles 8 to 11 seconded? [**Seconded**] Does any Member wish to speak on any of Articles 8 to 11? Senator Ozouf.

5.11.1 Senator P.F.C. Ozouf:

Sorry to be an election register geek, but the Chairman said that Article 8 was not going to be in place for this election. Could I suggest that he puts the online registration programme on rocket boosters with additional steroids, because there is an easy issue in relation to online registration. What he could do is allow for the registration form to be online, completed and then sent to the householder for signing and that would allow that step to be taken, whereby people simply do not apparently in today's world fill forms in and put them in the post. Most people work online, but the way of confirming it would be online completion with then a subsequent signature to be sent back. That may help. Would he agree to do what I say and put it on rocket boosters, please?

5.11.2 Deputy G.C.L. Baudains:

On a similar vein, I recall some years ago when I was a member of a previous P.P.C. inquiring why we did not have online voting and such matters, and the advice we received at the time was that there was no such thing as a secure electronic signature and I believe that is still the case. What I am concerned about with Article 8 is particularly part (a), where I understand it is an enabling exercise more so than one will be carried out immediately, but to enable a person to apply in electronic form for inclusion for his or her name to be omitted, presumably this is not as Senator Ozouf suggested, an application form that you apply for online and then get sent to you in hard copy, that presumably one does it all electronically, in which case is there not a danger here of a lack of security? For example, what happens if your P.C. (personal computer) is hacked and somebody removes your name from the register without you knowing about it? I would like an explanation of that and possibly having Article 8 voted on separately.

5.11.3 Deputy M. Tadier:

I cannot help feeling that heavy weather is being made of this Article. When it talks about online voting - and obviously Senator Ozouf is correct to raise these issues - the matter of a signature is not really of utmost importance when you are registering, because it is not about voting on the day. We all do online banking and we can verify who we are without having to provide a signature to our bank, there are security questions available. If the Parish authority, which it will be, is satisfied that somebody has made an online application and then they can be contacted, the person can be verified and say: "Yes, I can see that you have moved property. Maybe you were on the list. We will put you back on the list." The verification process comes on the day when that individual chooses to vote, so there is no incentive for somebody to register under a false name, if that is what is being suggested. Myself, who lives at Quennevais Park, is not going to register as Joe Bloggs because I am not going to be able to get a driving licence or passport that calls me Joe Bloggs in order to be able to go out and vote, unless I perhaps go to Bangkok and get one of the fake driving licences made over there, but then I think on balance probably not worth it for one vote, seeing that I may face several months in prison without even getting a vote, because we are not human rights compliant in that respect. I think these issues, quite right to be raised, but some of them I think are perhaps slightly spurious, if not vexatious ... certainly not vexatious, but I think certain Members clearly who have been on the receiving end of question time are probably using this time now to ask their own questions, so hopefully that helps.

5.11.4 Senator L.J. Farnham:

In the online theme, I wondered if the Privileges and Procedures Committee had explored the possibility at some stage in the future of introducing online voting. Deputy Tadier has alluded to the fact that online security now is proven in the very fact that the majority of people do their banking online. I wonder if that is a possibility, if they have explored it, and what his views are.

5.11.5 Deputy J.A. Martin:

Just briefly, I do think we are making heavy weather, because as the proposer said, overall we are trialling the name and address register and we agreed last time when this was brought in principle that it will be automatic. Everyone registered will be registered to vote. It is the principle of the 'Tell Us Once' from the Parishes, so I think we are making heavy weather and I think online is inevitable, online voting will come. We are paranoid people cannot vote on the Island postal votes, they have to be pre-pollled where someone comes around the house. That did not get passed. We accept that, but down the line you are going to have to have a leap of faith to have electronic voting, because it will come, I warn you.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on these Articles? If not, I will call on the Chairman to reply.

5.11.6 Deputy J.M. Maçon:

I thank Members who have spoken to this. To answer Deputy Baudains' question, this Article just enables an enabling provision within the law in order for it to happen. As for the verifications about what should happen, that can be dealt with administratively and does not need to be in the law. We did not want to complicate the matters within the actual legislation going through how exactly it should be done when that can be done administratively through the various verification processes when that occurs in time. My understanding is that currently the whole Parish website will be going under a big revamp about how they deliver their services and their layouts, *et cetera*, and this particular aspect is going to be rolled into that particular piece of work and that is why it could not be brought in at this particular time. It just made more sense in order to do it that way. What I would respond to the Minister for Treasury and Resources is to take perhaps another way, to say perhaps the Council of Ministers could speed-up the e-government programme and allow through the unique identity identifier that is going to be used in order for that programme. It would be very good if that could link into the registration process in order to provide what the Senator is asking for, but at the moment we unfortunately do not have that particular work which we can produce in time. We did have a question about online voting I think Senator Farnham asked. We did consider it briefly, but when we looked at it, we saw that it would require much greater skill and resource than we currently had at the time and so therefore while noting it, we decided to concentrate on what we could achieve rather than not being able to deliver on something which we could not. Therefore, I hope Members will support all of these Articles.

The Greffier of the States (in the Chair):

All Members in favour of adopting Articles 8 to 11, kindly show, and against. They are adopted. Do you propose the draft law in Third Reading, Chairman?

5.12 Deputy J.M. Maçon:

I so propose and before I finish, I would just like to again thank the previous Deputy Greffier of the States, who spent a huge amount of time giving a huge amount of support to the Sub-Committee and then P.P.C. [**Approbation**] in getting all this together. It was a huge amount of work, not only with the legislation side of it, but again with all the administrative changes which will be happening

behind the scenes in order to make the election process more user-friendly. Again, I would like to thank the public, Members of the Assembly and anyone else who contributed to this particular piece of work and I hope that the Assembly will approve all the Articles in the Third Reading.

The Greffier of the States (in the Chair):

Does any Member wish to speak in Third Reading? Deputy of St. Martin.

5.12.1 The Deputy of St. Martin:

I would just like to respond to something that the Deputy just said. He just said that it was too difficult and too hard to get on with the online voting and I think in this age where we are promoting Digital Jersey, gigabit technology, I just do not find that answer quite right.

5.12.2 Deputy N.B. Le Cornu:

The Deputy patted himself on the back when he is saying that we are very good at getting ourselves registered, but we do have a problem with not voting. It is true, we have a problem with not voting at 60 to 70 per cent voter abstention, but we also have a problem with registering ourselves. I did a little bit of work and put it on my blog comparing data between the 2011 Census indicated there were 10,000 missing eligible voters from the St. Helier electoral roll. Now, I am not a mathematician, but this figure comes from subtracting the number on the current roll, which was then 16,762, from the 28,860 that the Electoral Commission determined were eligible voters, using the data from the 2011 Census, so I think we need to review our position. I am sure there are many more missing in other Parishes, not only just 10,000 in St. Helier.

5.12.3 Deputy M. Tadier:

It is just to address the issue of online voting. I think this is clearly an issue which we would all like to think in an ideal world we would be able to log-on, cast our vote and then carry on with our business from the luxury and comfort of our own, I will not say luxury, but the comfort of our own homes, mindful of the next proposition. **[Laughter]** But it is not necessarily that easy is what I am hearing and I very much started from the position of the Deputy of St. Martin, first of all does anyone know of any other jurisdiction where you can vote online? Not electronically, but to be able to vote online. There might be a place but I have not yet heard of it. There is a difference between online banking and online voting. The key difference is that when you use your online banking you are not likely to give your PIN number or your security questions to anyone else because it is not within your interest. Unless it is perhaps a spouse, someone that you might trust, say: "Just move some money between my 2 accounts, pay my electric bill for me". When it comes to voting you will be able to do that presumably unless you are going to have some kind of retinal scans. There needs to be mechanisms in place, which ensure that you are not able to give a PIN number or verification code to somebody else to vote for you. It seems to me, if States Members cannot even get their heads around postal voting and that they are absolutely paranoid that everybody out there, it may be that the very small numbers of students in the U.K. who are going to make an election completely invalid because, I do not know how they are going to do that. But if we are worried about postal votes then I presume the same questions will also be coming up about security of internet voting. So it is not that the technology is not there, of course it is there, it is the verification mechanisms. Something that we should be looking into and that we have been looking into, and I do not mean to go on, but I think this issue needs to be addressed at this point, is electronic voting in the polling stations, joined-up databases so that if you want to have various pre-poll stations throughout the Island simultaneously you can cast your vote in St. Brelade even if you live in St. Helier, if you are going shopping, swimming at Les Quennevais, because the system will be live and as soon as you have cast your vote you will be taken off, you will no longer be eligible to vote somewhere else. As soon as you have that live system, which is perhaps more important, then it opens up the possibility for much easier, simpler voting. It also opens up the possibility for

transferable voting, S.T.V. (single transferable vote), because the computer will be able to much more easily calculate the results, if you like, within matters of minutes rather than all-night votes going on. So clearly there is work to be going on there but I suspect that the click of a button from home or phoning up a line and voting, as you would do in the Eurovision Song Contest, it is perhaps slightly too far off. Until we see other jurisdictions doing it and finding a mechanism to be able to do it meaningfully, I think we have to concentrate on the mechanisms which are more easily and readily available.

5.12.4 Deputy S.Y. Mézec:

Just briefly following on from what Deputy Tadier said, he is right that no other country offers online voting, but there are organisations, which offer online voting. I know, because I have done it before. One example of an organisation that has online voting is the National Union of Students.

[16:30]

If you want an example of how not to do politics look at the National Union of Students, it really is terrible in almost every single way, particularly online voting, because it is absolute havoc. I witnessed one election where there were all sorts of malfunctions in it, nobody knew if anyone had just gone to all their mates and said: "Let me vote for you", so I think it is really important that we just get over the idea of online voting. It is not difficult to vote by going to a polling station or getting a pre-poll or getting someone to come over. What is important is giving people a reason to vote. That is what matters, not online voting.

The Connétable of St. John:

That was a breath of fresh air, thank you.

The Greffier of the States (in the Chair):

Does any other Member wish to speak in Third Reading? Constable of Trinity.

5.12.5 The Connétable of Trinity:

I will be very quick. I know that Senator Ozouf wants to get more registration and I think if we go back when Deputy Le Hérissier was in P.P.C. we did in fact add a lot of people and I do congratulate the Constable of St. Helier employing someone to try and get the registration up. The sad fact is that we have to somehow then get the people to turn out to vote because I am afraid to say I guarantee, you put another 4,000 on the list this year, the percentage who are voting will go down. So we have to find some way or some way to encourage people to come and register their vote and that is what counts. The essential thing at the end of the day is to increase voter turnout and I hope we, at the forthcoming election, do so, something that will encourage people to come and vote.

5.12.6 Deputy G.C.L. Baudains:

I wish to just take up the point of the previous speaker, perhaps we could change things around so the public vote for who they do not want rather than who they do.

The Greffier of the States (in the Chair):

Does any other Member wish to speak in Third Reading? Then I call upon the Chairman to reply of he wishes.

5.12.7 Deputy J.M. Maçon:

I just thank Members for their contribution. With regards to online voting, we have had various speeches about it. It will be continued to be under the remit of the committee, which we will continue to look at, and certainly if the digital industry does take off, as we hope it does, we would

welcome that expertise to assist us in future but at the moment we are looking at what is before us and I hope Members will support this in Third Reading. I call for the appel.

The Greffier of the States (in the Chair):

The appel is called for in Third Reading. When Members are in their seats I will ask the Greffier to open the voting.

POUR: 37		CONTRE: 1		ABSTAIN: 0
Senator P.F. Routier		Connétable of St. John		
Senator P.F.C. Ozouf				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy N.B. Le Cornu (H)				
Deputy S.Y. Mezec (H)				

6. Residential rental property: minimum standards and a register of landlords (P.42/2014)

The Greffier of the States (in the Chair):

We come now to the proposition of Deputy Tadier, Residential rental property, and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Housing to bring forward for approval no later than 30th September 2014 proposals to (a) establish minimum standards for all categories of residential rental properties and a framework for the inspection and regulation of such properties; (b) create a register of landlords, for all individuals/companies wishing to rent out residential properties in the island; (c) investigate the introduction of rent control to set maximum levels of rents and fees that may be charged to tenants.

6.1 Deputy M. Tadier:

I will try to not keep Members too long and hopefully we can get this wrapped up certainly today I would have thought.

The Connétable of St. John:

Sir, could I declare an interest as a landlord?

The Greffier of the States (in the Chair):

Yes, if you wish, I believe you have a direct interest but you have declared your interest.

Senator B.I. Le Marquand:

Sorry, I need to declare an interest as a landlord as well.

Senator P.F.C. Ozouf:

I am a landlord, Sir.

Senator I.J. Gorst:

I ought to do the same, Sir, thank you.

Deputy E.J. Noel:

Same, Sir.

Deputy R.C. Duhamel:

Me as well, Sir.

The Greffier of the States (in the Chair):

Very well, Senator Ozouf, Deputy Noel, Senator Gorst, Deputy Duhamel. Very well, Deputy Tadier.

Deputy M. Tadier:

I always note that there seem to be a disproportionate amount of landlords in the States Assembly compared to other sections of society, including the Horse and Hounds, where a lot more people tend to rent in that establishment, but that is a different kind of gentlemen's club I think, which is not exclusively for gentlemen like this one. Moving on to perhaps a more serious note, when I stood here in 2011 pitching for Minister for Housing I gave a commitment, if you like, but certainly outlined my concerns, which were many, to do with the property situation in the Island – accommodation - that I was keen to see improvements both in the affordability of housing and the quality of rental accommodation, not just for States or social providers, but also in the non-social sector, (a) to (h) as it was called, but also for non-qualified, in fact the whole area. Even though I was not successful, I know that the Minister, whose speech unfortunately I did not get to hear because I was not in here, shares essentially the same ideas that I do. It has been a privilege to be able to work with the Minister and his officers who have been very helpful because often, when one is in the Assembly, one sees only part of the work that goes on. One might see the Minister for Housing and myself sparring, or certainly me asking questions that seem pointed, but the Minister

knows that we are on the same wavelength on many of the same issues. That is why today I am happy to accept the amendments that the Minister has brought but there are a couple of comments and assurances that I would like to hear from the Minister at the due moment when he proposes those amendments. But I would like to talk briefly through the issues as to why I have come to this point of having to lodge the amendment today. It was really to catalyse some of the work that is already going on and to perhaps enhance those areas to make that as holistic an approach as possible is taken. I know for example that the Minister has brought forward the Residential Tenancy Law, which started to take effect last year in 2013, and which provides some protection for tenants, which I have outlined on page 3. The issue that I think we all acknowledge we have is that the Residential Tenancy Law is somewhat limited in the protection that it provides for tenants and it is also not particularly user friendly to either tenants or landlords. Are we good to carry on?

The Greffier of the States (in the Chair):

I am not sure we are. I am afraid the Assembly is inquorate. I would ask the Usher to summon at least one Member from the anteroom. Very well.

Deputy J.E. Le Bailly of St. Mary:

Better make that 2. I am a landlord, I should be --

The Greffier of the States (in the Chair):

I do not think there is any direct interest, which you need to withdraw. So an interest is declared, Deputy, but it is not an interest that requires you to withdraw from the Assembly; it is simply to be declared. Deputy Tadier.

Deputy M. Tadier:

Alternatively, perhaps I should have given my speech in the coffee room, we might have had more of an audience. As I have said, there are certain issues which need to be raised, the main issue that I have had is that when constituents who may not even live in St. Brelade have come to me in the past and said: "Look, I have an issue with my housing, x, y, z, this does not seem to be right", they have taken advice often from Citizens Advice Bureau and they have been referred to the Residential Tenancy Law, Members will know that I have asked questions in this Assembly about that as well. The issue is that the Residential Tenancy Law Article 9 says that if a property is uninhabitable you basically do not have to pay your rent, and in the meantime you do not have to prove that the property is uninhabitable, you can just do that, and it is up to the landlord, if he wants to contest that issue. If you cannot agree on a definition between you, then it is up to the landlord to take you to the Petty Debts Court as a tenant to get the money back, although it is also your right to make an application to the Petty Debts Court in order to vary the terms of your lease, to cease it, to get money back, *et cetera*. This is what is happening at the moment. But the law has not been tested and I think quite understandably perhaps, if everyone were to come forward who thought that they were living in uninhabitable properties and to stop paying their rent overnight, in fact that is a question I asked one of the officers who works with the Minister for Housing, what would happen? He said: "That would clearly put us in a very difficult position because there would be an element of chaos", paraphrasing there of course, but you can imagine the uncertainty that would be created for both tenants and landlords if that were the only resolution. So quite clearly what it seems to me is that there needs to be a more proactive stance taken so that definition, which the Attorney General defined as generally unsuitable for living in, could be made more meaningful. That is why I have asked for minimum standards to be established for all categories of rental properties. It seems, if we are to have a level playing field, if we are putting an onus on social providers to meet certain standards, it only seems fair to provide the same level of protection and expectation for those in the other sector, or in other sectors. We know also that we have provisions made for lodging houses, which the Minister has referred to in his comments in the amendment, and so it

seems only fair that should be extended. Also, once the minimum standards have been established, then obviously a mechanism needs to be put in place for that to be met and to be administered. I should say at this point, this is not something that is one-sided, I have been contacted by landlords who, when they heard about this, were saying: "We have tried to be good landlords, we provide good accommodation, and we have had perhaps bad tenants or we have had tenants who have left under certain conditions in a rush and we feel that we are not necessarily being provided for. We do have a rent, obviously we have the deposit, which we can keep, but that is not always satisfactory." It is those also who are asking for some kind of proactive steps to be taken. We know that a deposit protection scheme is going to be introduced and when that is introduced that will be a third party who can act, if you like, as an arbiter between landlords and tenants. The current situation can have perversities because you do have tenants who feel that they have been mistreated in the past by landlords, perhaps they feel that their deposit has been withheld unjustifiably, and therefore when they go in, when it comes to the eleventh month of their tenancy they simply do not pay the last month of their deposit because they have had a bad experience in the past. Similarly you get good landlords who are on the receiving end of a tenant perhaps who has had a bad experience. So I think we all agree that clarity for both tenants and landlords must be a good thing. If I move on to the creation of the landlords register, as I said, I will be accepting the amendment from the Minister, which will change that, not to create a register, but simply to look into the creation of a register. I suspect that some kind of list of landlords will need to be kept anyway if we are to have a functioning deposit protection scheme because you will need to know who the landlords are and who they are partaking in the scheme. The last part, which is perhaps the most controversial for some Members, is the issue of rent control. I have been careful in the wording: "To investigate the introduction of rent control", because I am not saying that it is absolutely the correct solution for Jersey or that it will necessarily have the desired consequence. But what I am saying, it is one mechanism, which we could look into, if we want to control the rents that are paid for in Jersey. It has to be said that many people in Jersey, who might want to buy, cannot. We know there is a lack of affordable housing. It does not seem that anytime soon that we are going to resolve the affordable housing issue. Even if we build new properties, we are probably not going to be keeping up with the rate of population increase, which is the preferred policy of this Assembly, which wants population growth at 325 per year, even though in reality it might be more than that. We are probably not going to be building homes for 325 people per year. I do not even think we can keep up with housing the current population. So that is an issue. In a scenario where we know we are not going to have sufficient housing, we do not already have sufficient suitable housing. We need to look at serious other mechanisms for controlling the affordability and the standards of accommodation. To those who might be sceptical about any kind of interference with the free market, I would say it is not as if the free market has been particularly successful in the provision of affordable and quality housing in Jersey at the moment, has it? So I think we do need to look at other areas. So I would ask Members not simply to vote against rent control ideologically but to allow the Minister for Housing to look at this area and to find out if it is a tool in the armoury, which could be used for controlling affordable rents. The last point on that is that we have already agreed that we want to peg social rentals to the private sector. My question has always been, what do we peg the private rental sector prices to? Of course there is nothing. That is left to the vagaries of the market. So all I am saying is that we should not rule it out because it is helpful if there can be a link, if we can link the 2 together. I think that is all I need to say. There might be issues that come up. Although it is an important issue, the report does cover it. There are going to be various mechanisms that need to be raised including exactly what the criteria are and I will perhaps address a couple of those during the amendment, which the Minister is bringing. I make the proposition.

[16:45]

The Greffier of the States (in the Chair):

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

6.2 Residential rental property: minimum standards and a register of landlords (P.42/2014): amendment (P.42/2014 Amd.)

The Greffier of the States (in the Chair):

Now, there is an amendment in the name of the Minister for Housing and I will ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Page 2, introductory paragraph: (1) for the words “Minister for Housing”, substitute the words “Minister for Health and Social Services, in consultation with the Minister for Housing,” (2) For the words “30th September”, substitute the words “31st December”. Page 2, paragraph (b): for the word “create”, substitute the words “request the Minister for Housing to investigate (i) the creation of”. Page 2, paragraph (c): (1) delete the word “investigate”; (2) renumber paragraph “(c)” as subparagraph “(ii)”.

6.2.1 Deputy A.K.F. Green (The Minister for Housing):

As Deputy Tadier said, we are one in what we want to achieve here and we have a very healthy, if not sometimes a little bit of tension, but we have a very healthy working relationship. Members will recall that just over a year ago, in fact last Friday, we debated P.33/2014: The Reform of Social Housing, which included a proposal to introduce regulation to ensure that housing in the social rented sector was brought up to and maintained at the decent homes standard. Since that debate, I have become increasingly convinced that a level playing field needs to exist for properties in the private sector as well as the social rental sector, and in fact I have said this on several occasions when being questioned. In bringing forward this amendment today, I believe we can achieve that outcome. My first amendment maintains the principle of Deputy Tadier’s proposition but seeks to ensure that the work to establish minimum standards for rental residential properties and a cohesive framework for their inspection and regulation, is brought forward by the Minister for Health and Social Services and her department because that is where the expertise already lies and I have spoken to the Minister for Health and Social Services and we have agreed the most effective way forward to achieve decent standards in rental housing is through the Draft Public Health and Safety Dwellings (Jersey) Law 201- and whatever it might be. The Minister intends to bring that before this Assembly by the end of the year. Before we start sending loads of hares running and that, it is an amendment, it is not the one that was consulted to before, and I will let the Minister speak about it in detail later, but, as I understand it, it is the intention that the amended one will apply only to rental accommodation and not to owner-occupied. The Minister, as I said, will speak more about the draft law in a moment. But this important piece of legislation will introduce a set of health and safety standards across all categories of residential rental tenure and provide a robust system of regulation, enforcement and penalties through the Environmental Health Department, or I think they are called the Health Protection Department these days. As I said, I will not speak about this provision in detail but there will be minimum standards and the law will provide environmental health with a risk-based guidance in fields such as the property being in good repair, has it got the right sanitary and cooking conditions, the conditions of furnishings and fittings, dampness, ventilation, and the like. You see, the problem is that, if I go off and do exactly what Deputy Tadier has asked me to do, then I will need to set up my own inspection regime and we already have one working in the Health Department and we are supposed to be working more together, this will be working together, and we are supposed to be trying to reduce the number of people that we have duplicating work. I want to make good use of the very experienced officers that I have worked with in other fields that exist in environmental health. Along with the Minister for Health

and Social Services, and this forms now under the Strategic Housing Unit, there are the Minister for Treasury and Resources, the Minister for Planning and Environment, the Minister for Health and Social Services, and myself, on that Ministerial Advisory Group for the Strategic Housing, and we are all working together and I think this is a good first project to bring forward with the Minister for Health and Social Services' work to introduce minimum standards. I propose to undertake a review of the Lodging Houses Law. Deputy Tadier notes this in the report, but it may be that if we have minimum standards of accommodation we may not need to have a separate Lodging Houses Law, so I intend to carry out that review and bring my findings forward. I intend to work collaboratively with the Minister for Health and Social Services and Deputy Tadier has offered to work with us as well. I have some very dedicated officers and I believe that we can effectively regulate, monitor and enforce decent home standards across the Island's residential rental sector, which will eliminate substandard properties. I have to say, as Deputy Tadier said, there are good landlords and there are bad landlords; there are good tenants and there are bad tenants, but I am ashamed of some of the properties that I have seen when people have rung me up and asked me to go see it, and Jersey can do better, and that is why I am supporting this proposition, albeit bringing an amendment. I move now to the second amendment, if I may, the second part of it. Is that all right?

The Greffier of the States (in the Chair):

Yes, we will be voting on them together.

Deputy A.K.F. Green:

Deputy Tadier requested I bring forward a proposal to create a register of landlords wishing to rent out residential properties and that I investigate the introduction of rent control to set maximum levels of rent and fees that may be charged. My amendment to part (b) asks the Assembly to accept the undertaking to investigate the proposal to create a landlord register because, as Deputy Tadier said, we may end up with a register anyway when we bring in the deposit protection scheme and there will need to be some sort of register. Of course not all landlords take deposits so there may be some gaps, so that is why we need to look at it. I am sure Deputy Southern probably will not believe me when I tell him this, but I am hoping that we might lodge that particular bit of legislation on 2nd June. He did ask me in the coffee room which year. Members will recall that a landlords register was explored by the former Minister for Housing, Senator Le Main, in 2009, but this was before the proposal to create a deposit scheme, so I would just like to have a look at that, whether we can just have one system. I am aware that landlord registration schemes were introduced in Scotland in 2006 and in Northern Ireland earlier this year, so there are some good examples to look at, how a register might work. For instance, the requirement to introduce a 'fit and proper' test for landlords, making registers open for public inspection, and ensuring effective enforcement of housing standards. As I said, I am mindful though that the plan for the register of landlords in England was abandoned because of concerns that it would create too much red tape. The Scottish scheme has seen mixed results. So I just want time to look at that. I do not want to give Members the idea I am anti a register, I am just asking for time to investigate it. The Strategic Housing Unit will do that work. Now, finally, in relation to part (c), I am content to investigate the introduction of rent controls insofar as these matters need to be kept under review. However I must emphasise to the Deputy that on the reading that I have done I am not convinced of the need to set up a threshold for rents in the Island. The reading I have done leads me to believe that it often has the opposite effect in terms of what the Deputy is trying to achieve. But I share his concerns. I share his concerns about the cost of renting in Jersey. Rent control might appear to be a quick fix solution but, from the reading I have done, it could have very adverse consequences for the rental market, including, as I have read in other areas - and Members might think that is a good thing - including a reduction in supply, as landlords fall away, because of more red tape. It is difficult, although I have to, to strike a balance, but I will look at the issues. But introducing rent control and

restricting landlords' ability to set rents, from what I have read, appears to be impractical and costly and not in the long-term interests of tenants. I have to say that I do subscribe personally to increase the supply and the market will sort itself out, but I am prepared to look at it because it is right and proper that I do. When P.33 was debated last year, I said it was time to set housing in Jersey on the right course, and in view of the ongoing developments I believe that we are doing just this. This continues to be a tremendous period of change for housing in Jersey. We will have a debate on the memorandum and articles of Andium Homes in June and I hope also to bring forward, as I said, the proposals for the deposit scheme shortly. The Residential Tenancy Law is in place and provides a modern framework for landlords and tenant relations. But while acknowledging what we have done, as Minister it is my job to ensure that we continue to look at what else we can do to meet our community's housing need. It was one of our, or is one of our, strategic aims to house all of our community. As Deputy Tadier's proposition highlights, statutory powers to deal with and enforce decent homes standard in one area is somewhere where we are somewhat behind other countries. This is something that the Minister for Health and Social Services and I are determined to do something about. People's health and wellbeing and life opportunities depend on having homes that are in a safe, secure, decent physical condition. The majority of people do live in quality homes. We are a prosperous community, we should have good standards of housing for all, it should not be a luxury or a nice-to-have, but a required condition for every household regardless of income and tenure. Therefore I ask Members to accept my amendments in the spirit in which they are brought so my officers working with health and Deputy Tadier can achieve those aims. I make the amendments.

The Greffier of the States (in the Chair):

Are the amendments seconded? **[Seconded]** Before I call the first speaker, Deputy Tadier, I was not sure if you had indicated you were accepting these amendments or not accepting them? I know it is a matter for the Assembly, but it just sometimes helps to know how the proposer ...

Deputy M. Tadier:

Would it help if I spoke now?

The Greffier of the States (in the Chair):

Yes, if you would like, Deputy. I will call you now. Deputy Tadier.

6.2.2 Deputy M. Tadier:

Yes, I am happy to accept them. The only one issue that I do have... I mean I have some questions on a lot of the aspects. Presumably (1) needs to be taken wholly, does it, so we could not take the dates separately to the words?

The Greffier of the States (in the Chair):

No, I think we will just vote on the whole thing.

Deputy M. Tadier:

Yes. I am a little bit concerned about the date. Largely, from a practical point of view, I was always labouring on the understanding that we could not tie a future Assembly to do something, so that is really the reason I put in 30th September, it seemed like the latest possible date of this current Assembly to enable the current Minister for Housing, or in the case it will be the Minister for Health and Social Services in association with the Minister for Housing, to come forward with the plans. So, on balance, clearly they cannot be separated, so I am happy to allow that extra time, but Members need to be mindful of it that we may not be able to hold a future Minister to account if he or she fails to report back to the Assembly on 31st December. But I think we talked about good faith earlier with the unions, *et cetera*, and I think that is an element that can be extended here. I

did have some concerns about this being pushed over to Health and Social Services because for me these are not primarily simply health and safety issues. When we are looking about affordable housing and everything that goes with that, about good standards in housing, the decent homes standards that might be applied in the U.K. or elsewhere, ultimately it is something that needs to be brought under the Minister for Housing. As long as we have a Minister for Housing, and it is not entirely certain that position will always exist when we are moving to a more arm's-length scenario with Andium and the other trusts that are involved in the gateway, it seems to me that, if the Minister for Housing is to have some *raison d'être*, it should be to bring forward this kind of proposition and the standards. But I take also the fact that he will be heavily involved as some kind of safeguard and reassurance. The other issue is, if you look around at different standards that have been established, whether that be often for social providers, but increasingly for those in the private sector, it also takes into account things that are not specifically to do with health and safety, but may be indirectly related to the provision of heating, for example. You read through some of the lists and it says that: "For many tenants it is the efficiency of the heating system that has the most significant impact on their overall perception and enjoyment of the property. The type of heating provided should be efficient, safely designed and economical to run and it is in your interests as a landlord in the long term."

[17:00]

Issues like that really, and it is also there are issues to do with energy saving, certificates, which need to be obtained before a property can be rented out, so an assessment can take place on an environmental level, those are also issues that should engage the Minister for Planning and Environment and I think it is something that his department would be keen to look into and I do not think Ministers therefore can work in isolation because many of these issues may be more environmental, there is no point in moving into a flat that seems affordable on the face of it when you see it in the middle of summer, only to find out that when you move in October there is damp on the walls and that there is no central heating and that, because the place is so badly insulated, you are paying perhaps an equivalent of your rent on top to keep the place well insulated. Of course then you are told to keep the windows open because you need to ventilate the property, so you have to open the windows of your badly vented flat to let all the heat out from your very inefficient radiators that you have just bought cheaply from the second-hand shop somewhere in the centre of St. Helier. It is these kind of things, which also need to be looked into, they are not simply health and safety issues, and I hope that kind of engagement will be looked at holistically. With regards to the investigation of the list, I think I have already covered that. I think in fact those were the only 2 substantive amendments that have been made that I need to speak to so I will leave my comment there and then any more general issues I can address in the summing-up.

6.2.3 The Deputy of St. Ouen:

First of all, I need to declare that I am or shortly will be a landlord of some residential units and I would also like to say that I absolutely support a need for appropriate standards for all residential rental accommodation. I am well aware that in certain instances some - a relatively small number and percentage of properties - do not necessarily fit the standard that we believe should be met. The one thing that I am really struggling with is both the proposal by the original proposer - the original proposition - who suggests a date that this needs to be done and dusted by 30th September this year, and that the Minister for Housing came and said: "We can do it by 31st December". This work is (1) significant, or it should be if we are going to make it meaningful, and (2) it absolutely requires the involvement of, not only tenants, and considering the potential impact that increasing minimum standards might have on them, but also a discussion with landlords and other individuals that are involved in property. This is not some quick fix. The Minister for Housing sits here and says: "Yes, we should have a minimum standard", let us not forget our States housing cannot meet,

or over 20 per cent cannot meet, minimum U.K. standards, and yet he is planning to say now we will go with everything. There is a little bit of chicken and egg and putting your own house in order first and fully appreciate and understand the implications, which, in fairness, the Minister for Housing has, as well as the States could have said: "Yes, by the way, it costs a lot of money and we are going to have to invest more money if we are going to meet those standards". All right, if that is then applying to the States, it is going to apply to landlords, and what is going to happen, they will look to pass on their costs, as is normal, to the tenant. So, before you even deal with this, you have to understand all of the implications, properly consider them and definitely consult, if ever you are going to stand a chance of bringing in these minimum standards. It is not to say that we have not moved towards it, as I say we have spoken about and discussed having a Jersey minimum standard. We have a Planning Department that is talking about minimum sizes of rooms. But the other thing is, and the thing that frightens me the most, is the suggestion that the Minister for Health and Social Services strides in and brings back that horrendously ridiculous Public Health and Safety (Dwellings) Law that we were presented with, which, in the words of the Minister for Housing in his report, describes this new draft as: "Seeks to set and enforce health and safety standards across all types of rented accommodation." Well, (1) I certainly have not seen any draft, I cannot think of any significant consultation that has happened after the fiasco that was created by the introduction of the proposal of the presentation of that initial draft, and certainly as a Scrutiny Panel nothing of this has been spoken about, nothing, and we are at the end of May. I would hope that States Members would agree that, as I say, if we are going to really want to do something, and I think we do, we need to have a proper planned structured approach to ensure that whatever decisions are reached, whatever conclusions are reached, can be delivered to the benefit of all - of all. It is not going to happen, I am sorry, but we are living in a dreamland if you think that all of this can be dealt with by the end of September or December. Certainly I would not allow the Minister for Health and Social Services to go anywhere near this until such time as the Minister for Housing has come back with certain proposals around all the other matters that are included in part (a). I think people will probably understand by now that, although I accept and fully support the principles that sit behind both the proposition and the amendment, I cannot support either. Thank you.

6.2.4 The Deputy of Trinity:

I think it is safe to come back here. I am pleased to follow the Deputy of St Ouen. I will put my case forward first and then answer a few questions as we go along. The Minister for Housing has clearly set out the importance of introducing fair minimum housing standards for tenants in Jersey. It will come as no surprise that I and my department fully support these proposals. It has been long-recognised that poor housing standards and ill health are inextricably linked. It goes back to even Jersey's own public health champion, Pierre Le Sueur, commemorated by an obelisk in Broad Street, famously prosecuted landlords whose properties had become slums. More recently research in the U.K. and the U.S.A. (United States of America) serves to support that historic stance, demonstrating once again that the most important factor in preserving good health is good-quality housing. There is no doubt housing standards are a health issue, even though the Deputy of St. Ouen might not agree with that. In the 21st century good housing standards contributing to good health should be an absolute right, not a privilege, and this should apply to all tenures of housing. States housing together with social housing providers has adopted the decent homes standards to ensure tenants in the social sector have accommodation that attains to a reasonable minimum standard. Tenants in all rented accommodation should be able to enjoy the same guarantee, housing which, at the very least, meets this minimum standard of decency. I fully agree with the Minister for Housing that the most effective way to secure this objective is through the Public Health and Safety (Dwellings) 2000 Law, which seeks to set and enforce health and safety standards for rental accommodation - and I stress rental accommodation - both in private and social

sector. I know we did go out to consultation and we did listen to that consultation and I hope the Deputy of St. Ouen has put a submission in to that consultation. The owner-occupier parts of that have been removed. This law will implement a single standard across all types of tenancy accommodation and it will provide a solid framework for the inspection and regulation of tenanted properties. Experience and expertise in dealing with the matters of inspection and regulation already exists in the Public Health Department and the legislation will be developed in conjunction with the Strategic Housing Unit. The staff are fully trained to assess property to see if it is uninhabitable, as they do now. They only go in if invited. There are some people today, families with children, young and elderly people, who are having to tolerate some of the most appalling conditions, in some cases dangerous conditions, living conditions in rented accommodation. I also want to point out that there are some very good caring landlords, and I am sure the Deputy of St. Ouen is one of them, and the legislation will ensure that there is a level playing field. Those good landlords will have nothing to fear. It is incumbent on us to take action to address this issue, to challenge landlords who are failing to provide minimum standards of decency and safety for their tenants. To address a problem that is impacting so significantly on our Island's health. Regarding time factors, my department do work extremely hard and are very thorough and will come back by December. I understand they could come back before but Scrutiny might not support us with that. But I am pleased to support the amendment put forward by the Minister for Housing and support his proposition.

6.2.5 Deputy G.P. Southern:

It is pleasing to hear the degree of co-operation between a Back-Bencher and a Minister for once. I want to just focus briefly on what I consider to be a dilemma that we have got ourselves into. The Minister talked about a time for extreme change, the amount of change that is going on in Jersey housing. I want to concentrate on the investigation of a possibility of rent control because what is going to be happening is that the new body, Andium, which is to be our social housing provider, is to have its rents raised over time by R.P.I. (Retail Price Index) plus 0.75 per cent. If R.P.I. averages about 2 per cent that means over the next 10 years rents are going to go up by 31 per cent, by almost a third in the next 10 years. In the next 30 years, which P.33 talks about, into the future, looking at the long term, rents in the States sector, in the social sector, will go up by over double: 230 per cent. More than double. That is the plan. What that impact will be on social security, on income support, *et cetera*, on tenants, I do not know. I suggest that that policy in itself will already create hardship. Worse still, under P.33 we have now linked our social rents to the private sector. The figures quoted in the document in the proposition by Deputy Tadier when he referred to a question asked by Senator Le Gresley about rents in the private sector recently, in the period 2007 to 2009, in a 3-year period, private sector rents went up by 24.6 per cent.

[17:15]

24.6 per cent - a quarter on average - in the private sector. We have tagged ourselves on social rents to private sector rents. What happens, I ask, if we see a period of growth again similar to 2007 to 2009, it was boom years admittedly. In the near future the economy gets in gear and we start to grow again, is that what we are going to see again? What is going to happen to rents then if they are tagged to 90 per cent of the private sector? No control whatsoever. The frightening prospect of seeing social rents go through the roof, metaphorically, that is the danger we have got. So without investigating some form of control on the private sector rents what we are saying is that social sector rents can go through the roof. That is the reality; that is the danger. Certainly, that is the risk we run. As the proposer suggested, do not throw out the idea of rent control altogether out of principle or any other reason, because what we have done is we have tied social rents to them, so what is going to happen in the future I do not think really bears thinking about. To investigate and have a look at and examine the possibility social rent control, I would suggest is absolutely

essential if we are not going to see rents in the social sector go through the roof and cause large scale hardship to our most vulnerable and poorest inhabitants.

6.2.6 Deputy G.C.L. Baudains:

A moment ago I thought it was interesting listening to the Minister for Health and Social Services proving that the Deputy's once fears are well-founded. I too have concerns, the proposition is clearly well-intentioned and could do some good and no doubt the amendment is also. But the first concerns me and the amendment, I am afraid, compounds my concern. I too am not sure that Health and Social Services should be involved here, because nobody wants substandard accommodation, in fact it is not even in the landlords' interest because tenants will vote with their feet and there are a number of vacant properties around at the present time. Income support would assist those who may find the charges difficult. Tenants can vote with their feet. What concerns me is what the Minister for Housing highlights in the middle paragraph under his rent control report and the rent control part of it. Because what I do not want to see are landlords discouraged from renting out property, or indeed raising the rent higher than they normally would have done in order to cater for these moves. I can imagine, for example, Health and Social Services would have a smoking ban on houses and all sorts of the latest trendy thinking applied, and if you do not comply with it: "Well we will close your property down", so that will be somebody else on the street without a flat or house to live in. What I would like the Minister for Housing, who presumably will be summing up on his amendment, I am somewhat confused by the rent control part of his report. I totally agree with that middle paragraph that it is likely that attempting to set a maximum rental price is very likely to have the opposite desired effect, but I would suggest also this applies to minimum standards as well. You have got to be careful that you do not reduce the amount of property available to rent by these measures. What confuses me is that having made that brief point and comment he then goes in his amendment to part (c), which seems to me to take the complete opposite and contradict himself by suggesting that rent control may be a good idea after all. In fact by moving the word "investigate" I think it reinforces the proposition. In his summing up I would appreciate it if he could give me a better understanding of exactly what he is trying to achieve here.

Deputy M. Tadier:

Can I just make a point of order for that, Sir. It is that it does not remove the investigation word, it simply displaces it so the investigation is put before (b), to investigate the creation of and to investigate rent control. I hope that helps, even though it is not my amendment.

6.2.7 Connétable J.M. Refault of St. Peter:

I despair when I hear some of the Members of this House talking with authority where they do not seem to step out of their halcyon homes to look at what some people are living in. I have 2 feet: one is in Housing and the other one is Health. I have bridged both departments, but I am not talking from either of those this afternoon; I am talking from my past feet when I was involved as property valuer and negotiator before coming into politics. Some of the conditions that these tenants are living in are absolutely appalling. There are houses I refuse to go in. There used to be a joke - it is not so much of a joke - but it was used as joke: you need to wipe your feet when you come out. I used to carry overshoes in my car, sometimes to put on to go into houses with white carpets and beautiful homes and other times to put on to protect my shoes when I am going into houses which were fowled all through the house. Absolutely disgusting premises. Some down to the tenant, some down to the landlord, both of them were happy with the arrangement, they continued their lifestyles like that. What we do not seem to recognise or do not want to recognise, there are some appalling conditions out there and unfortunately, while I support Deputy Tadier's incentive to bring this forward, it does not go quite far enough because it only deals with tenant properties. What about the tied-properties, what about the staff accommodation? Have you ever

been inside some of those? I recommend you go and try and find ... no, do not. Do not go and look into some; they are absolutely disgraceful, not all of them, there are some that are absolutely disgraceful. If we truly have a social conscience we need to recognise in this House that there are people out there who are living in absolutely appalling conditions contributing to our very comfortable lifestyles. It is our job in this Chamber to look after those people. I am looking now at the Deputy of St. Ouen and I really have to say I was quite frustrated with his comments. I have written down: "Spoken like a true landlord." Because at the end of the day ...

The Deputy of St. Ouen:

He obviously was not listening, sir.

The Connétable of St. Peter:

At the end of the day good landlords have absolutely nothing to fear. They will carry on being good landlords with good tenants, they will carry on getting their rents. Bad landlords need to look out, because we need to be telling them: "We are after you. We want you to develop good homes for our people that are contributing to our economy." I am going to finish now, I have already said enough. Just one quick point I wanted to make was Deputy Southern talking about rent controls. I remember back in the 1970s and 1980s when I was first trying to buy my house in the early 1970s, if you could find a house to buy in those days, all the house prices were controlled by the Housing Department. You had to apply to the Housing Department for them to tell you how much you could sell your house for. You went along and said: "Well the Housing Department says that your house is worth £7,000." "Yes, it is. But I am leaving a settee suite and I want £1,000 for it." That is the same thing that will happen with rent controls. "If you want to live here, the rent officially is £1,000 a week", or a year or a month, or whatever it is going to be, "but I need another £100 on top of that to enable you to switch the lights on." That is how they will get around it. Though rent control is very good, but the bad landlord will find a way to get around them. That is not a reason for not doing them, it is finding a way where we can manage the bad landlord. We do not want to manage good landlords, they do it themselves, it is managing the bad landlords. I will sit down with that, sir. Thank you very much.

6.2.8 Deputy R.C. Duhamel:

In keeping with Deputy Baudains for the tenants, I think he made some useful points and although I am generally supportive of the idea of rent control and minimum standards and registers for landlords and whatever, I just wanted to mention a couple of queries. Over the last few years we have laboured on the Council of Ministers to try and introduce a new way of working which puts sustainability at the heart of all of our policies. For those who require further definition, the interpreted definition that is coming forward, is to try and get a tripartite working arrangement which makes sure that the social elements, the economic elements and the environmental elements of the policy setting are all able to be considered at the time in order to try and balance those 3 competing sectors and to come up with better quality policies. I find myself standing here today reading the proposals that have been put forward by the Minister for Housing which amend Deputy Tadier's proposition to move the central responsibility from the Minister for Housing to the Minister for Health and Social Services, in consultation with the Minister for Housing. That is a watering-down of responsibilities. Although we have heard from the Minister for Housing that we have set ourselves up a Strategic Housing Unit, which resides in the Chief Minister's Department, and I am a Member in my capacity as the Minister for Planning and Environment, it does strike me as somewhat odd that the amendment that has been put forward by the Minister for Housing seems to offset the potential organisational capacity from his own Ministry. Maybe he knows more about whether or not he is going to be here in the future than anybody else does, and has almost passed it over exclusively to Health and Social Services. I would have felt more comfortable had the

amendment been worded by all of us who do have shared responsibility through the Strategic Housing Unit to ensure that the environmental considerations ... It is somewhat ironic that it is environmental health that is being spoken about and environmental health is not just health, it contains the adjective “environmental” so environment must be in there somewhere. Another point is that it is not ignored that within the Planning Department, since the advent of the Parker Morris decent house standards that were proposed in the U.K. for decent home standards after the war, the Planning Department has had a legitimate interest, expressed not only within those standards, but also within the building bylaws to ensure that the buildings are fit for purpose in environmental terms. As I say, I consider the environmental aspects of this particular job that I am Minister for have been widened somewhat. I think most people’s interpretation of environmental considerations are starting to extend and overlap into the social areas which is why a joined-up approach with all of the Ministers who share some of those interests is the right way forward. The size of buildings is obviously important and I think some Members will have seen recent T.V. (television) programmes where people’s perceptions of the individual spaces have been shown to be material in terms of how happy they are living in the spaces that they are living in. We all have the pictures in our mind of cramped prison-type conditions in prison cells and indeed a kind of deprivation of spaces is one of the punishments that we do offer to people as part of their corrective behaviour if they do commit misdemeanours. What is starting to come to the fore more and more is that we are all psychologically affected by the sizes of the spaces, the quality of the spaces that we inhabit. I am very concerned that the right environmental perspectives are brought into the whole argument and we are not just, as the Minister for Housing is suggesting, only interested in the affordability of the accommodation and the extent to which landlords are able to turn a large profit on a piece of property to the social, environmental and economic detriment sometimes of the people who are their tenants.

[17:30]

The issues that are being put forward, therefore, should not just be seen as quantitative measures in order to improve the situation. They are very much qualitative issues and that really is at the heart of the definition of sustainability and environmental best practice. To finish I would have been happier had those considerations been part and parcel of the amendments that the Minister for Housing had put forward. But providing I can have some assurances that in not having put forward the proposal’s amendments in those terms that nevertheless there still is an opportunity for the Minister for Planning and Environment and the Minister for Treasury and Resources as well as a co-member of the Strategic Housing Unit, notwithstanding how we have worded the amendment and the main proposition, there still is an opportunity afforded to those 2 other Members and other Ministers to participate in something which I think is at the heart of the interest of quite a large slice of our population. Equity and fairness is what it is about, and qualitative issues must be at the forefront.

The Greffier of the States (in the Chair):

It is after 5.30pm, do Members wish to continue?

Deputy J.M. Maçon:

Can I propose that we continue and finish this item of business, it is quite a straightforward matter.

Deputy M. Tadier:

May I propose that we at least finish the amendment. There might be others who wish to speak on the substantive proposition.

The Greffier of the States (in the Chair):

Are the Members content to continue to at least conclude the amendment? Very well. The appel is called for on whether to continue. If you wish to continue you vote pour, if you wish to adjourn you vote contre. Members are in their seats, I will ask the Greffier to open the voting. If you wish to continue you vote pour; if you wish to adjourn you vote contre.

POUR: 20		CONTRE: 18		ABSTAIN: 1
Senator P.F. Routier		Senator A. Breckon		Deputy J.H. Young (B)
Senator P.F.C. Ozouf		Senator A.J.H. Maclean		
Senator I.J. Gorst		Senator B.I. Le Marquand		
Senator P.M. Bailhache		Senator F. du H. Le Gresley		
Connétable of Trinity		Senator L.J. Farnham		
Connétable of St. Clement		Connétable of St. Peter		
Connétable of St. Ouen		Connétable of St. Mary		
Connétable of St. Brelade		Deputy G.P. Southern (H)		
Connétable of St. Martin		Deputy of St. Ouen		
Deputy R.C. Duhamel (S)		Deputy J.A. Hilton (H)		
Deputy R.G. Le Hérisier (S)		Deputy T.A. Vallois (S)		
Deputy J.A. Martin (H)		Deputy M.R. Higgins (H)		
Deputy of Trinity		Deputy G.C.L. Baudains (C)		
Deputy K.C. Lewis (S)		Deputy of St. John		
Deputy M. Tadier (B)		Deputy S.J. Pinel (C)		
Deputy E.J. Noel (L)		Deputy R.G. Bryans (H)		
Deputy A.K.F. Green (H)		Deputy R.J. Rondel (H)		
Deputy J.M. Maçon (S)		Deputy S.Y. Mezec (H)		
Deputy of St. Mary				
Deputy N.B. Le Cornu (H)				

6.2.9 Senator P.F.C. Ozouf:

I will be extremely quick. Minimum standards are absolutely right, but the issue of a register ... I am going to go with the amendment, but a register has been proven, as the Minister said in the United Kingdom, not to be required. If I may just very quickly say what might be a solution is a register of rogue landlords. One needs to deal with the problem, not the vast majority. Basically you can have blacklists and that is probably the solution. Good economics does not always make the good politics and good economics does not always make for good politics. There is only one solution in relation to housing supply and housing costs and that is supply. We have recently had the pre-eminent economist Kate Barker, C.B.E. join our F.P.P. (Fiscal Policy Panel) and she, I think, will give Members quite a lot of information. I can see the Minister for Planning and Environment shaking his head. If the Minister for Planning and Environment does not agree with supply in dealing with prices then I just do not know where we are. Effectively it is - I am afraid to say - rent controls, well intentioned, good politics, but bad economics. The only solution is supply and this afternoon we have kicked off the bond issue, we have announced publically that we are starting the bond issue, that is £250 million, improving standards and improving supply and we are doing a lot and this Assembly should be very proud of what it is doing on that issue. Many people say that this Assembly does not speak about what it is doing and what we are doing in terms of boosting supply is very important and the Minister for Housing should be congratulated and I support his amendment. But I am very sceptical in relation to rent control, they do not work.

6.2.10 Senator F. du H. Le Gresley:

I thought I might have been going home, but as we are still here I will have to say this. In the speeches we have heard thus far we have heard the words “high standards, good standards, minimum standards” but in reality the law that we are looking at is about health and safety

standards which I would suggest there is a wide gap between high standards or even good standards. Health and safety standards, as described in the draft law, which I accept the Minister for Health and Social Services said is being changed, but at the moment it is defined as: “The health and safety of persons in a dwelling” or: “The conservation of energy or water supply to a dwelling.” I would suggest that that is not going to achieve decent home standards, which the Constable of St. Peter was very concerned about, quite rightly. In other words, this Public Health and Safety (Dwellings) (Jersey) Law has got a long way to go. A long way to go to achieve the aims of Deputy Tadier, obviously the Minister for Housing and it seems the Minister for Health and Social Services. I will back them all to the hilt, but we have got a long way to go.

6.2.11 Senator P.F. Routier:

Very briefly. The previous speaker is spot-on with his comments, but I think this is a good step in the right direction. I think this matter is extremely important. We have had a good measure of agreement among Members, and that is really pleasing to see. I think it is something that is really going to be of benefit to our communities. I think the best way we can serve our community is to support this and as quickly as possible.

The Greffier of the States (in the Chair):

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

6.2.12 Deputy A.K.F. Green

I have to say I was surprised at some of the speeches because I thought I had covered some of the points. Anyway, I will try and cover the things that have been raised. I thank all Members for speaking. I do not often dwell in the past, but I would like just to talk for a couple of minutes about the house I was brought up in. The first house, where Osborne Court is now, there were 7 cottages and I lived in number 7 with my family. We had no water, no electricity. We were the posh one; we had 3 gas mantles in the lounge. I say the lounge, it was one room: lounge, kitchen and my parents' bedroom. But that house was spotless. Absolutely spotless. Had my parents not kept it so it would have been classed as slum, even in those days. Some of these dwellings, I am afraid, still exist. We had to go down the yard in the middle of the night if you wanted to go to the toilet. Needless to say, constipation was very helpful on occasions. Those dwellings still exist. I can take you to some, even within my own constituency not far from St. Andrew's Park, where the dwellings are worse than that I have just described that I was brought up in. That is why I am passionate about improving housing for everybody. Picking up on the timing, could we achieve this by 31st December? Yes, we could. That does not mean that the landlords have to meet immediately by 31st December the standards, but we can bring standards before to this House by 31st December for them to debate and see whether it is right. Because a lot of that work has been done. I know it is called the Health and Safety (Dwelling) Law, but when you look at it it covers the quality of housing, the minimum standard of housing, heating. It covers overcrowding. It covers sanitary. All that we can bring back for discussion by 31st December. Some landlords will need time, just as my own department - soon to become Andium - have needed time to get their 20 per cent of stock that is not yet at decent home standard to get that up to scratch. They will need time, but at least we are moving in the right direction. I say to Members that if they want to see things improve, if they want to see a fair society, and I will come back to a fair society ... I will talk about it now. I also was, for a short while, about 6 years, on the youth panel in the court with the Magistrate, as he was then, Senator Le Marquand. It will come as no surprise for people to know that the majority of youth crime came from homes where, exactly as I have described, that were overcrowded, that were without sanitary provision and the children had nowhere to play. That is linked also, not only to health, but that is also linked to their education. If you have got nowhere to sit quietly to read, do your homework, to study, that affects your level of education, that affects

how youngsters perhaps become disaffected and then they find themselves in petty crime to start with and further down the road. Housing is linked not only to health, but to education and to crime. I make no apologies if people do not like that, it is a fact. The date, I am quite happy about, we can get this back. Why involve Health? Well it is about health as much as anything else. They have officers that are very experienced. They have officers that have statutory rights. Am I going to create another ... because the Housing Department, Andium, could not police this for themselves; am I going to create another department to enforce the Regulations however they might look. New officers would have statutory powers when we have that expertise, that knowledge and the statutory powers already in the Health Department. We need to get real. If that expertise exists let us use it. I, like the Minister for Treasury and Resources, are sceptical about the rent control being effective. Everything I have read tells me that it is not. But it is right to look at it and I will look at it again with an open mind. It is right to see if things have changed. It is right to examine current modern practice. I personally believe that it is good quality supply that will control rents. Some landlords have in fact said to me that in the work that we have been doing it has made it difficult for them sometimes to rent out the borderline properties and they have had to lower the rents, that is just what I have been told. I say to Deputy Southern when he criticised me - but it does not do any harm to keep me on my toes - that I have 20 per cent of my units of accommodation that do not meet the standard, I know that. That is what P.33 was about, and that is what the bond is about. That is what we are working on; we have a plan. We are not just saying that there is a problem and doing nothing about it. Of course going back to the Minister for Health and Social Services, I am very confident that this is the right way to go, working as a Strategic Housing Advisory Panel or group. We will all have an input: the Minister for Treasury and Resources, the Minister for Planning and Environment. I was disappointed to hear the Minister for Planning and Environment's comments, because he had not raised them before. I was disappointed to hear that today. But we need to work together to provide it. I could go on, but I get the feeling that people are ready to go home. I hope I have answered the majority of the questions that people have asked. If there is any burning issue I have not, tell me and I will answer it. But I maintain my amendment, and ask for the appel.

The Greffier of the States (in the Chair):

The appel is called for with the amendments brought by the Minister for Housing. Members are in their seats. I will ask the Greffier to open the voting.

POUR: 33		CONTRE: 4		ABSTAIN: 0
Senator P.F. Routier		Deputy of St. Ouen		
Senator P.F.C. Ozouf		Deputy G.C.L. Baudains (C)		
Senator A. Breckon		Deputy N.B. Le Cornu (H)		
Senator B.I. Le Marquand		Deputy S.Y. Mezec (H)		
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				

Deputy G.P. Southern (H)				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

Deputy J.H. Young:

Before we adjourn could I ask that we do need to agree about this change in dates because we cannot be waiting another day to know whether the Island Plan is happening on 1st July as listed or is the 14th?

The Greffier of the States (in the Chair):

I am afraid we will deal with future business at the end of the sitting ...

Deputy J.H. Young:

I know, Sir, but that means 2 weeks. Is that reasonable with the amount of ...

The Greffier of the States (in the Chair):

No, the sitting will no doubt end tomorrow, Deputy. I presume to end the sitting tomorrow.

Deputy J.H. Young:

Because there are meetings that decisions need to be made and if the Ministers know that they are going to delaying those why could they not tell us now, instead of waiting another day with those meetings having to be rearranged.

The Greffier of the States (in the Chair):

You will have to speak to the Minister for Planning and Environment and ask of his intentions. Very well, the adjournment is proposed. Before we adjourn I can announce to Members that the States Employment Board have lodged the Draft Employment of States of Jersey Employees (Amendment Number 7) (Jersey) Regulations, P.97. Very well the Assembly stands adjourned until 9.30 a.m. tomorrow.

ADJOURNMENT

[17:44]