

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 18th JANUARY 2017

PUBLIC BUSINESS – resumption	4
1. Draft Public Elections (Amendment No. 7) (Jersey) Law 201- (P.124/2016) - resumption.....	4
1.1 Connétable L. Norman of St. Clement (Chairman, Privileges and Procedures Committee):	4
1.1.1 Deputy C.F. Labey of Grouville:.....	4
1.1.2 The Connétable of St. Clement:	4
2. Draft Public Elections (Amendment No. 8) (Jersey) Law 201- (P.125/2016)	5
2.1 The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):.....	6
2.1.1 Deputy J.M. Maçon of St. Saviour:.....	7
2.1.2 Senator S.C. Ferguson:	7
2.1.3 Deputy K.C. Lewis of St. Saviour:.....	7
2.1.4 Deputy R. Labey of St. Helier:.....	7
2.1.5 Senator P.F.C. Ozouf:.....	7
2.1.6 Deputy G.J. Truscott of St. Brelade:	9
2.1.7 Deputy J.A.N. Le Fondré:.....	9
2.1.8 The Connétable of St. Clement:	9
2.2 The Connétable of St. Clement:	11
2.2.1 Senator S.C. Ferguson:	12
2.2.2 Deputy J.A. Hilton of St. Helier:.....	12
2.2.3 Senator P.F.C. Ozouf:.....	12
2.2.4 The Connétable of St. Clement:	13
Deputy J.A.N. Le Fondré:.....	13
Mr. R.J. MacRae, H.M. Attorney General:.....	13
3. Draft Amendment (No. 30) of the Standing Orders of the States of Jersey (P.126/2016)	15
3.1 The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):.....	15
4. Draft Sea Fisheries (Amendment No. 3) (Jersey) Law 201- (P.128/2016)	16
4.1 Deputy S.G. Luce of St. Martin (The Minister for the Environment):.....	16
4.1.1 The Deputy of Grouville:.....	17
4.1.2 Senator P.F.C. Ozouf:.....	18
4.1.3 Senator S.C. Ferguson:	19
4.1.4 The Deputy of St. Martin:	19

4.2	The Deputy of St. Martin:	20
5.	Draft Animal Health (Jersey) Law 2016 (Appointed Day) Act 201- (P.129/2016).....	20
5.1	The Deputy of St. Martin (The Minister for the Environment):	20
6.	Draft Animal Health (Consequential Amendments) (Jersey) Regulations 201- (P.131/2016)	21
6.1	The Deputy of St. Martin (The Minister for the Environment):	21
7.	Future Hospital Funding Strategy (P.130/2016)	22
7.1	Senator A.J.H. Maclean (The Minister for Treasury and Resources):	23
7.2	Future Hospital Funding Strategy (P.130/2016): amendment (P.130/2016 Amd.)	26
7.2.1	Connétable C.H. Taylor of St. John:	27
	Senator A.J.H. Maclean:	28
7.3	Future Hospital Funding Strategy (P.130/2016): amendment (P.130/2016 Amd.) – amendment (P.130/2016 Amd.Amd)	29
7.3.1	Senator A.J.H. Maclean (The Minister for Treasury and Resources):	29
7.4	Future Hospital Funding Strategy (P.130/2016): amendment (P.130/2016 Amd.) - as amended.....	30
7.4.1	Connétable D.W. Mezbourian of St. Lawrence:	30
7.4.2	Senator A.J.H. Maclean:	30
7.4.3	The Connétable of St. John:	30
7.5	Future Hospital Funding Strategy (P.130/2016) - as amended.....	31
7.6	Future Hospital Funding Strategy (P.130/2016) - Suspend the debate for the Corporate Services Scrutiny Panel to review under Standing Order 79	32
7.6.1	Deputy R.J. Renouf of St. Ouen:	32
7.6.2	The Connétable of St. Lawrence:	34
7.6.3	Senator A.J.H. Maclean:	34
7.6.4	The Deputy of Grouville:	35
7.6.5	Deputy G.P. Southern:	36
7.6.6	Deputy M.R. Higgins:.....	37
7.6.7	Deputy J.A. Martin of St. Helier:	38
7.6.8	Deputy A.D. Lewis of St. Helier:	39
7.6.9	Deputy J.M. Maçon:	40
7.6.10	Deputy J.A.N. Le Fondré:	41
7.6.11	Deputy R. Labey:	43
	LUNCHEON ADJOURNMENT PROPOSED.....	44
	LUNCHEON ADJOURNMENT.....	44
7.6.12	The Connétable of St. John:	44
7.6.13	Connétable J.M. Refault of St. Peter:.....	45
7.6.14	Senator A.K.F. Green:	49
7.6.15	Senator P.F.C. Ozouf:	50
7.6.16	Deputy S.M. Brée of St. Clement:	54
7.6.17	Senator S.C. Ferguson:.....	55
7.6.18	Senator P.F. Routier:	56

7.6.19	Deputy K.C. Lewis:	56
7.6.20	Deputy D. Johnson of St. Mary:	57
7.6.21	Senator I.J. Gorst:	57
7.6.22	The Deputy of St. John:	59
ADJOURNMENT		61
	M.H. Temple, Q.C., H.M. Solicitor General:	61
ADJOURNMENT		63
	Senator A.J.H. Maclean:	63
	Deputy J.A.N. Le Fondré:	63
	The Solicitor General:	64
	Deputy J.A. Martin:	64
	Deputy S.M. Brée:	65
8.	Draft Prison (Independent Prison Monitoring Board) (Jersey) Regulations 201-	
	(P.132/2016)	65
8.1	Deputy K.L. Moore of St. Peter (The Minister for Home Affairs):	66
8.1.1	Deputy J.M. Maçon:	66
8.1.2	Deputy J.A. Martin:	67
8.1.3	The Deputy of St. Peter:	67
8.2	The Deputy of St. Peter:	67
8.3	The Deputy of St. Peter:	68
ADJOURNMENT		69

[9:30]

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

PUBLIC BUSINESS – resumption

1. Draft Public Elections (Amendment No. 7) (Jersey) Law 201- (P.124/2016) - resumption

The Bailiff:

We finished last night with the Assembly approving the principles of P.124: Draft Public Elections (Amendment No. 7) Law. Deputy Le Fondré, does your panel wish to scrutinise these regulations?

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman, Corporate Services Scrutiny Panel):

No, thank you, Sir.

1.1 Connétable L. Norman of St. Clement (Chairman, Privileges and Procedures Committee):

I shall propose the Articles *en bloc*, but just say a few words about them as I go through. The Committee has provided Members with a marked-up copy of the law as it would be amended if these Articles are approved, and I hope Members have found that helpful. Article 1 is the interpretation article. Article 2 of this draft law disqualifies from voting those prisoners who have been convicted and sentenced to more than 4 years' imprisonment, or who are unlawfully at large at the time, no matter how long they have been sentenced for. Article 3 of the law sets out the requirements that a person must fulfil in order to have their name included on the electoral register. This amendment makes it absolutely clear that any sentence of imprisonment does not count towards a period of ordinary residence. Article 4 currently provides the *Autorisé* or *Adjoint* with discretion to take such measures as he or she considers appropriate for taking the vote of an ill or disabled person on the day of the poll. As amended, this provision will enable the discretion to be exercised to take the votes of prisoners as well. Articles 5, 6 and 7 deal with pre-poll voting and postal voting. Article 7 of the law amends Article 42 of the 2002 law and removes the limited ability of remand prisoners to cast a pre-poll vote. Instead they will be able to cast a postal vote, thereby simplifying matters for the Judicial Greffe. Postal voting currently applies to people who are likely to be out of the Island while the polls are open. The draft law widens this Article to include people who are entitled to vote but will be detained in prison while the polls are open. Article 8 amends the law which enables the Judicial Greffe to receive an application for postal voting after closing time if he or she considers there are exceptional circumstances which justify doing so. This ability refers to all people, not just prisoners. Article 9 is the citation. I propose the Articles and will attempt to answer any questions.

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak?

1.1.1 Deputy C.F. Labey of Grouville:

I would just like Article 5 amended clarified, that if a person is taken into prison when they do not have the qualifying period of being resident in Jersey, they then do not leave prison maybe 2 or 3 years later with that qualification. It is just to be clarified. I think that is what that Article says, but I just wanted some clarification.

The Bailiff:

Does any other Member wish to speak? Then I ask the Chairman to reply.

1.1.2 The Connétable of St. Clement:

Any prisoner has to meet the residential criteria and the law makes it quite clear that while they are imprisoned they are not counting time towards that residential qualification for the purposes of voting. I maintain the Articles.

The Bailiff:

Would those Members in favour of adopting the Articles kindly show? Those against? The Articles are adopted. Do you move the Bill to the Third Reading, Chairman?

The Connétable of St. Clement:

Yes, please, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak in the Third Reading? Would those in favour of adopting the Bill in Third Reading kindly show? The appel is called for. If I could ask Members to return to their seats. The vote is on whether to adopt the Draft Public Elections (Amendment No. 7) Law in Third Reading. I will ask the Greffier to open the voting.

POUR: 30		CONTRE: 6		ABSTAIN: 0
Senator P.F.C. Ozouf		Deputy J.A. Hilton (H)		
Senator A.K.F. Green		Deputy J.A.N. Le Fondré (L)		
Senator S.C. Ferguson		Deputy K.C. Lewis (S)		
Connétable of St. Clement		Deputy J.M. Maçon (S)		
Connétable of St. Lawrence		Deputy S.J. Pinel (C)		
Connétable of St. Mary		Deputy of St. Martin		
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

2. Draft Public Elections (Amendment No. 8) (Jersey) Law 201- (P.125/2016)

The Bailiff:

We come now to the P.125: Draft Public Elections (Amendment No. 8) (Jersey) Law, lodged by the Privileges and Procedures Committee. I will ask the Greffier to read the citation again.

The Deputy Greffier of the States:

The Draft Public Elections (Amendment No. 8) (Jersey) Law 201-. A Law to amend further the Public Elections (Jersey) Law 2002, the States of Jersey Law 2005, the Public Elections (Expenditure and Donations) (Jersey) Law 2014 and the Connétables (Jersey) Law 2008. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

The Bailiff:

Chairman, do wish to propose the principles?

2.1 The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):

This draft amendment to the law is the culmination of work started in 2015 and is because of the experience we had in the 2014 elections. It has involved considerable consultation with the Judicial Greffe, the Jurats who are responsible for running elections on the day, and also takes into account matters looked into by the Comité des Connétables and indeed the Attorney General, and we are grateful to all of them. What this law does I shall run through briefly. One thing that it allows us to do is to appoint election observers, after consultation with the Chief Minister. This would be in accordance with international best practice and is something which I know the Chief Minister was keen to do at the last election but we did not have the *vires* to do it. What election observers can do is to point out issues with Election Law and practice which ought to be examined and their appointment signals to the rest of the world that Jersey is a functioning and self-confident democracy. Various international organisations, such as the Council of Europe and the Commonwealth Parliamentary Association provide election observers who are usually current or former parliamentarians. If this proposition is successful, we will, with the Chief Minister, consider who to appoint for the 2018 elections. There are various changes to the nomination procedure, including allowing candidates to be described on the ballot paper by their full name, or by the name they are commonly known as if, in the opinion of the presiding officer at the nomination meeting, its use will not confuse or mislead voters and is not obscene or offensive. There is also a new procedure for allowing candidates to withdraw after they have been nominated, a gap in the law which was highlighted when a Senator or candidate sought to withdraw from the ballot in 2014. Some of these proposals simply reflect current practice, but under the current law people who are at polling stations at 8.10 p.m. can vote if they are inside the polling station, but if it should happen that there is a queue outside, technically and legally they are not allowed to vote. The law is being changed to make sure that it is absolutely clear that they can do so. We have special pre-polling arrangements for ill, disabled or illiterate people where votes can be taken on the day. That is going to be extended to carers of ill or disabled people. Jurats and *Autorisé* have used their common sense in the past and allowed this to happen, but this gives the *vires* for it to happen. There are a number of changes to the management of public elections in each Parish, constituency or District, the processes in respect of the distribution of ballot papers and the management of accounts in many cases were to ensure that the law reflects current practice.

[9:45]

These changes include provision in certain circumstances for a count to be held in more than one location and the results added together, which currently under the law cannot happen, even though I suspect it does from time to time. Following the experience in 2014, we propose a change to the laws on recounts for Senatorial elections so that the right to request a recount may only apply if the difference between the votes cast for the candidate making the request and the votes cast of the person elected, or if more than one the person elected with the lowest number of votes, is one per

cent or less than the votes cast for the person elected, rather than one per cent of the total number of votes cast, which can be a rather huge number. There are also changes to Article 61 of the Public Elections Law which relates to when the Royal Court must declare a vacancy or that an election is void. This is in response to problems with the drafting of the Article which emerged during a court challenge to the result in St. Helier No. 1 in 2014. Also we are asking the States to remove the requirement for candidates to declare convictions for sodomy committed before 12th January 2007, when the law on sodomy changed, if the offence committed before that date would not be illegal now, and also to declare convictions for offences against someone aged under 18 if the candidate was over 18 at the time of the offence. That summarises the changes we are proposing and I propose the principles.

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak on the principles? Deputy Maçon?

2.1.1 Deputy J.M. Maçon of St. Saviour:

Very briefly. I just want to thank the committee and the chairman for bringing these forward, particularly with regard to the changes around carers, which was originally my proposition which I brought quite a few years ago, but I am glad to see that it has been put in the legislation. I would also like to praise the Judicial Greffe, along with the chairman, for the pragmatism of the Judicial Greffe in making a workable solution as well. I just want to put that on record and let the committee know that I am fully supportive of these proposals.

2.1.2 Senator S.C. Ferguson:

The election observers, would these be available for the postal and pre-poll votes, because that was the area where there were a lot of questions after the 2014 election? It was a good thing to have a recount. It may not have been a good thing when you were going through it, but at least it sorted out a lot of questions. To reduce the ability of people to ask for these sort of things, is that a good thing? Does it reduce the access to democracy? Certainly, the observers, we need them, I think, for pre-poll and postal voting.

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

Just one query regarding travel and accommodation expenses by election observers in the course of their work; is it planned to have off-Island observers coming in, and how far afield are we talking?

2.1.4 Deputy R. Labey of St. Helier:

Just on the minimum one per cent within reach of the winning candidate being the criteria for being able to call for a recount, what happens if it is above one per cent but for very good reasons? I am trying to think of some now, but I cannot. Let us imagine the candidate had very good reason for suspecting a ballot box got lost in transit or caught fire, or did not make it to the count, which would potentially make the gap bigger than one per cent, or under one per cent; I am confusing myself. Are there real circumstances in which a candidate does not meet the one per cent but could have a very good reason for wanting a recount and they would have no recourse even if they were correct, to have that recount?

The Bailiff:

Does any other Member wish to speak?

2.1.5 Senator P.F.C. Ozouf:

I am a little confused and I wonder if the chairman would confirm what the circumstances in the last recount would be. Would this mean that the request for the recount that, perfectly legitimately, Senator Ferguson made ... and I endorse the comments, I think it was a good day for our Judicial

Grefe and our Jurats because effectively I know my vote went up a little, but not by very much. In fact, they were absolutely vindicated in their precision and the way that they go about it. The second issue I wanted to raise on election observing is that the methodology which the ... forgive me, I think I am correct in saying that it is the Judicial Greffier who has provided some guidance to the Jurats who oversee without fear or favour our counts and the modalities of the election process. I think they were absolutely vindicated. In fact, the way that the counting is done has been held up as a model, I know, around the Commonwealth. I think I am the only Member of this Assembly who has ever had the privilege to serve as an election observer and I am still currently a member of P.P.C. (Privileges and Procedures Committee). If I may say, I think this is a really important way of strengthening our democracy and sends out a clear message about the fact that we can be open. It really is a double endorsement you would not need. I think we all know the Jurats and we trust them without hesitation, but when we have to have a recount in order to almost validate their work, their work was audited and it was perfection. They do their work voluntarily and diligently and properly, and they are highly respected. The question about what election observers do, well, in different democracies where there are different risks, the election observing mission is always invited. There are expert bodies which are experts and then they are providing assistance, normally, to experienced parliamentarians or parliamentarians in another place. This Assembly is a member of 2 parliamentary bodies, the *Assemblée Parlementaire de la Francophonie*, the French A.P.F., and the C.P.A. (Commonwealth Parliamentary Association), and I know another Member is part of the Irish Inter-Parliamentary Union, I think. Those 3 bodies engage in election observing and when election observers in difficult countries, like in Africa ... I was an election observer for the presidential election in Rwanda, and then the Cayman Islands. There were certain reasons why lots of countries have them, just to send out the message that: "We have nothing to hide" that: "We are good and proper and there is a proper election process." The chairman has briefed you on this but having been one I think the chairman encouraged me to forego a holiday and be an election observer and I do not regret a moment of it, and any Member that has that offer when those come around, I would encourage them to take that opportunity, because it is an opportunity of a lifetime and you really learn a lot about democracy. If it is in a difficult place, you learn just how lucky we are, free and fair elections. What they are doing, effectively, is looking at the whole process. Yes, they will be looking at things like postal voting, if they are invited to do so. There has to be an election observing mission and then there are terms of reference, and that can be as wide or as limited as they want. The general view is that you invite in experts; there is an expert body that is based in Prague which provides the experts who go around booking election observers who are experts in elections, free and fair, how you get there. There are all sorts of components of that: whether or not the media has been fair, whether or not there has been fair coverage, whether or not there has been an explanation of policies in a way that is clear to the voters. All of these issues, they can really add value and they can add constructive value, and it may be of assistance if I sent the 2 election observers reports that I have been involved in in Rwanda and the Cayman Islands. Encouragingly, our friends in the Cayman Islands ... Sir, you welcomed, I think, as Bailiff - perhaps it was your predecessor, I am not sure - we welcomed a delegation from the Cayman Islands and it was with some pride, I think, that the C.P.A. in London announced that all the recommendations of that election observing mission were adopted, in all its parts. I cannot be an election observer in Cayman anymore because I am clearly conflicted because I know the Premier, and I have got to know him and we got to talk about things and he has learned a lot from our system; our counting systems, *et cetera*. There are always ways to improve, to deepen and to widen democracy and to make it better, because that is why we are here. To have that external validation, which is normally a simple statement: "Has this election been free and fair?" that is the most fundamental thing. And then whether or not the modalities that got you there ... has there been a proper process for nomination? Has there been a free and fair process in allowing anybody who wishes to stand? Are there any impediments to people to stand? Has the media been fair in

the observations of the elections? Has there been a proper scrutiny of candidates so that people can be informed about a real choice? Are there any observations from experience of other places, large and small, that can strengthen that most important of decisions? As we move into a digital age, something which Deputy Wickenden and I ... if I may take this opportunity of drawing Members' attention to a report, I think the first ever report by the Greffier on behalf of the Assembly about how to strengthen democracy in Jersey in a number of different respects. Technology is going to mean an enormous amount. We are not going to do away with the Jurats in their counting oversight, but I am sure that there can be technology, as I have seen in Estonia. That was a very valuable trip, as I went on holiday to Estonia originally and then was so excited by what I saw I asked Deputy Wickenden and an official to come and see for themselves the way they operate their Parliament, their Council of Ministers, their elections. I was convinced by the fact that e-voting can work and can be safe. There are some very interesting things going on, and we can improve, strengthen and deepen and make this Assembly an even stronger place than it is today, and learn from the experience of other places. Those election observers, it is the experts that come with them that then give recommendations to the experienced parliamentarians and then they write the report. But at those Parliaments, it has been an honour to serve with other parliamentarians, a very distinguished Maltese parliamentarian, and in the case of Rwanda I served with an Attorney General of Mauritania, almost a Nelson Mandela figure of the French-speaking world. That was a very difficult election observing mission to do, but it was certainly a worthwhile piece of work and I hope that in sharing that experience, as I did at the time, I will send those reports around. It is a really good thing, and it means that we can then go up and show ourselves. With a good report from good election observers, we can say Jersey democracy is in good shape and we have had a good election and that makes us all legitimate. We all gain; it is a win-win, and I urge Members to support it.

2.1.6 Deputy G.J. Truscott of St. Brelade:

I just wondered if the chairman could explain the practicality and the logistics of when people are at the queue at a polling station; how does he intend to administer that, whether it is by ring-fencing or giving out a card. How would he do that, and would there be a particular cut-off point where you would say: "No; no more people can be taken in to vote?" The other one is: I would like an example of why somebody on the ballot paper could name themselves as somebody that they are known by. Can you give me an example of that, and will it open the gates for people ... somebody may be known locally as "Seamus the Lunatic" or something? Is it opening it up to that, and that would give me concern? The legality of that also would be something you could explain.

[10:00]

2.1.7 Deputy J.A.N. Le Fondré:

I suppose a minor query for the chairman, again, just going back to the principle of appointing observers, and it sounds fine from a transparency point of view and all that sort of stuff, but the only example I heard seemed to be quite small jurisdictions, of which, obviously, we are one, and of the other countries which have had pressures at varying times. What do the larger western democracies do, like Australia or New Zealand or the U.K. (United Kingdom) or France? Do they have election observers or the ability to bring election observers into the system? I was just curious.

The Bailiff:

Does any other Member wish to speak? Then I call on the Chairman to reply.

2.1.8 The Connétable of St. Clement:

I thank Deputy Maçon for his supportive comments. I agree with Senator Ferguson that the right of a recount is important and the law emphasises that what we do. It is just sorting out, familiarising the amount where a candidate has the absolute right to a recount. Of course, if there are some other concerns - somebody mentioned that ballot boxes perhaps go missing or something of that nature - then the *Autorisé* or the Judicial Greffier, depending on which election it has, has the right to allow a recount, in any event, in circumstances like that. The election observers, if it is decided, and it is not compulsory that we have election observers, but if it is decided that we should have, the P.P.C. and the Chief Minister will decide which organisation to invite. That organisation, be it the Council of Europe, be it the C.P.A., or whatever, will decide who they will invite. It would be wrong to have independent election observers and we have to say exactly who they are going to be. Wherever they might come from, yes, we would be responsible for their expenses; accommodation expenses, subsistence and travel. Talking about observers, as I say, I think large jurisdictions, I am not sure about the others, but certainly the U.K. does not use election observers. I imagine they could if they wished to. What we will have, if the amendment of law is accepted, the ability to have election observers if we so wish and, yes, they will have the right to things like the electoral roll and to be at the pre-poll as well; I think Senator Ferguson asked about that. Deputy Truscott asked how we would administer the queues at polling stations. I wish we had that problem. **[Laughter]** But, of course, the P.P.C. will not be controlling the queues or administering the queues; that would be a matter for the returning officer, the *Autorisé*, at the particular polling station. I have seen it during my time; at an election I was involved in a few years ago where a few were queuing outside. It is a matter of common sense, is it not? We want to encourage people to vote. We do not want to turn them away. If they are still queuing at 8.15 p.m., 8.20 p.m. or 8.30 p.m., personally I would let them in and I hope the *Autorisé*, the returning officer, would do the same. Someone asked about the names on the voting slip. What this Bill will do will allow people who are commonly known by a different name to select that name on the slip. An obvious example, in the last Senatorial election was a gentleman commonly known as Stevie Ocean but he had to have his proper name, his original name, on the voting slip and he felt that was wrong and we agreed with him. Another one is a former Member of this House, in a very simple way, was Bob Hill, who wanted to have Bob Hill on the ballot paper. The law requires that whoever is presiding at the nomination meeting to decide what a person wants is rude, offensive, inappropriate or misleading and that should be fairly easy to establish. But I think it gives candidates just a little more right and a little more satisfaction that things are being done properly. I think I have answered all the questions. If I have missed somebody, I do apologise and I maintain the principles.

The Bailiff:

Those in favour of adopting the principles, kindly show. The appel is called for. If Members could return to their seats and vote on the principles of the Public Elections (Amendment No. 8) Law and I ask the Greffier to open the voting.

POUR: 40		CONTRE: 0		ABSTAIN: 0
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				

Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Bailiff:

Chairman, do you wish to scrutinise these?

Deputy J.A.N. Le Fondré (Chairman, Corporate Services Scrutiny Panel):

No, thank you, Sir.

2.2 The Connétable of St. Clement:

Once again the committee have provided Members with a marked-up copy of the law, as it would be, if these Articles are adopted. I think the simplest way would be for me to propose the Articles *en bloc* and offer to answer any questions on any particular Article that Members may have and revise the Articles.

The Bailiff:

Seconded? [**Seconded**]

Senator S.C. Ferguson:

Sir, might we have the Article 17, 52AA separately, please?

The Bailiff:

52AA, right. Do you wish to speak to that or not? This is your chance, do you wish to, that is the ...

Senator S.C. Ferguson:

You do not ask a politician that, Sir, I do not think.

The Bailiff:

You do not have to but ...

2.2.1 Senator S.C. Ferguson:

No, it is just that it is the recount set up and I query the one per cent at this point in time. Why one, why not 5? Nobody has told us the rationale of how many percentages they use. Is this a common percentage worldwide? Perhaps the chairman can explain.

2.2.2 Deputy J.A. Hilton of St. Helier:

I was just wondering if the chairman could just give me a little bit more information on Article 4, which amends Article 9 of the 2002 Law: "This enables a person to apply to have his or her name and address omitted from the electoral register on the ground that its inclusion would constitute a significant risk or threat of personal harm to the person or another person who resides with him or her." Can the chairman tell me, who makes the decision that somebody is at significant risk or threat? If it is decided after the person makes the application that they are, if they reside with family members or obviously share the same name, would it be automatically accepted that the family members could be exempt from the electoral register as well?

2.2.3 Senator P.F.C. Ozouf:

I just think before we vote, Senator Ferguson has asked for a vote on Article 52AA and I would just like the chairman, if he is able because obviously this was discussed at P.P.C., to give the rationale and a good rationale behind the reasons why that was the percentage given. I am standing really to make sure that he has got all his notes, I am sure he has, in relation to it just because it seems to me that there was ... it is perfectly appropriate to ask if an election, which is a tight one, is going to be different in its outcome and you have a recount; that seems to me entirely right. In the case of a Senatorial election it was on the margin, I think, vindicated the Jurats' diligence. The counterweight of that is the uncertainty that prevails. If it is not going to change because one has a confidence in the counting and there is no suspicion of any wrongdoing by Jurats and the returning officers and all the modalities that are happening, there is, of course, a cost in time. We ask the people to perform their tasks, not only the Jurats but the many other people that are involved; many of them do it in their own time. There just needs to be an appropriate balance between the rights of somebody to properly ask for a recount in exceptional circumstances and the offsetting cost of that and all the uncertainty that prevails. I went through it and Members may think about the things the ... and, again, it is not what one goes through, it is the things that people that are around you go through, that is the problem and that is on both sides. There is a reasonableness test versus a cost test but at all times democracy and the accuracy of democracy, because that is why we are here, must be paramount. I would just invite the chairman to explain carefully because this was obviously carefully thought about. I think it was fair to say that the ability for Senator Ferguson, while lawful and proper, we found out that in fact it was somewhat of a grey area, if not a lacuna in the previous drafting and I think that is why it happened. I, of course, will be supporting it but maybe the chairman in summing up may explain both sides of those arguments because they are really important.

The Bailiff:

Does any other Member wish to speak? I call on the Chairman to reply.

2.2.4 The Connétable of St. Clement:

Deputy Hilton asked about the persons who feel they might be at risk and having their names not on the electoral roll or have them on a separate register, that decision is made after application by the individual, by the Constable of each Parish who is responsible for the preparation of the electoral register. It very rarely happens, I cannot give any numbers or anything like that but it is the ability for someone perhaps who wishes to be on the register, who wishes to vote but fears, for whatever reason, it might be something like threats, physical threats or whatever. It would be a matter for the Constable to decide if that threat was real enough for them to be off the electoral register on application. The change in this law is that for some strange reason a mistake in the law, as previously drafted, meant that those persons were not necessarily off the list, which is at the library or at the Judicial Greffe. They would be off the list at the Parish Hall but not at the Judicial Greffe. This was improving the security for those particular individuals. The law on recounts, the one per cent, what we are proposing now is what the States originally wished to do a number of years ago in the drafting and it was not picked up. The one per cent, which gives an absolute right of a recount for a candidate is less than one per cent of the number of votes of the successful candidate, now has an absolute right. What happened in the previous law or what currently exists, it is one per cent of the total number of votes cast in that electorate, which can be a huge amount. What it is doing is bringing it to a realistic amount you give but also, and Senator Ozouf is right, the democratic process has to be clear and every candidate has to have confidence in it and it needs to be absolutely right. What this law does is to give the unsuccessful candidate, who is within one per cent of the successful candidate, the absolute right to a recount. As I have said before, if there are other problems, missing ballot papers or so on, then the *Autorisé*, the returning officer, has the right to call a recount anyway. Anyone can ask for a recount if they feel that things had gone on that might not be right and, of course, if we have election observers they will be there to comment as well. I hope that makes it clear and I maintain the Articles.

Senator S.C. Ferguson:

I am sorry, I asked if the Chairman could explain why they picked one per cent, not 2 per cent, 3 per cent, 4 per cent or 5 per cent.

[10:15]

The Connétable of St. Clement:

The one per cent was a decision of the States the last time we debated the electoral law and, therefore, the P.P.C. did not feel there was any necessity to change it.

Deputy J.A.N. Le Fondré:

If I am allowed to ask, under 52AA we have part (1), which is the ... I am confused between part (1) and part (2) because part (2), which is the one per cent of the number of votes cast at the bottom end is without prejudice to paragraph (1). Does paragraph (1) still stand? The reason I ask that because in my reading of that - sorry, I could be completely misreading it - is that we then have 2 conditions, either of which apply, which is one per cent or less of the total number of votes or one per cent of the votes in paragraph (b), either one of them.

The Bailiff:

Attorney, do you wish to advise the Assembly on that?

Mr. R.J. MacRae, H.M. Attorney General:

Could I invite the Deputy to please repeat the question because I have the law in front of me but I did not quite follow the question?

Deputy J.A.N. Le Fondré:

Under 52AA we have a paragraph (1) and a paragraph (2). Paragraph (2), which I think is where the focus has been as to the new condition of the one per cent, starts: “Without prejudice to paragraph (1).” I am assuming it is a separate condition and, therefore, paragraph (1) seems to say when the difference: “Is one per cent or less of the total number of votes cast in the election.” I am trying to marry that up with the comment that we change from going from one per cent of the total votes cast in the election to one per cent of the votes cast for the unsuccessful candidate, the number of votes cast for the person elected. But I may just be misinterpreting it or something.

The Attorney General:

I think the point is that 52AA (2) deals specifically with Senatorial elections, unlike (1). Of course, in the context of those elections, one per cent of the total poll will be much more significant and 52AA (2) states that the one per cent is the one per cent for the successful candidate with the lowest number of votes in such an election.

The Bailiff:

Chairman, we have been asked for taking the vote on 52AA separately and I did not want to give you the ruling just yet while you were speaking but in case you wish to add anything, we cannot take 52AA on its own separately but we can take Article 17 separately, which is 52A and 52AA and 52. In other words, Article 17, as a whole, can be taken separately because that is the provision. That is the reading in accordance with the usual process of Standing Order 74, which defines a provision as an Article or a regulation. The Article in this law is Article 17, which is substituting for Articles 52 and 52A, Articles 52, 52A and 52AA. When we come to the vote we will have to take Article 17 separately. I mention that only in case there is anything that you wanted to add as a result of that.

The Connétable of St. Clement:

No, thank you for that clarification, Sir, and obviously totally content with that and that is really what I expected. I am also grateful to the Attorney General for his comments and, of course, he is absolutely right, what we are talking about for the one per cent between candidates was for the Senatorial election. If we did that for Deputies and Connétables the number could be extremely small and the current arrangements remain in place for the Connétables and Deputies’ election and the one per cent between the candidates is simply for the Senatorial election. I maintain the Article and may I ask for the vote on 1 to 16?

The Bailiff:

We will take, first of all, the vote on Articles 1 to 16 inclusive. Those Members in favour of adopting those Articles, kindly show. Those against? The Articles are adopted. We now take the vote on Article 17 that is replacing Articles 52 and 52A with 52, 52A and 52AA. The appel is called for. I invite Members to return to their seats. I am not going to repeat what the vote is all about, I just said so, and ask the Greffier to open the voting.

POUR: 39		CONTRE: 3		ABSTAIN: 0
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Deputy J.A.N. Le Fondré (L)		
Senator A.J.H. Maclean		Deputy R. Labey (H)		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator A.K.F. Green				
Connétable of St. Clement				
Connétable of St. Peter				

Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Bailiff:

We now come to the remaining Articles, 18 to the end. Those Members in favour of adopting those Articles, kindly show. Those against? The Articles are adopted. Do you move the Bill in Third Reading, Chairman? Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting it in Third Reading, kindly show. Those against? The Bill is adopted in Third Reading.

3. Draft Amendment (No. 30) of the Standing Orders of the States of Jersey (P.126/2016)

The Bailiff:

We come now to P.126, Draft Amendment (No. 30) of the Standing Orders of the States of Jersey and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

Draft Amendment (No. 30) of the Standing Orders of the States of Jersey. The States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendments to the Standing Orders of the States of Jersey.

3.1 The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):

It was back in June of last year that Deputy Wickenden convinced the States to adopt his proposition, which sought to modify Standing Orders to require that any proposition lodged by a Minister would need to include a statement detailing which Ministers and Assistant Ministers were bound to vote in accordance with collective responsibility in respect of the proposition. This is a Standing Order that brings this request or on what the decision was based into effect and I propose the Standing Order.

The Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak? Those Members in favour of adopting the proposition, kindly show. Those against? The Standing Order change is adopted. Greffier, Deputy Southern said he did not wish to proceed with it but I was not clear whether he is deferring or withdrawing, do you know?

The Deputy Greffier of the States:

Which one, sorry?

The Bailiff:

P.127.

The Deputy Greffier of the States:

He is withdrawing that ...

The Bailiff:

He is withdrawing. Deputy Mézec, as Deputy Southern is in your party, perhaps you can tell us, I do not have a note as to whether P.127 ... Deputy Southern, I do not have a note as to whether you withdrew P.127 or deferred it.

Deputy G.P. Southern:

I withdrew it.

The Bailiff:

You withdrew it, thank you very much.

4. Draft Sea Fisheries (Amendment No. 3) (Jersey) Law 201- (P.128/2016)

The Bailiff:

Then we come to P.128: Draft Sea Fisheries (Amendment No. 3) (Jersey) Law, lodged by the Minister for Environment and I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Sea Fisheries (Amendment No. 3) (Jersey) Law 201-. A Law to amend the Sea Fisheries (Jersey) Law 1994. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

4.1 Deputy S.G. Luce of St. Martin (The Minister for the Environment):

The Sea Fisheries (Jersey) Law 1994 is the overarching law that makes provision for the regulation of sea fishing and conservation of fish, licensing fishing boats and connected matters. Article 8 of the law sets out the requirement that: "Before making any regulations under Article 2, 5 or 6, which apply to our extended territorial sea, the States shall consult with the Secretary of State whose concurrence shall be obtained." The proposed amendment to the law to remove this Article is

required to reflect the current nature and requirements of the Island's relationship with the U.K. This Article was required as part of the original Fisheries Management Agreement, F.M.A., with the U.K. The agreement was signed in 1996 and was a prerequisite of the extension of our territorial waters. At that time it was perfectly reasonable to require that the sensible checks and balances to the new regulations, particularly in light of the fact that the Granville Bay Agreement was in the final stages of being agreed and a certain cautiousness was prudent, given the unprecedented nature of that agreement. However, things have now moved on, both in our relationship with the U.K. and in our relationship with France. The F.M.A. has now been in place for 20 years and it is time that it reflected the nature of the relationship between the Island and the U.K., a relationship that has developed into a more equal partnership with both sides recognising the status of each party and the value of the agreement. Jersey should not and is no longer considered the junior partner. Jersey's territorial waters out to 12 miles or the median line are now well established and accepted by all. In addition, Jersey now also has ownership of the seabed and it is only right that this Assembly is the decision-maker in matters that relate to the regulation of our waters with respect to fisheries matters and the management of those precious stocks that live there. This has been recognised by the U.K. and officers from both the Department of Environment, Fisheries and Rural Affairs and the Ministry of Justice are in agreement that this requirement to obtain the concurrence of the Secretary of State is outdated and does not reflect the type of relationship the Island now has with the U.K. It may be interesting for Members to note that more recent F.M.A.s between the U.K. and other Crown Dependencies do not have this requirement at all. I would want to be clear with all Members that this amendment should not be seen as an opportunity to duck out of any wider international obligations or working with neighbouring jurisdictions. I am very clear that the F.M.A. will set out an explicit requirement in consultation with colleagues in D.E.F.R.A. and through that the other devolved administrations and Crown Dependencies. The Granville Bay Agreement sets out very clearly the requirements to consult and collaborate with the French fishermen and administration. But I am absolutely sure that, ultimately, this Assembly will agree or not, as is the case, any regulations that manage our marine resources. This simple amendment is a natural step forward in a maturing relationship supported by both sides and I urge Members to support the proposition.

The Bailiff:

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? Senator Ozouf.

Senator P.F.C. Ozouf:

Sir, I know you called me first but I am happy for ...

The Bailiff:

I saw you first but if you wish to give way, the Deputy of Grouville.

4.1.1 The Deputy of Grouville:

Would this not have been an opportune time to renegotiate our Fisheries Management Agreement to achieve a joint Fisheries Management Agreement with the Channel Islands and especially our sister island and the U.K.? Because to close-off this requirement to renew the Fisheries Agreement will surely close-off any opportunity to look at this agreement in the future because the ultimate for us would be to achieve a joint Channel Island Fisheries Management Agreement with the U.K. In this respect, could the Minister possibly tell this Assembly what progress is being made in restoring our historical fishing rights with Guernsey and, even more, what representation and support is being given to our fishermen who are still being discriminated against in Guernsey waters? While Guernsey will issue licences, Guernsey, as we know very well, are discriminating and issuing conditions on our fishermen, which almost change completely the essence that that licence was made. There are still issues going on now and I would like to know what progress is being made

and if this closes the opportunity to achieve a joint Fisheries Management Agreement with our sister islands.

4.1.2 Senator P.F.C. Ozouf:

The Minister for External Relations is not in the Assembly today and I do not even attempt to speak on his behalf but having hung out in the London office and having had numerous conversations and having spoken to the Minister for the Environment in a previous life, both when I was Environment and Public Services President, he is doing something here today that is really to be commended.

[10:30]

I think it is a mark of the respect to which the Fisheries Management Agreement and the Granville Bay Agreement is held that the Island is being afforded no longer this requirement, was really, in my view, not necessary. It is necessary when we cannot be trusted. We can be trusted. In fact there are important issues and the Deputy of Grouville has taken a close, personal interest in fisheries when she discharged the Assistant Ministership of Economic Development, and she is right to push at the boundaries yet further. Brexit is going to have an impact, as is being put in the public domain by fishermen and perhaps the Minister will, no doubt, summarise on that. There is an outstanding issue with the rights of Jersey fishermen and U.K. fishermen in Guernsey waters. There has been some rather uncomfortable dialogue between the authorities in the United Kingdom and the Guernsey administration, court cases, summons; it almost seems an unseemly situation. The Deputy looks forward to a Channel Island fishery agreement, so I wish to bring attention to the fact that I issued an April Fool when I said I was going to stand for the elections of Guernsey and I issued a 13-point manifesto. Perhaps it is no joking matter but then I proposed that, as an election, it was in the period of time when you could stand for election in Guernsey and I found, apparently, some unusable clause in the 1771 code that any Member of any island could stand in any one of the elections. It was 1st April; it was a fishy topic. But the fact is is that sometimes in jest there is a serious point. It would be wonderful, would it not, if we could have a Channel Island Fisheries Agreement with our French colleagues, which is held up as a model of good fisheries practice and deshacked from the shackle of the European Union limits, which are painful for Guernsey, in some respects, because effectively they are required to abide by fisheries limits that have no bearing really or on micro subsidiarity, putting the decisions in the right place, not great big rules by Europe or rules by the United Kingdom, which are not bespoke rules for our fishery requirements and our neighbouring fish? I do not think fish think, when they are crossing the border, that they are getting a passport or they are going to go and get caught in the French waters or Guernsey waters; fish swim and so these things need pragmatism and properness. I commend the work of all of the successes, the current work of the Fisheries Department and the Minister in what he is doing. This is a good day for Jersey. It is getting back something that we should have had. There are issues to be dealt with but they are being expertly dealt with by the Minister for External Relations, delicately handled by the Minister and we are going to be better off, I have no doubt, as a result. I note the Secretary of State in the United Kingdom for D.E.F.R.A. made some very interesting and very, I think, worthwhile comments in the House of Commons yesterday about the vision of post-Brexit Britain and the fisheries arrangements that are being thought of there. We will be deshacked from some European obligations, but there is the whole Granville Bay Agreement, our relationship with the French. I had the occasion to speak to former Senator Horsfall this morning and, of course, he was one of the architects, as many other people were, with good legal advice and good Law Officers' advice. We have got a great agreement that is held up as a model. Again, Jersey doing something fantastic and the Minister is doing something that shows that we are doing something fantastic and can be trusted. That is a good thing for Jersey and I am a proud Jerseyman because of it and I say congratulations to the Minister.

The Bailiff:

Can I just give some guidance to Members? This is a very narrow proposition, which is to remove the obligation under the law, the concurrence of the Secretary of State, before the States make regulations. It is not a debate about fishing in Guernsey waters, which would not be the subject of our regulations, in any event.

Senator S.C. Ferguson:

I will try and stay to the point, Sir.

The Bailiff:

Yes, please.

4.1.3 Senator S.C. Ferguson:

I think people are missing the point. All the fisheries around the U.K. and northern Europe are subject to a supra E.U. (European Union) international agreement. It is governed by the North East Atlantic Fisheries Commission, chaired by Norway. Following Brexit, the U.K. will have their own seat on that Commission, rather than relying on being represented by the E.U., which represents 28 different countries. In this new enlightened agreement with the U.K., what talks has the Minister or his department had with the U.K. as to the probable future ability for Crown Dependencies to represent themselves on the North East Atlantic Fisheries Commission?

The Bailiff:

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

4.1.4 The Deputy of St. Martin:

Thank you, and I am grateful for your intervention about the very narrow proposition that I have in front of the Assembly today, which is just referring to Jersey waters and the taking away of the concurrence necessary of the Secretary of State in the U.K. This is not an opportunity for the Minister, whoever that is, to go off particularly on his own. As I pointed out, there are mechanisms in both the Fisheries Agreements whereby we have to consult and work together with our neighbours; that is in France, in Guernsey and in the U.K. In addition, draft regulations will obviously come to this Assembly before they pass. Senator Ozouf mentioned the word "Brexit"; this is nothing to do with Brexit and discussions on this matter have been long and protracted and were commenced a long time before Brexit ever came to be discussed. This is not part of an independent strategy. There is no danger of what I am proposing today being seen in a negative way in the U.K. Officials from both sides, and I mentioned D.E.F.R.A. and the M.o.J. (Ministry of Justice), are fully aware of these proposals. This is not part of other Crown Dependencies' F.M.A.s and I refer to the Deputy of Grouville. Guernsey have their own F.M.A. with the U.K. We have our separate F.M.A. with the U.K. and I will return to that in a second. But I have had discussions and I can tell the Assembly I have had discussions and correspondence, face-to-face discussions, with the U.K. D.E.F.R.A. Minister, George Eustice M.P. (Member of Parliament), on our relationship concerning fisheries matters and that is quite wide-ranging discussions. But we are of one accord on this matter when it comes to protecting, conserving and managing our precious fishery stocks. I will finally finish by saying there is no danger of the proposition today being seen in a negative way by the French and this has no impact at all on our Granville Bay Agreement that we have with the French. I would point out that we have, and the Deputy of Grouville will know this only too well, a hugely complicated situation with fisheries in Jersey whereby we have a relationship with the U.K., we have local licensing but we also have an agreement with the French through the Granville Bay Agreement. Making the change to any one of those 3 can impact on the others and we always have to think very carefully about how we move forward. Certainly, it would be my view and I will finish with this, moving forward, and we have had some mention of a Channel Island Fisheries Agreement, that I would like to see all Channel Islands' fishermen treated

exactly the same in each other's waters. **[Approbation]** I have worked hard on this thus far and my attempts via direct correspondence with Guernsey and indirect correspondence with the U.K. have not been as successful as I would have liked. But I, only this morning, sent messages to fishermen confirming that I will continue to work as hard as I possibly can on the difficult arrangements that we have for some Jersey fishermen in Guernsey waters at the moment. Finally, to finish with, the Senator's question about the North East Atlantic Commission, I have not approached the Minister about that but certainly, as we move forward with our fisheries arrangements in the next couple of years, shall we say, with ongoing negotiations with Brexit and with continuing discussions over the Granville Bay Agreement, I will bear that in mind. I make the proposition.

The Bailiff:

All Members in favour of adopting the principles, kindly show. Those against? The principles are adopted. The Deputy of St. Mary, does your panel wish to scrutinise these? Are these *en bloc*, a little bloc?

4.2 The Deputy of St. Martin:

Yes, it is *en bloc* inasmuch as it is simply that the Article 8 be repealed, Sir.

The Bailiff:

Thank you, and Article 2 of the citation and commencement date, thank you. Is that seconded? **[Seconded]** All Members in favour or anyone wishing to speak? Members in favour of adopting the Articles, kindly show. Those against? The Articles are adopted. Are you proposing in Third Reading, Minister?

The Deputy of St. Martin:

Thank you, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Those Members in favour of adopting it in Third Reading, kindly show. Those against? The Bill is adopted in Third Reading.

5. Draft Animal Health (Jersey) Law 2016 (Appointed Day) Act 201- (P.129/2016)

The Bailiff:

We come to the Draft Animal Health (Jersey) Law (Appointed Day) Act lodged by the Minister for Environment - P.129 - and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

Draft Animal Health (Jersey) Law 2016 (Appointed Day) Act 201-. The States, in pursuance of Article 35(2) of the Animal Health (Jersey) Law 2016, have made the following Act.

5.1 The Deputy of St. Martin (The Minister for the Environment):

Before I start, I might ask whether it would be sensible if I would be allowed to take P.131 immediately after this. I do not quite know how the 2 became separated by Future Hospital Funding but my P.131 is a very short amendment and I would like to do that, if possible.

The Bailiff:

Maybe they both concerned health.

The Deputy of St. Martin:

Possibly, although I am sure the Minister for Health would object if horses and cattle started trundling into his new hospital. In any case, Members may recall that on 12th April 2016 the States adopted the Animal Health (Jersey) Law 2016. This Animal Health (Jersey) Law (Appointed Day) Act today will bring that law into force on 1st February of this year, apart from a few minor consequential amendments that came into force when the law was adopted last year. The Animal Health (Jersey) Law 2016 replaced the Diseases of Animals Law 1956. Much has changed since that date; emerging diseases, such as avian influenza, which is very relevant, especially at the moment and Bluetongue, both pose a regional and global threat. The geographical distribution of diseases is changing with, among other things, climate change and increasing global trade and movement of animals and animal product facilities all aid to the rapid international disease threat. In order to deal with these changes Jersey's legislation needed to be updated to incorporate modern approaches to veterinary disease control, reflecting modern international standards, as defined in E.U. legislation and the codes of the World Organisation for Animal Health. I am sure Members will remember that the new law primarily addressed 2 issues; it provided powers for disease prevention, surveillance and the safeguarding of food safety and it provided powers to be applied where disease is suspected or confirmed. In doing so, this new law provides the legislative framework, reducing the risk of introducing new diseases into Jersey and for reducing the impact of outbreaks of animal diseases, should they occur. I propose the Appointed Day Act.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the Act, kindly show. Those against? The Act is adopted.

6. Draft Animal Health (Consequential Amendments) (Jersey) Regulations 201-(P.131/2016)

The Bailiff:

It is suggested by the Minister we move straight to P.131, which seems sensible while we are in this area and I then ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Animal Health (Consequential Amendments) (Jersey) Regulations 201-. The States, in pursuance of Article 34(2) of the Animal Health (Jersey) Law 2016, have made the following Regulations.

6.1 The Deputy of St. Martin (The Minister for the Environment):

Having just approved the Animal Health (Jersey) Law 2016 (Appointed Day) Act and are setting the law to come into force, these are consequential amendments, just amending certain E.U. legislation, which was required as a result of the Animal Health Law 2016. The minor changes to the E.C. (European Communities) Legislation (Bluetongue) (Jersey) Regulations 2008 and the E.U. Legislation (Transmissible Spongiform Encephalopathies) (Jersey) Regulations 2015 that clarify that the Animal Health Law will apply in addition. These Regulations also amend the E.U. Legislation (Veterinary Zootechnical Checks - Trade with Member States) and the E.U. Legislation (Veterinary Checks - Imports from Third Countries). The proposed Regulations also update cross-references to animals for which an import licence is needed under an order made under the law.

[10:45]

If approved, these Regulations will also come into force on 1st February. I propose the amendments.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Over to Scrutiny, the Deputy of St. Mary, do you wish to scrutinise? Those Members in favour of adopting the principles, kindly show. Those against?

The Bailiff:

Are the Regulations *en bloc*?

The Deputy of St. Martin:

Yes, please.

The Bailiff:

Does anyone wish to speak? Would those Members in favour of adopting the Regulation kindly show? Against? The Regulations are adopted. In the Third Reading?

The Deputy of St. Martin

Thank you.

The Bailiff:

Seconded. **[Seconded]** Does any Member wish to speak? Would those in favour of adopting in Third Reading kindly show? Those against? Adopted in Third Reading.

7. Future Hospital Funding Strategy (P.130/2016)

The Bailiff:

We now come to Future Hospital Funding Strategy - P.130 - lodged by the Minister for Treasury and Resources and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion – (a) to agree expenditure up to a maximum of £466 million for the main construction project and all associated costs including relocation costs (and including contingencies), of a new Jersey General Hospital; (b) to approve, in accordance with the provisions of Article 3(3)(a) of the Public Finances (Jersey) Law 2005 (“the Law”) the establishment of a Special Fund to be known as the “Hospital Construction Fund”, and to approve the Fund’s purpose, terms of reference and operation as set out in the Appendix to the report accompanying this proposition; (c) to authorise, in accordance with Article 21(1) of the Law, the Minister for Treasury and Resources to borrow up to a maximum of £400 million for the construction of a new Jersey General Hospital and associated costs, and the amount borrowed to be paid into the Hospital Construction Fund; (d) to refer to their Act dated 5th December 2013, when they agreed that the Strategic Reserve Fund may be used for the planning and creation of new hospital services in the Island and, in order to progress that decision, to agree that the policy be amended as follows – (i) there shall be available for transfer from the Strategic Reserve Fund to the Hospital Construction Fund the difference between the £466 million cost of the hospital and the sum of £23.6 million remaining from previous allocations agreed for this purpose by the States Assembly and the net amount that is to be borrowed by the Minister for Treasury and Resources in accordance with paragraph (c); (ii) the costs of borrowing and ongoing finance and administration costs related to that borrowing to be funded from transfers from the Strategic Reserve Fund to the Hospital Construction Fund; and (iii) the amount borrowed in accordance with paragraph (c) above will be repaid from the Hospital Construction Fund by means of a transfer from the Strategic Reserve Fund in the year the borrowed amount becomes due, and to note that a proposal to amend

the Public Finances (Jersey) Law 2005 will be brought forward to facilitate the direct transfer of funds from the Strategic Reserve Fund to the Hospital Construction Fund.

7.1 Senator A.J.H. Maclean (The Minister for Treasury and Resources):

Members will have heard yesterday's statement from the chairman of the Corporate Services Scrutiny Panel. I fully understand the sensitivity around Scrutiny not believing that they had enough time to scrutinise this proposal. I will explain why I think there should have been enough time and I will also put forward a possible way in which matters can proceed and give Members added comfort. But firstly, I would like to set the scene and then explain the strategy we are proposing for the funding of the new hospital. We have now agreed that Jersey needs a new general hospital to provide the general and acute care that Islanders need both now and in the future. The new hospital will be an integral part of an updated model of care that supports Islanders as far as possible in their homes and in the community. We have also agreed to redevelop the existing site. It is estimated that the cost of the new hospital will be up to £466 million but more detailed work will be needed on design, planning and procurement to turn this indicative estimate into a final cost. At this early stage of the project it is also appropriate to include a larger than normal contingency of £90 million within the £466 million budget. The budget does include buying the required additional land, all related relocation work, the new build, the refurbishment of the Westaway Court, repurposing the granite block and, of course, fees. It also includes the rental costs for key workers until 2020. It does not include any work needed to adapt or demolish redundant buildings. After considering a number of options and consulting with expert advisers, we are proposing to raise part of the funding required by borrowing up to £400 million. The preferred route to raise this funding is currently through a public-rated sterling bond. The balance needed to complete the project would come from existing reserves. An alternative option we did consider was to fund the new hospital by using the existing Strategic Reserve which currently stands at more than £800 million. But expert advice made it clear this would not make the best use of our money at a time of historically low interest rates, rates that we can lock-in to and fix for 30 or 40 years which could prove to be a once in a lifetime opportunity. We would, therefore, retain this Strategic Reserve and use some of the investment returns to not only pay the annual coupon or interest payments on the borrowing, but also to pay back all the capital borrowed by 2057. Yes, the figures do stack-up and have been independently verified. To make the point, we are currently making an average - and I say average - of 7 per cent per annum from investing our reserves. I use average because there are, of course, good years and not such good years. As an example, at 30th November the value of the Strategic Reserve had increased by almost 12 per cent in 2016 and that is definitely a good year. The cost of borrowing through a bond, if we can lock-in today's low interest rate, is likely to be below 3 per cent and that, as I have said, would be fixed for the whole term of 30 or 40 years. If we issue a £400 million bond and pay the capital and interest back using the excess returns from the Strategic Reserve, the Strategic Reserve will grow to an estimated value of £3.6 billion by 2057. To be clear, if we use the Strategic Reserve today to fund the hospital and assuming the same conservative returns, it would mean the Strategic Reserve would have a value by 2057 of £2.9 billion. But by borrowing to fund the hospital, we can pay off the capital and all the interest and have an additional £700 million more in the Strategic Reserve by 2057. I would like to go into a little more detail on the funding. Before a funding strategy could be finalised, we needed a site to be agreed and more certainty over the cost of the project. An estimate, as I have said, of £466 million has been calculated now. This figure has been capped. It also includes, as I have said, a contingency of £90 million. Setting such a cap helps to ensure that we do not have any scope for creep within the project and should provide Members with comfort that if that number was to prove insufficient for any reason, that an appropriate process would be necessary to consider increasing the cap. To explain how the borrowing would be funded, the average return on Jersey's Strategic Reserve since 1986 has exceeded R.P.I. (Retail Price Index) by 4 per cent. For the period

from 2005 to 2015 the average return was 7 per cent. That was 4.5 per cent above R.P.I.Y. (Retail Price Index excluding Mortgage Interest Payments and Indirect Taxes). After consultation with independent investment advisers, assessing expected returns with an appropriately diverse asset allocation, we have assumed a long-term rate of return on the Strategic Reserve which, if we use assumptions overseen by the Fiscal Policy Panel, equates to R.P.I.Y. of plus 2 per cent, or in effect a round figure of 5 per cent. The interest rates on borrowing through a public rated sterling bond are, as I said, at historic lows. In November, financial advisers estimated the interest as 2.6 per cent which, of course, could be fixed for the term. So by borrowing at these low rates of interest we can leave our reserves in place where they generate income that is expected to exceed the cost of borrowing. Furthermore, we estimate that over the long term, the differences between the investment returns and the cost of that borrowing is such that the cost of our borrowing can be funded from the excess returns on the reserve. These are the returns that over and above the capital amount the States Assembly agree to protect. The capital value, having been defined by this Assembly as at 2012 value of the Strategic Reserve, which was £651 million as inflated by R.P.I.Y., and it does this without requiring direct contributions from Islanders through any additional charges or taxes. This proposal will increase our borrowing but Jersey will have very low rates of borrowings compared to elsewhere. It would take our debt to G.D.P. (Gross Domestic Product) ratio from its current level of 6 per cent to no more than 16 per cent. By comparison, the U.K. has a ratio of 88 per cent. This proposal makes the most of our considerable reserves and strong balance sheet and the proceeds of any future sales of property or other strategic assets should be used to replenish and further strengthen those reserves in the future. Specific advice was sought from the Fiscal Policy Panel, our independent expert economists. The panel understood that this is an important and necessary investment for the well-being of our community. They feel that at a high level, the strategy of borrowing money from a bond issue is, and I quote: "Sensible in view of the fiscal and economic outlook." The panel acknowledged the risks of this approach but felt they were, and I quote again from their advice: "Not significant enough to require a different approach." In the panel's words, they - and again I quote yet again: "Consider that this is the best and most cost-effective way of funding a new hospital given the current borrowing costs and expected returns on the Strategic Reserve." To go into a little bit more detail, the money raised through the bond would be placed in a specific fund set up for the hospital construction. This fund will hold the proceeds generated by the bonds and the necessary drawdowns from the Strategic Reserve and the cost of construction and financing will be made from this Hospital Construction Fund. The fund will be maintained until any external borrowing has been repaid but, as proposed by the Constable of St. John, any residual funding available from the £466 million will be returned to the Strategic Reserve after the final account is complete and any claims have been settled. The Minister for the Department of Infrastructure will have the overall political responsibility for the construction of the new hospital including reporting back to the States and answering questions on construction-related matters. Let me be clear, there are risks associated with any funding solution such as increased construction costs, local construction capacity risks and project risks. This project will need a well-structured governance framework to work within. All departments involved, Health and Social Services, the Department of Infrastructure, and Treasury, will need to continue working together to ensure the solution is fit for purpose, affordable and delivers good value for money. It has already been established that once more details are known and the likely build cost is more certain, contingencies will be managed by Treasury. The risks associated with the proposed solution include investment return volatility and the implications on the Strategic Reserve but assumptions used have been prudent and based on many years of historical data including years of significant volatility.

[11:00]

It is important to recognise we cannot eliminate volatility and that in some years we may even suffer losses but this strategy is a long-term one and must be viewed as such. In the event that the Strategic Reserve is required for any of its primary purposes, at that point it may be necessary to change the model to fund these payments. When the Fiscal Policy Panel responded to my request for their view on this funding strategy, they commented on the risks they saw, a number of which we had already highlighted to States Members at the briefing. The panel referred particularly to the following risks. Borrowing costs; a requirement to fund additional £10.5 million per annum will put a small amount of additional pressure on States finances. The Strategic Reserve; the implications of this proposal means that very few further calls on the use on the real returns can be made. The net position; a decision to fund a new hospital in this way does not significantly alter the net asset position of the States as the acquisition of a new asset and a new liability with the bond are broadly of equal sizes. However, it does involve a switching of liquidity of assets. Then there was the project risks. Experience in the United Kingdom suggests large public sector capital projects often take longer and cost more than originally intended. These are the risks identified by the Fiscal Policy Panel and quite rightly so. They also commented on the local construction capacity. The sector is already growing strongly so consideration of use of off-Island contractors and/or the ability to bring in temporary workers will be necessary. We have already been using excess returns on the Strategic Reserve to invest in our health services. In Budget 2014 and Budget 2015 this Assembly granted £10.2 million and £22.7 million respectively from the fund for those purposes. As at 30th November, the Strategic Reserve stood at a figure of £806 million. The inflation linked 2012 value is £694 million. That means £112 million is currently defined as excess returns which are available after 2016 drawdown but before the 2017 and 2018 drawdowns that were agreed in the Medium Term Financial Plan. The policy on the use of the Strategic Reserve was approved by the States Assembly in October 2006. This policy stated that the capital value of the reserve should only be used in exceptional circumstances to insulate the Island from severe structural decline or major natural disaster. This policy was amended in 2009 so the reserve could be used to meet the costs up to £100 million of the Bank Depositors' Compensation Scheme should it be required. During the Budget 2014 debate, the States Assembly granted £10.2 million from the Strategic Reserve for planning and creating new hospital services and, as I have said, in the 2015 Budget it was agreed to maintain £651 million as the capital value of the reserve at the end of 2012 but to be increased each year by R.P.I.Y. Excess returns that took it above this figure could be used for agreed items. In Budget 2015, the Assembly agreed the further £22 million for the purposes of supporting health. The intention at the time was to use excess returns from the reserve to finance the building of the hospital but that proposal is no longer realistic. If excess reserves are needed for the primary purposes in future, there may be a temporary need to use part of the reserve's capital. This would be repaid when income improves or when returns increase or, as I have stated, by selling property and assets, or through raising revenue measures. Of course, any such use of the reserve would be a decision for this Assembly. In conclusion, there is no doubt that we need a new hospital. This proposal would allow borrowing through a bond of up to £400 million over a period of years that represent the best value at the time the bond is issued. This provides flexibility to make the right decision at the right time. This funding proposal makes the best use of our reserves that we have accumulated over many years. The interest rates on borrowing through public rates sterling bonds are at historic lows at the moment so we can borrow at a low rate of interest and leave our existing reserves in place where they generate income that is expected to exceed the cost of borrowing. This solution maintains the value of our Strategic Reserve so future generations can continue to benefit from returns on this investment. Jersey will still have very low rates of borrowing and debt. The money raised will be placed in a fund set up for the hospital construction, known as the Hospital Construction Fund, and there is a precedent with a housing bond having been issued. Today's proposal, if approved, will enable world-class health facilities for Islanders. This is a long-term plan and in it we may need to ensure there is flex and flexibility to react to

changing circumstances. If there is volatility in the market, it might be necessary to temporarily use the capital from the Strategic Reserve. This would then be repaid from returns when they improve and we are saying that in any event asset sales would be used to strengthen the reserves further in due course. If we need more flexibility in the meantime, we would need to save more, sell assets or consider raising more revenue in other ways. We are aiming to avoid raising charges or taxes, instead using our strong financial position. After taking professional advice, this is the most cost effective way to fund a new hospital that meets the best practice and can continue to evolve as health care changes. I mentioned in my opening remarks that I am acutely aware of the sensitivities around these proposals not having been scrutinised. Let me be absolutely clear that the Council of Ministers and I were desperately keen that they were scrutinised and I have not tried to prevent the panel from doing its work. A brief timeline may be helpful for Members. The Hospital Sub-Panel received a confidential briefing on 17th October on the funding proposals. At a Corporate Services Scrutiny Panel hearing on 7th November, the panel were told that the Council of Ministers would be considering the Hospital Funding Strategy proposition on 9th November. The panel, therefore, had access to the proposition from immediately after 9th November. The first States briefing was on 28th November. The proposition was formally lodged on 30th November. At any of these mentioned points the panel could have started the process of appointing advisers and commencing their review. If they had done so, I believe that they would have had the necessary time to undertake a review. I did receive a request from the panel to delay the debate due to the Christmas holidays and reluctantly because of the advice I was receiving about the volatility of markets, I did agree to a 2-week delay to cover the Christmas period but the panel insisted that they needed until 14th February. However, if that date had been missed if it had been agreed to, if had been missed for any reason the next States sitting after 14th February was, in fact, 14th March as a result of the half-term holidays. I found myself in a very difficult if not impossible position. As the custodian of public finances, I have to do all that I can to ensure that I protect the public interest. At the same time, I fully respect and value the parliamentary process and, in particular, the importance of the Scrutiny function. However, I was being advised that in the current, highly volatile times to delay this debate we would not be able to consider putting hedging measures in place to lock-in the current low borrowing rates available, rates that have been forecast to rise. For information for Members, a 0.1 per cent increase in the borrowing rate on a £400 million bond, even if we only hedged 50 per cent, would cost the public an extra £150,000 per annum over the term of the loan, equating to around about £6 million of additional cost for an extra 0.1 per cent movement in interest borrowing rates. These are real risks and the reason that I have maintained this proposition regrettably without it having been scrutinised. As the Minister for Treasury and Resources, I have a duty to secure funding at the lowest possible cost to Islanders. Not to do so would not be doing my duty. I did not take this decision lightly and I wrote to the panel in December to urge them to still undertake the review as the bond will not be finalised until the middle of this year. There is, therefore, time for the appointment of advisers and for a report to be produced. I commit to Members today that I will consider that report if it is done before agreeing the final placement of the bond but I do need a decision from this Assembly before we can start work on implementing this funding strategy and before we can consider locking-down some of today's low borrowing rates with a hedging strategy if that is deemed appropriate. I leave Members to consider these issues and I urge them and hope that they will support this proposal.

The Bailiff:

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

7.2 Future Hospital Funding Strategy (P.130/2016): amendment (P.130/2016 Amd.)

There is an amendment lodged by the Connétable of St. John. The Greffier will read the amendment.

The Deputy Greffier of the States:

Page 2, Paragraph (d)(i) – After the words “in accordance with paragraph (c)” insert the words – “provided that the capital value of the Strategic Reserve does not fall below the minimum level set in the Budget Statement 2015 (P.129/2014) before the practical completion of the new Jersey General Hospital. Page 2 – After paragraph (d)(i) insert the following new paragraph – “(ii) in agreeing to the borrowing specified in paragraph (c) above, the Strategic Reserve should not be used for any further purposes, including capital spending, deficit management or fiscal stimulus (save for those sums already agreed to by the Assembly) for a minimum period of 20 years;”, and renumber paragraphs (ii) and (iii) accordingly. Page 2 – After renumbered paragraph (iv) insert the following new paragraphs – “(v) any contingency expenditure (as referred to in paragraph (a) above) which would exceed a total for such expenditure of £36 million shall be notified to the Assembly by separate report at least 15 working days before a decision to incur that expenditure is taken; (vi) on practical completion of the new Jersey General Hospital, any unspent monies from either contingency provision or savings from the overall construction project shall be returned to the Strategic Reserve Fund;”.

7.2.1 Connétable C.H. Taylor of St. John:

When I received this proposition, I was surprised how loosely it was compiled. On the surface it seemed a reasonable proposal but when you dig into the proposal holes start to appear. This is why I strongly believe this should be scrutinised. I also see the Minister’s position. His duty is to secure the finances as cheap as possible but this is where we have a dilemma. This Assembly has set up a procedure and we should follow that procedure. Due to the last minute decisions of the Minister for Treasury and Resources not to allow the Scrutiny process sufficient time, I put in at the very last minute some amendments that I believe will help strengthen the proposal. The first area is to protect the amount of money that is to be taken from the Strategic Reserve.

[11:15]

The Minister’s proposition is to take borrowing of up to £400 million. The problem I have with that is if he only secured £20, he could then take the remaining £430-440 million from the Strategic Reserve and that is not in the understanding that we have been given that he would be taking a bond of £400 million, and my concern is if he did not get that bond of £400 million, say it was £250 million or even less, then the balance would be taken from the Strategic Reserve and that is why I put in, in the first part “provided that the capital value of the Strategic Reserve does not fall below the minimum set in the Budget Statement 2015.” That was to ensure that if additional funding from the Strategic Reserve was needed the Minister would have to come back to this Assembly. The second area that I found of concern was that in agreeing to borrow from the Strategic Reserve there was an issue that if the project was to run over budget, money could continue to be taken from the Strategic Reserve. If you examine the graph that was given to us, and I believe it is in the proposition on page 16, if you look at the graph you note that in the first 10 years there is very little growth in the value of the fund but when you start looking towards the last 10 years, the growth is quite significant and so I wish to protect that growth. If you raid the fund in the early years it takes 10 years off the end of the fund. It does not take 10 years off the front of the fund. So put your finger on the graph and slide it 10 years to the left and you see the reduction from just under £4 billion to something in the region of £2.5 billion; a massive reduction. That is what will happen if you raid the fund during the early years after the start of the hospital and so that is why I, in fact, asked for 20 years but the Minister’s amendment to my amendment asked for 10. I still urge 20 but I can see the Minister’s position. The third area of my amendment is on contingency expenditure. This project currently, as the Minister pointed out, has a very large contingency of £90 million. That is almost 25 per cent of the projected build cost of in the region of £370 million. Add on the £90 million contingency and you get to £466 million. Ordinarily,

building projects have a contingency of between 5 per cent and 10 per cent and so because this is such a disproportionate amount of contingency, what I have said is a contingency of 10 per cent on the £360 million, which is £36 million, can be spent but if you start spending more than an unrealistic amount of contingency, then this Assembly is to be notified and we are to be kept closely informed of any runaway in costs so on page 2, paragraph 5, that is what it is aimed to do; to ensure that the contingency is not, as it were, embedded into the project itself but kept as a contingency and precisely for the word “contingency” and not part of the initial cost. The final part of my amendment is to ensure that the money left over at the end of the hospital project that will be in the hospital construction fund is returned to the Strategic Reserve. The Minister very graciously said to me: “Well, that was our intention” but I am learning about politics; it is not in the proposition so I am putting in the proposition to make sure that the money at the end is put back into the Strategic Reserve and not used for various other nice-to-haves that might be dreamt up by future Ministers for Health and Social Services and so should we continue to debate this today, I would urge Members to agree to my amendments to the proposition. Thank you.

The Bailiff:

Is the amendment seconded? [**Seconded**] Now, there is an amendment to the amendment which has not been lodged in the necessary time to be debated today unless the States reduce the minimum lodging period which I take it, Minister, you would ask the States to do?

Senator A.J.H. Maclean:

Yes, Sir, I would ask Members to accept the reduction in the minimum lodging time.

The Bailiff:

Before you do that I just want to give some directions to Members, if I may, because it is a matter on which there is sometimes uncertainty. The matter of the lodging periods originally were in the law, in particular in the Code of 1771, and when the States of Jersey Law was enacted in 2005 it was decided to put minimum lodging periods in Standing Orders and so one has the relevant provisions which are in Standing Order 26 and these provisions have changed sometimes over the last 11 years or so. By paragraph 7 of Standing Order 26: “The States may reduce the minimum lodging period for a proposition if they are of the opinion that it is in the public interest to do so” and that is what I am going to ask the Minister to address in just a moment. The clarification point I wanted to make at the outset is that this is a 2-part process. First of all, that there is a decision to be made by the Chair as to whether it is reasonable to take the view that it is in the public interest and the reason that that is a necessary provision, but the Chair must take that decision first, is that it is to prevent a tyranny of the majority in the States to ensure that the majority do not have such control that the minority do not have an opportunity to argue against not having sufficient time to oppose, if necessary, a proposition. The fact that the Chair takes the view that it could be in the public interest does not mean that the States are obliged to take that view as well. It is just a simple straightforward thing that it meets the minimum threshold that it is arguable. So I wish to make it plain that I accept entirely that it is arguable it is in the public interest and that is why the matter is going to the Assembly, and it will be a matter for the Members to decide whether they think it is or it is not. Minister?

Senator A.J.H. Maclean:

Yes, Sir, I have been in consultation with the good Constable of St. John. I understand entirely the aim and thrust of his amendment. His amendment, indeed, could not have been debated before today anyway at the lodging period of that and we, of course, responded to it which is why we are in the position that we are in today. We have worked with the Constable of St. John and have produced an amendment to his amendment which is what we are discussing now as to whether Members will allow us to debate and, indeed, it is my understanding with discussions with the

Constable that he has accepted the amendment to the amendment, which allows his amendment to put some protections in place as far as the Constable is concerned, which he has outlined to Members. But our amendment to his amendment ensures that it is, in practical terms, workable from a funding strategy perspective and the Constable in dialogue meetings has accepted that point. So I would ask Members if they would allow this on the basis that it is a package and on the basis that the Constable has accepted the amendment to his amendment.

The Bailiff:

It is a proposal from the Minister for Treasury and Resources, seconded no doubt, that we should take this amendment despite it not meeting the time provisions in Standing Orders. Does any Member wish to speak on that? It should be a straightforward matter.

Deputy J.M. Maçon:

Just very, very quickly, Sir. In support of this matter we are going to be debating one of the biggest capital projects that the Island is ever going to see in possibly our lifetime and, therefore, I think to have all the options on the table I think is very much in the public interest and, therefore, I think Members should take that view.

The Bailiff:

Very well. All of those in favour of allowing the Minister to bring this amendment, kindly show. Very well. Those against? So decided.

7.3 Future Hospital Funding Strategy (P.130/2016): amendment (P.130/2016 Amd.) – amendment (P.130/2016 Amd.Amd)

The Bailiff:

Minister, would you like to propose your amendment? I am sorry. The Greffier reminded me I have not asked her to read it.

The Deputy Greffier of the States:

Page 2, Amendment – (a) after the words “provided that” insert the words “, based upon the latest available forecast as at 30th November 2016,”; (b) for the words “does not fall” substitute the words “is not estimated to fall”; and (c) for the words “before the practical completion of the new Jersey General Hospital” substitute the words “at the estimated practical completion date of the new Jersey General Hospital 2025”. Page 2, Amendment 2 – For the number “20” substitute the number “10”. Page 2, Amendment 3 – In new paragraph (vi) for the words “practical completion of the new Jersey General Hospital” substitute the words “the final account of the new Jersey General Hospital being presented”.

The Bailiff:

Minister, sorry to interrupt you, please go ahead.

7.3.1 Senator A.J.H. Maclean (The Minister for Treasury and Resources):

That is perfectly okay, Sir. Hopefully this amendment to the amendment is relatively straightforward and, in fact, the Constable has broadly explained what we were seeking to do by this amendment to his amendment. The Constable’s plan caused some practical challenges and in particular with regard to the protection of the Strategic Reserve which, of course, is in all of our interests. So effectively the first part what we are seeking to do with the capitalisation date is to ensure that the issuing of a bond is set within a fixed criteria between a minimum of £300 million and the maximum we have already stated which is £400 million. That is protecting the Strategic

Reserve to funding withdrawals of no more than £143 million. Secondly, we are seeking to protect the fund for 20 years was the proposal by the Constable of St. John's so, again, any other uses we felt beyond 10 years looking at the financial horizon is very difficult to manage within. The Constable accepted the flexibility that 10 years would provide and the first part of his third element we accept; that sum changed. The other element to mention is around the terminology. It is a relatively minor point and that is "practical completion" and we have sought to replace that with "final account" because there can be a difference in timing between these 2 and, therefore, it is appropriate that "final account" is used rather than "practical completion". I maintain the amendment to the amendment which I understand that the Constable has accepted. Thank you.

The Bailiff:

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

7.4 Future Hospital Funding Strategy (P.130/2016): amendment (P.130/2016 Amd.) - as amended

The Bailiff:

So we now return to the amendment of the Connétable of St. John as amended by the Minister. Does any Member wish to speak?

7.4.1 Connétable D.W. Mezbourian of St. Lawrence:

I just feel that amendment is timely bearing in mind what we have gone through over the past couple of days with what seems to me to have been a lack of governance and I am sure Members will be totally ... well, certainly I intend to be supportive of this amendment. Thank you.

7.4.2 Senator A.J.H. Maclean:

I should make it clear to Members, I am sure they have gathered this anyway, that we are supporting the amendment and I thank the Constable. It was a very constructive process. He came to Treasury, we discussed what the objectives were and we came and reached what I believe is a very sensible compromised position which does improve the proposition and provides some additional safety, certainly from the Constable's point of view, and I am sure from the perspective of Members, with regard to this proposition. So just for clarity sake I am supporting this amendment.

[11:30]

The Bailiff:

Does any other Member wish to speak? I call on the Connétable to reply.

7.4.3 The Connétable of St. John:

There does not seem to be much to reply to other than the fact that I have agreed the amendment by the Minister to my amendment. There was a degree of reluctance but I saw the pragmatic and the practical approach and, having spoken with his officers, it seemed the logical way forward and so I make my amendment. Thank you.

The Bailiff:

Those Members in favour of adopting the amendment, kindly show. The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the amendment to the

Future Hospital Funding Strategy as lodged by the Connétable of St. John and as amended. I ask the Greffier to open the voting.

POUR: 37	CONTRE: 1	ABSTAIN: 1
Senator P.F. Routier	Deputy J.A. Martin (H)	Deputy S.Y. Mézec (H)
Senator P.F.C. Ozouf		
Senator A.J.H. Maclean		
Senator I.J. Gorst		
Senator A.K.F. Green		
Senator S.C. Ferguson		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Ouen		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy G.P. Southern (H)		
Deputy of Grouville		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy K.C. Lewis (S)		
Deputy E.J. Noel (L)		
Deputy of St. John		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy S.J. Pinel (C)		
Deputy of St. Martin		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy A.D. Lewis (H)		
Deputy of St. Ouen		
Deputy R. Labey (H)		
Deputy S.M. Wickenden (H)		
Deputy S.M. Bree (C)		
Deputy M.J. Norton (B)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		
Deputy G.J. Truscott (B)		
Deputy P.D. McLinton (S)		

[If all Members have had the opportunity of voting I will ask the Greffier to close the voting. I can announce the amendment has been carried: 37 votes in favour, one vote against and one abstention. [INSERT VOTE TABLE]..

The Deputy Greffier of the States:

Deputy Martin voted contre and Deputy Mézec abstained.]

7.5 Future Hospital Funding Strategy (P.130/2016) - as amended

The Bailiff:

We now then return to the principle proposition as amended and the debate opens on that. Does any Member wish to speak? The Deputy of St. Ouen.

7.6 Future Hospital Funding Strategy (P.130/2016) - Suspend the debate for the Corporate Services Scrutiny Panel to review under Standing Order 79

7.6.1 Deputy R.J. Renouf of St. Ouen:

At the outset I wish to inform the Assembly that I wish to propose, under Standing Order 79, that the debates on this proposition be suspended and that the Assembly request the Corporate Services Scrutiny Panel to consider reviewing the proposition and report back to us as to whether it would carry out such a review as I understand it is likely to do so. It has saddened me that we have got to a situation where the Minister or the Council of Ministers feel that this cannot go before Scrutiny, that they come along and they say that Scrutiny should have had time, should have done certain actions within a very short period. In fact, it has more than saddened me, it has rather alarmed me. This is the largest capital project the Island has ever undertaken. It is to be funded by incurring debt which may in the end turn out to be the best course of action but in the past the Island has boasted that it has been free of debt. If we are to remove ourselves from that sort of proposition then it should be done after full and detailed consideration and if we incur that debt it is to be repaid not in the next few years, this is not a short term matter, it is to be repaid over 40 years. So these are matters of great significance and I certainly believe they should be scrutinised and I very much more believe that the public would expect us to have undertaken the Scrutiny process of these proposals. The Health and Social Security Panel formed a sub-panel in 2015 to look at the future hospital project. We formed it in 2015 when we believed that proposals were imminent but things took their time. Site selection took its time. We were told it was likely that funding proposals would come together with the site selection and that this Assembly would be considering the site selection and the funding on the same dates. We kept asking throughout 2016. It is the case, as the Minister has told us this morning, that on 17th October last year the Future Hospital Sub-Panel did have a briefing from the Minister for Treasury and Resources but proposals were not finalised by then and our briefing was very much along the lines that it was likely to be a blended solution which we had all heard in answers to inquiries before that there was absolutely no detail because we were told that the Treasury Department was still working hard in working out all the options and could not yet give the detail. I was rather surprised when the Minister said this morning that they could not bring forward a proposal until the site had been agreed because it was our understanding that the 2 proposals, the site and the funding, were to be brought together but they have not been. So, today the Minister has said that the Scrutiny process could have got underway perhaps from that briefing but I can assure Members that there was nothing concrete. There was nothing that could be scrutinised, there was no proposition, there was nothing that could be put to advisers at the time of that briefing. We had already advisers engaged to assist us with the site selection. We could not have given anything to them about the funding option. Our Future Hospital Sub-Panel reported on 24th November last year. All we could say, and all we did say, about funding was at the very end ... I should have marked my page but here we are: "At the time of drafting its report, the Sub-Panel has not received any proposals for the funding of the future hospital and thus it is unable to comment on that issue." That was not contested by the Minister for Health and Social Services when we submitted the report for his consideration before its issue. Had funding proposals been made earlier as was envisaged, we would have scrutinised as a sub-panel and that had been accepted by the Council of Ministers throughout the course of our review which lasted the best part of a year that if the proposals were coming forward we would be in a position to scrutinise it. But it was clear the debate on the site selection was coming before the funding; we had to issue our report which dealt solely with the site selection. Then the proposal for funding came along one week after our report was lodged. The proposition was lodged on 30th November. Then having taken so long, it seems to me the best part of 2016, it seems it is no longer appropriate

to give adequate time to Scrutiny to do its work so the mantle may then pass to Corporate Services, the Hospital Sub-Panel having done its work on site selection. Despite the Council of Ministers having given praise to the Sub-Panel for its report, it seems that they no longer wish Scrutiny to do the second part of its job or the other side of the same coin, which is to give Scrutiny time to look at the funding proposals. I do not believe the Corporate Services Panel have incurred any delay in trying to get a review underway. It is only possible to draft terms of reference once a proposition has been received. You cannot draft terms of reference under some imaginary proposition that you are trying to second-guess a Minister. So, by the first week of December I understand draft terms of reference were formulated by the Corporate Services Panel. They have to be agreed by the Minister, and I understand the Minister for Treasury and Resources agreed those terms of reference on 7th December, and only then is it possible for a panel to engage advisers. We have got to be conscious we are spending public funds as well when Scrutiny engages advisers, so we need to receive submissions from a number of advisers who might have been approached. We need to receive their quotes and consider which advisers to select and then that budget and that selection, the process has to be agreed by other chairmen also. So all of this was put in place and I understand advisers were selected and a budget agreed. But we are in the middle of December and then of course we have got Christmas impending and Christmas and New Year holidays, and for the Council of Ministers to believe that it was possible for a Scrutiny report to be prepared by today's date is frankly, I believe, untenable and ridiculous. I know from my experience that it takes time to set up a Scrutiny review and sometimes it has frustrated me. If there are issues there then they should be addressed perhaps with the Greffier or with P.P.C. but not today to say that a Scrutiny Panel should have been able to set up and report on such a huge and complex and important matter within 6 weeks of the proposition being lodged and with a Christmas and New Year holiday intervening. That is an appalling approach to take, I believe. There is patently insufficient time. I do accept that there is a public interest of course in avoiding the risk that might arise from a proposal to hedge half of the possible borrowing, but of course the risks might go either way and those risks have been apparent throughout the whole of the past year when it became clear that borrowing was going to be the likely route which the Ministers would propose but nothing has come forward to this Assembly throughout the whole year when the site selection was being considered. Even once the site was selected there was no proposition at that time for the funding contemporaneously. I fear that if the Council of Ministers were able to proceed in this way, then they will always be able to say that there will be a cost if their proposals are not adopted straight away, that there will be implications if their proposals were delayed by Scrutiny. It is always going to be possible for Government to say that but Government, it seems, must accept that there is a need for Scrutiny involvement because Scrutiny has been built into the structure of Government. Scrutiny is the necessary counterbalance. Why should we not think valuable an expert report that can consider all that has gone on within Treasury just to check out that they have considered every option, every nuance and that there are no other ways which could reasonably be brought before this Assembly to fund this proposal. Why should we not have that expert advice? Why especially this week do the Council of Ministers think that that sort of guidance should not be made available to this Assembly? These proposals should be scrutinised because Scrutiny does what it says on the tin, it scrutinises. There is that public interest in trying to minimise risk but I would submit there is greater public interest in ensuring that this proposition is properly thought through and has the support and the clear analysis of a Scrutiny Report. We would come back to this debate better informed. We would be able to make a better decision with greater public confidence and therefore I make the proposition and I call for a seconder. Thank you.

[11:45]

The Bailiff:

Seconded? [**Seconded**] Thank you. I call on the Connétable of St. Lawrence.

7.6.2 The Connétable of St. Lawrence:

I wanted to speak as soon as I possibly could in this because I think I need advice from you, Sir, on whether we are now debating the proposition of the Deputy of St. Ouen. Is that right?

The Bailiff:

No, I am sorry, Connétable, we are debating the Minister for Treasury and Resources' proposition as amended, whether the debate on that should be suspended and the States request the relevant Scrutiny Panel to have the proposition referred to it. That is what we are debating now.

The Connétable of St. Lawrence:

Very well, thank you. In that case, no doubt the Minister for Treasury and Resources will address the Assembly and I want him to clarify a comment that he made when he made the proposal for the Future Hospital Funding Strategy because I recall that he mentioned that he needs an Assembly decision on this today because the bond would not be available until the middle of this year. I seem to recall him saying that if a report is done it would be taken into account. I think he needs to clarify what he means by that because I was not clear whether he was expecting the Corporate Services Scrutiny Panel to produce a report anyway for him to consider. So I think he needs to clarify that because what report was he expecting to have presented to him before the bond was signed-off in the middle of the year? By saying that he would take it into account, was he implying that in fact, depending upon the report and its recommendations, he would delay going ahead with the bond? Because I really need to know about that as to whether or not I will go ahead and vote to have this scrutinised. I think what the Deputy of St. Ouen has done is articulate the way many of us feel here today that this is something of such a magnitude that it certainly must be looked at very closely and I cannot believe that the Minister is intending it to go ahead without having had it scrutinised. That disappoints me very much and I refer again to what has happened over the last few days. It needs to be looked at thoroughly, not only by the Treasury Department but by Back-Bench Members who frankly represent us all. I think that there are such burning issues with this that it does need to be scrutinised but the Minister needs to make clear to me, and hopefully to others, what he meant by saying that he would take a report into account. Because I read that he would delay it and if that is the case then can he not delay this anyway for the Scrutiny Report? I hope the Minister has understood what I am trying to articulate here. Thank you.

7.6.3 Senator A.J.H. Maclean:

Yes, I thought it appropriate I should respond early although it is always useful to hear other Members' views, but I think enough perhaps has been said. I did seek to address this in part in my opening remarks on this proposition to express the fact that I am, to say the least, uncomfortable with the position that I find myself in here today. It is a difficult position and it is not very satisfactory. I would much have preferred, as the Council of Ministers would have, for Scrutiny to have undertaken a review of this proposition. It is a very important proposition, it is a significant proposition, both in terms of financing but also in terms of what it means to this Island more broadly. I will come back to the Constable of St. Lawrence in a moment, but I just wanted to clarify some points I made earlier. The proposer of this reference back made the point about 17th October when I attended upon with officers his sub-panel for a confidential briefing. I did not - and I just wish to clarify this - suggest that the Scrutiny review should have started from that point, I simply was trying to give the view to Members that the engagement, meaningful engagement, started at that time with that sub-panel. The point I was making earlier was that on 7th November I attended the Corporate Services Scrutiny Panel for a formal recorded hearing, it is in the transcript, and I was asked at that hearing about the funding strategy for the hospital and indeed the timing in relation to when it was going to be brought forward. I explained to the panel that it was only the next couple of days, 9th November, that the Council of Ministers would be considering the report

and proposition for this funding strategy. The point I was making earlier, it is from that point after the Council of Ministers have received and considered the report and proposition, it is a B item, but Scrutiny nevertheless have access to the B items and were aware that was happening and therefore had access to that report and proposition. It was from that point that I would have thought that the process could have started in terms of considering a review and also appointing advisers. That would have given time of which I believe would have been more than reasonable. After that of course we had the States Members' briefing on 28th November and the proposition was formally lodged on the 30th. That does give the normal 6-week lodging period and I accepted the point that there was a Christmas period in between. Although many people work over Christmas, I do understand that it can present some problems. I had a discussion at a meeting with the chairman of the panel and I was prepared to accept a very short delay for a couple of weeks to take into consideration the Christmas holiday. The panel, however, were finding, I think, difficulties with this. Their views were that they needed until 14th February. As I mentioned earlier today, that did present more of a challenge for me. Each day and each week that we are extended over this matter, it does make it an increased risk in terms of the borrowing cost. As I explained also earlier, as a custodian of public finances, it is incumbent upon me to ensure best value and it is incumbent upon me to ensure that we do not attract additional costs for the public by unnecessary delays. That is where I found myself in a very difficult position, respecting the Scrutiny function and the importance of a Scrutiny function in government; I also had to consider my role. That is ultimately why I have maintained this debate date because it will be a matter for this Assembly. If they feel that Scrutiny should review it in the full knowledge of the risks that exist, then that is something the Assembly can give due consideration about and we can proceed from that point. I would like to clarify for the Constable of St. Lawrence who asked a very reasonable question. Just to be clear about that, I do not think it was today I was specifically saying but it is relevant to today, we need an early decision in this matter so that we can consider putting in place a hedging mechanism to lock-in at least some part of the bond issuance at the current low rates. The advice would be possibly to lock-in anything from a quarter to three-quarters, usually around a half. We are waiting for the formal advice on that, and we could do that, but we cannot start the process, we cannot put in place a hedging mechanism until we have a States decision. That is why we need a States decision today to be able to lock-in low rates for at least part of the bond issuance. I should also perhaps make it clear that this strategy has been approved by the Fiscal Policy Panel; I was mentioning that point earlier on. But with regard to Scrutiny still undertaking a review, again the second part of the Constable of St. Lawrence's point, they could indeed still appoint advisers, undertake a review. The bond-issuing process takes months, 3 months or more, it will probably be towards the middle of the year that the quantum of the issue is exactly finally decided upon. It is therefore at that point that any review undertaken and recommendations from such a review could and would be taken into consideration and it was the point that I was trying to make earlier on. But without a States decision today, we do not have the option of considering whether indeed we can hedge because we do not have the mandate from this Assembly. I think I will leave it at that. It is an uncomfortable position, not just for myself, but for the panel and I know for Members, but nevertheless a decision will be made today which way it is decided we need to go, hopefully in full knowledge of the situation and the risks. Thank you.

7.6.4 The Deputy of Grouville:

My question is quite a simple one, it might be overly simple, I understand the Minister for Treasury and Resources' dilemma but I do feel it is absolutely imperative this issue goes to Scrutiny. But my question is: is there any reason why we cannot set up the hedging mechanism and get the bond without drawing down on the loan?

The Bailiff:

Deputy, would you sit a minute? I am taking that as a question to the Minister for Treasury and Resources for clarification of what he has just said and then you can continue your speech afterwards. He does not have a right to speak again and that is why we will deal with it that way.

Senator A.J.H. Maclean:

If this debate is agreed today, if we go ahead with this proposal, yes, but without it, no. That is the problem.

The Deputy of Grouville:

Well to continue my speech, to my mind that gives us the answer: let us give it to Scrutiny but let us hedge our bets today. **[Interruption]** Well we can get the bond, surely, and not draw down on the loan today. Thank you.

Senator A.J.H. Maclean:

If I may just clarify that point for the Deputy of Grouville. If the proposition before Members today is approved, not what is being proposed by the Deputy of St. Ouen, but if the proposition on the funding strategy is approved today then we can put in place hedging. Without it being approved, we cannot, that is the position we are in.

Deputy M.R. Higgins of St. Helier:

A point of clarification: can the Minister for Treasury and Resources tell us whether - you mention a hedge - but surely you can take out an option on a loan for a small fee which keeps it open. If we do not follow through with it, then we will lose the money that we put for the option but an option will enable you to lock-in so that when the due date comes you can go for it.

Senator A.J.H. Maclean:

Well not without a States decision and that is what we are seeking today. This is part of the proposition.

7.6.5 Deputy G.P. Southern:

I do not believe that I can do anything but agree with the Deputy of St. Ouen that we must have this, what is going to be the largest spend in our history, reviewed properly and in a timely manner by Scrutiny. I say so as a person who has just voted to amend this proposition in practically Stygian gloom in terms of my enlightenment. I do not know if this amended proposition is safer, better or worse than the original proposition. Why? Because I have not had a set of experts commissioned by a Scrutiny Panel to report back to me in a timely manner and say: "This is what it means, these are the risks" in nice, simple language because I am not an expert on finance. In nice, simple language that I can understand and say: "These are the possibilities. It may be that some action is better than others for these following reasons" and that is what I need. But I cannot today vote for this proposition with any security to be able to talk to my voters and say I knew what I was doing because I have not received that expert advice. To present this as some sort of dilemma, as the Minister for Treasury and Resources has done between his desire to secure the best deal for the public and his desire to obey the rules that we have here around Scrutiny, is not really an effective balance.

[12:00]

He appears to have thrown in some big numbers and say unless we make a decision today, given the market volatility that he is having whispered to him by his own experts, we may be losing up to - what was it? - £150,000 per year on this bond if we do not get a jump now and get the right agreements and, really, that is not the point. The point is, as an Assembly we have set up a system which allows Scrutiny Panels to call in a proposition, a significantly important proposition like this

one, and to report back. They have got a fortnight initially to say when they can report back and another 4 sessions. But I think it is a substantial amount of time and it does mean a delay but if we are to scrutinise properly, that delay is completely and utterly justified. Because, like me, who finds it extremely difficult to vote one way or the other today on this proposition, I think most Members would admit that they are in a bit of a gloom too about which way to go on this proposition. Now I have heard today in the Minister's speech, and I just started making notes, when he talked about, oh yes: "This does not include rental costs for workers, these costs do not include any extra demolition costs" and I am saying immediately: "Would somebody tell me about that? What does that mean? How much is that? Is that why the contingency was so large and we just decided to reduce it anyway? Where are we going with this?" Then he has talked about if things change and we have to change the model, and he refers to the housing bond being a precedent. Now, the housing bond, I do not know much about economics and finances, but certainly I know that if you are going to take out a bond you should have a revenue stream with which to pay off that bond, interest and capital, and that is what we had with a housing bond of £250 million. A rental stream there, that is how you deal with the rental which goes to this borrowing, that is the way it works. Where is the guaranteed revenue stream in this deal? It is not there. What they are talking is use of capital and borrowing to produce something which is an asset but there is no mention of revenue stream. So to describe the housing bond as a precedent is completely false. That is one set of circumstances, a guaranteed revenue stream, a revenue stream which was not good enough originally to meet the need of the bond, so we had to raise our level of rents to 90 per cent in order to cope with the bond, but this one has no revenue stream. It has no revenue stream today, in 10 years' time perhaps if things have gone wrong, then will we see the advent of a hospital charge, a hospital tax, payment for services in the hospital? Is that what we will see sometime in the future in order to service the bond? I do not know but I certainly cannot vote in favour of this mixed funding, this bond, today. I may well feel confident about voting for it or otherwise in 6, 8 weeks' time when this comes back. Perhaps it may be longer than that because we have got a big gap between 14th February and 14th March. I think that it may be into April before we get the report back from Scrutiny but I am prepared to wait for that and that is the sensible way forward, so I will be voting for the call-in.

7.6.6 Deputy M.R. Higgins:

I would echo the words of Deputy Southern and the Deputy of Grouville. This is the largest set of borrowing that the Island has ever done and, to be honest, I am absolutely amazed that the Council of Ministers want us to come along today and just suddenly rubberstamp it for them. I am not prepared to rubberstamp anything. I want some facts. In fact, one of the concerns that I have is the actual Strategic Reserve. There are other calls on the Strategic Reserve which have not been considered and I hope the Scrutiny Panel - and I believe we should go for a Scrutiny Panel - should review. There is a call on the Strategic Reserve and the Depositor Compensation Scheme so if a bank fails at any time, the States agreed previously, and I believe they were wrong to do it because all other depositor protection schemes are financed by the banks, but the Jersey scheme says if a bank fails, the first call for paying depositors is from the States Strategic Reserve. Now if a bank fails then for a few hundred million pounds now, yes, there is a process where it will go into liquidation and then there will be a process of trying to recover the money. I think Landsbanki when it went down in Guernsey took over 5 years for a lot of the people to be paid their money. So what I am asking is that Scrutiny, when they do look at this, look at the Depositor Compensation Scheme, see what the call is and the liability of the States. Are the States, for example, allowed to just simply write it off and just say: "Yes, we will pay it" or are there provisions where certain proportions of the Strategic Reserve are being kept for that purpose and cannot be used? So, there is a major concern here. A bank failure will cause a loss of hundreds of millions. That money will be coming out of the Strategic Reserve. Yes, we may get it back but we may not and how many

years is that going to take? What impact does that have on the idea of having a bond for this and so on? So, I have got major concerns and I would like to be reassured about that, and I believe a Scrutiny Panel would be the best people to question and get the answers to it. So, I shall be supporting the reference to the Scrutiny Panel and I believe it is well worth the wait. The risk on this is very, very high and we should not be taking risks of this order today just because the Ministers say we need to get it in quick. Thank you.

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

I did put my light on very early on to propose exactly what the Deputy of St. Ouen has done and that is why I can explain why I voted against the Constable of St. John. Because this to me is not about amending something that has been plonked on our desks on 30th November. Scrutiny has been told that they should have done this. Was everybody here that they needed to interview over the Christmas period? That would be interesting to find out. I doubt it very much but that is Scrutiny's fault, they did not cancel all their plans. The Ministers are swanning here, there and everywhere, and, forget the Ministers, also their officers. I say to the Constable of St. Lawrence, I was going to go for Standing Order 79 myself and that is because it gives the Scrutiny Panel the option not to just go if they had asked it to be referred under Standing Order 72 after the principles had been agreed. That is after. Now, is this the only principle that we can debate? I thank the Minister for having again a nice briefing the other day. There was a nice Mr. Suit there from Ernst & Young giving him advice, giving us advice about what could happen. I made the analogy of when I am in Paddy Power's or William Hill's. Literally, that is how much information you had. I am not about to give £400 million over 40 years, with the payback in 40 years' time, with the hurry up that this has had. Why? Why did they not know? All right, they had debates about where the hospital was going to go but the underlying job of this Minister, the Minister for Treasury and Resources, was to tell us how it was going to be funded, have propositions ready to go, and not then say: "We have not got time." I see where the Deputy of Grouville is coming from. When you are told: "Get your money on that, the race is about to be off" and you are standing there: "Ooh" and then your horse falls at the first fence and you are really glad you did not get your fiver on. I am being funny but it is not a joke. I looked at my grandchildren the other day and thought: "You will be middle-aged by the time this ...". Well what security, as you say? I asked a question the other day in the briefing. Does this not tie-up all our interests on the Strategic Reserve for the next 40 years? Well, yes, it does. Do we know - my crystal ball again - what is coming down the line? But the Minister for Treasury and Resources tells me it is fine and the nice young man from Ernst & Young tells me it is fine and then we had the F.P.P. who tells us it is fine. What other proposition? We had one slide on the way which Deputy Southern asked how this could be financed from the Strategic Reserve and it was about the costs, I think, it was not what we would have to take out now. There was not enough information and this is what the job of Scrutiny does. I am sorry that the Minister stood up early and basically said again: "Well I want Scrutiny to work along beside us. I want Scrutiny to look at this narrow avenue and I expect them to go away and do it." Well, sorry, have you read what Scrutiny does? Has the Minister read what Scrutiny does? It is certainly not that. It is not standing next to you saying: "This is the only way you should go." You are going to hear loads of promises if they do not change their mind because that is why I voted against the Constable of St. John. I had no intention of voting for the whole proposition as it stands. I am not, on this piece of paper, one briefing, going to give away my grandchildren's future for the next 40 years and you should all think of that when you are literally thinking of the Minister's words. He is going to be hoisted by his own petard because he will not get this back until about April now when, if he had allowed Scrutiny a couple of more weeks, they would have finished this and it would have been done. I do not listen to somebody who is hedging my bets and the money that is in our Strategic Reserve which is for the rainy day. We have now gone from just a borrowing on Andium, and it is going to be 16 per cent of our borrowing which apparently is very

low, but it is not as low as zero which we had 5 years ago, and we do not have a funding stream. But is that the next thing coming down? They will come back and say: “You have got to put this up, we have got to charge for this, that and the other because we need to pay for it.” Absolutely disappointed with the Minister. He has spoken but he can advise his Assistant, whoever that may be, and tell us that he is now going to absolutely endorse that this goes back to Scrutiny or I hope other Members like me feel they cannot even attempt to vote for this today so it will be thrown out. I hope he is listening to me, he is typing something up, but it really is an important point. You cannot hurry this up. Look back at the Hansard, and it is over the last few days, of when this Minister or another Minister proposed the Jersey Innovation Fund, the promises we had, this, that and the other for £5 million. Not one of them happened. So you come the same week and ask us to, as I say, literally bet on something that I would not put a fiver on in the bookies because, as I say, it is going to fall at the first hurdle, and you ask me to tie it up for the next 40 years and then pay the capital back. I cannot make this up. I absolutely agree with the Deputy of St. Ouen. If I had got up any quicker, I would have been proposing this myself because that is why I did not vote for it and that is again why we are not doing it under Standing Order 72 because it gives the Scrutiny everything they need to do. They can look at everything, they can even bring alternatives. Where are they? Their advisers will give them good advice. I really hope that people will think this cannot be rushed and do not be pulled into the: “Oh, we have got to do it today” or: “We might as well hedge this now.” That man and great advice they are getting has got no more clearer who the winner is of this race than me and that is saying something because I quite like a bet but not this one. Thank you.

The Bailiff:

Can I just say with some hesitation, as the doyen of Standing Orders, but Standing Order 72 is not available because that is only for laws and regulations but there you go. Does any other Member wish to speak? Deputy Andrew Lewis. The Assistant Minister for Treasury and Resources, if I may suggest, the Minister for Treasury and Resources is not going to have the opportunity of replying, so if other Members have got questions I personally think it might be convenient for you to pick up any answers to their questions in the course of that debate. But either you or the Chief Minister should be able to do that. Somebody needs to be able to do it. Deputy Andrew Lewis.

7.6.8 Deputy A.D. Lewis of St. Helier:

I greatly respect the Deputy of St. Ouen’s proposal here and he is quite right in that the process we have for deliberating over any policy or proposition is often the method of Scrutiny.

[12:15]

I work in that area of parliament myself on P.A.C. (Public Accounts Committee) so, yes, I know how it works and, yes, I accept that it is an acceptable process and it is something which we should, whenever possible, do. However, we are in a slightly unusual place in terms of the world. On the 20th of this week Donald Trump will be inaugurated into the presidential seat of power in the U.S. (United States). He said on numerous occasions during his election that he felt that one of the biggest threats to the U.S. economy was low interest rates. Interest rates in the U.S. will go up and they may well go up quite rapidly over the next few months. Why is that relevant? That will put up the rates of bonds quicker than some of you might expect. That is what the accountant from EY was telling us at his presentation to us last week. What the Minister for Treasury and Resources is trying to do is hedge against those types of threats. There are more on the way. We have got several elections happening in Europe over the next few months, there will be a cry there where they have got some of the lowest interest rates in history, as we all know. The Right may well get elected, they favour exactly the same principles as Trump, so their interest rates will go up. European bond rates will go up. If we do not take the advice of the adviser we have already, the

Fiscal Policy Panel, and advice from accountants and hedge now, I think we could be in for a bigger shock than just the £150,000 that the Minister alluded to earlier extrapolating up to £6 million, £8 million in the course of this bond. That might not sound very much when you say it over 40 years but my prediction if I was investing in bonds now, I would be investing in them because I would be getting a good return. But we are not, we are doing the opposite, we are going to take a bond at a cost. If we do not lock-in to that now and hedge our bets, which is what Deputy Martin was suggesting was a gamble, it is a huge gamble not to. So I would urge Members, as laudable as the proposition of the Deputy of St. Ouen is to abide by the principles of Scrutiny, and he is quite right, on this occasion if you are doing business, and we have the task of doing business in this Assembly, and one of those things is making decisions like this, we need to do it and we need to do it now. The advice is there. Scrutiny will go away and get further advice and some of that advice will suggest the same. It may well come up with other advice which is pertinent to this ultimate decision that we will make when we enact the bond. There is time to change that, stall it or even stop it if a Scrutiny Report came up with something so surprising and so damning to this whole idea of funding a hospital like this, that then it could be stopped. So, as the Minister for Treasury and Resources says, it is quite right that Scrutiny should continue with this, produce their report. It may well find some useful information that is pertinent to delaying that bond being enacted but if you do not start that negotiation process right now and lock-in and hedge, my prediction is it could cost us an awful lot more than the Minister for Treasury and Resources is currently suggesting from my viewpoint of bond rates, which I have an interest in as well as maybe other investors here do. So if you want to invest at the moment at a high yield, invest in bonds. The world is changing and that is the risk that we face today. So I would support the Minister for Treasury and Resources in what he is trying to achieve here. I totally accept and respect what the Deputy of St. Ouen is suggesting but, on this occasion, we need to make a decision in the best interests of the public whom we represent. On this occasion, that is to get on with what the Minister for Treasury and Resources is suggesting which has received appropriate advice already. You can never have too much advice and we can have further advice through the Scrutiny process which can run in parallel at the same time as adopting what the Minister for Treasury and Resources is suggesting we do. So, on the basis of that, I cannot support the prospect of referencing this back at this stage. I think it would be wrong, it would be unbusinesslike and it would be quite damaging to the public purse. Thank you.

7.6.9 Deputy J.M. Maçon:

We respect Scrutiny, we value the Scrutiny process, Scrutiny makes our system better. Now who have we heard utter those words in this Assembly before? Is it perhaps the same people today who are urging us not to refer this matter to Scrutiny? I have said this in this Assembly before how when it is a matter to which the Ministers are feeling very strongly about, as soon as the issue of Scrutiny raises its head, of course, Scrutiny suddenly becomes the villain of the piece. What I wanted to add is, as the Constable of St. Lawrence mentioned, we have been here before. Remember the issue about the incinerator and the hedging of the euro. Remember the Innovation Fund and remember other things. Treasury, in my mind, needs as much support through this process and a good examining of all the processes is entirely needed. It really does frustrate me for a Member who has never been a member of Scrutiny to tell Scrutiny how Scrutiny should carry out those processes. Deputy Martin quite rightly pointed out some of the big issues that Scrutiny faces when it comes to the holiday periods. Every year it happens. Therefore, I do not accept the criticism of Scrutiny that Scrutiny has somehow dragged its heels on this issue. We knew the situation where it is going to be and why the Minister for Treasury and Resources, as soon as the proposal of a hospital was coming along, was not engaging and bringing along Scrutiny and briefing them up to the hilt as soon as it was all starting is beyond me. We will have another debate later where in fact I will be praising the Minister for Home Affairs for completely the opposite

approach that her and her department have been taking. Deputy Andrew Lewis just spoke and talked about the risks of not proceeding with this decision today but of course there are other risks if we do proceed with the decisions going today. Are we convinced that the governance structures around what is being proposed are there? Are we convinced that the Treasury is going to carry out all the proper procedures? Now, of course you have got a lot of good people in Treasury, I am not knocking the department, but I am not convinced at this time without having much more of an independent oversight of the proposals to be able to even support the proposition today. I really think the Ministers, like me, appreciate that this is one of the largest capital projects that the Island has ever seen, is the largest capital project that the Island has ever seen, and therefore very much in the public interest. It has got to be viewed, not only as a 6-eyes process, an 8-eyes process but a 16-eyes process because the risk to the public one way or another if these things are not done properly is huge. Therefore, as much as there is a risk of not proceeding as the Minister wants us today, there is a risk of not examining these processes properly. I do not accept that, well, if we give the Ministers the approval today, somehow when Scrutiny turns around and says: "Oh, you need to do this and you need to do this and you need to do that" after the horse has already bolted, suddenly we are going to get all these changes, time and time again, Assembly Members, this has never happened, and why? Einstein says: "Insanity is repeating the same process over and over again and expecting a different result." We have been here before in different guises and once approval has been given, very little ever changes. So please, Assembly Members, let us do this properly, let us do this right. Please support Scrutiny who are asking for this. Scrutiny are asking to be able to do this work and therefore please support. I ask Members to support Scrutiny and to refer this important part of work. We know the Islanders want this done as quickly as possible but they also want it done properly and that is incredibly important. Thank you.

7.6.10 Deputy J.A.N. Le Fondré:

Yes, my speech unfortunately has got slightly longer. The role of Scrutiny **[Interruption]** ... I am glad people have woken up, at least we will get some humour. The role of Scrutiny is to inform States Members before they make a decision. It is very, very unfortunate in certain ways **[Laughter] [Interruption]** ... not that long. That is the one sentiment I do share with the Minister, it is unfortunate we have got to where we are today. However, we have been very clear, from as soon as we could be, that we needed an extension to 14th February, not just to suit ourselves, but because when we finally did get advisers and got a quote that was realistic, and we can only get quotes from advisers once we know what we are scrutinising, Scrutiny cannot act in a fog. Those are the dates that those advisers could meet and it was pretty certain ... in fact if the thing had gone to 14th February, then the Minister could rightly have been critical if we needed further time after that. As far as I can say, hand on heart, we were not in that position. We were very clear, the advisers could have started on 9th January, and the point was we needed confirmation from the Minister up until even as late as 30th December would have been fine. Various correspondence was sent to the Minister over various times and I think I finally received an email from the Minister, it was on 30th December, and this is not a criticism of the Minister, but he was off-Island at the time, so in other words the availability of people during that period is difficult. It is the Christmas period, folks, but that applies to the people who are trying to employ as well. If anybody ever tries to get a carpenter to put up shelves and goes and rings them up on 1st December and say: "By the way ..." and it is a big job, they are not going to be able to do it before Christmas even if you start ringing them in September, I would suggest. Now, the Constable of St. Lawrence is absolutely right, it is about governance. I will deal with a couple of areas, I am afraid. The Minister made reference to early November, I think it was, and I have just received a quick extract of the transcript at the time. The Minister stated: "A timetable for announcements, lodging and so on, will be proposed." I do not think we have received that: "If the Council of Ministers are in approval and there are no further pieces of work asked to be undertaken as a result of that meeting,

then we would lodge almost immediately after that.” Well, it took 3 weeks, I think, from that meeting at least to lodge the proposition. I am not doing the maths, I am afraid. In the radio interview when the Assistant Minister for Treasury and Resources was on the radio with the Constable of St. John, the Assistant Minister, in reference to something the Constable of St. John said, said: “What you are saying is correct, it is loosely worded.” That is the proposition, by the way. I shall get to the proposition in a second. Treasury admit that the proposition is loosely worded. Later on, and I say this just to correct something on record, the Connétable said: “This is what the debate is about because we need the States to agree the principle of the ... so that it can go out in May”, *et cetera*. He talks about the principle of the debt. Well if you read the proposition - and this is the dilemma we have - the proposition is to agree expenditure up to a maximum £466 million to approve the establishment of a hospital construction fund to authorise to borrow up to a maximum of £400 million and then there are various other bits about the Strategic Reserve. That is not in principle. If this item is approved today, the Assembly will have approved the borrowing of up to £400 million. So, the issues around that, for example, the Minister for Treasury and Resources did make reference, I cannot remember if it was his opening speech or the comments he made in this particular debate, if the primary purpose of the Strategic Reserve was needed, at that point it might be necessary to change the model. Now, sorry, that is talking about risk. The issue there, then he says “at some point” so how are you going to change the model? Are you going to increase taxes or something because you have suddenly got a fund, £400 million, but you have not got the calculator out? Well if you need the Rainy Day Fund, by the way, that probably implies we have some pretty serious problems. Therefore, putting up taxes at a time when I am assuming that revenue is falling might be slightly difficult. That is one of those areas of what is the risk within the Strategic Reserve. The Constable of St. John is absolutely correct, as I said in my statement yesterday, it is not a panel amendment because we could not go through the due process and all that type of stuff in the timing. We were very hopeful we were going to get the go-ahead to go for 14th February. So it was a very... what I will call an initial quick scan of kind of the big issues. When I say the “big issues”, the immediately obvious issues. As he has said, if you are saying we are going to use the return from the Strategic Reserve over this period to repay the debt, then you have got to make sure you do not delve into it any more. So what is the risk? How does that all come together?

[12:30]

I have talked through the proposition; that was fine. Now, I will make another reference, just for the purposes of the microphone, there has been reference to the letter from the Fiscal Policy Panel and the quotes that have been made are absolutely correct, okay? However, in their penultimate paragraph, immediately after the “In Summary” bit they also say: “However, it is important that the Government of Jersey gives full consideration in the risks it poses which we have highlighted above. This would be the case whatever approach to funding was adopted.” Now that letter was dated 21st December, so information is obviously coming in at very late stages in this process. What I think is also unfortunate is that in terms of where we are, if this was in principle, we might be facing different issues. It is not coming back to the Assembly. Scrutiny’s role is to inform Members in making this decision. So, yes, it is lovely in theory to say we will work along in parallel and that type of stuff, the panel have been very clear when we have talked about this. If the proposition from the Deputy of St. Ouen is rejected, we have no intention at this stage to do any review of this item because there is very little point, the path will have been decided. We felt that the justification of the money you would be spending would not warrant the potential impact at the end because you are that far down the line, you are committed on that path, we do not know. “Could you produce something? The Minister says he will consider it.” Well that is all very well but this Assembly will have given the authority to borrow up to £400 million. You are on that path. I said we have been very clear with the Minister from as soon as it was lodged that we needed the

extension in time. We did start speaking to advisers as early as humanly possible. Some of the quotes that we got to come back in on were eye-watering, and we are obviously not in that territory for the advisers we have ready, but they were eye-watering. I think, really, I hope I have addressed most of the principal points. I have very much tried not to cover the areas that the Deputy of St. Ouen has already covered. I think he did a fantastic speech. In fact, I will even go as far to say, I think it was one of his best speeches he has done. I think he laid it out very, very clearly, very calmly and exactly the reasons why we should be doing this. I will stress, and it is unfortunate, we have made the point in a number of our hearings, all the Ministers we scrutinise: “Do you support the role of Scrutiny?” Unequivocally they have said yes. This is one of our fundamental roles. This, as we keep saying, is the biggest level of debt that we are committing this Island to for generations. Plural. Yes, there is always a risk in these things and also there might be some incremental stuff around what that cost is but do not lose sight of the £400 million. Do not lose sight, for example, of what the Constable of St. John indicated, is that if something goes wrong in the early years, you have got a variation of I think it was of £1.5 billion in his calculations, so we are talking very large numbers. I think I will probably close by saying I really find it unfortunate that if the small extension that we asked for had been approved, we would not be in this position. I regret saying this but whether it is the Minister for Treasury and Resources or the Council of Ministers, I think they have put themselves into this position which I think is unfortunate. If we could have had that extension, as I said, we would be saying: “You will be having a report in time for that debate” and at the very least you would be having a properly-informed decision from the perspective of Scrutiny. If Members decide not to, then that is a matter for Members but I reiterate, £400 million, it is not a small sum, so obviously I will be supporting the proposition of the Deputy of St. Ouen.

7.6.11 Deputy R. Labey:

Yes, this is unfortunate timing for the Minister for Treasury and Resources after recent events. I guess that trust is not exactly at an all-time high but we should put those prejudices aside because it is such an important issue for the people of this Island. While I agree with Deputy Le Fondré that the Deputy of St. Ouen’s speech was excellent and difficult to argue against, the argument against was just provided by Deputy Andrew Lewis. So, with my tenuous grasp on bonds and hedging, I thought that the financial instruments could be negotiated at any time it is just the charges and the rates that are variable. So what is the Minister for Treasury and Resources telling us? What is he forecasting; an imminent rise in loan rates that is going to cost the Island lots more money? What is the scale of the negative with delay? I think I want information through his Assistant Minister, if possible. Thank you.

Senator P.F.C. Ozouf:

May I just have some guidance? The amendment or the proposition of the Deputy of St. Ouen is to refer back the whole proposition; is that correct? Is there any opportunity to refer part of the proposition back but not the whole of the proposition?

The Bailiff:

No, it is not a reference back it is a suspension of the debate so that the whole proposition is referred to Scrutiny.

Senator P.F.C. Ozouf:

So, in the event of some of the proposition being effectively ... or an argument being put that some of the proposition could be approved and the rest of it sent to Scrutiny, would that be ... I do not want to take the Assembly’s time maybe with something I can seek guidance over the luncheon adjournment but I just wanted to ... I know I put my light on. I know the Assistant Minister for Treasury and Resources is going to speak but I just think that there may be a middle and helpful

way that deals with some of the concerns that have been raised and gives people what they want. But I am probably not best to do it.

The Bailiff:

We have one proposition and the ...

Senator P.F.C. Ozouf:

Which I do not agree with at all.

The Bailiff:

... Standing Order 79 says that any Member may propose that a debate on that proposition be suspended and I think that is where we are at the moment.

Senator P.F.C. Ozouf:

I am happy to propose the adjournment because we are not that far off when that would normally be done by the senior Member, perhaps if there is a brief speech on it but pending that I think if there is a proposal I would wish to put. It is a point that I am just trying to make but I do not want to waste the Assembly's time like this.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

The adjournment is proposed. **[Seconded]** Do Members agree? Then we will stand adjourned until 2.15 p.m. this afternoon.

[12:38]

LUNCHEON ADJOURNMENT

[14:16]

The Bailiff:

We now resume the debate on P.130, as amended, and I call on Senator Ozouf.

Senator P.F.C. Ozouf:

As we adjourned before lunch you called me to ask a point of clarification and I have got that and I am just going to continue to hear the rest of the speech. I might not speak in the rest of this debate, having taken soundings. I now know what the options are and you have advised me, kindly after the adjournment, exactly what options were and I do not think there is anything I need to add in terms of clarification before I speak. I will put my light on to speak shortly, but I know there are other people who want to speak. So my point is being assisted with. Thank you.

The Bailiff:

Does any other Member wish to speak? No, the Connétable of St. John will be ... oh, no, he will not. We are on the reference back, I am so sorry. Connétable of St. John.

7.6.12 The Connétable of St. John:

There are 2 specific areas to this proposal by the Deputy of St. Ouen. The first is: should we lock-in now, in the urgency of locking-in and the importance which the Minister for Treasury and Resources has eloquently put forward, and the second is a matter of parliamentary procedure. I will address the first issue and I have been struggling over lunch as to how one might address the importance, or not, of locking-in and hedging if we are to raise such an issue as a sterling bond. We have not had this scrutinised, but the Minister for Treasury and Resources is saying: "It is

urgent that I hedge and lock-in to a bond.” Hold on, we have not scrutinised that yet. That may not, and I cannot talk because I am not an expert, be the best option. It reminds me of a dear friend who bought some shares in Rolls Royce in the year 2000 at 70 pence and he said: “I have got a bargain here, I am going to sell them for £2.30 in about a year, 18 months’ time.” I saw him 2 years later and I said: “You made a killing on your Rolls Royce shares.” He said: “Yes, and I have still got them, they are still going up. I am going to flog at about £5.” A few years went by and I said: “Oh, you did well on your Rolls Royce, you did the right thing holding on to them.” “Oh, no, I am still holding on to them they are still going up.” They peaked at £12 they are now £7.20. So, by locking-in, or hedging his bets, on the rates of bonds he may hedge his bets and lose, or he may hedge his bets and win. This is the type of volatility we are in at the moment and I urge caution of taking any steps prior to this Assembly having had the opportunity to properly scrutinise the proposition. The second issue is probably more important parliamentary-wise than it is financially, and that is that we have a parliamentary procedure. It is laid down and that is what we follow. We have had too many instances in which this Assembly is being railroaded by the Council of Ministers to try and make an agreement without going through the due process of government. I did forward an email just to make sure all Members of this Assembly received the Hansard, or the speech, of the Secretary General of the Commonwealth Parliamentary Association which he made just before Christmas, and in it he referred to over-powerful executives forcing and using assemblies as rubber stamps to just rubber stamp and not having proper parliamentary procedure. Things can go right and things can go wrong. When things go right we are going to be criticised for having wasted time, possibly wasted some money. When things go wrong we then get criticised for having not done due diligence and for having not done our job properly. Whichever way it goes we politicians - or you are politicians, I am a Constable - need to accept that we will be vilified one way or another, which is why we have parliamentary procedures laid down for us to follow and that is why I urge this Assembly to support the Deputy of St. Ouen in his proposition. Thank you.

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

I fear the debate is not about the funding - it has gone in a different direction - it is about almost the Council of Ministers against Scrutiny and *vice versa* and this is certainly not where I want to be and I am certainly sure that is not where the Minister for Treasury and Resources, and I think most of us would prefer not to be. I think just for the moment I will pick up on the Constable of St. John’s last comments, if I may first of all. He made his point about the Rolls Royce shares. Yes, you are right, the markets do move up and they do move down. The principle of hedging, equally, is a risk, as he quite rightly says and we have recognised that risk, which is why we are only proposing to have the option of hedging £200 million as half of the amount of money that we need to borrow so we can take the advantage and not suffer the disadvantage on a significant proportion of the bond price that we are trying to achieve. The other point the Constable made was about parliamentary procedures and he is absolutely right as well. I think I just must point out, for the record, that we lodged on 30th November. That was entirely in time for the 6-week lodging period required for all major propositions. Before it came to the States today it has been that 6-week lodging period, which is enshrined within Standing Orders, and is applied across all other public holidays in the past including Easter and previous Christmas periods as well. So I think, if I may say, and I do not like using these words, but I must say that that is a little bit of a red herring. Just going back I would like to just address some points that Members have made so far and Deputy Lewis of St. Helier, he made some very good points, very strong points from his position in P.A.C. about the changing world environment that we are in. We are in a volatile world, whether we like it or not. We did not expect Brexit and we did not expect Trump and we have got them both. Sorry, Senator Ferguson did expect Brexit; well done. **[Laughter]** I wish I could borrow your crystal ball. But there we are, I cannot, so I will not be rich either. I will not cover his points, so I will cover them

slightly differently a little bit later on. His points were very well made from his position in the Public Accounts Committee, and, just for the record, I notice that Deputy Martin made a comment about the Minister not having any experience of Scrutiny. That is a shame, Minister, you should have had; it is quite a good experience. I was vice-chairman of P.A.C. in my first term of office and also I was on the Environment Scrutiny Panel at the same time, so I have had a very good grounding in Scrutiny. I am going slightly off topic. One of my regrets is that all Members do not get the opportunity of working both in Scrutiny and in governance some time through their term of office and they would see how the whole thing can work cohesively together, providing we do work together. Deputy Maçon raised a very good point that Treasury needs support for these decisions; he is absolutely right. We do have support: Ernst & Young, the Fiscal Policy Panel, the Treasury Advisory Panel. All of these people, they advise us from their expert knowledge. One of the great advantages of going to Ernst & Young is they have no financial interest, other than their fee, for giving the advice. If we went to a bank for advice the bank, be it HSBC, Barclays, Lloyds, whoever it may well be, would say: "This is our advice and do it with us" because they want the business, so they will put their own slant on it to get the business. But going to an independent adviser like Ernst & Young means we get untarnished and no self-interest within that advice. Equally, the Fiscal Policy Panel, these are world-known renowned people who work very hard for the public of Jersey and one of their remits is to protect our interest with regard to the Strategic Reserve. So their own advice says: "What we are proposing to do is in the best interest of the foregoing economy and for the future of the Strategic Reserve." Then we have got the Treasury Advisory Panel, which advises us on all our experts; these are made up from people in the community with a high level of business experience in the financial world and they come in to talk to us about how we use our Common Investment Fund and how we should do our investments. They have also advised; in their opinion the strategy that we are using going forward is the right strategy to do. Sorry, I have got the Constable of St. John down twice. Sorry about that, Constable of St. John, I am not being mean to you, honestly. You can get me back another time. He also mentioned about the high level of contingency. I do recall, and I think it was the Gleeds report for the hospital building itself, and I can be corrected on this, but it was certainly one of the reports. They said: "The greatest risk to this project is political interference, or delay, or both" and that is where we are, unfortunately. So we must make decisions today recognising the actual risks that we are contributing to in whichever decisions we make, in both directions, whether you vote *pour* or against. We will need to acknowledge that we are carrying the burden for whatever the outcome is, whether it be good or bad. Various Members talked about the biggest projects and the amount of debt that we will be attracting. They are right, absolutely right. I can remember in 2008 when coming to, or thinking about coming to office in the middle of 2008, going to see people like the Institute of Directors, for example, several other people, the Citizen's Advice, to talk to them about what was going on in government, which were the main points I needed to consider if I was going to put my name down for being the Constable of St. Peter. One of the things that was very topical at that time was the incinerator and they all said the same thing: "The Government is mad. They are taking the money out of the bank to build the incinerator, they should do it on borrowings." Borrowing is the best way forward. Invest your money for the incinerator in a proper investment strategy and go for a bond, that is the best way in the long term; you spread the cost over many, many years. The people that are using the hospital over the next 40 years will be the people ... well, they will not pay for it, it will be paid for by the surplus on the Strategic Reserve. But ultimately if we go to Deputy Martin's, what I call the Armageddon perspective, and there had to be taxes raised to cover the cost of the bond if the Strategic Reserve fell for any known reason, they would be the users. So, there would be an element of user pays, that is if we get into the Armageddon-type scenario which I think it could happen now. There could be an aeroplane land on the roof of this building now. We know anything could happen; we cannot predict with any certainty the long term. We have to look out with optimism, otherwise we would not get up in the morning. I think,

just talking now about the issue that was being raised with regard to this reference back is I need to say that I, and Treasury officers, were working right through the Christmas period, working on this and other matters right the way through Christmas, so we were available at all times. I recognise, I think we presumed, I think probably correctly, that the chairman of the C.S.S.P. (Corporate Services Scrutiny Panel) was not available, he was away, so our communications were not ...

[14:30]

Deputy J.A.N. Le Fondré:

I was on-Island.

The Connétable of St. Peter:

You were on-Island. Well, we emailed you anyway to make sure you got the message ...

The Bailiff:

That is the fourth time, Connétable, you have not talked through the Chair.

The Connétable of St. Peter:

Sorry, Sir. Apologies, I am getting a bit carried away with the flow. Moving down. I have already covered the points about Treasury have already used expert external financial advisers who are independent, have no incentive. Also it is picked up within the proposition, there was a comment in one of the letters from Scrutiny about they want to look at other options. Well, the options are well laid out in the proposition; it is in the documents in front of you today and they have all been looked at and all the reasons why they have not been considered are in there, they are within the proposition to give you confidence that the strategy that we are proposing is the right way forward. I am just checking my notes, if I may, for a moment. I think, just looking a little bit at the timeline, the panel were informed of the public hearing on 7th November - I think that was a budget meeting if I recall rightly - that the proposition was going to the Council of Ministers on 9th November and would be available shortly thereafter to them, albeit it did not get lodged until the 30th, but once it had been through the Council of Ministers then it was a done deal on the 9th. There may have been, I believe, I am informed there may have been a glitch in the mechanism somewhere that the panel, or somebody working within Scrutiny, did not ask for the papers at an early enough time and if that is the case that is extremely unfortunate. I would not like to put blame anywhere, but that is a suggestion that I have heard today as well. I think one thing that the Minister for Treasury and Resources feels he must have is some certainty and that is certainty in the cost going forward, and that is why he wants to try and get us to come to a decision today, so he can use up the option of going for a hedge now before the market starts to turn potentially against us. A delay until March, or possibly even up until April, could make things far better than they are now. I have got some other advice that has just come in which I need to share with Members, if I can just find it. I will have to try and paraphrase it, it has not come up on my iPad unfortunately. Basically, they have been looking at what is the potential of trying to go, as the Deputy of Grouville mentioned before lunch, is why not just go and hedge now. The problem with hedging now is that if there were to be a safe decision further downstream and we did not go with a bond and the market moved against us in any way, or form, then that would cost in the region of possibly around about £14 million. However, the advice from our bankers now, that is the High Street retail bankers, the HSBC and also other advice from other High Street bankers, is that there is a very high expectation of a 0.5 per cent increase in rates on bonds in the short to medium term. The short to medium term in their world is 3 to 6 months and they are expecting to see an escalation of bond prices up to that sort of level. If that escalation did come around at 0.5 per cent it would mean, potentially, around about £400,000 per year for the life of the bond if it were to come out at that level. So, you are looking at a significant amount of money that it would cost us by that delay. We have already covered the

things about the Bank of England are stopping the quantitative easing at the end of this month, the end of January. That is going to have an impact on the market. We have already spoken about Brexit. We have already been advised by the construction suppliers in Jersey that prices, on the back of Brexit and the exchange rates, have already gone up by approximately 10 per cent and that can only possibly get worse. We know we have got the elections coming up in Europe shortly and that is going to change, potentially, the face of policy throughout Europe and that will also create more volatility and uncertainty in the European bond market, which will only drive prices further up again. The Minister was in a very difficult place; we spoke at length about the proposition and our response to the Scrutiny Panel, and my advice to him was very, very clear. It was: he must be seen to be protecting the public purse at all odds, because that is his role and that is his officers' role. If he was to simply allow a delay of a month, that could be costly and who would be responsible for those costs, and we all saw what happened yesterday and I am fairly sure where the fingers would point if it were to happen here. We were already advised by Property Holdings and the work they have been doing over the past couple of years on the hospital project, that the construction costs increase by every month of delay at just under £2 million per month. That is £22 million a year, just under £2 million a month that we would potentially attract by further delay on this, and if we were to miss the optimum level in the bond market it could be even more than that. So you are looking at significant cost overruns - not overruns - considerable costs incurred should those things come to pass. I think I would like to just share, and I mentioned it earlier on, the email that went to the chairman of the Scrutiny Panel on 30th December. There is a lot of technical stuff in here, so I will just paraphrase that part of it, if I may just read out part of it. I will circulate the full copy to Members later on if they would wish. "Dear John. Thank you for your email. After considering all the latest advice to this matter, I feel that, unfortunately, I have no choice but to proceed with a debate on 17th January. My reasons for this are set out below. Now that the States have agreed the site for the new hospital, I, as Minister for Treasury and Resources, have a duty to secure funding to implement that decision at the lowest possible cost to Islanders. Indications from our expert advisers are that the costs to the States are increasing, potentially daily, as a result of delay. These cost increases are chiefly in 2 areas: the coupon cost of a new bond issuance." I will not go into the technicalities behind that because it is rather complex, so I will share that with you later. "The second cost being the cost of construction contract. Indications are that construction costs are rising with Brexit matters playing a part." Moving on: "I do not take this decision lightly." I will say that again: "I do not take this decision lightly and intend to set out fully to States Members why I am unable to consider a delay. Should any Member then wish to propose to delay then they will be doing so in the full knowledge of the potential additional costs that may be involved. I am not prepared to risk the Island's financial position in that way. I would also point out that the precise quantum of the bond placement will not be settled until towards the middle of the year, once we have carried out a marketing process and we are aware of the level of demand." The most important piece here: "For that reason, I would urge you to continue with the appointment of your advisers and the production of your panel's report. I will commit to the Assembly to consider that report before agreeing the final placement, but I must seek their mandate to continue with the funding strategy and allow progress towards letting a building contract. Kindest regards, Alan." One final point, which is not really material, so I will say thank you very much.

Deputy J.A. Martin:

Can I have a point of clarification, please, from the Assistant Minister? I may have misheard him; he mentioned all the usual advisers, F.P.P. (Fiscal Policy Panel) and the Treasury Advisory Board, and he also said Ernst & Young were the only advisers and that was good, because they did not have a financial interest. Then a bit later on I am sure the Assistant Minister said: "And they have been to the High Street banks and HSBC and another said 3 months to 6 months." So, which is it? Who was the advice from? Somebody who does want the money, or somebody who does not want

the work, basically, because I think a High Street bank may have an interest; that is my point. Thank you.

The Connétable of St. Peter:

Yes, sorry if I confused Deputy Martin. You are right, I did mention both. The advice that we have ...

The Bailiff:

Through the Chair, please.

The Connétable of St. Peter:

Sorry, Sir, through the Chair. The advice that we have taken on board for the preparation of this proposition has come entirely from Ernst & Young. The updated advice, which I have given you regarding HSBC and other High Street banks, is advice that we have received this morning to enable me to come back to you at lunchtime today to give you an up-to-date outlook on what is happening in the marketplace. Thank you.

7.6.14 Senator A.K.F. Green:

I think Members would expect to hear from the Minister for Health and Social Services, being as the money is being raised for a major health project. The Minister for Treasury and Resources finds himself in a really difficult position, because he has to bring a funding strategy which is approved, hopefully, to enable him to hedge, and let me just remind Members that the Assistant Minister for Treasury and Resources and Health and Social Services reminded us, just now, about the Energy from Waste Plant and the advice that he had had when he was thinking of standing: that we should have paid for it by way of a loan and invested the money elsewhere. But that is not the aspect I want to remind Members of. I might remind Members that, at that time, we failed to hedge against the euro and it cost us a lot of money, it cost this Assembly a lot of money and reputation. Now, other people may have a different view on that, but I would just like to remind them. Deputy Martin made a comment about a very nice young man from EY and that he had no more idea about who was going to win the race than who was going to lose; something along those lines. She is shaking her head. Something along those lines anyway. But that nice young man from EY does know one thing and one thing we must take note of: interest rates are at the lowest level they are ever likely to be. They might go up and down a tad at the moment, but one thing is for certain: there is only one definite way interest rates are going to go and that is up. Those of us that, unfortunately, in the late 1970s and the early 1980s, that had mortgages saw our interest rates go up from 7, 8, 9, 10, sometimes overnight almost and I was unfortunate, like many Members who had mortgages at that time, to end up paying 17 per cent at the time; 17 per cent and then when I needed - because of my son's condition - an unsecured loan to extend the mortgage above that which was the value of the house, we needed a 2 per cent above base. Now, that is not being suggested here, but what is being suggested, there is only one way that interest rates are going and that is up. So, what the Minister for Treasury and Resources has done, because he recognises the difficulty that Scrutiny has, so what he has done is say: "Approve the strategy, I will hedge to try and ensure that we are in a better position, but I will not take out the bond until after the report from the Scrutiny Panel." I do not think there is any doubt about that is what he said. He will prepare, get the work going, but he will not take the bond until we have the report from the Scrutiny Panel. Nobody in this Assembly, I might suggest, had any doubt, when they approved the proposition to define the hospital site and therefore, by extension, to build a new hospital, nobody had any doubt that we would need in excess of £400 million to carry out that scheme. It could come, if one wanted to, from our Strategic Reserve. It could come from borrowing. It could come from a combination of that. But, we all knew that is where we were going. There is no other magic way of getting £400 million and what we need to do here is to reduce the risk. I could give you a long

speech, but Members would not appreciate it, about the risk of the building, delaying the building, but we are not in that scenario at the moment. What we are in at the moment is, if we do not get this right, if we do not allow the Minister for Treasury and Resources to hedge as quickly as we can - half, he is saying, that is keeping his options open on the size of the bond - then it is quite likely that it is going to cost more and that is a decision that Members have to make. I do not think I can say much more, but this is about reducing the risk and still allowing Scrutiny to do their work. Perhaps the only other thing I would like to say, and we have heard about the advice from EY, we have heard about the advice from the Fiscal Panel, but might I remind Members that Scrutiny's own advisers, Concerto, said exactly the same: the biggest risk to the scheme was delay. I do not think I can add much more, thank you.

Senator P.F.C. Ozouf:

This is a debate ...

Deputy J.A.N. Le Fondré:

Sorry, he has spoken already, Sir.

The Bailiff:

No, he asked for a point of order.

7.6.15 Senator P.F.C. Ozouf:

I will be addressing the Corporate Services Scrutiny Panel concern in a second. The question before Members is whether to refer this back, in order that the Minister for Treasury and Resources cannot engage in a number of actions to protect the public finances and we are testing whether or not we have had some emotional arguments about ministerial versus Scrutiny and all the rest of it.

[14:45]

My own view is that this Assembly works best when Scrutiny and the Executive work together, as I tried to do and I believe continue to do, tried to certainly with the Scrutiny Panels that I have worked with over the years. It requires some goodwill on both sides. It requires an understanding that the world moves quickly and that decisions have to be made on a timely basis. I read the remarks of the C.P.A.'s (Commonwealth Parliamentary Association) present chair, forgive me if I do not remember exactly what his title is, but he is an eminent individual and I have read many speeches of parliamentarians. We were pleased to see and welcome the Speaker of the New Zealand Parliament into Jersey last Friday and, of course, his predecessor is known to Members. New Zealand is relevant to this topic. New Zealand, which I have visited and learnt a lot about their parliamentary practice, is a model of Scrutiny and the Executive. Politics can be noisy sometimes, as we have seen. It is important, but that does not mean to say that it is bad, but it should be noisy, because there will be debate and that is what is happening here and people can see it for the first time and I am delighted about that. Now, Scrutiny: I wish to draw Members' attention, I have looked on their website and there was a Future Hospital Funding Strategy announcement on their website on 30th November. I stand to be corrected, but I am sure that I have seen this and I have got it in front of me. There was an announcement about what the review would be about with the terms of reference, to examine reliability of financial forecasts, assess the reliability of the level of identified expenditure on the hospital capital project 466, blah, blah, blah. Now, like most Members I had a little bit of a New Year break, but I have been doing quite a bit since 30th November, I have had to, as will become clear, in a number of different portfolios. I do not hear anything that Scrutiny ... Scrutiny was well aware of the fact. Is there no member of the public aware that there is an urgent necessary need to get on with building the hospital and making decisions? Another Member spoke of the incinerator; it had been put off for years. There might have been a discussion about how to pay for it; at the time we probably could not have got a

borrowing through the States Assembly. I know there are cries from people again, perhaps communication is our biggest problem. Borrowing for the incinerator; it might have been better to borrow it, or do some sort of other financial instrument. I do know it was the right time and, of course, lots of people have evidence in hindsight as well. Lots of people know and they say they, of course knew then they had evidence of the future now. Well, I have got no evidence of the future; I have just got some experience that tells me that this sounds like Groundhog Day. Is there any doubt at all that there is going to have to be a substantial amount of money put, in terms of cash flow, into the Treasury in order to fund the appropriate expenditure allocations, which will come back to this Assembly, every bit? There was no head of expenditure, this is not a bill of supply; this is a permission to undertake certain cash flow matters and to make certain investigations into the repayment of that cash flow. There was no expenditure - forgive me if I am wrong, if I am erring please correct me - but I do not see this as a bill of supply. I do not see this is an expenditure approval. It is setting the groundwork for that. What is absolutely clear is there are a number of separate decisions that need to be taken: the cash flow of it and where to find that cash. There is a debate about the level of the cash that needs to be taken and then there is a debate about the actual decision of the location and the precise matter that is going to have to come forward, and each one of these things has got to be properly shaken down and tested. But this Assembly has known for years. There was a proposition put forward in the 2014 Budget of an expenditure cash flow arrangement of £300 million. Fortunately, even though there has been some delays and we have been through a process of People's Park and all the rest of it and the price has gone up, but then the quality might be better, maybe a bit more time will mean that we have got consensus, which I hope we have got, but there is no doubt at all that the Treasury is going to need to make some decisions to put some money aside in order to pay for the hospital. We know that. It is not going to be zero and we do not know whether it is 468 and the Minister for Treasury and Resources' proposition is a maximum of. I think everybody knows that the Minister for Treasury and Resources is a pretty prudent Minister for Treasury and Resources. He is a good traditional Jersey man, or woman, he is a Jersey man, or woman, and their money are not easily parted and I think I can speak that the Minister for Treasury and Resources is doing that and the Assistant Minister was in Treasury with Deputy Noel and I; these are prudent people that take advice and they take proper advice. What we are doing is we are expecting Scrutiny to be experts and this is again the fudging of the role; fudging of the role of expertise. Now, I expect there is policy and there is implementation. It is very clear to me that the policy of putting aside at least £300 million needs to be the ability for the Treasury to make a quick and decisive decision to basically put aside £300 million, or to make necessary arrangements to hedge to protect against the rising interest rate situation. A week is a long time in politics and a week is a long time in bond markets, *et cetera*, sometimes. Now, this is what this debate is about. I fully accept and understand why Scrutiny should be all over part (d) of this proposition and there certainly should be a testing of these issues. But, do I have confidence - and again I am probably going to get told off - but I am looking at the track record of the Corporate Affairs Scrutiny Panel. I note with interest that they said that we are going to start work on this on 30th November. I think it is 18th January. There have been a few days off in between, but presumably people should have been appointed in order to be able to at least give a preliminary indicative report in order to say what we really think. No, we do not want this, we want to go through another Scrutiny process. Reboot, start again, delay, put the whole thing off again. How many times are we going to do this? It is like Groundhog Day! We have already made certain decisions. This Assembly has got an extant decision to already have approved £300 million, or £297 million, to be precise, off the Strategic Reserve. I know the price has gone up, inflation happens, but fortunately there has been a rather splendid Brexit bounce of which our experts - no praise for them - but the expenditure and the actual Strategic Reserve that underpins all of this, I am advised, even though we have made some withdrawals, is now £806 million. I have been back to that budget that we had then and, of course, there is no way that we would have expected that to be

the kind of amount of money and that is with £50 million taken out to protect ourselves on the economy. I think the Minister for Social Security is sitting on at least another £300 million, or £400 million, in her fund; that is jolly good, she may be able to be of assistance, subject to expert advice, in order to use some of her bonds in her portfolio in order to reduce the cost of expenditure. We are a net asset jurisdiction, we have got no net debt; it is net debt that matters. People that are clever use their balance sheet and they take good advice, and my goodness me we have put in place good advice with the Consolidated Fund. Why do we need to have Scrutiny to not allow the Minister for Treasury and Resources to take advice from people with a jolly good track record of managing the balance sheet, doing well in a market of turmoil and putting us in a position where we can say that we are in a better position today, in net assets, in Jersey than even at the start, and at the beginning, and the middle, of the financial crisis? If there is another Member that can name another jurisdiction in the world, apart from an oil jurisdiction like, perhaps, Norway, then perhaps they can tell me, because I cannot find one and I like looking. I understand the need for Scrutiny but, please, let us make some decisions and allow decisions to be taken. This is not a yaboo debate, this is not an opposition debate between Scrutiny versus Ministers; we have got to start healing some of these debates and we have got to start working together and we have got to start this sort of appalling situation where people say: "If you dare not say Scrutiny can have a look at something, then you are absolutely on the other side of this Assembly; it is a them and us." This is not like that, we sit together and we are each with our responsibilities, but Scrutiny has a responsibility to help us and help the Executive and help this Assembly make good decisions. But they must do so on a timely basis and I look at their track record; I am still waiting for their review. I know they complain they have not got information, I know that, but interim reports would be quite helpful to update us along the progress. I am waiting for a number of reports from Corporate Services. I know Deputy Le Fondré is not going to like it, but it is true; I have been waiting and looking forward to seeing the International Financial Centre review for some time. It is not good enough just to say that they have not got information, because there is lots of information out there and there are clearly buildings going up, because our economy is doing so well, and the economy needs to continue to do so well. But it is uncertainty which is the biggest problem that we have. We are supposed to be stable, nimble, fast moving and we want a Treasury that will be nimble and fast moving if the expert advice is there. However, I developed a practice with my former Scrutiny chair - not yet because I have not had the chance to discuss with the Chief Minister the draft letter yet. So I will talk to him about that later. But, the current Scrutiny Panel chair and I had an arrangement whereby he saw nothing and saw nothing in the paper, or on a States email system, and I know sometimes it was just a few minutes before, but we were getting better and better at it, because we kind of got an understanding. I welcome Scrutiny saying ... I almost gave them - not a veto, not a calling right - but certainly, with respect, to discuss something with the Scrutiny chair. Is this an example of a Scrutiny chair and a Scrutiny Panel working and talking interactively and saying: "I share this problem. This is what I am thinking of doing and I have got to move quickly"? No. If we go with the Deputy of St. Ouen's arguments then, basically, the Treasury cannot do anything. Nothing. They can do a bit of preparation. But then what is the certainty of that? The States is going to throw it out again? You going to be in Guernsey? Put off 3 incinerators, put off the hospital again? Oh, great; that is going to be great for our Island community. No. Scrutiny has an important role, but with that responsibility comes a responsibility of doing things on a timely basis when things are necessary and what is necessary. They cannot be frustrated Ministers, because they are scrutineers. They are not Shadow Ministers in that sense. They are there to be a critical friend, not a critical blocker, and that is effectively what is happening. There are some areas I would invite, perhaps ... I do not know what the solution is, but perhaps (a), (b) and (c) are bits of the proposition that are able to be approved immediately to give the Minister the opportunity. I will just say one final thing: when I was appointed Minister for Treasury and Resources, the moment I went over to the Treasury I found out that the incinerator had not been

hedged. That was the first thing I found out. The second thing that I found out was that the estimates of public revenues were wrong and they had to be redone and there was a £100 million deficit by 2013, which had to be tackled. Apparently I am the prophet of optimism and I can also be the prophet of doom, apparently; people have short memories. I have faith in the Minister for Treasury and Resources. I have faith in the Minister for Treasury and Resources, absolute confidence in his Assistant Minister working with him and the expert advice that the Treasury has. I know they have been working jolly hard and we need to say: “Yes, Treasury. We understand you have expert advice; your track record is good. If you need to make a quick decision of up to whatever figure I think the Minister for Treasury and Resources has in mind.” Again he is a prudent individual, I understand; probably he might even say: “Look, I really do not want to say that I have to spend all that £468 million. I need to, perhaps, just hedge an absolute minimum amount that I know ought to take whatever derivative, or whatever arrangement possible.” But he knows he has got to get at least £250 million, £300 million. The rest of it is up for debate.

[15:00]

We are going to spend a bit more, but we have got a bit more, so that is okay. We are going to get a good hospital, and that is all fine. So let us get some realism here. We have got a Treasury that know what they are doing. There is no reason why they cannot get on and do these first issues. Let us not block them again and let us not have another Groundhog Day. Let us not delay. This is the problem. Fast moving and nimble is the thing that we are supposed to do when we are talking about Jersey; fast nimble - cautiously nimble - that is what we are. Of course, we get in the micro sometimes and that is not to say that there should not be accountability. But I know exactly what is going to happen. If interest rates go up the Minister for Treasury and Resources is going to get the blame and then somebody else will say: “Well, you should have told us.” Well, crystal balls; nobody has got them. Let the Treasury, with their expert advice, get on and if they need to hedge, if they need to draw down a reasonable amount of money having regard to Scrutiny, keep Members informed and I say: “No” to the Deputy of St. Ouen’s proposition, please. Let us allow the Minister for Treasury and Resources, his expert advice - he has got a pretty good track record - to get on and make the necessary decisions to prepare for us to have a good debate, a quick debate and a proper debate to get our hospital built because, my goodness me, we need it. It has been far too long. Let us not have another Groundhog Day, please.

Deputy G.P. Southern:

Point of clarification. I wonder today if he is speaking still as Assistant Minister, because he certainly seems to be rallying the troops today. If he has resigned ...

The Bailiff:

No, that is not a point of clarification. The Senator did not purport to be speaking as Assistant Chief Minister.

Deputy J.A.N. Le Fondré:

The point of clarification I was seeking - and I am not sure if it is from yourself or from the last speaker - is my reading of the first 3 parts of this proposition are they are all to agree, or to approve, or to authorise specific things. They are not an “in-principle” debate. The inference I took from part of the previous speaker, he was trying to say: “We might be going for smaller amounts, or in-principle”, or something along those lines. This is very specific and this is what we approve. To clarify: was my understanding correct?

The Bailiff:

Who are you asking? Are you asking me to clarify that, or are you asking the Senator?

Deputy J.A.N. Le Fondré:

Whoever can answer.

The Bailiff:

Senator, you ...?

Senator P.F.C. Ozouf:

I am not giving a second speech.

The Bailiff:

You can clarify it to the extent that you spoke about it, yes.

Senator P.F.C. Ozouf:

So, yes, I asked Members to read the proposition, to agree expenditure up to a maximum and then I spoke, and I repeated the fact that a good Minister will communicate with a Scrutiny chair in a constructive way. That is what I said and I stand by it.

Deputy M.R. Higgins:

Point of clarification. The Minister said as part of speech how people forget. He was referring to the incinerator. He also stated that he discovered that the incinerator was not hedged. In fact, I discovered it on the second day, and I went through and came back to see and told the Senator ...

The Bailiff:

Deputy, please sit down. I do not give you leave to raise that as a point of clarification. It is not relevant to what we have to discuss.

Deputy M.R. Higgins:

Okay. He has just got a selective memory.

Senator P.F.C. Ozouf:

Is he saying I lied, Sir?

The Bailiff:

No, he is not. It is not relevant to what he had to say today. Now, Deputy Brée.

7.6.16 Deputy S.M. Brée of St. Clement:

What we have in front of us is not a referral back. It is a fundamental question being asked about a fundamental principle of this Assembly. That question quite simply is: "Does this Assembly believe in and fully support the process of Scrutiny?" Let us just look really at why Scrutiny is so vitally important at this time. The capital amount that is being suggested, the maximum amount that could be borrowed through the issuance of a bond, is £400 million. Over 40 years the total cost of borrowing, which is something we need to look at, is just short of £1 billion. That is what we are talking about. That is the commitment that we are being asked to make. It is not £400 million. Now, we have also heard a lot today about dates and when somebody briefed somebody, or somebody told somebody something else. The important date is 30th November last year when the proposition was lodged. Then, and only then, do we know what the exact details will be. It is only then and only then that we as a Scrutiny Panel can decide which expert adviser to appoint, because we do not know the nature of the proposition until it is lodged. We have also heard a lot being spoken about volatility. Volatility does not mean prices go up. Volatility is about a measurement of the movement in price that can be up or down. Now, for those States Members who attended last week's States Members' briefing on this particular proposition, I would like to remind

Members that Treasury's own expert adviser agreed with me that at the moment volatility is low. The volatility in the particular instrument they are looking at which for those who wish to know is the long-term gilt yield curve, the volatility occurred between August and November; not now. Also, we have heard because of the volatility we have to hedge. I have read the proposition and I see no mention in it, whatsoever, of hedging. Remember, and I think it is important that we do remember, what we are going to be voting on when it comes to debate this proposition, is what is in the proposition. Not what is in the report; not what is in the words that we hear from the various Ministers or Assistant Ministers, but what is in the proposition. Hedging is not included. But, with all the talk of hedging the nature of the hedging instrument to be used has never been mentioned. The cost of the hedging instrument to be used has never been mentioned. The Minister has also stated that the best way forward is that if this Assembly approves the proposition, Scrutiny should still go ahead and do a review and issue a report and he will, and I use his word here, "consider" the Scrutiny Report which commits him to absolutely nothing. The purpose of Scrutiny is to ensure that all Members of this Assembly have the full facts and figures and options available in front of them at the time of the debate, and we undertake independent scrutiny. That is the important word here, "independent" scrutiny. It saddens me to say, but at the current situation, as was borne out yesterday, there is an apparent lack of governance going on. There is apparent lack of clarity from the Council of Ministers as to who is politically responsible for what. It is much more important, now more than ever, that Scrutiny plays its role. It is about parliamentary process. Scrutiny is there to provide checks and balances and it is incumbent on Scrutiny to ensure that whatever proposition is put forward it is in the best interest of the Island and the public of this Island. At the moment there is a high degree of public concern over the actions of the Council of Ministers. Now, more than ever, is the time for parliamentary process, as agreed by this Assembly, to be allowed to take its course. Do we want to see a process whereby we are allowing, quite happily, ministerial departments to scrutinise themselves? I would certainly hope I will never see that in this Island. I would suggest that the failure by this Assembly in not supporting the Deputy of St. Ouen's proposition will send out completely the wrong message to the public of this Island, namely that this Assembly does not support and does not fully believe in the role of Scrutiny in ministerial government, and as such I urge Members to support the Deputy of St. Ouen's proposition that the debate on this proposition is suspended and the matter is referred to Scrutiny in order for Scrutiny to complete its role.

7.6.17 Senator S.C. Ferguson:

I get a lot of emails, as spam, from investment advisers. You know, a once and never to be repeated offer; apply now. The arguments that we heard prior to the incinerator debate were very similar: "We have got to do it now; we are running out of space. We are running out of this, we are running out of that. The old machine is about to fall into the sea and die." When I first got involved in the finance industry, at the end of the 1960s, there was a gentleman called James Hanson, who was a very successful industrialist. I do not think most people here will have heard of him, because I do not think they were born then; but anyway ... He used to say that if a project came to him, he wanted to have the information of the very worst case scenario, and he was a very successful businessman. So, we have not had that sort of information. We have not been given a comment on the worst case scenario. What does happen if everything goes against us, interest rates, stock market, *et cetera*. All the things which will be looked at in the normal course of a business. You know, the hedging strategy, which Deputy Brée has just mentioned, it is not in the proposition. We have not had any of these sorts of samples. We have not got the full information. Having been through the incinerator debate, I am not going to be pushed into anything now. I get around and meet people at the cheese counter at the supermarket and so on, and I get retired fund managers, or bank managers of large businesses, and they are all expressing concern about the information we have had.

The Bailiff:

We are inquorate. We are down to 24. Could I ask Members who are in the coffee room outside to return to the Chamber? Thank you.

Senator S.C. Ferguson:

These gentlemen and ladies of great experience are all concerned about the information that is in the public arena and the cost of the proposed new hospital.

[15:15]

As a sideline, I do not know whether the Health Department are planning for a pair of Christian Louboutin shoes, or a hospital of the standard of Christian Louboutin's shoes, when all we need are Clarkes. We need a good general hospital, but that is another story. I am just waiting for people to be quiet, so I can finish. As I say, we have not had the information; we have not had the worst case scenario. They are trying to railroad us into a decision and take no notice of Scrutiny. I am sorry, I support the proposition and I think we must scrutinise this, because there is too much public concern about what is going on.

7.6.18 Senator P.F. Routier:

I really wanted to express my concern about the way this debate has been developing, about Scrutiny versus the Executive. This is such a major decision for our Island, that it is a whole Assembly decision we need to be making. I know that Scrutiny would come back and advise the Assembly on their findings of what their advisers would help us to get to. I was fortunate to go along to the presentation, which was arranged by the Minister for Treasury and Resources and the team, and to listen to the EY adviser about his views on the suitability of what was being proposed and the timeliness of it, and I came away from that meeting thinking that it was a risk that we are being asked to address. It is a risk we need to take. It is the information we were given that for every 10 basis points that it changed we could be into a £300,000 a year risk and that could carry on for 40 years. I am a very simple person when it comes to money; I like to get the best deal I possibly can. I have thought about it long and hard, about how - it has been mentioned as a dilemma for us, something that we are being put in a difficult position - about whether we should allow this extra time to have further examination of the advice that we have been given. I think it was Deputy Brée mentioned also about the advice from the EY gentleman was that the volatility that had been experienced, I think from last October/November time there really had not been a lot going on. But only yesterday, as the Prime Minister of England got to her feet and during her speech, the volatility in the market was immense. It has not settled yet. We are in a risky position. When we go to press our button today, each of us individually, what risk are we prepared to take? Are we prepared to risk costing our Island and our community more money? That is what it is about. It is not about whether Scrutiny has got time to do things. We are being asked through advice to allow the proposition to fund the hospital, which we desperately need to progress. There is going to be an opportunity for Scrutiny during that process to do their work and then to come back. If Scrutiny comes back with other findings the Minister for Treasury and Resources may not enter into that bond. All I am saying is that when you press that button think about if you are prepared to risk that extra, additional cost for our community. I am certainly not.

7.6.19 Deputy K.C. Lewis:

I will be brief. Lots of talk about risk today, but if all risk came with a guarantee there would be no risk. But this is the biggest project ever in the history of Jersey. This is incinerator times 9 by the time we have all the interest payments paid. The Corporate Service Scrutiny Panel has been accused of being blockers, but in a review of the International Finance Centre we are the ones who are being blocked. I am not sure if I can mention, but I think it is in the public domain that we had

to *subpoena* the S.o.J.D.C. (States of Jersey Development Company) to get all the relevant information, causing more and more delay. Scrutiny is essential as part of the entire process. Senator Ozouf implied that we were being awkward, but it is part of our remit that we scrutinise the whole project. With regard to the International Finance Centre, I think Senator Ozouf might need a dictionary, because the definition of international is between, or among, nations and we do not have any signed up yet with the International Finance Centre. Talking to lots of people, but no one has signed up yet. This is the biggest project in the history of Jersey and our children will be paying for this, and our grandchildren, for decades to come. We must make sure we get it right and it is absolutely essential that this is referred to Scrutiny.

7.6.20 Deputy D. Johnson of St. Mary:

If I may, I would like to get back to the bones of this particular proposition, rather than extend it to other matters in which Scrutiny are being involved. I am afraid I have to share the view of the Assistant Minister for Treasury and Resources to say this has degenerated into a debate between Scrutiny, on the one hand, and maybe the Council of Ministers on the other. Most of us do not wish that to be so. We all, I think, accept the points made about the risk involved if we do not pass this now. If Scrutiny had been involved and they had accepted the basic format, the structure of the financing, I think again most of us would have accepted it would be prudent to go ahead. The basic point is that Scrutiny has not had the opportunity to approve that structure and that is a basic point. Do we allow them to approve that structure first, or do we go ahead and borrow now? Either way, it would pain me to say, that I support Scrutiny on this. This is a major project and they must be allowed to carry out their exercise first. So I will be supporting the Deputy of St. Ouen's proposition.

7.6.21 Senator I.J. Gorst:

You were almost psychic for a moment there, Sir. Can I start by welcoming our Guernsey colleagues in the balcony? It is nice to see them here with us. **[Approbation]** I am not sure they are going to learn much. No, that is not fair. I am pleased to follow Deputy Brée, because a lot of what he has said about the content of the proposition I find difficult to disagree with. I do not agree that it is a principle of the Minister for Treasury and Resources against the Scrutiny Panel. I do not think it is that. This is a debate about whether Scrutiny - and I do not think it necessarily is helpful for us to go over the old ground of 30th November, when the proposition was lodged, and 31st November when, according to the Scrutiny website, the terms of reference for the review were first published. That might be an error on the website, but that is what it says. I do not think going over all that whether people could work over the Christmas period, or not, or whether they could not; whether an expert could do this, or that, is necessarily helpful to us today. The question that we face today about this proposition - and this is where I understand what Deputy Brée was saying - is do we want to make this decision today and mitigate any risks in changing interest rates, or do we want to wait, allow Scrutiny to do their work and that risk would remain. Now, that risk of course only remains if ... let us imagine the scenario where Members do not accept the Deputy of St. Ouen's proposal, they do accept the Minister for Treasury and Resources' proposition. The Minister for Treasury and Resources then, rightly, would have a decision before him upon which to then go and make a decision. That decision, rightly, would include expert advice about whether the decision of the States should be hedged before a bond is secured in the marketplace. So, the proposition does not say it is not agreeing to a hedge, but the Treasury rightly would ask their experts, because now they have a decision: how can they mitigate any risk between the decision date and securing the funding in the marketplace. What we are talking about today, and we talked about at the States Members' briefing, is the difference in potential change between a decision, that could be made today or tomorrow, and a decision that could be made post-Scrutiny's review, which could be 4 weeks, could be 6 weeks; I have got no doubt whatsoever that Scrutiny would undertake

to do a review as quickly as they could with the expert that they would employ. That is the decision. Senator Ferguson asked about worst-case scenarios. She knows from her experience in financial services, I hope, that in this regard the worst-case scenario is that the interest rate on these instruments moves so strongly against the Minister for Treasury and Resources that the strategy that is being proposed would no longer be the optimal strategy. These things are not just cast in aspic; what is an appropriate funding strategy given current market conditions may not be an appropriate funding strategy if those market conditions change over a period of time. So, let us imagine that Scrutiny did go and do their review and it took 6 weeks, there may be such a change in market conditions that they would come back and say: "We do not agree with the Minister for Treasury and Resources' strategy because of those changes in market conditions." None of us in this room has a crystal ball. Deputy Brée was right to talk about volatility and the height of the market, I think in November, and he reiterated that, as he did at the briefing to States Members, and that it has fallen away slightly since that November high and that the upwards volatility in the market saw a high in November. None of us knows. Deputy Martin made some unfortunate comments about the Ernst & Young adviser, but advisers take the best information that they have got and they advise.

[15:30]

But, as again Deputy Brée said quite clearly, the rate could go down as well as up, and Members could make this decision today or tomorrow. The Minister for Treasury and Resources could get the best advice available to him, that advice could include a hedge; one would expect that to be the case. There is a cost associated with that, because of the uncertainty in markets, and the rate could then move against it. The Minister for Treasury and Resources has brought this debate to the States today because this debate and this decision is bigger than the Minister for Treasury and Resources, it is bigger than the Minister for Health and Social Services, it is bigger than the Council of Ministers, it is bigger than the Corporate Services Scrutiny Panel. That is why he has come to the Assembly to ask them to say to him: "Go away and get ..." within the parameters which the Connétable of St. John has now very helpfully put into this proposition, because there was ambiguity in the way that he described within those parameters, and he has said it would be a dereliction of his duty if he did not ask the States to give an opinion. That is what this proposition is doing. That is the finely-balanced decision that the Minister is asking Members to take. Some Members of the Scrutiny Panel rightly have carefully said, "no". They think, because of their reading of markets and their reading of the volatility, as I have just mentioned, that we can take another 6 weeks to make that decision. The Minister for Treasury and Resources is saying the best advice he has currently got is that a potential for an upward trend over the next period is what they see, and that is why, rather than the normal process of saying: "Yes, of course, the Minister for Treasury and Resources is quite prepared to give Scrutiny another month to do their work" it is because of that that the Minister for Treasury and Resources felt, and I think rightly, that he should come to this Assembly and ask for them to make that decision rather than just him as a corporation sole to make that decision. I think that is right; it is not about the Minister or Scrutiny, it is not about that principle, it is about the supremacy of this Assembly being asked to make that decision outside of what one would expect to be the normal parameters. There are arguments on both sides - I absolutely acknowledge and understand that - and when there are arguments on both sides and when we cannot see into the future about the volatility of markets, sometimes that gives us a challenge, and we face one of those challenges today. I think the Minister for Treasury and Resources is right to ask the Assembly to say to him: "Go away and secure the best possible source of funding that you can at this time within those parameters." Other Members may think we should wait a little longer and consider other options and then we will make that decision. That is a decision for this Assembly, but it will be this Assembly that decides. If the market goes against the Minister, this Assembly will have instructed him not to do it but to wait for the review; that is fine.

If the market falls away then this Assembly will think it was the right thing to do to ask Scrutiny to take a little longer. We are not in the world of certainty; we are talking about a financial product, there is uncertainty. These rates can go up, they can go down; that is the decision before the Assembly this afternoon, but I am supporting the Minister for Treasury and Resources.

Deputy R. Labey:

Sir, could I see a point of clarification from the Chief Minister? If the biggest concern is the imminent risk of a change in rates, why did the Treasury take so long to arrange the financing?

The Bailiff:

I am not sure that is a question the Chief Minister can answer. Does any Member wish to speak?
The Deputy of St. John.

The Deputy of St. John:

I was hoping that I could seek some clarification from the Attorney General. It is with regards to the Public Finances (Jersey) Law on the actual proposition.

The Bailiff:

The Attorney has been called away to another urgent meeting. I was not aware of that until he passed me a note, but we can certainly ask the Solicitor General to come over. Greffier, would you do that? Do you wish to speak as well, or not?

7.6.22 The Deputy of St. John:

Just briefly, Sir. The reason why I stand to speak is I do not really want to get into this whole argument about who is right and who is wrong; about whether Scrutiny has been wrong, or whether the Council of Ministers just cannot do things on time. I think that has been laid out, but I have been involved in these types of arguments time and time again for the last 8 years and, to be honest, we are humans and we should be able to be civil and be able to work together. Ironically, that does not seem to be the case. What worries me about this specific proposition, and the reason why I need to ask the Attorney General, or the Solicitor General, for information on the legislation is that I am not sure what we are being asked in the first place is in accordance with what has been suggested by the Ministers, or what is being referred to as what we agreed with the last bond, because it is very different wording. That is all I really wanted to ask: I just wanted to ask the Solicitor General, or the Attorney General, a specific a legal question so that I can determine whether I think it is more appropriate for Scrutiny to look at this. Understanding the issues surrounding volatility, and all these fancy finance words, and that there is uncertainty ... because the only thing I have ever known is that there are only 2 things that are certain in life: death and, ironically, taxes and so everything is uncertain. I know there are so many uncertain things going on this year, and it does worry me, but what I know will happen ... and I have got to, as an independent States Member, who has been elected by parishioners in St. John, look at the actual wording and look at the specific things I am being asked to agree. When I do that, it makes me more and more uncomfortable. When we start reading through the report and the contradictory terms that are placed in there, there is talk about precedents, and all those types of things. It is not fact-for-fact, it is not exactly the same thing; this is a very different project. I would have preferred, and I did make this point to the Minister for Treasury and Resources last month, if he had come to us and asked us if he could go out to hedge. I have suggested to the Council of Ministers today that we should be asked to look at approving (b) and (c). Looking into it even further, when I read paragraph (c) and look at the Article in which we are being asked if we are of the opinion to authorise in accordance with the Finance Law, it is not the same as what we were asked to agree in accordance with the Finance Law for the housing bond. So they are 2 very different things. I need to understand exactly what it is I am being asked to authorise here before I decide whether I want to

say: “Yes, Scrutiny needs to look at this much further, especially with regards to paragraph (d)” but I need that understanding from the legal expertise.

Senator I.J. Gorst:

Sir, could I suggest: I think it is quite important to get the Deputy of St. John’s advice from the Solicitor General.

The Bailiff:

He is on his way, Chief Minister.

Senator I.J. Gorst:

I was just wondering whether it is worth adjourning then, otherwise we go to the summing up.

The Bailiff:

Very well, if Members wish to adjourn briefly, that is what we will do. Is that the mood of Members? No?

Senator I.J. Gorst:

Sir, could I propose, then, that we adjourn for 10 minutes to allow for the arrival of the Solicitor General, please?

The Bailiff:

We will adjourn for 10 minutes. Perhaps we will just sit a moment. Deputy, could you please formulate for the Solicitor General your precise question that you want answered and then we will adjourn for 10 minutes?

The Deputy of St. John:

Thank you, Sir, and thank you to the Solicitor General for running over so quickly. Paragraph (c) of the actual proposition itself asks us to authorise, in accordance with Article 21(1) of the Law, which is the Public Finances (Jersey) Law 2005. My specific question is: firstly, what exactly is it that it is asking us to do, but also, at what point does Article 21(3) kick in, in which that requires us to make sure that we do not borrow any more than our previous year’s income? If we are not being asked to agree that, does it still stand?

The Bailiff:

Deputy, is your question concerned with what happens if our income drops in 5 years’ time and whether the total is then more than the income which we then have available? Is that what the question is?

The Deputy of St. John:

Kind of, Sir. For me, what I am being asked here is to authorise, in accordance with Article 21(1), so, if I am being asked in accordance with that, I want to understand where Article 21(3) kicks in, if it does at all, and whether we should be agreeing it as part of the overall package. Because, under the housing bond, we were asked to agree in accordance with Article 21 as a whole, not a specific paragraph.

The Bailiff:

Do you need 10 minutes for that, Solicitor General?

Mr. M.H. Temple Q.C., H.M. Solicitor General:

Sorry, I have not been following the debate, so I would appreciate 10 minutes to do that, Sir.

The Bailiff:

Very well, then we will adjourn for 10 minutes.

[15:43]

ADJOURNMENT

[15:56]

The Bailiff:

I am not sure the Solicitor General ever had so many Members wanting to get my advice.
[Laughter]

M.H. Temple, Q.C., H.M. Solicitor General:

Sir, I have had the opportunity of reviewing the Public Finances (Jersey) Law, particularly Article 21 and, as I read it, the power to borrow, which is in Article 21(1) of the Law, has to be read subject to (a) whole law, but also (b) in view of the remaining provisions of the Article as a whole. As I read it, the power to borrow is subject to a qualification, which is in Article 21(3) of the Public Finances (Jersey) Law, which provides that: "The States should not authorise any borrowing if it would permit the total amount borrowed by the States at that time" - so at the time of the borrowing - "to exceed an amount equal to the estimated income of the States derived from taxation during the previous financial year." As I read that qualification, at the time that the States is considering authorising borrowing - which I understand to be now - then it is subject to the qualification that the total amount being borrowed at the States cannot exceed an amount equal to the estimated income of the States derived from taxation during the previous financial year.

The Bailiff:

Deputy, has that answered your question?

The Deputy of St. John:

Yes, thank you, Sir. Just one further question, then, if I can ask the Solicitor General from that. I understand that the forecast income for last year was £620 million and we are already borrowing £250 million so, if we are being asked to borrow up to £400 million, does that mean we are being asked to break the law?

The Bailiff:

I think that is not so much a matter for the Solicitor General but a matter, perhaps, for the Minister for Treasury and Resources. Can you confirm, Minister for Treasury and Resources, the amount of outstanding borrowing at the moment and last year's income?

Senator A.J.H. Maclean:

Sir, the advice that we have had is that we are within the parameters and, therefore, within the law.

The Bailiff:

That is not quite the same thing. I was asking you the figures; do you not have them available?

Senator A.J.H. Maclean:

I have not at the moment, Sir, but I can come back to you in a moment.

Deputy G.P. Southern:

As a point of information, I happen to have Summary Table A in front of me: proposed States Income Targets 2016-19. If the year is 2016 then the total income of the States, including additional proposals, is £685 million.

The Deputy of St. John:

That is not what I was advised by the Financial Planning Performance Officer of Treasury at a Scrutiny hearing on 19th December. I was advised that the forecasting income would be £620 million. The thing is, we will not know the actual income from last year until the end of March.

The Bailiff:

In the light of that range of figures, Solicitor General, what is your advice to the Assembly as to what the “estimate income” means; not figures, but in the law?

The Solicitor General:

Sir, I took the figure from what I heard to be the £629 million figure, I think it was.

[16:00]

Sorry, while other Deputies were speaking, I was also looking at Article 21(4) of the law which provides some further detail as to the total amount borrowed by the States, for the purposes of paragraph (3). Some specific items are not to be taken into account so, under 24(a), if there is an amount borrowed from a third party, by a company owned, or controlled, by the States, so if, for example, perhaps the Ports of Jersey had borrowed some money from a third party, that would not be taken into account as regards the total amount borrowed. Similarly, in (b), the liability of a company owned or controlled by the States under any guarantee, so if there is a specific guarantee or indemnity that has been given by a company that is owned by the States, that also is not to be taken into account for the purposes of the limit in Article 21(3).

The Bailiff:

Thank you. Minister for Treasury and Resources, I probably ought to know the answer to this, and I am afraid I do not: was the housing bond, which was discussed by the States, to be taken out by Andium or by the States?

Senator A.J.H. Maclean:

It is owned by the States.

The Bailiff:

What is?

Senator A.J.H. Maclean:

Andium.

The Bailiff:

I know that. The loan was taken out by the States, was it, and that was £250 million?

The Connétable of St. Peter:

Certainly the advice when I asked the question back in Treasury was that the Andium bond was not captured by Article 21, because it was seen to be a separate company owned by the States and it was that company that had the commitment to repay that particular bond separate from the one that we are looking at for the hospital.

The Bailiff:

Connétable, that is why I was asking who the debtor was in relation to the bond. If the States are the debtor then Article 21(4) does not apply.

The Connétable of St. Peter:

You are right. If it is the States as the debtor then Article 21(4) would not apply. My belief is that it does. That is the advice I have been given.

Senator S.C. Ferguson:

Perhaps Senator Ozouf can help, Sir, because I distinctly remember him saying in the States that it was more advantageous for the States to borrow the money and then lend it to Andium.

The Deputy of St. John:

Sir, can I suggest that Members take this into consideration and support the Deputy of St. Ouen for it to go to Scrutiny?

The Bailiff:

I think, Deputy, while that may sound attractive, one has to assume that there is the possibility that the States will approve the strategy as the proposition as drafted and, if it is unlawful, that would not be the correct thing to do. I need to know what the total sum is which has so far been borrowed, for the purposes of Article 21(3), and I would need to have a figure as to the estimated income of the States. I am going to adjourn now until those figures are made available from the Minister for Treasury and Resources on advice from the Treasurer.

[16:04]

ADJOURNMENT

[16:29]

The Bailiff:

Now, Minister for Treasury and Resources, I asked you to ascertain from the Treasurer the figures of the total amount borrowed by the States as of now and the estimated income of the States derived from taxation last year. Have you been able to obtain those?

Senator A.J.H. Maclean:

Yes, certainly relevant to this matter in terms of total tax income. I should point out, first of all, apologies to yourself and Members for the delay. Treasury have had more than 20 pages worth of advice from the Law Officers' Department in this area as to what is included, and not included, for the purposes, and officers have just been double checking to make certain that the information supplied is accurate.

[16:30]

On that note, I have been advised by the Treasurer that total tax income, which includes long-term care - which is part of the advice - is £665,543 million. As far as total debts are concerned: with regard to Andium - although the payback is £250 million - it is carried on the accounts at £243 million, which provides the necessary headroom for the maximum borrowing up to £400 million that is provided for within the proposition.

Deputy J.A.N. Le Fondré:

Probably predictably, can I ask for a point of clarification? I was surprised that the figure included long-term care. The only reason I say that is because I had always understood - and I do not know about in legal terms - that the argument from the Council of Ministers was that long-term care was not a tax.

The Bailiff:

I think the question probably is one for the Solicitor General as to whether or not - however described politically - long-term care is taxation for the purposes of Article 21(3). Solicitor General?

The Solicitor General:

I think the Minister for Treasury and Resources referred to advice from my department. I am not privy to that advice, but I have no reason to think that the Minister for Treasury and Resources' statement, that the advice was that long-term care should be included for the purposes of taxation. I am not sure that now is the right moment for a legal debate about the differences between a tax and a charge, but for the purposes of the qualification to the power to borrow that is in Article 21(3) of the Public Finances Law, I think the key point is that if one were to exclude revenue from long-term care, that would make the headroom that would be available to the States or the Minister for Treasury and Resources for the purposes of borrowing even greater. On the figures that ... **[Interruption]** Sorry, if long-term care is counted as a tax then it is income derived from taxation, so it would increase the amount of estimated income from the States.

The Bailiff:

Yes, and as I understand from the Minister for Treasury and Resources that is within the £665,543 million?

The Solicitor General:

Yes. On the basis of the figures that the Minister for Treasury and Resources has given, my calculation is that the amount that is sought to be borrowed does fall within the qualification for the purposes of Article 21(3), the limit. So, my advice is that the sum that is sought is not breaching the limit in Article 21(3) of the law.

Deputy J.A. Martin:

Could I have a clarification from the Solicitor General? The long-term care fund is collected through taxation, but is it not put into a ring-fenced fund for long-term care? I am very confused here and if these figures are included that gives you the higher figure and then you can borrow up to the higher figure. But, if they are absolutely untouchable, which I thought when we passed that law they are untouchable, it is set for long-term care, why would they be included into the maximum borrowing? I am very confused. If the Solicitor General could help me out, please.

The Bailiff:

I am not sure that is a question of law, but it is perhaps one more for the Minister for Treasury and Resources. The long-term care fund, Minister, is that a special fund established under Article 3 of the Public Finances Law which is only to be applied for long-term care?

Senator A.J.H. Maclean:

Yes.

The Bailiff:

If that is so, Solicitor General, does that affect the advice that you give, given the terms of Article 3(3) which direct that money credited to such a fund does not form part of the annual income of the States? Does that make any difference for the purposes of the construction of Article 21(3)?

The Solicitor General:

I would need some time to think about that, sorry. I do not have the advice that has been given by my department to the Minister, so I think I really need to see that advice. I am sorry about that.

The Bailiff:

This is an important point. May I suggest to Members that we ought to adjourn until 9.30 a.m. tomorrow morning when the Attorney, or Solicitor General, will be able to give full advice on this point? We could look to deal with other business if it is possible to deal with that now but, forgive me, I am sure we can.

Deputy J.A.N. Le Fondré:

Can we just ask that once the advice has been arrived at can the Minister for Treasury and Resources circulate effectively a schedule which says: "This is income tax, this is G.S.T. (Goods and Services Tax), this is the total income from taxation." If it has got long-term care in it, great, if it has not, also fine, just so we have got some clarity, because I think this is coming down to part of the nub of the whole debate we have been making.

The Bailiff:

I think, Minister, it would be helpful if the Treasurer could circulate Members with a note of estimated income for last year and where the heads of income come from that he has taken into account for the purposes of the figures you have just given us.

Deputy A.J.H. Maclean:

Yes, and relevant clearly to the 20 pages or so of Law Officers' advice we have had, we will summarise that together with those headline figures, not the advice in total, but to ensure that Members are properly informed as to what is included and what is not included.

The Bailiff:

I think the important thing will be the advice which the Attorney, or the Solicitor, General gives tomorrow morning to the States, so I am not sure that you need to do that.

Deputy S.M. Brée:

May I seek a point of clarification, as well, from the Minister for Treasury and Resources with regards to the outstanding borrowing in the debt market? The States of Jersey bond was issued at £250 million and yet I believe that the Minister for Treasury and Resources mentioned £243 million is written as the outstanding debt. My understanding of the debt markets is there is a maturity date on all bonds at which point the full capital is repaid. Could the Minister for Treasury and Resources please clarify why there is differential between the amount issued and the amount owed?

The Bailiff:

You are wondering whether we can take P.132 now, Minister, are you? It is slightly odd to do it in the middle of another debate, but nothing seems to be straightforward this week, so let us do that.

8. Draft Prison (Independent Prison Monitoring Board) (Jersey) Regulations 201- (P.132/2016)

The Bailiff:

We will take P.132, the Draft Prison (Independent Prison Monitoring Board) (Jersey) Regulations 201-, lodged by the Minister for Home Affairs. I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Prison (Independent Prison Monitoring Board) (Jersey) Regulations 201-. The States, in pursuance of Article 6 of the Prison (Jersey) Law 1957, have made the following Regulations.

8.1 Deputy K.L. Moore of St. Peter (The Minister for Home Affairs):

As Members will recall, on 11th October last year, this Assembly agreed to adopt an amendment to the Prison Law. The primary purpose of that amendment was to allow for the establishment of an Independent Prison Monitoring Board, which will replace the current Prison Board of Visitors. The amendment stipulated that the board would be formally established by Regulations. Accordingly, these draft Regulations provide for the establishment, functioning and administration of the new Independent Prison Monitoring Board. As I stated during the debate on the amendment to the primary law, this represents an important step towards ensuring that the Island complies with the requirements of the United Nations Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, otherwise known as O.P.C.A.T. The objective of O.P.C.A.T. is to establish a system of regular visits, undertaken by independent bodies, to places where people are deprived of their liberty, in order to prevent torture and other criminal, inhuman, or degrading treatment, or punishment. I am sure further clarification is not required for Members, but I feel it important to restate that this provides the sole explanation as to why the Prison Board of Visitors cannot continue to be comprised of Jurats. I wish, once again, to restate my thanks to the current chair of the Prison Board of Visitors, who has continued to serve in a very professional manner over recent months, and they have been most co-operative and helpful in response to this impending change. I am similarly grateful to the Education and Home Affairs Scrutiny Panel for their continued assistance and interest in this important policy area. I turn to the principles of the draft Regulations. The Regulations firstly provide for the establishment, constitution and functions of the Independent Prison Monitoring Board, which must consist of at least 7 people including a chairman and a deputy chairman. The process for the Minister appointing the members of the Prison Board, for the filling of vacancies, and the reappointment of members is set out, and the terms of appointments are set at 4 years with flexibility also given for circumstances where a shorter period may be required. The Regulations set out which persons are not eligible to serve as members of the Monitoring Board and those include, for example, a person who in the past 5 years acted for, or on behalf of the prosecution in any criminal proceedings, or who adjudicated on a question of fact, or law, in a court. The process for the resignation or termination of appointment of a Monitoring Board member is established, so are the proceedings of the Monitoring Board and the Board's powers and duties are also set out in the draft Regulations. The Board is, for example, required to meet at the prison not less than 8 times in any 12-month period, must review its practices and procedures every 12 months, and hear any complaint or request which a prisoner wishes to make. The means through which the Monitoring Board co-operates with the Minister and the Governor are also stipulated and the Regulations ensure that any matter which is of concern to the board is brought to the Governor or the Minister's attention. The Board is required to make an annual report to the Minister and other such reports as it considers necessary. Members may be aware that an open recruitment process for appointments to the Board has commenced, with a view to the new board becoming operational in roughly 3 months' time, subject to the Assembly's support of these Regulations today. To this end, the Regulations revoke the current Prison Board of Visitor's Regulations and provide for the new Regulations to come into force 3 months after they are made. This will ensure sufficient time for a transitional period and allow for a smooth handover between the existing and the new boards. I would be more than happy to take any questions from Members should they have them at this stage, and I move the principles.

The Bailiff:

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

8.1.1 Deputy J.M. Maçon:

As I alluded to earlier, I would like to take this opportunity to praise the Minister for Home Affairs and the department in the way that they have worked with Scrutiny. We were brought in quite early on when the drafting of these proposals were suggested and while we have not scrutinised them in the fullest of capacities, certainly it did allow the Scrutiny Panel an opportunity to pose poignant questions to the department, to get them to explain their reasoning for some Articles. For example, I believe in the original draft there was one which kind of compelled the Board to work with the Prison Governor to achieve all the efficiency targets that they had, and when we did ask the department to explain how a Board, which is there to work as an advocate for prisoners, which may require more resourcing, could be justified within their role, the department did go back and think about it and, of course, that Article now is not there in the law. So, I do hope and I would ask that the Minister could, perhaps, ask her officers to do a training session for other officers in the States about how work with Scrutiny can be done because, as I say, I think this has been a very good model, a very good way of going forward, and I can inform the Assembly that no States Member or member of the public has approached the Scrutiny Panel to raise a concern about these Regulations. Thank you.

8.1.2 Deputy J.A. Martin:

I would just like to say thank you very much to the Minister for Home Affairs. This was one of the areas I looked at very, very first with the last Deputy of St. Martin in 2006. I know it has taken a long time and it has been seen now that it is really the right thing to do and it is nothing to do with the previous people, it is just the right thing to do, totally independent. So, I really thank the Minister for bringing this and getting it through, and it is about time. Thank you.

The Bailiff:

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

8.1.3 The Deputy of St. Peter:

I am very grateful to Members who have spoken and for their appreciation. I think this is perhaps an example of how things can progress and move on and I am grateful to the Assembly.

The Bailiff:

Those in favour of adopting the principles kindly show. Those against? The principles are adopted. You do not wish to scrutinise the detail of these regulations?

Deputy J.M. Maçon (Chairman, Education and Home Affairs Scrutiny Panel):

No, thank you.

The Bailiff:

I got that impression. Minister?

8.2 The Deputy of St. Peter:

If we could take them *en bloc* please.

[16:45]

The Bailiff:

Very well. You do not wish to say anything more about any of them?

The Deputy of St. Peter:

I sense that the Assembly might not wish me to go into detail but I would be happy to do so if anyone would like.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on any of the Articles? Those in favour of adopting the Articles kindly show. Those against? The Articles are adopted. Do you move the Regulations in Third Reading, Minister?

8.3 The Deputy of St. Peter:

Before I formally ask the Assembly to adopt the Draft Regulations in Third Reading I would like to thank Members again for their support and contributions, particularly those who have contributed today, and to the Scrutiny Panels of the past. I also wish to thank the Assistant Law Draftsman for the time and effort that she has put into this piece of legislation. I extend my appreciation also to the relevant individuals in the Law Officers’ Department and my own department, Community and Constitutional Affairs. My gratitude once again goes to the Scrutiny Panel, whose reports on this subject, just over a year ago, was the origin of these Regulations, and the current Prison Board of Visitors, who have provided a really excellent service to the community. I have greatly appreciated working with them. I am sure the new Board, once recruited, will undertake their role with the utmost professionalism and I look forward to working with them also in the coming months. I move the amendment and ask for the *appel*.

The Bailiff:

The *appel* is called for. I invite Members to return to their seats. I did not ask if anyone wanted to speak in Third Reading and I suppose nobody wants to speak. I ask Members to return to their seats and the vote is on whether to adopt these Regulations in Third Reading. I ask the Greffier to open the voting.

POUR: 41		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				

Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Bailiff:

The next item on the agenda is P.138, the States of Jersey Law 2005: proposed amendment. I am not sure how controversial this is going to be, Deputy. Is it ...

Deputy M.R. Higgins:

I personally hope this will not be controversial at all.

The Bailiff:

The reason I hesitate is that, frankly, we ought to return to the other matter first thing tomorrow morning and if this is not going to be dealt with in three-quarters of an hour then, frankly, I would invite Members to adjourn now. I sense the mood of the Assembly to adjourn now and I think that is the right thing to do. In those circumstances the States will stand adjourned until 9.30 a.m. tomorrow morning.

ADJOURNMENT

[16:48]