

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 1st FEBRUARY 2017

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[9.31]

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

**PUBLIC BUSINESS – resumption**

**1. Draft Commissioner for Standards (Jersey) Law 201- (P.87/2016)**

**The Deputy Bailiff:**

We now continue with Public Business. The first item of Public Business is the Draft Commissioner for Standards (Jersey) Law 201-, P.87/2016, lodged by the Privileges and Procedures Committee and I ask the Greffier to read the citation please.

**The Greffier of the States:**

Draft Commissioner for Standards (Jersey) Law 201-. A Law to establish the office of Commissioner for Standards and to make provision for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**The Deputy Bailiff:**

Chairman, there is an amendment to this law lodged by the Chief Minister. Are you able to say at this point whether you will be accepting that amendment?

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

No, sir.

**The Deputy Bailiff:**

Very well.

**The Connétable of St. Clement:**

I am able to say and the answer is no.

**The Deputy Bailiff:**

No, you will not be accepting it. Thank you very much indeed.

**The Connétable of St. Clement:**

I propose the principles then. It was back in November 2013 the States decided and agreed to create the post of Commissioner for Parliamentary Standards. This would bring Jersey into line with best practice in other Commonwealth jurisdictions; for example there has been such a commissioner in the United Kingdom for over 20 years. At the moment complaints about Member's conduct under the code are referred to P.P.C. (Privileges and Procedures Committee) which is required to decide if there is a *prima facie* case to investigate the complaint if there is a *prima facie* case and determine on them and then decide what sanction, if any, whatever, the committee should take. The role of the commissioner which the States have agreed should be appointed would be to investigate the complaints ... well, firstly decide if it is worthy of a complaint and to investigate the complaint and advise P.P.C. how it should be determined. The P.P.C. will continue to decide on recommendation from the Commissioner whether or not a breach of conduct has occurred and to recommend to the Assembly what sanctions, if any, should be applied to a Member. The important thing, which the States agreed in 2013, is that the appointment of commissioner would inject an independent element into the process for decisions about Members' conduct and would be more likely to have the confidence of the public and there is no doubt that that has been the experience in the United Kingdom. Since that decision was made we have been working on how to implement the Assembly's decision. We did start the debate of the draft law

last year but the Assembly voted to move on to the next item because of a number of unanswered questions. We have worked on those matters which are fully set out in our report accompanying the law and I hope we can decide today to adopt the draft law so we can finally get on with appointing a commissioner and setting up the new arrangements. So much of the law dealing, for example, with the appointment process and administrative process is unexceptional and hopefully not contentious. In this debate on the principles I am going to cover the main areas which were contentious when this matter was last debated nearly 12 months ago. First, is cost. P.P.C.'s view was that the commissioner would be paid a daily rate of round about £300 to £400 and the total cost would be of the order of £8,000 to £10,000 per annum. This was based on the number of complaints that we deal with currently and this would be found within the existing budget. Administrative support would be provided by the Greffe as it is currently to P.P.C. So in our report we give further information on comparative roles both in Jersey and elsewhere. From this I hope Members will see that the cost estimate is reasonable assuming of course that there is not a sudden and dramatic explosion in the number of complaints against States Members and I would not anticipate that. Secondly, what was raised during the previous debate was the question whether the commissioner's remit should cover Scrutiny. Of course the commissioner's remit is to consider complaints brought under the code of conduct for Elected Members which applies to all elected Members at all times. Scrutiny members and Ministers are covered by the code of conduct for Elected Members at all times. So in that area all Members are covered by the code. But in this context we looked carefully at whether the commissioner's remit should be extended to include the Scrutiny code of practice. We have decided not to recommend this. The Scrutiny code of practice is not about the conduct of Scrutiny members. It is about how Scrutiny, which is an important and core part of this Assembly's work, functions. It would, in our view, be highly undesirable for complaints about the work of Scrutiny, such as whether a report had drawn on all the available evidence or whether a member's questioning in a panel meeting has been fair to be referred to an external investigator. This could seriously undermine the accountability of the Assembly and its Members to the electorate and could stop Scrutiny taking on more contentious work if a panel feared a barrage of referrals to the commissioner perhaps on spurious grounds. Scrutiny is a political process and complaints about Scrutiny should be resolved by the Chairmen's Committee or failing that the Assembly. We also looked at whether the code of conduct for Ministers and Assistant Ministers should be within the commissioner's remit and we decided in this case that it should.

[9:45]

That code does deal with conduct issues, for example to do with the receipt of gifts and hospitality by Members as well as matters that are fundamentally important to our work, such as the requirement for Assembly Members to be informed of important policy announcements before the media. Our view is that all complaints under the ministerial code should be referred to the commissioner which will then report its conclusions to P.P.C. This is a significant improvement on the current position where the Chief Minister decides whether a complaint should be investigated, the Chief Minister commissions the investigation, the Chief Minister receives the report of the investigation and the Chief Minister decides what to do with the report. That cannot be right and the public would rightly expect an independent investigation and a greater role for this Assembly which, after all, appoints the Chief Minister and each Minister. I propose the principles.

### **The Deputy Bailiff:**

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

#### **1.1.1 Senator P.F. Routier:**

I doubt if Members will realise how much I welcome this because, as has been described by the chairman, the Chief Minister has had to delegate the investigation of complaints and they have usually headed my way. I have to say that it is one of most uncomfortable places to have been and so I think what is being proposed today is very welcome. I think we should look at this as being something that we should certainly have. This Assembly, I know, will want to ensure that we have got the highest standards of conduct and it is really of the utmost importance. Our community expects and deserves Members to act with integrity, honesty, objectivity and I believe that is what we all try to do. We are here for the very best of intentions; to serve the public as best we possibly can, so I believe we can and should be proud of what we do try to achieve. In support of this a Commissioner for Standards is absolutely the right thing to do. It ensures that the fullest independence and expertise in the examination of potential breaches of standards of conduct. It provides the public with the confidence and assurance they deserve as said by the chairman. So I fully support this proposition. You will see later on that we do have an amendment, as described by the chairman, that the Scrutiny Panels and P.A.C. (Public Accounts Committee) ... it is not considered appropriate to have the commissioner looking at the practice of Scrutiny Panels. We believe that it should be on an equal playing field so there will be an amendment which I will be proposing later which we will deal with later but generally this is really good and we should be getting on with it as soon as we can.

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

As one of the few who have been on the end of attempting to make a complaint about the behaviour of a Minister it has to be said that the current setup is woefully inadequate. At the time I did not get the Chief Minister involved, I got the Assistant Chief Minister involved, and he was highly embarrassed, I think, at discussing the behaviour of one of his fellow Ministers and that that parity I did not feel was given to the complainant. The end result was a couple of cases of selective deafness as to what exactly the words were spoken and whether those words were threatening in any way and an inconclusive solution which left the complainant deeply dissatisfied and myself thinking we have to change this. It looks to me on the surface that the proposals from P.P.C. do deal with that question of independence and the apparent independence of any investigation without any need for amendments which I believe are very weakening but we will get on to those later. So I welcome this move from P.P.C. unamended.

#### **1.1.3 Deputy R.J. Renouf of St. Ouen:**

Likewise, I do welcome this new proposal. I have one question relating to one part of the legislation but perhaps I may ask it at this stage as it is a point of principle. So I see under the commissioner's powers the commissioner would have power to notify a complainant that he really does not have any grounds for making a complaint. Now, does the matter stop there or would the P.P.C. see itself as being able to hear any sort of appeal from that complainant who might really feel aggrieved by that? Would the P.P.C. still exercise a supervisory jurisdiction and hear that complainant and if it does feel that the complainant would have grounds would it feel in the position to direct the commissioner to hear the complaint?

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

It was just to seek clarification. I note that the amendment put forward by the Chief Minister means that the Chief Minister can refer a matter to the commissioner if he thinks that there is something that needs to be investigated from a Minister or Assistant Minister. Is it the case, just for absolute clarity, that the Commissioner of Standards can look at both the code of conduct for Elected Members, which we know is the case, and can look at all aspects of the ministerial code of his or her own volition so he or she does not have to rely on a recommendation or a request from the

Chief Minister? That individual can go and look at both aspects of all the code of conduct, whether it is ministerial or not.

#### **1.1.5 Deputy C.F. Labey of Grouville:**

I must say I am quite uncomfortable with this appointment. We have spent the entire week so far, and we will no doubt spend the rest of the week, talking about ourselves and here we are, in this time of budget constraints, we are now making a new appointment for something or someone to look at our standards, to consider our standards. Now, surely if the Chief Minister is uncomfortable in this position, and I can understand why, with all the various tasks and appeals and all the rest of it... but surely we can structure ourselves in such a way where there is a panel to consider issues or another grouping of lay people, voluntary people. I am very uncomfortable with setting up new posts, costly posts, so that we have people looking at us. This is purely for States Members and I shall be voting against it at this time.

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

It is not purely for States Members. It is for members of the public so they can get an absolute fair hearing. Unfortunately the Deputy of Grouville and probably many ... I do not even think Senator Routier has ever been on P.P.C. and tried to knit with complaints from the public. I have been under 4 ... too many years. I do enjoy it. I have enjoyed working. But this, to me, has been a way forward. As the chairman has said, it is done in other parliaments. What is the price of justice? It is not too much money. We are asking someone who has got legal expertise and to me, as I say, and I know the case Deputy Southern ... it was a member of the public complaining about it and it is the majority, the member of the public. You will get occasionally a States Member complaining about another States Member, very rare, but it is that, you know, we have a code. We need to know whether it has been breached. It is not clear. I have tried so many times. People can absolutely refuse to come and speak to P.P.C. There is not even seen to be natural justice. Please do not set up another body like the Complaints Board that can just be ignored. So, sorry, I really think this ... I disagree this time, absolutely, with the Deputy of Grouville. This is much needed and it is real value for money.

#### **1.1.7 The Very Reverend R.F. Key, B.A., The Dean of Jersey:**

Just to say that I agreed very much indeed with what Deputy Southern said and what Deputy Martin said but would just add this to it. It is not simply so that those who have a complaint can be assured of a fair and transparent hearing. It is also so that any Member who is wrongly accused will find themselves exonerated not just by a group of people that could be said in the media to be "their mates" but by somebody who is independent, perhaps legally trained, so that that exoneration is unarguable.

#### **1.1.8 Deputy R. Labey of St. Helier:**

This is the first debate of this kind on the draft Commissioner that I have ever taken part in for various reasons. I might not have been elected or I was away when it last came before the House so I might be playing catch-up here but I have got the same worries as the Deputy of Grouville about creating a new post at this time. At a time when we are supposed to be cutting back and it just seems like we are setting such a bad example in making an exception for ourselves. I am worried that the creation of this role could inspire a whole new raft of fresh vexatious complaints and who is going to sort a legitimate complaint from a vexatious one? Is it going to be done before it goes to the commissioner who, on the £300 or £400 a day, is he going to be sorting through the possibility of vexatious complaints? Is there a sort of vetting beforehand? Also is there a time bar on complaints that could be investigated by the commissioner or could somebody go back decades? So I hear what people are saying and it does begin to make more sense to me but I have just always felt that we have a Commissioner for Standards of States Members in the general public who can

vote us out every 3 or 4 years if they do not like what we are doing. I know it is perhaps a little bit simplistic. I will hear what the chairman of P.P.C. has to say.

#### **1.1.9 Connétable J. Gallichan of St. Mary:**

I am only prompted to speak by what I have heard. Deputy Martin served on the Privileges and Procedures Committee when I was chairman and I think I can echo what she said. There were complaints raised during that period which were particularly difficult, particularly politicised, both inside and outside the States. One particular complaint I remember, but obviously I will not go into any details, I was phoned and harangued continually by someone who was close to the person who was the subject of a complaint simply because a complaint had been made to the P.P.C. and we were going to investigate whether in fact that complaint was valid. As it happened the complaint was not held to be valid as far as I remember and was not pursued, but the amount of tension and public concern and personal grievance that I had from it leads me to believe that as much as it would be wonderful if we could always keep our own house in order there are times when States Members, as the Dean has said, have a right to know that there is no political intervention in the complaint, when the public can be assured of that and of course transparency shows that we must be open. We must be able to say this is something that has been independently looked at, the complaint is or is not valid and the outcome is this. Members of the public who feel aggrieved enough to make a complaint need to know that if that complaint is not pursued there is a valid reason why this failed. For that reason alone, much as I think we should keep our own house in order, there are very practical considerations as to why an external commissioner is often the way forward. I would just echo the words of the proposer when he said: "If we continue to behave ..." well, he did not say this, I will paraphrase: "If we continue to behave ourselves reasonably the call on this Commissioner for Standards will be minimal", and if we really believe that we need to get value for money, which we must do, that should be an added incentive to understand the code of conduct and to work within it.

[10:00]

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

As another former chairman of the Privileges and Procedures Committee and who brought the in principle decision about this one, the only thing I would like to add is again when you do sit on a complaint over another Member - and we had one quite controversial one that we had to try and deal with - one of the benefits of this system is the speed at which decisions will be able to be dealt with. Part of the problem is when you have a committee of States Members it is finding a time when you can convene everyone and the person that is having the complaint against them all together, decide whether there is a case to be answered for, then go through the process. You might need more information; all of which takes a huge amount of time and certainly at that time many States Members ... I remember individuals like Deputy Luce expressing great dissatisfaction with the process and therefore one of the key things which has not been mentioned yet is how fast and speedily these processes can be put forward and that is fair and that will be a much better process on anyone that has a complaint against them and I think for that reason as well we should be supporting this.

#### **1.1.11 Deputy J.A. Hilton of St. Helier:**

Just briefly. I cannot see anywhere in the proposition where it outlines what the penalties are for the States ... you know, if a complaint against a States Member is upheld by the commissioner and who decides if there is a penalty. Who decides what that penalty is going to be? So I am quite interested in that. Also I am interested to know ... I think the Constable mentioned that there have been 10 complaints against States Members in the past year. Is that 10 complaints against 10 individual States Members? That concerns me rather, to be honest, so I would be interested to



know whether many of those complaints were against one or 2 individuals. I find it quite alarming to think that the public have had cause to make complaints against 10 States Members in the last year.

**1.1.12 Senator S.C. Ferguson:**

Perhaps the proposer would also explain how any upheld complaint, any penalty is going to be enforced? We saw yesterday that the only way to enforce a penalty is to go to court. What is going to happen in the case of the Commissioner for Standards?

**The Deputy Bailiff:**

Does any other Member wish to speak on the principles? I call upon the chairman to respond.

**1.1.13 The Connétable of St. Clement:**

I am grateful for those Members who have been supportive. A couple of specific or a number of specific questions. The Deputy of St. Ouen asked if we could direct, or the P.P.C. could direct, the commissioner and I would say certainly not. This is going to be an independent role and if the P.P.C. were able to direct the commissioner there would be no point in having the commissioner; we can carry on doing the job ourselves. It will be for the commissioner to decide if any complaint has merit, if it is frivolous or whatever, or spurious; he or she will tell the complainant that and that will be the matter. Of course, anybody who is not satisfied with the commissioner's response can lobby a States Member for it to be investigated further but certainly I would not want the P.P.C. to be in a position where they could direct an independent commissioner to do something or to do something in a certain way. I will confirm, Deputy Tadier, that the commissioner can investigate a complaint on his own initiative. He does not have to wait for a complaint if the commissioner feels that that is appropriate and that does happen in the United Kingdom.

**Deputy M. Tadier:**

It is a slightly different question. Can the commissioner investigate a complaint under the ministerial code if one is referred to him by a member of the public?

**The Connétable of St. Clement:**

If the law is adopted unamended, when we come to the Articles, then that would be the case, yes. The Deputy of Grouville I can understand her being worried about this but the reality is what the P.P.C. are doing with this proposition is putting into effect the decision the States made 3 years ago. It is important that we do decide on our own standards and we do do that. The code of conduct, the ministerial code is approved by this Assembly or by the Council of Ministers or whatever, so we do decide that. What we are saying here, it will be up to the commissioner to decide if their code has been breached and that is quite important and it is important that if complaints are made that the complainant and indeed the public as a whole has the confidence that it has been dealt with fairly, properly and independently. That is what is really important and I think one or 2 previous members of P.P.C. and a current member of P.P.C. has explained how difficult it is sometimes, uncomfortable, to sit in judgment on one's peers. That is a very uncomfortable position to be in. Deputy Labey asked about time limits and, yes, certainly in the Articles the commissioner cannot deal with complaints which are more than 12 months old, which I think is quite reasonable. Deputy Hilton wanted to know, and indeed Senator Ferguson, about the sanctions. Now, I did mention to Deputy Hilton earlier this morning I think it is round about 8 or 9 complaints we have received probably in the last 12 to 18 months. Not all of them have been accepted as complaints. Some of them have been frivolous or not worthy of being dealt with. So, yes, there have been that many. I think a number against one particular Member but some of them were not considered to be worthy of further investigation. Sanctions, at the end of the day, would be a matter for this Assembly. I mean the P.P.C. would receive a recommendation from the Commissioner of Standards and it

might simply be no case to answer. It might be that it is right at the lower end and the Member should be advised that this sort of conduct is not acceptable. It might be that a report be brought to the States explaining what has happened. It might be that the P.P.C. be recommended to bring a proposition to the Assembly to suspend the Member or take some other sanction against the Member depending on what the complaint is, whether it is upheld, whether it is justified, but at the end of the day the decision would be here. I think I have answered all the questions and I maintain the principles.

**Senator P.F. Routier:**

May I just ask for some clarification from the chairman? When he was responding to the point by Deputy Tadier about whether the Ministers' code of conduct could be investigated, he responded that as long as it was unamended that would be the case but I think the amendments that the Council of Ministers is proposing is just to remove the code of practice so if the code of practice was removed the code of conduct can still be investigated by the commissioner. Can he clarify that is the case?

**The Connétable of St. Clement:**

Yes, I thank the Senator for his clarification. Of course, that is quite correct.

**The Deputy Bailiff:**

Very well. Those Members in favour of adopting the ...

**Deputy J.A. Martin:**

The appel please.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. I will ask the Greffier to open the voting.

<b>POUR: 38</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy of Grouville		
Senator P.F.C. Ozouf				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
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Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				

Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
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. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Deputy Bailiff:**

This matter falls within the purview of the Corporate Services Scrutiny Panel. Deputy Brée, does your panel wish to bring the matter in?

**Deputy S.M. Brée of St. Clement (Vice-Chairman, Corporate Services Scrutiny Panel):**

No, we do not.

**The Deputy Bailiff:**

Chairman, you obviously now wish to deal with the matter in Second Reading, the Articles. Do you propose Article 1 because there is an amendment to Article 1 which will have to be put?

**1.2 The Connétable of St. Clement:**

Well, I would have thought ... there is an amendment to Article 1 ... part 1 and part 3 of the Article and I would have thought that it might be sensible to deal with part 2.

**The Deputy Bailiff:**

I have 2 paragraphs of the amendment which is an amendment to Article 1, the definition of code, and then an amendment to Article 9 and those are the only amendments that I am looking at on here.

**The Connétable of St. Clement:**

Okay. I will propose Article 1 in that case.

**The Deputy Bailiff:**

Very well, thank you. Did you wish to speak to Article 1 because there will have to be an amendment if the amendment ...

**The Connétable of St. Clement:**

It is simply to say that this is definitions where the remit of the commissioner is said as covering both the elected Members and ministerial codes and I would propose the Article.

**1.3 Draft Commissioner for Standards (Jersey) Law 201- (P.87/2016): second amendment (P.87/2016 Amd.(2))**

**The Deputy Bailiff:**

Well, the first part of the amendment lodged by the Chief Minister relates to Article 1 therefore we come to deal with that part of the amendment and I ask the Greffier to read that part of the amendment.

**The Greffier of the States:**

Page 23, Article 1, in the definition “code”, in paragraph (b) delete the words “and code of practice”.

**1.3.1 Senator P.F. Routier (Assistant Chief Minister - rapporteur):**

I was looking at the clock and really hoping the Chief Minister was going to come in through the door. **[Laughter]** We should have spoken a bit longer on the ... this amendment is really just to put in place a level playing field between the P.A.C., Scrutiny and the Council of Ministers so I think I put that as the basis of what I wanted to say. As the chairman in his opening remarks talked about, he spoke about how inappropriate it was for the commissioner to look at the practice of hearings of Scrutiny Panels and the workings of the P.P.C. So what this amendment does is really just to put in place a level playing field. I think it would seem rather unusual and probably even odd that the commissioner and P.P.C. were to be responsible for investigating and enforcing practices such as collective responsibility on behalf of the Chief Minister because this is what the law, if it is not amended, will do. So in the simplest terms, if a Minister voted against the collective position of the Council of Ministers or even made an announcement that was contrary to that position the commissioner could investigate that. Members may think that collective responsibility is some great mystery but I can assure you it is not. It is governments adopting a single policy position but where a Minister does not follow collective responsibility it is a political matter. It is as the chairman described in his comments about the politicising of the Scrutiny administration; that is not an appropriate thing to do. It is something an agreement between Ministers to act in a particular way can be made at various times, so it is something which it will be very difficult, I believe, for a commissioner to investigate. Just thinking back to when the States of Jersey Law was amended in the last term. It followed a proposition by Deputy Vallois to require Ministers to have a code of practice as well as a code of conduct. Well, that has been in place and practically what would happen if this amendment is successful the 2 matters would be separated out so that they would be on a basis of the same as Scrutiny Panels and P.A.C. This amendment seeks to ensure that these 2 matters - conduct and practice - are separate with conduct quite rightly covered by the commissioner. We have thought long and hard how best to achieve this and, as I explained, that is how we would achieve that. I believe this amendment does what Members would expect and what is right and proper. It ensures that all Ministers at all times in their public duties, whether in the Council of Ministers or otherwise, are subject to investigation by the Commissioner of Standards. This amendment would mirror the position of members of Scrutiny and other committees who would be equally open to investigation by the commissioner for their conduct, whether in a panel hearing or their dealings with a constituent or any other public business. We would not expect the commissioner to enforce the proceedings of Scrutiny hearings and, of course, this is rightly what is not being proposed by P.P.C. This amendment extends the same treatment of Scrutiny members and P.A.C., as I have already mentioned. I really hope that Members will see that treating the Scrutiny Panels, the P.A.C. and the Council of Ministers is the only fair way to treat this matter and I ask Members to support the amendment.

[10:15]

**The Deputy Bailiff:**

Is paragraph 1 of the amendment seconded? **[Seconded]** Deputy Tadier, you had your light on?

**Deputy M. Tadier:**

Can I reserve the right to speak? I think ...

**The Deputy Bailiff:**

Yes. I mean I just assumed your light was on in error and it can come on at a later time.

**1.3.2 The Connétable of St. Clement:**

Yes, just briefly. As far as the P.P.C. are concerned this amendment is not a deal-breaker. It does not diminish the proposed law significantly and we will be comfortable whatever the States decide. I would point out that ... well, Senator Routier said that collective responsibility, for example, is a political matter but I really must tell him that collective responsibility is also a legal responsibility under the States of Jersey Law and therefore in that context it seems reasonable that there is some independent investigation of whether or not it has been breached. I should also point out to him and to the States that the draft law envisages P.P.C. publishing reports from the commissioner which relate to the ministerial code without taking further action so that the Chief Minister himself can take action. I do think it is appropriate that this remains unamended but nevertheless the P.P.C. will be comfortable with whatever the States may decide.

**1.3.3 Senator A.K.F. Green:**

Just briefly. This amendment is not about different standards of conduct for Ministers and Assistant Ministers. This is absolutely right that we all work to the highest possible standard and we have no dispute with the commissioner's appointment and what it wants to do. But I have an issue with this, and it is only a small one, but it is a practical example and it is around collective responsibility because, for example, I have a long-held objection to extending Sunday trading. Now, if that was the view of the Council of Ministers and if I maintained my long-held view, which I cannot think that I would not, then I would leave myself open to investigation by the Commissioner of Standards because I have broken the ministerial code of conduct and that does not seem to me to be right. I know some Members are uncomfortable with the collective responsibility. If they are uncomfortable then they should support this amendment because this will make it very difficult for Ministers who wish to have a slightly different view to the Council as a whole because of long held beliefs, not to be difficult, to be able to do that. For that reason I utterly support this amendment.

**1.3.4 Senator P.F.C. Ozouf:**

Obviously 2 weeks ago I would have been caught by a ministerial code of conduct infraction. Today I would be caught by a States Member Back-Bencher position and, as the chairman says, I sat on P.P.C. and considered this matter and the important thing is that the chairman said that this is not a deal-breaker. This is not excluding the ministerial code from the same exacting standards that one would expect. This is an amendment which places Scrutiny, P.A.C. and the Council of Ministers on a level playing field and that is important because we are going to be talking later on about our composition. Clothier introduced... and some Members do not accept that, but it did implement a system whereby some Members of this Assembly would be members of the Executive and other Members would hold the Executive to account. That is not in any way hierarchical; it is absolutely equal but they are different roles. There is one role for Ministers and the code of conduct for Ministers, if Members have looked at it, it is a much more onerous code and I am looking, if Members do have their iPads, they can look at R.11 of 2015. That Code of Conduct and Practice for Ministers and Assistant Ministers is properly extremely burdensome. It runs to, I think, some 17 pages. It should be and it should be overseen and adjudicated in an appropriate way and perhaps that way is best appropriately explained by the individual who is being charged with being Chief Minister and now he has joined us after, no doubt, making appropriate remarks at the ... I know what he has been at, which is the J.F.S.C. (Jersey Financial Services Commission) Annual General Meeting and that is also a problem of course because Ministers have to go and do things

like going to talk to industry and the regulator - it was a regulatory meeting this morning - and then still do what they do here but they cannot be cut into 2 pieces. I uphold and try to uphold and want to uphold the highest standards of integrity. There is a problem in this Assembly in the way the public do regard us in terms of integrity and we need to deal with that. The underlying principle of this has to be right. I agree with the Deputy of Grouville, a Jersey woman and a Jersey man do not... their money is not easily parted. However, in parting with money you uphold standards but standards have to be standards of different position and it would be quite wrong to put in an amendment to put the responsibilities of a much more onerous 17-page code into the hands of the group that are effectively non-exec or the person doing that. Yes, there should be a person holding to account but the way that that is achieved must reflect that different person and I hope in saying those remarks that perhaps the Chief Minister is now here he may want to add of why this is, as the chairman said, not a deal-breaker but is an important issue of principle and a level playing field. I will be supporting the amendment.

**Deputy M. Tadier:**

It is just a question for the Solicitor General if I may of clarification. Is it the case that there is only one Code of Conduct and Practice which is R.11/2015 which is the Code of Conduct and Practice for Ministers and Assistant Ministers? There are not 2 separate codes, i.e. a code of conduct and a separate code of practice which seems to be what I picked up from Senator Routier's speech?

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

I am looking at the Code of Conduct and Practice and that is the only one that I am aware of.

**The Deputy Bailiff:**

Very well, does any other Member wish to speak on the amendment?

**Deputy M. Tadier:**

Can I say that was not my speech by the way, it was just ...

**The Deputy Bailiff:**

No, I understood that. I was assuming that you might speak but you have not indicated a desire to do so yet.

**1.3.5 The Deputy of St. Ouen:**

Yes, it is this aspect that gives rise to some concern in me because there is just one code called the Code of Conduct and Practice but Senator Routier has suggested that the commissioner would be able to look at Ministers' conduct but not the practice of Ministers, so we would be putting in place a Commissioner for Standards who then has to look at the document and decide, well, is this complaint about conduct or is this complaint about practice, and that is far from clear very often when a complaint is made. Well, perhaps I am getting indications that the Chief Minister will wish to speak and explain but I hope that could be explained because that seems entirely confusing and so does this amendment which seeks to delete the words "and code of practice" but there is not a code of practice as such. It is a single code which merges practice with matters of conduct. Perhaps this cries out for clarification and I am not wholly understanding the matter but I wonder if the rationale for keeping the code of practice subject to the Commissioner for Standards is because Ministers are exercising their functions and making decisions which will directly affect members of the public whereas in ... I am sorry, Chief Minister, I will not look at you if you are trying to respond to me. Whereas the Scrutiny function does not usually... and I cannot think of an instance, where what Scrutiny does would directly affect members of the public. We are looking at policy decisions or legislation but within the Council of Ministers and Ministers' decisions can be different in that they will be dealing with situations which have a direct effect on members of the

public, and therefore it is perhaps right that those members of the public could contest the process or the practice under which that decision has been arrived at. I am also raising my concerns because I am not sure now what the effect of this amendment is going to be and will it remove the whole of the Code of Conduct and Practice or how will the commissioner be expected to divide the code and decide which matters are practice and which matters are conduct.

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

I must say I am somewhat in agreement with, I was going to say, my learned friend. Well, he is certainly more learned than me on the law but it does concern me if practice and conduct are separated out because if, as Senator Ozouf says, Ministers are held to a higher standard than the whole of their higher standard should be able to be considered by this commissioner. If it is not then there is a wonderful get out clause saying: "Oh well, this is not conduct. This is practice." I do not think we should provide a get out clause before we even start.

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

As another member of P.P.C., and I do not speak for the chairman obviously, I am now confused because we did have quite a bit of discussion around the table and this amendment seemed to be one of those you could support. One of them it did not matter. I had the feeling that when you are employing an independent commissioner to look at a code of conduct which is underpinned by a practice or the other way round it would be harder and Senator Ozouf nailed that today that there is a ... it is not ironical but, as the Deputy of St. Ouen says, they are making the decisions. Now, how does this amendment stand, and this is ... I am sorry, a question for the Solicitor General. There is one code, R.11, and it is called code of conduct "and" Practice. We have put an extra "and" in our ... for commissioners but is this taking the whole of the ministerial Code of Conduct and Practice out because if we vote for this ... well, the code is not split. I have a question for the Solicitor General and I would like it answered and then I will maybe carry on.

### **The Deputy Bailiff:**

So can you say precisely what your question is please, Deputy?

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

R.11, 10th February 2015; is the Code of Conduct and Practice - and Practice - for Ministers and Assistant Ministers. The amendment wants to delete the words "and code of practice". Code of Conduct and Practice, so what ... there is not another word "code" in R.11. If we delete "code of practice" out of our commissioner's I think we are deleting the whole code, R.11, from the amendment. The Chief Minister is shaking his head. How can you have one piece of legislation and break it down into 2 parts? It is really a straightforward question to the Solicitor General. Maybe I have missed on drafting on our part or the amendment part but I think something has gone wrong.

### **The Deputy Bailiff:**

Mr. Solicitor, this generally deals with the definitions but if you could advise the Assembly.

### **The Solicitor General:**

The document refers to a Code of Conduct and Practice. As I read it, by taking the amendment would not remove entirely the Code of Conduct and Practice from the scope of the Commissioner for Standard's ambit but in terms of what practically is a matter of practice and what is a matter of conduct; I have not yet been through the entirety of the ministerial code. On a brief glance I could not separate out something that was clearly practice and something that was clearly conduct. Possibly appendix 2 to the code of conduct which deals with procedure in relation to alleged breaches of code, that might be more practical and might be considered separate but just on a very

brief look I could not see a clear distinction between what was conduct and what was practice but if I can have more time to consider that I might be able to come up with a better answer.

[10:30]

**Deputy M. Tadier:**

On that basis could I propose that we move to the next item and give time for more information to be brought to the Assembly?

**The Deputy Bailiff:**

Do bear with me a moment please.

**Senator I.J. Gorst:**

Could I just ask for clarification? The mover is asking to move to the next item, as in the amendment, or the next item of business, so we go away and consider the entire Commissioner for Standards proposition because it is quite different.

**The Deputy Bailiff:**

Well I think that calls for a ruling from the Chair. In my view, it has to be a movement to the next item of business. It is not simply to put aside the amendment, it would be to move on to the next item of business. Standing Order 85 says that a Member can propose without notice that the States move on to consideration of the next item. It would require a vote of 20 Members in favour of that, that it is a matter for me to allow or not, if in my view it would be an abuse of process of the Assembly to do so. In my view, there have only been 6 people who have spoken on the amendment so far. In my view, that is not a sufficient number to permit that proposition to be moved at this point and therefore the debate may continue.

**Deputy M. Tadier:**

In that case, may I use Standing Order 83, a reference back? It seems that we do need specific information in order to make an informed decision here. We are being told that we have one code but there is 2 parts to the code, and it is not clear about how they might be separated. I think a reference back for the whole thing should be helpful for making an informed decision.

**The Deputy Bailiff:**

Then, as I understand it, what you are asking for a reference back for, Deputy Tadier, is for clarification as to what remains of the Code of Conduct and Practice should this amendment be adopted?

**Deputy M. Tadier:**

That is correct, Sir.

**Deputy J.A. Martin:**

To whom, sorry? Because it is a P.P.C. proposition, an amendment by the Council of Ministers, so to whom is the reference back to?

**The Deputy Bailiff:**

I think the reference must be back to the Council of Ministers, the people who have brought the proposition. Sorry, having been advised, I think that is correct. I think the whole thing must go back to P.P.C. on the basis that one is looking at the legislation as a whole and that clarification can only be, I think, provided by P.P.C. obviously after discussion with the Council of Ministers but that is what it would be. It is not a matter for discretion by the Chair. Is the proposal for a



reference back seconded? **[Seconded]** Do you wish to formally propose then ... I probably should have asked you to do that in advance and then I shall ask for seconding afterwards.

**Deputy M. Tadier:**

I think that is the case and I may as well ask for the appel as well.

**The Deputy Bailiff:**

Very well.

**Senator I.J. Gorst:**

No, we can speak, Sir.

**The Deputy Bailiff:**

Sorry? Yes, the matter is open for ...

**Deputy M. Tadier:**

Sorry, yes, well I do not have a lot to say. I think Members understand the issue here. I think this has been a point of contention. I think that despite the chairman's words saying that it is not a deal-breaker, I strongly suspect that the vast majority of P.P.C., perhaps bar one member who is no longer on there, did not support these amendments. I think it is not just about this one amendment, I think it has consequential implications for the further amendments later on. I think it is absolutely important that we get this correct so that the public can have confidence. If Members who are not Ministers are subject to certain standards and there is a higher bar for Ministers, it is important that the commissioner be able to look at everything that is germane and we need to know what is germane and, importantly, he or she in the future needs clarity about what he or she can and cannot do. So I propose the reference back on that basis so we might make a more informed decision. It seems to have cross-bench support.

**The Deputy Bailiff:**

Is that proposal seconded for a reference back? **[Seconded]** Chief Minister.

**Senator I.J. Gorst:**

Maybe I could apologise to the Assembly for not being here at the start of this sitting. I and my officers have worked with the officers of P.P.C. to try and reach agreement. We did not quite get to that point and listening to some Members' concerns, I think they could be answered but I think, on balance, listening to those concerns, it is a sensible approach to take it back. I will work again with P.P.C. I may not reach a unanimous decision or a majority decision on P.P.C. but I am prepared to try and do that. As I understand it, the concern now arises from what is conduct and what is practice. Even that separating out of the code, which this amendment would allow, some Members may still not be satisfied with that but at least they would have the detailed information of what is covered by conduct, what is covered by practice, and then be able to make an informed decision about what that differentiation is. The conduct of Ministers in the code of conduct for Ministers, which is currently the Code of Conduct and Practice, was put together for ease of reference and ease of understanding, as Senator Routier said, moved on a proposition of the now Deputy of St. John, but the code of conduct for Ministers is already a higher bar than it is for Members already in this code, and that will not change. So Ministers will, even with the separating out of practice, be held to a higher standard than just as being a Member of this Assembly. As the Deputy of St. Ouen said, that is right, because Ministers are making decisions and have some powers whereby they should be held to a higher standard. The concern that I had, and the other Ministers had, and I think that if we were able to communicate this better with Members, is should the independent commissioner look also at practice? They absolutely should be able to go away and look at the

conduct of Ministers which is a higher standard than Members. Absolutely they should. But should they, as a matter of right, be able to go and look at practice? Some Members think they should and when we bring this back they may vote against it, but I do not agree with the position that the chairman of P.P.C. has suggested. The way that collective responsibility works, it is a political decision. As the Minister for Health and Social Services, Senator Green, said there are some long-held views of members of the Council of Ministers, around that table, that mean there are certain things that the Council might decide that they cannot support. I will say: "That is absolutely fine, that is your long-held view." So it is an important detail of what I am going to go away and do based on the request of Deputy Tadier.

**The Deputy Bailiff:**

So, are you then saying that you would support a reference back at this point?

**Senator I.J. Gorst:**

Absolutely, that is what I said in my opening words. I do support that but I am explaining the reasons why that is so that Members can have clarity between conduct and practice. I think that is the concern that has been raised because it is currently in one code. I apologise to the Solicitor General that he has not had the time to review that code to be able to say to Members which bit is conduct and which bit is practice. That is another issue that we will be able to address by the reference back. But Ministers should be able to decide politically how they are going to manage a situation of collective responsibility. It is not complex. For example, a Minister might have an agreement with their Assistant Minister that for various reasons that they have discussed during the policy formation that they are not going to support the position of the Minister. That should be allowed ...

**The Deputy Bailiff:**

Chief Minister, if I could interrupt you again, thank you. Standing Order 83 says: "The debate on the proposal shall be confined to the merits of the reference back." You have accepted the reference back, you were giving some detail.

**Senator I.J. Gorst:**

To the merits.

**The Deputy Bailiff:**

I am wondering if perhaps we have gone too far to that, but it is a matter for you if you were to continue.

**Senator I.J. Gorst:**

I apologise if that is the case. I was hopefully trying to explain the detail of those merits and I hopefully have done that. In practice, should it be right that the independent Commissioner for Standards will come along and say: "No, that Assistant Minister should have been forced to vote with the Minister despite their long-held views" or: "That Minister should have been forced to" and it should not be right, absolutely. These were the issues that I tried to address with P.P.C., tried to deal with in the amendment, and it is clear that some Members are still not satisfied with where we have got to. Therefore, that is why I support the reference back, to be able to go and clarify those issues for Members before they make their decision. Thank you.

**Deputy G.P. Southern:**

Briefly, if I may, why this should be referred back is because if we take out code of practice, we have already seen today what might happen, and that is the S.G. (Solicitor General) sitting there saying: "Well, I do not know what is practice and what is conduct in here, I can take a look at it."

It will open the door to a challenge like that every time you try and use it. That may be a problem that will come up and needs further discussion in the reference back in order to clarify it so the next time they bring it here we can be safe and secure that those sorts of challenges will not be occurring.

**The Connétable of St. Clement:**

I really battle - really battle - as to why Deputy Southern and Deputy Tadier want to let the Council of Ministers off the hook. **[Laughter]** **[Approbation]** This really does not make any sense to me whatsoever. We should not be delaying an improvement in our structure and our practice because of a totally inadequate amendment by the Council of Ministers who have had months and months to do this properly. P.P.C.'s proposition and Article deals with the only document that is in existence. It deals with a Code of Conduct and Practice for Ministers and Assistant Ministers. There is no other document; therefore, we could not have brought any other proposition. Now, if you think that the remit of the commissioner should be able to look at the code of practice and Conduct of the Council of Ministers, then we should reject the reference back, reject the amendment and vote for P.P.C.'s Article as it has been lodged and debated and proposed. We could not bring any different Article because there is no other document. In fact, I suggest that possibly the Council of Minister's amendment should have been rejected because there is no code of practice. There is a Code of Conduct and Practice; therefore, I urge the States to get on with this business, reject the reference back, reject the amendment and pass the law as now proposed. If, in due course, the Council of Ministers do find that this creates a difficulty for them, then there is no reason why they cannot bring an amendment to the law in due course. But that is not going to happen, is it, in reality? Because what we are interested in is the conduct of the Ministers which is included in this 17-page code of conduct and practice for Ministers. That is all we are asking to do. I urge the States strongly to reject the reference back and to reject the amendment in the name of the Chief Minister.

**The Connétable of St. Mary:**

I was going to say exactly what the Constable of St. Clement has just said but I was going to say it probably not as well, except I had hoped to speak before the Chief Minister and, of course, remember, he did not propose this, did he? It was the Assistant Chief Minister who did to say we were introduced to this amendment by saying: "It is not a deal-breaker." **[Interruption]** Why ...

[10:45]

Sorry, we are dealing with the amendment ... it is okay. I understand, sorry.

**The Deputy Bailiff:**

We are dealing with the reference back.

**The Connétable of St. Mary:**

Yes, I know, sorry, Sir. But I agree with the chairman, the reference back is not necessary here simply because if the Council of Ministers had any feeling for what the Assembly is saying and understanding, they would simply say: "Let us withdraw this amendment and move on to the debate of the main item" which is even more clear than just waiting for the vote. I think if they have not had the message on how the vote will go by now, they are soon going to get it. I really do not think this reference back is necessary. What really concerns me about it, which I will add to what the Constable said, is we have been here before getting to a part of the debate and moved forward for something else to be discussed. I think it is quite amazing that, considering we are back for the second time looking at this piece of legislation, that we have got here again without this fundamental concern having been flagged-up by someone, so basically that does not do us any

credit. My opinion is, reject the reference back, and hopefully somebody from the Council of Ministers will withdraw that amendment.

**Senator P.F.C. Ozouf:**

The definition of confusion is: “Uncertainty about what is happening, intended or required, indecision, hesitation, hesitancy, scepticism, doubt or incertitude.” I do not know whether I am in a parallel universe but I first of all heard that this was not a deal-breaker from the chairman. Secondly, I heard the Solicitor General not being able to answer the question, perhaps caught on the hoof, about whether or not ... because I have got the Code of Conduct and Practice in front of me and he could not answer whether or not it was covered or not. Now if there is uncertainty, we should not debate something, and so for once I will be agreeing with Deputy Tadier because he is right. If there is uncertainty, and there is uncertainty, because if people are against it, fine, but they cannot be against something that other people are uncertain about and that we have not had a political and a legal ruling on, so there is no alternative. There is no alternative about referring it back to get certainty because how on earth can this Assembly be passing legislation where there is uncertainty? I refer Members again to the definition of uncertainty. The definition of uncertainty is: “Doubt, hesitancy, scepticism.” There is scepticism, there is doubt and uncertainty. No law should be made on that basis. For once, I will agree with Deputy Tadier.

**Deputy J.A. Martin:**

Just to refer to Senator Ozouf, about I do not know what doubt or uncertainty is, I asked the Solicitor General: “Could you separate out the code?” because that is what it is called, the code, and the Solicitor General was quite clear saying: “No, you cannot strip it out” but the Minister’s amendment says they want us to do that. I absolutely agree with my chairman, I am under no illusion or confusion or hesitation and I can look all them up. I quite clearly know what words mean, and the differential, but this is quite clear to me, if this had been passed, the confusion when the commissioner had been elected to do his job would have been: “Oh, you cannot go there because we have taken that out.” What they want to try and take out is the whole of their code and they do not want it affected by this. The reference back is a ploy. It was referenced back to P.P.C. and we are not wrong. Our law, our amendment is written completely correctly. It includes the whole wording of the code which is one code, no confusion. Please do not send this back because it will have to go back and be filibustered, knocked around by the Council of Ministers. It will not come back before the next 18 months again, more legislation that will not go through under this Council of Ministers. Thank you.

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

I am a bit confused here because I hope Deputy Vallois, the Deputy of St. John, is going to talk because if my memory serves me correctly, in the last session she proposed an amendment asking for a code of practice, and we achieved that by merging the code of practice and the code of conduct together. So we started with one, we ended up with 2 but in one version, if you like, and why can we not, if we need to, reverse it again? So I am confused. I am with Senator Ozouf on this one. I would like a bit of clarity and surely we need to know exactly where we are.

**Deputy T.A. Vallois of St. John:**

I have been clearly asked to speak. Yes, I did ask for a code of practice because there was no code of practice in place, so in terms of being able to hold the Minister to account for the way that they run things, there was nothing to hold them to account with. But I did not tell Ministers to put a code of conduct and a code of practice together and I did raise the issues with the Chief Minister at the time. If Ministers cannot be clear on what the difference is between a code of conduct and a code of practice, well I think we are all in serious trouble.

**Deputy M. Tadier:**

May I seek to be helpful to the Assembly, and I would like to withdraw my reference back **[Approbation]** and I can explain briefly why if Members will indulge me very quickly. Basically, I think that the comments of the P.P.C. chairman hold a lot of sway and I am glad that I have been able to smoke out both him and the Council of Ministers, although it was not intentional, necessarily. Because we have gone from a position where this amendment was not a deal-breaker to where I think it is the sensible point that it shows that, and because the Council of Ministers have bitten my hand off so quickly for a reference back clearly shows that they are on shaky ground not simply with being able to win the amendment but because they do not understand their own code of practice and code of conduct. The fact that we have a very esteemed and erudite Solicitor General who, looking at it, I think, quite clearly at first glance, none of us could see a clear separation between what constitutes practice and conduct, if indeed there is a difference between those 2, so how on earth any Commissioner for Standards could know the difference between those 2 is also beyond me. So I think the right thing to do is to withdraw the reference back, to trust P.P.C. and the chairman. In the future, if the Council of Ministers want to bring something back which is somewhat less shabby than what they have brought in this amendment, which is a clear separation between the 2 codes, it is up to them whether they want to bring back 2 codes, a code of practice and a code of conduct, and they are at liberty to do that. So I do ask for the leave of the Assembly to withdraw the reference back.

**The Deputy Bailiff:**

Well the Deputy is correct, he requires the leave of the Assembly to withdraw the proposition for a reference back. Do Members agree that that can be withdrawn?

**Deputy J.A. Martin:**

Could we have the appel?

**The Deputy Bailiff:**

Did somebody ask for the appel? Very well. **[Interruption]** Sorry? The position is that if there is an objection to the withdrawal of the reference back, then the reference back itself is now put to the vote. So, first, can I ask, is there any objection to the Deputy's withdrawal of the reference back? Well if no one objects to the withdrawal, then we move on to continue the debate on the amendment. Very well, does any other ...

**Deputy J.A. Martin:**

I think I was speaking all those many moons ago.

**The Deputy Bailiff:**

Yes, I will be able to identify who was speaking. Deputy Martin, you were speaking when the proposal for the reference back came. Do you wish to continue with your speech if you had not finished?

**Deputy J.A. Martin:**

No, I just wish to say I am glad we have had this short debate and thank the Solicitor General for his very good advice and let us get on and throw out this amendment. I absolutely think it is not a good amendment. Thank you.

**1.3.8 Deputy G.P. Southern:**

I thought I had not spoken on the amendment. I have to rise in complete support for the chair of P.P.C. who has now come to the correct position, this amendment should be kicked into the long grass.

**1.3.9 Senator P.M. Bailhache:**

I thought that was an extraordinary contribution from the chairman of the P.P.C. I thought that when he first spoke he was perfectly properly expressing the differences of opinion on P.P.C. in relation to the amendment and therefore he was being slightly agnostic about the amendment of the Council of Ministers. There is a clear distinction between conduct and practice. Now it is unfortunate that the Council of Ministers has a Code of Conduct and Practice which has not yet been divided and for my part I hold up my hands to the fact that we should have done the work to divide these things before this debate took place. Senator Routier made it perfectly clear that if the amendment is adopted, then the Council of Ministers will forthwith proceed to divide the code of conduct from the code of practice and the code of conduct will be that which brings in the jurisdiction of the commissioner. That would put the Council of Ministers in exactly the same position - exactly the same position - as Scrutiny Panels. Why on earth would this Assembly want to put the Council of Ministers in such a tangle of knitting that any dispute among the Members on the practice would be such as to enable the issue to be determined by the commissioner? Scrutiny Panels, the Council of Ministers are perfectly entitled to order their practice, the way in which they behave among themselves as they see fit. If a Minister breaches an element of the code of practice, it is a matter for the Chief Minister. It is not a matter for the Privileges and Procedures Committee to interfere in the way in which the Council of Ministers conducts its business. That is a matter for the Council of Ministers. Scrutiny Panels would be outraged if Ministers started to interfere in the way in which Scrutiny Panels operated themselves, but they are not. I find the proposition put forward by the chairman of P.P.C. quite extraordinary. If the amendment does not get through, then pettifogging disputes between Ministers which ought to be sorted out in the Council of Ministers, adjudicated if necessary by the Chief Minister, will start to be discussed among members of the Privileges and Procedures Committee and, frankly, that would be chaos. I implore Members to forgive the Council of Ministers for failing before this debate to divide the code of conduct from the code of practice but to pass the amendment on an undertaking which I am sure the Chief Minister will give to ensure that before the law comes into force there will be a separate code of conduct and a code of practice.

**1.3.10 Senator L.J. Farnham:**

It would seem unusual if the commissioner and P.P.C. were to be responsible for investigating and enforcing a collective responsibility, essentially. This is what the new law, if not amended, would effectively do. In simple terms, if a Minister voted against a collective position or even made an announcement that was contrary to the position of the Council of Ministers, the commissioner could investigate. This is a direct interference in Government. I think it could amount to almost a gagging order for some Ministers. The healthy attention that does at times exist on the Council of Ministers or any committee or any Scrutiny Panel in the duty of carrying out its work is an important part of the democratic process. I would hate to think that any Minister or member of any committee or member of any Scrutiny Panel would feel that they could not speak out on occasion for fear of being subject to the Commissioner for Standards. That is it in a nutshell, really. Thank you.

**1.3.11 Deputy J.M. Maçon:**

Unfortunately, we have moved on but it was interesting in the mini previous debate the ... well it will not be the first time we will be seeing an unholy alliance this week. What I would want to say about this, Senator Bailhache commented how awfully afraid a Scrutiny member would be if the

Commissioner for Standards looked into our behaviour. Well, as a long-term serving member of Scrutiny, I have absolutely no problem with that, in fact, I would welcome it. Absolutely no issue with that whatsoever.

[11:00]

I take comfort from that type of breathing space. Then Senator Farnham said: “Oh, how awful, it is going to be a gagging clause.” Wait a minute, we are talking about conduct, we are talking about behaviour. If it is unacceptable to be slinging insults around among Ministers, it is clearly unacceptable to be doing it at Scrutiny panels, it is clearly unacceptable to be doing it in the States, so I really do not see what the heavy weather is being made of this. Therefore, I think we have got to support P.P.C.

**Senator L.J. Farnham:**

Might I just clarify? I think the Deputy misunderstood. We are talking about practices, not conduct. Practices and conduct are very different and it is ...

**The Deputy Bailiff:**

Very well, that was the point of your speech?

**Senator L.J. Farnham:**

Yes, thank you.

**The Deputy Bailiff:**

You were seeking to clarify and the Deputy gave way for that purpose which is technically permissible but if there are any points of clarification people wish to make or indeed to seek it should be prefaced with the words: “Is the Member prepared to give way?” because that is a requirement before that rule can be applied. The Connétable of St. Lawrence.

**1.3.12 Connétable D.W. Mezbourian of St. Lawrence:**

I am not quite sure to whom I should be addressing my concerns in here because I have just heard Senator Farnham say that potentially what we could be doing is gagging free speech for Members. That concerns me and it should be concerning to every Member of this Assembly who is here to speak freely. So I am not sure whether it is something that could be addressed to the Solicitor General to confirm or otherwise that Ministers, if this is accepted, will lose their right to free speech, because if they choose to deviate from the collective position, they could be reported to the Commissioner for Standards because they would be breaking the code that binds them to that collective responsibility. It is just that I have just picked up on what the Senator has said and I really do feel that some clarification and guidance should be given. Also, you will direct whether or not that should be through the Solicitor General or potentially, if not through the learned S.G., through another Member who has not yet spoken in this debate.

**The Deputy Bailiff:**

Well, first, Mr. Solicitor, is there an answer in the law on which you can give?

**The Solicitor General:**

In law, if the P.P.C.’s proposition stands without the amendment, then all the matters that are raised in all the paragraphs of the Code of Conduct and Practice would fall within the jurisdiction of the Commissioner for Standards. So, I have been looking at it further since it was first raised and clearly it does deal with matters of ministerial collective responsibility. So, certainly in law, a breach of the principle of collective responsibility, if the amendment is not passed, then that would

fall within the jurisdiction for the Commissioner for Standards in law. I think that is the clearest answer I can give.

**The Deputy Bailiff:**

Does that assist you, Connétable?

**The Connétable of St. Lawrence:**

I think that has clarified for me where I will be going with this amendment because, I think, to put it simply, if a member of the Council of Ministers deviates from the collective position, they are likely to be investigated by the Commissioner for Standards. That to me is gagging free speech because there will be times when a member of the Council of Ministers wants to make a stand against collective responsibility and they should be entitled to do that.

**Deputy M. Tadier:**

I have a question for the Solicitor General. I think questions can be put at any time.

**The Connétable of St. Lawrence:**

Do I need to give way?

**The Deputy Bailiff:**

Well, questions can in theory be put at any time but there is no reason why a Member should stop their speech. You could ask your question subsequently.

**Deputy M. Tadier:**

The reason I do it, is that I think it benefits the Connétable of St. Lawrence if I ask the question now because it would tease out further information which she may wish to respond to which she cannot do if she has finished speaking. I am perfectly happy to wait until afterwards.

**The Deputy Bailiff:**

Connétable, do you wish to give way for a question to the Solicitor General?

**The Connétable of St. Lawrence:**

Anything that will help me in my decision is always welcome and so I thank the Deputy for his intervention and I am happy to give way.

**The Deputy Bailiff:**

Very well, Deputy.

**Deputy M. Tadier:**

The question I have is, notwithstanding the previous answer the Solicitor General gave, is it not also the case that the Commissioner for Standards would be able to use her discretion as to whether she takes a particular complaint, whether that complaint is vexatious, whether the Minister has acted reasonably? On top of that, is it not the case that collective responsibility first and foremost is a political setup rather than a legal one, although there are legal implications for it? The recourse for somebody, a Minister who wishes to go against collective responsibility, is to either seek permission from the Chief Minister first to do that, or simply to take his or her chances about standing up for a point of principle which may lead to his or her sacking in due course?

**The Deputy Bailiff:**

So that is your question to the Solicitor General?

**The Solicitor General:**



In terms of the discretion of the commissioner, the commissioner's powers and duties are set out primarily in Article 9 of the proposed law. Yes, the commissioner has a jurisdiction to not accept a complaint which is frivolous, vexatious or unsubstantiated. So that gives the commissioner a judgment not to accept a complaint which is frivolous, vexatious or unsubstantiated. In terms of "is that a discretion?" Well it is a judgment that has to be made almost in a judicial capacity so the discretion has to be exercised such as it is on the basis that in the commissioner's opinion, the complaint is frivolous, vexatious or unsubstantiated, that is the test that the commissioner has to bear in mind.

**Senator I.J. Gorst:**

Could the Solicitor General clarify for us, please - I accept his consideration of the position there - but without the amendment, a complaint to the commissioner about an issue of collective responsibility, and a Minister saying something outside of government policy, would be under the law considered appropriate and therefore could not be considered vexatious in that regard because the law expressly allows it?

**The Solicitor General:**

If there had been a clear breach of the principle of collective responsibility, then it would be very difficult for the commissioner to form an opinion that a complaint was frivolous, vexatious or unsubstantiated.

**The Deputy Bailiff:**

The Connétable of St. Lawrence, do you wish to continue with your ...

**The Connétable of St. Lawrence:**

That last comment from the Solicitor General in response to the Chief Minister I think is worthy, as are all his comments, of particular consideration by Members. If the amendment is rejected, then political free speech by members of the Council of Ministers could be denied then because they could be sanctioned through the Commissioner for Standards. We cannot support that. It cannot be appropriate that a parliament denies its own Members the right to express their views without fear nor favour which in this case I believe is likely to happen. The chairman of P.P.C. I think was pretty ambivalent towards this in his opening speech and when, through email request, members of P.P.C. were asked whether or not they accepted this amendment, my response was that indeed I did and I do. It makes absolute sense to me, having listened to all of the arguments within P.P.C., having listened to the argument or the thoughts of the Chief Minister when he attended upon us, that there needs to be consistency, there needs to be parity between any restrictions that are placed upon the Council of Ministers and upon Scrutiny. In my opinion, the amendment provides that parity, it provides the equity that there surely should be within parliamentary processes. So clearly Members can tell from what I am saying, I absolutely support this amendment. I do not see how Members cannot fail to see the importance of it being included and I do urge Members to give very close consideration to how they vote upon this because to vote against it, I believe, will stifle the options of Ministers who want to make that stand against the collective responsibility by which they are bound. Thank you.

**1.3.13 Deputy R. Labey:**

If we are going to get side-tracked by semantics like the collective responsibility issue and free speech issues, we are going to be here all day on this one. Collective responsibility, the Ministers have a get-out on conscience anyway. I know of at least 3 Ministers in the last 2 months who have elected to spend the vote in the coffee room and to my knowledge because of the calibre of the Chief Minister, who is a decent and fair man, they have not received very much of a ticking off. I do not know, I better not look in anyone's direction. I nearly turned around then ...

**Senator L.J. Farnham:**

But a Minister technically can ...

**The Deputy Bailiff:**

Senator, you cannot just stand up and speak. You must either stand up and ask to give way or not, as the case may be, for a point of clarification, but you appear to be wishing to provide information, so if you would like to carry on.

**Senator L.J. Farnham:**

Thank you, Deputy ... oh, sorry, just very quickly.

**Deputy R. Labey:**

No, because I am not going to give way because I am just going to finish by a small interjection to make those points. Free speech is also covered by parliamentary privilege, and that is not going to disappear. If anything, Ministers should be subject to maximum scrutiny by the commissioner because they hold power and the decisions they make mostly affect people's lives more than the rest of us here. So they should be up for the maximum scrutiny and no loop-holes.

**Senator L.J. Farnham:**

May I make that point of clarification briefly?

**The Deputy Bailiff:**

Clarification of what?

**Senator L.J. Farnham:**

I apologise for interrupting the Deputy.

**The Deputy Bailiff:**

Are you asking the Deputy for a point of clarification of something he said? Because he did not give way so technically you cannot ...

**Senator L.J. Farnham:**

Well I think so, you might have to be the judge. He referred to Members sitting out a vote in a coffee room and I just wanted to say that if that happened they would be subject to ...

**The Deputy Bailiff:**

Well, I think, no, I am sorry, Senator, that is not a point of clarification from his speech; that is a point you would like to make. Very well.

**Deputy R. Labey:**

I applaud the Members who sat out the vote in the coffee room; the Ministers.

**The Deputy Bailiff:**

No, Deputy, you have sat down. Please, can we keep some order to this debate? People will not please interject unless it is within Standing Orders which is to either clarify a point of their own speech or to seek a point of clarification from a previous speaker after first having got that speaker to agree to give way. So, we now come to Deputy Tadier.

**1.3.14 Deputy M. Tadier:**

Surprisingly, I have not yet spoken in this debate. It does not feel like that.

**The Deputy Bailiff:**

Yes, it is; I did have to check, Deputy. Yes, indeed it is. [Laughter]

**Deputy M. Tadier:**

Yes, and I refer Senator Farnham to Standing Orders. When one uses them correctly, one can speak almost as much as one wants. I say that tongue-in-cheek because I might lose the patience of the Chair. But, seriously, I think that the Council of Ministers now are risking bringing this Assembly into disrepute by maintaining this amendment. We have got ourselves in a, frankly, politically very unsatisfactory position where arguments are coming forward which, frankly, are specious and scrape the barrel. To use arguments about collective responsibility and gagging, the idea that certain Ministers cannot speak freely, as if that is some kind of revelation, that is what happens now. We do not even have a Commissioner for Standards that looks at the ministerial Code of Conduct and Practice and Ministers are gagged. We all know the political reality. We all sit next to people, perhaps, or we have seen people in the past who are Assistant Ministers, Ministers, who have a crisis of conscience whose heart would vote one way, and the finger-wavers on the bus because they are expected to vote one way or the other.

[11:15]

That happens now. People miss votes now and there are political consequences perceivably if they do not do that because if you do it too many times and do not have a good reason for doing that, you will get fired, or your position will become untenable, and that is what happens when you have a whip. That is nothing to do with a code of conduct, that is to do with the political setup and if you do not like being gagged, I would suggest do not be a Minister or Assistant Minister and rescind collective responsibility. That is an argument for another day; it is not an argument for today. Arguably, having a code of conduct and a Commissioner for Standards who can look at the whole of the code provides protection for Assistant Ministers and Ministers who might want to break from the ministerial ranks. Because imagine that an Assistant Minister is expected to vote with her Minister, if it is a Home Affairs issue, she feels very strongly that she does not want to and then she is fired as a result. She can make a complaint, or a member of the public can make a complaint, that the Chief Minister has acted unreasonably under the code of practice and a complaint can be upheld against the Chief Minister for breaking the spirit if, for example, the individual had a long-held belief and the Chief Minister had acted incorrectly, that could be taken as a complaint. But that would be completely redundant anyway because the recourse is always a political one. If a political decision is made and gagging orders, et cetera, are implemented, the recourse is always political, and that is how things work. I think that the position of the P.P.C. chairman is quite correct, that this is a bad amendment, they have not done their homework. This proposition has been on the table since 23rd August, that is effectively 6 months in which the Council of Ministers could have brought up their position. This is not something new. I remember when I was on P.P.C. in previous incarnations of it that the Chief Minister and the Council of Ministers did not even want their code of conduct to be subject to the commissioner. They wanted to be completely carved out for it because they said: "We are covered by the code of conduct for Members and it is none of their business how we behave as Ministers. That is up to the Chief Minister to look at the complaints" and, as Deputy Southern earlier in the debate said, is a completely unsatisfactory position. There needs to be a level playing field. I think the argument that was put forward about Scrutiny is complete nonsense because the Scrutiny code has nothing to do with the members' conduct on Scrutiny. It is purely to do with administrative issues which are of no real interest to the public apart from of general interest but not for the purposes of making complaints, whereas that is not the case for the Council of Ministers. There is much, if not all, in the current code for Ministers that is of vital interest to the public which is therefore of public interest and something which we should be upholding. We should be rejecting this amendment. This amendment should be withdrawn and I make one final plea to the Chief Minister to withdraw this and all amendments that

he has put forward, to get on with this. We have been debating this for almost 2 hours now and I think the correct thing to do is support the position, the considered position that P.P.C. has put forward. I would ask in summing-up if the chairman would clarify what the position was of all of the P.P.C. members, whether there was general support, whether there was a split, or whether there was, as I suspect, almost unanimous support for rejecting these amendments.

**The Deputy Bailiff:**

Well of course, Deputy, the chairman cannot speak again in the amendment debate; it is not his proposition. The Connétable of St. Mary.

**1.3.15 The Connétable of St. Mary:**

I got to the stage today where I thought I knew what was going on, so I popped out to have a quick glass of water. When I came back everything had changed, which was really quite strange. I am just rising because I am now totally confused, and I am confused because of the Constable of St. Lawrence's position. It seems to me quite clear that we all operate in whatever sphere we operate, under the guise of Standing Orders, whatever, and codes of conduct, and those Standing Orders, of course, come down from the basic position of the States of Jersey Law. Now the States of Jersey Law is quite clear and it charges the Council of Ministers to agree and within 3 months to present a code of conduct and a code of practice. It does not tell them what is in it, that is for them to decide. Much as we always say we do not like when the chairman makes a ruling and we say: "But he is acting in accordance with Standing Orders" and they are our Standing Orders, so if we do not like something, it is in our gift to ultimately change it. So the Council of Ministers have a code of conduct and a code of practice, maybe it is not advisable they are together, but they are, that they have put forward. Now, the law also says that the Chief Minister, Ministers and the Assistant Ministers in respect of the Ministers to whom they are responsible will abide by collective responsibility. But that is taken further again in the code which say how that will work. Now, I am astounded that somebody would say that stifles free speech. The whole point is, as I understand collective responsibility and how it was sold to me, is that on the Council there is total free and frank discussion, a position is reached, and then that position is collectively held. I believe that is how collective responsibility is designed to work. So, effectively, by signing up to the code and by understanding the position of the States of Jersey Law, the Council of Ministers already knows that collective responsibility is the norm and that therefore they will present a show of collective responsibility and of unity in the Assembly. The free and frank speech for those Ministers comes around the Council of Ministers' table. But of course, as Senator Green has said, he has given an excellent example of something where he has always maintained a particular stance, and he has probably stood on election platforms on that thing, the Chief Minister has the right to say there is an exception here. So surely the answer is simple, the Council of Ministers simply need to act carefully in accordance with the rules that they have set out for themselves. If there is an issue of conscience, if a Minister or, in the right circumstances, an Assistant Minister comes against a brick wall where they cannot give that support, if they can justify that lack of support for the Council's desired position around the table, then the natural thing to do is for the Chief Minister, if he deems it appropriate, to agree that that is set aside for that matter. It has always been understood to me, I am sure it came up when we debated this in the past, that there will sometimes become a tension where a Minister or an Assistant Minister has such a difficulty, hits such a stalemate, and cannot accept the collective responsibility, the sanction then is for the Chief Minister to decide that that Member is no longer fitting in the Council of Ministers and to take the appropriate action. That is where that happens so I really cannot see how the Code of Conduct and Practice for Ministers would keep ... I do not see this deluge of complaints against Members going to the commissioner. I just do not see that if collective responsibility, and I am just using this as an example because obviously the whole of everything that is embodied within the codes is effectively the same way, if

it is working as it was intended to work, there will not be a problem. If it is not working as it was intended to work, then I would put it that it is the wrong code. What can we do about that? Oh yes, we can change it. The Council can adapt the code within the terms of the law because it is their code. The States Assembly does not say: "Yes, we will have that code" or: "We will tinker with it and we will propose amendments." No, the Council of Ministers put it forward. End of story. All I say is, I am getting a little tired in latest debates of us, there is only one word for it, it is probably not parliamentary, but it is "faffing". We have procedures. We cannot even decide whether we are going to debate business in the right order in the next sitting without a debate. We have procedures. We cannot decide whether we will come back next week or work early on Fridays or whatever. We have procedures set in place so that we do not continually waste time discussing the minutiae. **[Approbation]** If Members have problems with anything they are dealing with in Standing Orders or within the codes and it is relevant to them, I urge them, talk to P.P.C., talk to the Greffier, talk to the Bailiff, find out what the issues are and find out what the remedies are. We are the masters of our own procedure and I am getting a little tedious of this not being adhered to. I rest my case. I am not in a court of law.

### **1.3.16 Deputy A.D. Lewis of St. Helier:**

I am going to be very brief. Members seem to be suggesting that P.P.C. have almost developed this whole thing on the back of a cigarette packet. This has had a lot of work done to it and it has been laid before us since August. The Council of Ministers have had time to present their comments or amendments many, many weeks and months before and they have not. This has been looked at in great detail by P.P.C. I am quite sure it is being compared with other similar ombudsmen or commissioners elsewhere. I cannot believe that it is being done on the hoof. I have read it, it seems to make absolute sense to me. If the Council of Ministers feel it does not work in the future, they are freely able to bring amendments then. I would suggest Members think very carefully, we proceed to the vote as quick as possible, get this enacted, and then if it is, for some reason, not working, as we can do with Standing Orders, we then proceed with amendments at that point. At this point, P.P.C. have done their work, that is what we asked them to do, we should get on with it, vote through it, and appoint our Commissioner for Standards. That commissioner, I am quite sure, he or she, will be an eminent, capable, professional individual and will not take into account frivolous, vexatious or unsubstantiated comments or allegations against Members. That is what they are going to be paid to do; that is what they will do. That is what this document does and I think we should get on, have the vote on the amendment, and again on to the substantive proposition, and move on, as the Constable of St. Mary was suggesting. Thank you.

### **1.3.17 The Deputy of St. John:**

I am not going to say very much because the Constable of St. Mary has pretty much said everything that I was going to say, so thank you to the Constable of St. Mary for that. The only thing that I wanted to raise in particular with this is, my reluctance to vote for the amendment is that it was very specific in the last term that it was recognised that Ministers, because of the extra power that they have, that there was a slightly different code of conduct, hence the reason why the legislation, the States of Jersey Law, was changed and specifically included and required them to have a code of conduct and a code of practice. There were issues from the Chief Minister's point of view as to how he separates that out. I think there would be a role, should we support the legislation today, particularly under Article 9 where the commissioner can request to include proposals to change a code. I think there is an opportunity there for the Chief Minister to sit down with who the commissioner may be to ensure that there is a proper separation and that separation is carried out and we then remove the practice part of the legislation. But I am not, at this point in time, going to support this amendment because basically we have got ourselves in a bit of a pickle here with regards to the legislation. Whether it is an ability for the Chief Minister in the meantime to take the

Code of Conduct and Practice that he has in place at this precise moment in time, allay the fears of Assistant Ministers or other Ministers with regards to collective responsibility and have a guidance under Article 18(3A)(a) of the States of Jersey Law as to how that would work for them in the meantime and then sit down with the commissioner when they are appointed. I am just trying to find a more appropriate way forward, rather than us trying to mess around with little bits of wording and trying to assume that we fully 100 per cent understand everything that is going on. Thank you.

**1.3.18 Deputy S.M. Brée:**

Perhaps it is just me but we appear to be going round and round in circles and not possibly giving a very good impression to the outside world of exactly how we discuss things. Looking at the amendment that has been lodged by the Chief Minister, and that is what we are looking at at the moment, not anything else, just the amendment that has been lodged, Senator Bailhache very kindly openly admitted to this Assembly that the codes of conduct and the codes of practice for Ministers and Assistant Ministers are one code, not 2, therefore they cannot be separated.

[11:30]

It is quite true that when you look at one code, it becomes open to interpretation as to what constitutes conduct and what constitutes practice. Should the Chief Minister have wished to make it abundantly clear as to what areas he was accepting the commissioner would be having an overview of then he should have lodged a proposition to separate the 2 out. He failed to do that which means that the wording within this amendment, I would respectfully suggest to all Members, surely cannot be supported. This amendment cannot be supported because there is no such thing as a separate code of practice that is referred to in the amendment. If we support this amendment then it allows the Chief Minister to determine what is conduct and what is practice. That is not the point of having a commissioner. I am very concerned as well the direction that some Members have attempted to take this debate into when we start talking about “freedom of speech”, when we start talking about “Ministers making a stand”. Irrespective of what you may think, if a current sitting Minister wishes to take a stand against the idea of collective responsibility they still have an option available to them and that is called resign, and stand up for your principles. I am really concerned that at this particular moment in time when this Assembly should be sending out messages to the public that we are prepared for ourselves to be independently scrutinised on what we do - that is every Member in here and every code, and it is going to be done independently - I am really concerned that we apparently have in front of us an amendment lodged by the Chief Minister who says: “I fully agree with it but it does not include Ministers and Assistant Ministers.” Now, perhaps I am reading that wrong, but perhaps perception of the public is what is important at the moment with everything that has happened over the past few weeks. I would urge Members to support P.P.C. in all the work that it has done and the clarity of its vision, and reject this amendment. Thank you.

**1.3.19 Senator I.J. Gorst:**

I am pleased to follow the last speaker because, as he knows, the Scrutiny code of practice is not included and Deputy Maçon suggested that he would like to be scrutinised on the Scrutiny code of practice, but it is not included. So there is in this proposal a differentiation of conduct and practice between Ministers and the Scrutiny function. This amendment does not take out Ministers and Assistant Ministers. It separates out, as is the same for Scrutiny, between conduct and practice. I find myself in a very strange position this morning in that I want to keep collective responsibility as it is. I want, like Deputy Labey said, to be able to work with Ministers and say: “I can understand the reasons that you want to go and sit in the coffee room, but that reason is not big enough to resign and overall the work that you are doing in the interests of Jersey trumps that one particular

area where you are troubled by the Government policy on an issue. I understand the other reason that you might want to take the decision that you did. I want you to carry on around the Council of Ministers table speaking your mind and acting in good conscience.” That is how I work it. It is in line with the code. I think that is how every Member of this Assembly would want a Chief Minister to work it. Without this amendment what P.P.C. are doing is strengthening collective responsibility and strengthening any future Chief Minister’s ability to rule with a rod of iron. I do not think that is appropriate. I think that part of the job that this Assembly asked me to do is to work with Ministers; is to get the best out of them; is to think about Jersey’s best interest; is to want them to challenge Government policy and to work together to deliver the best policy; to allow that freedom of speech that the Connétable of St. Lawrence spoke about. Not a strengthening of it, not a going to Ministers and saying: “Well, if you do not do this particular position then I can guarantee somebody is going to report it to the commissioner and the commissioner is going to find that you have been in breach of the code, and that is all I will need to ask you to resign.” I do not want that. I do not think this Assembly wants it and I am pretty sure I do not think the public want it. That is why we brought this amendment. It has been difficult; it has been tricky to find something that works. I understand how legislative assemblies work, the toing and froing, the criticising of Ministers because, after all, have Ministers not got thousands of people sat behind them doing the work? I am not criticising my department for not having had time to bring forward a divided code that separates out conduct and practice because they are the same people that have been supporting me and the department throughout the last month, and Members know all of the challenges and issues that we have had to face throughout that month. They are the same people, so I do not criticise them. We put our hand up and say that we would rather not have been here and we would have separated it out. I do not think that we want to strengthen collective responsibility, but I would say in response to the Deputy of St. John that if Members do vote for this then we will be left with that suggestion to take the issue forward, because I do not think Members want that strengthening of collective responsibility. They want flexibility. They want Ministers to feel free to be able to act and speak in Jersey’s best interest, even if that is not quite aligned with Government policy. I think that is the sort of leadership that we want in our community, not ruling with a rod of iron, I think it is the reverse. That is the reason that I brought forward this amendment. If Members want to strengthen by rejecting this amendment today that is entirely up to them and we will then have to work with the Commissioner on the different approach. Thank you.

**The Deputy Bailiff:**

Does any other Member wish to speak on the amendment? I call on Senator Routier to reply.

**1.3.20 Senator P.F. Routier:**

I started out this morning a bit apprehensive because of knowing that only overnight I was asked to bring forward this amendment on behalf of the Chief Minister because he was doing an important speech elsewhere. What has been reported to me over some time is the horror stories that the P.P.C. have within their own committee. They have meetings which I understand can be very fractious and which have been again played out here today across the Assembly. I think we find ourselves in a similar position to them where they seem to be never to be able to come to an agreed position. From my point of view it is about just straightforward fairness and a level playing field. We have had a long debate about it but I would ask any Member who thinks that it is right that Scrutiny and the P.A.C. do not have their code of practice included within what the commissioner looks at, but Ministers do. If they think that is fair, fair enough, that is a decision Members can make. I do not think that is particularly fair. Remember, what is being proposed here, which we all support, is that the Commissioner of Standards will be looking at all of our conduct for everybody,

Ministers included, and I just will maintain the amendment because I believe it is the fairest way for all of us to be treated. I maintain the amendment and ask for the appel.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 20</b>		<b>CONTRE: 22</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Connétable of St. Clement		
Senator A.J.H. Maclean		Connétable of St. Mary		
Senator I.J. Gorst		Connétable of St. Brelade		
Senator L.J. Farnham		Connétable of St. Saviour		
Senator P.M. Bailhache		Connétable of Grouville		
Senator A.K.F. Green		Connétable of St. John		
Connétable of St. Helier		Connétable of Trinity		
Connétable of St. Peter		Deputy J.A. Martin (H)		
Connétable of St. Lawrence		Deputy G.P. Southern (H)		
Connétable of St. Martin		Deputy of Grouville		
Deputy J.A. Hilton (H)		Deputy K.C. Lewis (S)		
Deputy of Trinity		Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		Deputy of St. John		
Deputy S.J. Pinel (C)		Deputy J.M. Maçon (S)		
Deputy of St. Martin		Deputy S.Y. Mézec (H)		
Deputy R.G. Bryans (H)		Deputy A.D. Lewis (H)		
Deputy of St. Peter		Deputy of St. Ouen		
Deputy G.J. Truscott (B)		Deputy R. Labey (H)		
Deputy P.D. McLinton (S)		Deputy S.M. Bree (C)		
		Deputy T.A. McDonald (S)		
		Deputy of St. Mary		

**1.4 Draft Commissioner for Standards (Jersey) Law 201- (P.87/2016) - resumption**

**The Deputy Bailiff:**

Chairman, do we now come on to consider further Articles? The amendment on Article 1 has been defeated so does any other Member wish to speak on Article 1? Very well, those Members in favour of adopting Article 1 ... the appel is called for, I invite Members to return to their seats. I will ask the Greffier to open the voting.

<b>POUR: 37</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator P.F.C. Ozouf		
Senator A.J.H. Maclean				
Senator I.J. Gorst				
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. Brelade				
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 M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
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. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**The Deputy Bailiff:**

Chairman, do you wish to deal with Articles 2 to 8? Obviously Article 9 has an amendment to it as well.

**Senator P.F. Routier:**

Just to advise that we will be withdrawing the next amendment because it is consequential.

**The Deputy Bailiff:**

Very well, in that case how do you wish to propose the remaining Articles?

**1.5 The Connétable of St. Clement:**

I would like to propose Articles 2 to 8 first.

**The Deputy Bailiff:**

Very well, if you could speak to those.

**The Connétable of St. Clement:**

Yes, very briefly. Part 2, I will start at Article 2 which establishes the office of the Commissioner. Article 3 provides that P.P.C. makes the appointment of the Commissioner but must give 2 weeks' notice to the Assembly before doing so. Article 4 sets the terms and conditions of the Commissioner. Article 5 deals with the procedure for revoking an appointment and Article 6 sets out the various grounds at which the office may become vacant. Article 7 puts a legal obligation on the States to provide the Commissioner with administrative support, and as I said in my opening comments this would be from the Greffe for this report they currently give to the committee. Article 8 protects the Commissioner from reliability for external pursuance of the law, except

where the Commissioner acts in bad faith or in relation to breaches of human rights. I propose those Articles.

**The Deputy Bailiff:**

Are Articles 2 to 8 seconded? **[Seconded]** Does any Member wish to speak on Articles 2 to 8? Very well, those Members in favour of adopting Articles 2 to 8, kindly show. Those against? Articles 2 to 8 have been adopted.

**1.6 The Connétable of St. Clement:**

In view of that may I then propose the remainder of the Articles *en bloc* and attempt to answer any questions that Members might have.

[11:45]

**The Deputy Bailiff:**

The remaining Articles are proposed *en bloc*. Are they seconded? **[Seconded]** Does any Member wish to speak on the remaining Articles?

**1.6.1 Senator P.F. Routier:**

Keeping records is what I want to get to the bottom of. In company law there is a requirement for companies to keep records for a number of years. Can I ask whether there is a duty on Members to keep records for a number of years? I do not know if the Solicitor General can help on that, because I have been a Member for a while and I am not 100 per cent sure if we have a duty to keep our records.

**The Deputy Bailiff:**

Is that a question for the Solicitor General?

**The Connétable of St. Clement:**

Yes.

**The Deputy Bailiff:**

Are you able to assist, Solicitor?

**The Solicitor General:**

I am not aware of a specific requirement for States Members to keep records for a certain period of time.

**Senator P.F. Routier:**

Thank you. I think that it is just useful for us to be aware of really because it is not changing my views on the legislation, it is really when I read it I just thought to myself: "What is our duty in keeping records?"

**1.6.2 Deputy G.P. Southern:**

I would just like to thank the proposer from withdrawing the amendment to Article 9 because it leaves Article 10 independent in its beautiful, pristine condition, which says the Commissioner must not be directed on how any function of the office of commissioner is to be carried out, including in particular whether or not to undertake an investigation referred to in Article 9(1)(a) or (b). That purity is what we seek; complete lack of interference from anybody, the Chief Minister, P.P.C., or otherwise. It is completely independent and that is what we need.

**The Deputy Bailiff:**

Does any other Member wish to speak on Articles 9 and thereafter? Very well, I call on the Chairman to respond.

**1.6.3 The Connétable of St. Clement:**

I do not think there is anything for me to reply to so I maintain the Articles.

**The Deputy Bailiff:**

Those in favour of adopting Articles 9 and following to the end, kindly show. Those against? The Articles are adopted. Do you propose the matter in Third Reading?

**1.7 The Connétable of St. Clement:**

Yes, please.

**The Deputy Bailiff:**

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

**1.7.1 Senator L.J. Farnham:**

Just simply, I was surprised to see Article 5 and the revocation of the appointment of the Commissioner, that it should be ...

**The Deputy Bailiff:**

Senator, you cannot speak to specific Articles in Third Reading. You can talk to the general law as adopted but if you are looking to make a criticism or comment about Article 5 it seems to me that was for Second Reading.

**Senator L.J. Farnham:**

No, it was just surprising to see that the law contained a reference to have a debate in camera. I thought we were trying to move away from in camera debates, that was all.

**The Deputy Bailiff:**

That was really part of an argument that could have taken place when we were going through the specific Articles.

**1.7.2 Senator P.F.C. Ozouf:**

I wonder whether or not in the Third Reading the proposer could confirm the issue of retrospection and backdating. I know there is going to be a law and it has got to come back as Appointed Day Act, but I think it is important that Members understand when and to which timeframe a complaint could be made. Is it retrospective? Does it kick in from 12 months previously from when the law comes in? I think it is an important principle, I would ask for clarification in the Third Reading.

**1.7.3 Deputy K.C. Lewis of St. Saviour:**

Just a brief clarification, under 16(2) am I right in thinking that would also exclude a person from becoming or remaining as a States Member?

**The Deputy Bailiff:**

These really are questions that should have been asked during the debate on the Articles so clarification could have been given on specific Articles. It is not really a suitable topic for debate on Third Reading. Does anyone else have any observations to make? Senator Farnham, you have already spoken.

**Senator L.J. Farnham:**

Sorry, sir, I do not want to challenge your ruling but I thought a Member could speak on any part of the law in the Third Reading, on any subject and any issue. That was all.

**The Deputy Bailiff:**

Standing Orders are silent as to the precise ambit of what can be discussed in Third Reading. In my view the purpose of Third Reading is of course a discussion as to the general principles relating to the law which may have been substantially amended during the course of the Articles, so it would be a generalised comment on that. I do not think one can address concerns relating to specific Articles, particularly when they have not been subject to an amendment going forward through the Article by Article deliberation. Sorry, Chief Minister, you have a concern?

**Senator I.J. Gorst:**

I do have a concern if that becomes the standing ruling because what we see is that there is some dysfunctionality in the way that we deal with legislation because we have the First Reading, we then go straight to the detail rather than having legislative scrutiny which would have dealt with all of the issues that we spent over an hour discussing about what code fits where and how it works, and then we come to the Third Reading and we are only dealing with the principles. So I would be very concerned if there was a standing ruling from the Chair that said we could not discuss the entire piece of legislation in the Third Reading. I think that would be most unsatisfactory.

**The Deputy Bailiff:**

To be honest, I may have not made myself entirely clear when I gave my initial ruling. It is of course perfectly open to Members to discuss the entirety of the law, whether or not it should be adopted as amended or not, and all of those types of things. What it is not, in my view, permissible to do is to pick back through - if that is the right wording - specific Articles which have been voted on just moments before, in effect. That seems to be reopening a debate on something that the Assembly has already determined. So I think in Third Reading my ruling for this debate is that one should generally be able to discuss the law as a whole in its amended form.

**Senator P.F.C. Ozouf:**

A point of order, sir? May I ask whether or not my question was of that general nature or specific?

**The Deputy Bailiff:**

I am afraid I cannot recall your question.

**Senator P.F.C. Ozouf:**

My question was just a clarification as to the retrospective or otherwise nature.

**The Deputy Bailiff:**

I would rule that as in order within the context. Does any other Member wish to speak in Third Reading? Very well, Chairman.

**1.7.4 The Connétable of St. Clement:**

Yes, just very briefly. The question that Senator Ozouf asks is obviously in Article 9, which we have already approved, where it says: "The functions of the Commissioner are to investigate a complaint that, at a relevant time, a breach of a code as in force at that time occurred." It goes on to say that: "Relevant time is not earlier than the date that is 12 months before the date." So the relevant time is 12 months previous to the Article coming into effect basically. Deputy Lewis of St. Saviour asked about the person ... 16(2) if a person guilty of an offence under paragraph (1) shall be liable to imprisonment for a term of 6 months. If someone is sentenced to 6 months by the court then if it is a States Member my understanding is that they would no longer be able to serve as a

States Member. But of course that Article applies to all persons and not only to States Members. I think that answers the questions and I maintain the ...

**Senator P.F.C. Ozouf:**

I am afraid my question was not answered. My question as retrospective.

**The Deputy Bailiff:**

The question put down by Senator Ozouf was is there a retrospective effect to the law, in other words, when the law is brought in over what prior period can complaints be brought? Does it date from when the law is brought in or an earlier period?

**Senator P.F.C. Ozouf:**

Or, if it may help the chairman, retrospective I understand is a complete political no-no, but we just need to know what we are doing.

**The Deputy Bailiff:**

It has just been pointed out to me by the Greffier that the answer appears to be in Article 9(2) of the law, Senator, which is 12 months before the date the Article comes into force, and of course the Article comes into force at the Appointed Day Act when the States bring it.

**The Connétable of St. Clement:**

I had thought that is what I said and I am sorry if I was not clear.

**Senator P.F.C. Ozouf:**

Well, I just want to know, is it retrospective, yes or no?

**The Deputy Bailiff:**

Well it is not for me to give an interpretation of the statute, I was explaining what was in it, but I think the simple position is that a complaint can be brought that dates from 12 months prior to when it is brought into force on the Appointed Day Act. So if it brought into force by an Appointed Day Act on a particular date during the course of the year then any complaint which arose in the 12 months prior to that can be lodged.

**Senator P.F.C. Ozouf:**

So then the answer to the question is, yes, it is retrospective legislation. The answer, that is all I want.

**The Deputy Bailiff:**

The answer is that I am certainly not going to make a determination or characterisation. I can explain to you what I think the legislation has said. Chairman, you ask for the matter to be put to the vote?

**The Connétable of St. Clement:**

Yes, I maintain the Third Reading.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier				Senator P.F.C. Ozouf
Senator A.J.H. Maclean				

Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
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. Brelade				
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 of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
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. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

## **2. Composition and Election of the States Assembly (P.133/2016)**

### **The Deputy Bailiff:**

The next item is the Composition and Election of the States Assembly, P.133/2016, lodged by Deputy Andrew Lewis of St. Helier. I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion (a) to agree that it should establish an Assembly of 44 Members comprising 12 Parish Connétables elected from within the current Parish boundaries and 32 other Members (to be known by the title of Senator), elected from 6 large districts, each choosing 5 Senators, with the exception of St. Helier Districts 1 and 2, which would each choose 6 Senators in addition to their Parish Connétable; (b) that the proposed 6 new large

districts will replace the current Schedule 1 to the States of Jersey Law 2005, as set out in the text of the proposition; (c) that in an Assembly of 44 Members, the maximum number of Ministers and Assistant Ministers shall be 19; (d) to request the Privileges and Procedures Committee to bring forward for debate the necessary legislative changes to enable the foregoing in time for the May 2018 elections.

## **2.1 Deputy A.D. Lewis:**

I was not quite sure we were going to get on to this today. I am slightly concerned there was some filibustering going on but I am sure Members had their best intentions in mind. However, today we have a great opportunity to demonstrate to the public that we listened, and not only that, we have a second chance - something we do not often get in politics - to enact the results of the 2013 referendum in which the public voted overwhelmingly for change. Some Members may say: "Why now?" Well, the reason why now is because we have a limited amount of time to get this enacted before the next elections. Why now, because P.P.C., despite doing a huge amount of work on this - and I take my hat off to them, they have worked very hard on this - were unfortunately not able to draw to a final conclusion to present Members options to discuss in this Assembly. I did make an election promise, I was harangued on the doors - as other Members may have been - about the inability for Members to make a decision on this in the past, and many said they would not vote again as a result. So I said I would bring it for debate. I discussed this with the P.P.C. chairman some time ago and he asked me to hold back while P.P.C. did their work, and Members now know what has happened with that work. It has not been presented to Members.

[12:00]

So today we have the opportunity to debate what maybe P.P.C. may have produced but unfortunately were unable to. There have been many attempts over many years to reform the States Assembly but in March 2012 the States agreed to set up an Electoral Commission to consider the matter. It was something that I stood here when I was first a Member and asked consistently to happen, and I was delighted when it did. It was agreed by this Assembly that the views of the public should be sought and taken into full consideration. That is why, upon completion of the Commission's work, the States was asked to approve the holding of a public referendum. On Tuesday, 19th February 2013 Senator Bailhache presented P.5/2013, which was to agree how the referendum would be worded. It was down to the Assembly to seek Members' agreement to hold the referendum. During his opening remarks the Senator said: "Some Members may not agree with the recommendations of the Commission, but I hope that they will nevertheless respect the right of the people to have their say. If the public does not agree they can reject the recommendations for reform. That is the promise that has been made to them, that is democracy. If we believe in democracy we ought not to be content to remain with the status quo." That was Senator Bailhache back in 2013. During the debate the Assembly made attempts to amend the proposition, the questions that were put to the public under P.5. There were 5 amendments, all were overwhelmingly rejected. The motion to have the referendum was passed: 37 votes in favour, 12 against, and it was held in April 2013. If I may, I would like to briefly put to Members some historical context to this subject. In the early years of the 20th century the States were constantly changing the number of Deputies and the shape of constituencies to reflect the growing population in St. Helier. Some major changes were made in 1948, the Rectors and Jurats were removed from the States and the office of Senator was created, and incidentally a number of serving Jurats stood successfully as Senators. However, since then the States have failed to keep representation in the States aligned to the changing number of electors in different parts of the Island. Apart from allowing one extra seat in St. Brelade and moving 2 seats from St. Helier to St. Saviour in 1974, and then removing 4 Senators in recent years, nothing significant has changed in the last 65 years. Yet the population of the Island has changed significantly in its distribution and it has not been

reflected in the system of parliamentary representation that we have today. I will give you an example: St. Peter has one Deputy for 5,000 voters whereas St. Lawrence has 2 for 5,500 voters. Where is the logic in that? There are many other anomalies and I am sure Members will mention them during the debate. The Commission's report that I attached to my proposition clearly demonstrates the enormous difficulty in mathematically balancing representation under our current system, or indeed any system with smaller constituencies if Parish boundaries are maintained as electoral districts. So why does this matter in a modern democracy? Well, this is perhaps demonstrated by the fact that all too often there are no elections in some Parishes. I strongly suggest that this is not good for the health of any democracy. How many Members of other parliaments get nodded through without an election? I suspect very few that are truly democratic. Furthermore, too often Members are elected on just a few hundred votes. Voter turnout is low, in fact lower, as far as I am aware, than any other part of Europe, including Guernsey, the Isle of Man and others. There is widespread disillusionment with the political process. Some might say that this is reflected in the absence of party politics, but in my mind it is perhaps the reflection of a complex and unfair system. This Assembly in recent times agreed to a single election day, which has rendered the practical distinction between Senator and Deputy virtually non-existent. You can be elected by 15,000 or by less than 400. In the Chamber it makes no difference. Some voters can elect one Deputy where other voters can elect 2, 3 or even 4. For newcomers to our Island, or even those who have lived here for most of their lives, the system is quite baffling to many, all but incomprehensible to others. By replacing the Island-wide mandate with super-constituencies all candidates, not just Senators, will have to gain many more votes to get elected. To those that say that the Island-wide mandate should be maintained, believing that Senators then take on larger portfolios, can I just remind Members that there are now only 8 Senators so currently 6 of our Ministers are Deputies. I have no issue with that, I am sure they do an excellent ministerial job, however, those Deputies were elected on less than 400 votes between them if you divide it by 6; 2 were unopposed in the elections. P.133 ensures that future Ministers will have to gain significantly more votes. If this Assembly is to regain the respect of the public as a fully functioning democratic legislature, we ought to be dismayed by the complex and illogical process by which we are elected. That was the conclusion of the Electoral Commission. From what I can gather the makeup of the Commission consisted of very independent characters, yet when they came to present their recommendations they were unanimous. The conclusions of the Commission were supported by Jersey's largest ever public engagement exercise. The Commission even published an interim report allowing the public to engage in its provisional conclusions. Then a version of the final report was distributed to every household so that the public could fully understand the questions being recommended to them, and then proposed to be put to a referendum. One of the biggest changes put to the public was the concept of creating larger electoral districts. In the referendum the public voted overwhelmingly in favour of this concept with the option to maintain existing districts achieving less than 19 per cent of the vote. So, why did people recognise this as the best way forward? Well, I would suggest that many saw this as a way of eradicating uncontested elections. The public also saw that they would have a chance of 5 or more seats to elect and more candidates to choose from. As it has been proven in other countries, a direct consequence of such a reform would be increased voter interest and in turn voter participation. But most importantly, a candidate would have to obtain a significant number of votes to be eradicated ... sorry, elected. **[Laughter]** Freudian slip. Not as many as a Senator but still a much more significant number than at present. This will enhance the quality of debate hustings and ultimately in this Assembly. As a consequence Members of the Assembly that would be elected from these districts would concentrate on the large and important issues facing the Island, leaving parochial matters to Constables and the Parish authorities. Let us face it, our Constables know that stuff better. I have endeavoured during the past few weeks to speak to most Members about their views on reform. It has been an enlightening and refreshing experience. We should all talk to each other more often.



Some expressed concerns as to whether the Assembly can function with less Members. I would assert that with the right calibre of elected Members, attracted by a simpler, fairer, electoral system, the Assembly would function very effectively. But more importantly, one must consider both the views of the Commission and even Clothier. When deliberating on a suitable number of Members to recommend in its report the Commission considered a range of factors. Firstly they carried out research into the size of parliaments and legislatures throughout the Commonwealth, and in particular looked at the size of parliaments in small Commonwealth countries. They discovered many countries and legislatures that were small, and in some cases significantly smaller than the States Assembly here. Secondly the Commission took into account the views of the public who in both oral and written submissions expressed a view that there were too many States Members, and if you looked at the responses on the media yesterday that was an expression that was made by a number. That said, in Senator Bailhache's speech in the Assembly during the debate on P.5 he clearly stated that the Commission took the view with great caution. It is a bit like saying: "Do you want to pay more tax?" "Do you want more States Members?" I accept that and so did the Senator. It also is made clear in the Commission's report, but nonetheless that was the clear and unambiguous opinion of the vast majority of submissions made to the Commission. If you look at the back of the report you can see the list of the names, a lot of people submitted orally and in writing. The process for the Government and the Scrutiny could operate with a lesser number; that was the view of the Commission in previous reports. In paragraphs 4.3 and 4.5 on page 18 of the final report, which I attached to my proposition, there is an analysis of the numbers necessary to perform the functions of Government and Scrutiny under our current system. The Commission concluded that the relevant number of States Members required under the current machinery of government was 42. They went on to say that it was not sensible to have more Members of the States than was necessary for the legislative critical functions of the Assembly. The Commission also took into account conclusions of the Clothier panel which recommended that if the Assembly were to move to ministerial government, which of course it did, the number of Members ought to be reduced to between 42 and 44; 44 being the number I am now proposing. So currently only 44 Members of our 49 Members are engaged in the functions that were identified by the Commission as making up the essential functions of Government. This is not the first time that Members have expressed similar concerns. In the debate on P.5 the minority of Members stated similar concerns. However I have done a considerable amount of research over several months here and I have not found any submissions from any Members past or present to the commission expressing their concern where they published their report in numbers. Maybe I have missed it but I have not found it. In April 2013 Jersey held its second ever referendum to ask the people of Jersey's opinion on the significant work carried out by the Commission presenting them with 3 options. The results are now well known, but for the record, option B was retain the Constables, create 6 larger districts with a total of 30 Deputies received the most votes in both the first and the second round, with option A coming a close second. However option A was the clear front runner in St. Helier, reflecting voters' desire for greater voter equity in the urban area. What this proposition does is recognise that and improves voter equity in St. Helier by introducing 2 extra seats, one in each of the 2 St. Helier electoral districts. This significantly improves the issue of deviation from the Venice Convention which Members will be familiar with. There is a table on your desks as highlighted by the Commission and many other expert political commentators over many years. The debate about electoral reform has rumbled on since 2001 and possibly before that. It has created nearly 60 reports, has seen numerous propositions lodged, all without creating any effective change. Today we have a chance to put an end to the saga of electoral reform. This proposition P.133 represents progress by acknowledging the will of the people of Jersey. Crucially it creates more voter equity and equality than ever before. It simplifies our system of government, reduces the number of States Members and yet still maintains those all-important strong links with the Parishes. This proposition is an opportunity for States Members to vote for Islanders and the

system of effective government that they clearly want. So it is not often in politics that you get a second chance to get something right. This is that opportunity. When I was canvassing for the elections last time in Districts 3 and 4, in 2014, I was regularly reminded by constituents that this Assembly had ignored the results of the referendum. I was appalled that many said to me that because of the despair about the disregard for that vote that they were never going to vote again, and it was right across the democratic spectrum; it was not just people that were anti-government. Today we have an opportunity to regain the public's confidence and clearly demonstrate that we have not only listened, but we have acted too in the best interests of the Island, and adopted a simple but extremely important democratic principle, fair and equitable elections. This is not only important for the people of Jersey but equally important that we demonstrate to the wider world that we respect such principles and we have acted under our own direction rather than risk the real possibility that some day in the future we would be forced to reform by others.

[12:15]

There is probably plenty more to say on this and Members, I am sure, will speak eloquently as they have in the past. I have over the last several weeks and months been through all of the transcripts of all of your speeches and your predecessors. There is a common theme. You are all passionate about politics. You are all passionate about Jersey. That is a great thing. But we need to be passionate about democracy as well and put aside those thoughts and views that are personal to us for the betterment of the democracy that we are proud of now and want to be proud of in the future. That is the opportunity we have today. I would urge Members to consider this very seriously, to have that debate. I would urge people to listen carefully to the amendments. We need to have that debate about those amendments too. But fortunately this time there are not too many amendments. There are very few other ways you can do this. In the past many amendments have resulted in substantive propositions being defeated. I hope that does not happen today. There is an opportunity for you to take. I hope you take it and I hope we have a healthy debate about this matter and we come to a healthy conclusion for the benefit of all.

**The Deputy Bailiff:**

Is the proposition seconded? **[Seconded]** Now there are 4 amendments that have been lodged to the proposition. The order that we will take them is that we will first take the amendment lodged by Senator Ozouf. If that is not adopted then we will move on to the second amendment lodged by Senator Farnham. If that too is not adopted then we will move to the fourth amendment also lodged by Senator Farnham. Finally regardless of the votes on the earlier amendments we will then have to consider the third amendment also lodged by Senator Farnham.

**The Deputy Bailiff:**

**2.2 Composition and Election of the States Assembly (P.133/2016): amendment (P.133/2016 Amd.) - as amended**

**The Deputy Bailiff:**

The first amendment for consideration has been lodged by Senator Ozouf and it is Composition and Election of States Assembly: amendment. Senator, you have lodged an amendment to your own amendment and you wish if you can to take your amendment as amended.

**Senator P.F.C. Ozouf:**

Yes, I would prefer to. Members, I explained I do not know how many days ago, that I did lodge an amendment to the amendment. My position is going to become clear during the course of the debate. I think it is important Members do have this opportunity of making the decision about Senators in the way that I have done so; and I respectfully say that I did submit ... I know that it was submitted at 4.00 p.m. but it was for various administrative reasons not possible to lodge it. It

would have been in order, and I would like not to test Members' patience by proposing my amendment as amended if I may. That means reducing the day of lodging by one day, but I would plead in mitigation that I did send my amendment in in good time and it was just understandable administrative arrangements or whatever the arrangements are within the Greffier and the Bailiff's office that it was not possible to do it. So I would prefer to propose my amendment as amended and would seek Members' permission to do so under the relevant Standing Order.

**The Deputy Bailiff:**

So, Senator, you are proposing that the lodging period is reduced for your amendment so it can be taken together with your amendment.

**Senator P.F.C. Ozouf:**

We may be here tomorrow which may be an odd state of affairs. But if I may seek that I would like to just do it in one go and get it over and done with, amended as amended.

**The Deputy Bailiff:**

Is that proposition from the Senator seconded? **[Seconded]** Does any Member wish to speak on the proposition that the lodging period is reduced to enable the amendment to be taken as amended?

**Deputy M. Tadier:**

Can I just ask what is the Standing Order that relates to the lodging period being reduced? Is it the usual test about public interest or is it just ...

**The Deputy Bailiff:**

Standing Order 26. It requires that the States must be of the view that it is in the public interest to permit that to happen. Yes, subparagraph (7): "May reduce the minimum lodging period for the proposition if the States are of the opinion that it is in the public interest to do so."

**Deputy M. Tadier:**

I find it difficult to see how, if it is so important if it is in the public interest, and of course it is for Senator Ozouf to judge whether it is in the public interest first and foremost because it is his amendment, you would have thought something that is so important for us to reduce the lodging period would have been lodged within good time. I do not think it is a satisfactory excuse to say: "Well, I did put it in at 4.00 p.m. to the Greffier." On a busy week before the States for lodging, expecting it to be processed in time because I think we have all been in this Assembly and Senator Ozouf has been here much longer than I have and I know that you cannot expect to put something into the Clerk's Office before say even in the afternoon and expect it to be lodged. You do it well in advance. You do it at least the day before, and you would speak to them. Given the fact that Senator Ozouf has already put an amendment in anyway and then he is amending further his own amendment out of time I do not think it is within the public interest and I think we should reject it on that basis.

**Deputy S.Y. Mézec of St. Helier:**

Looking at the amendments that we have before us at the amended amendments from Senator Ozouf it is virtually identical to one of the amendments from Senator Farnham, the only difference being that Senator Ozouf's amended amendment has 6 Senators and Senator Farnham's has 8 Senators. On the basis that those propositions are virtually identical and Senator Farnham lodged his in time I cannot see how it is in the public interest for this States Assembly when we have already spent half a day debating ourselves to essentially have the same debate twice, the only argument being over 2 Senators. I cannot see how that is in the public interest and I do not think

we should have that debate. We will have it when we come to Senator Farnham's amendment instead.

**Deputy J.A. Martin:**

No, I was pleased to see this amendment to the amendment because if I was ever going to support - and I am not saying which way I was going to go - I thought the numbers in the first amendment were far too low and on what we could do. Is it in the public's interest? This again, as Deputy Lewis of St. Helier has just said, this is the last chance we have to debate. I think we have been given time to have a thorough debate. I absolutely do not know whose fault it was, but I think after the Senator has spoken to people he thought he would have no chance unless it was amended and I think we should allow the Senator on this occasion; for myself it is very much in the public interest that we have a thorough, thorough debate. So I absolutely support limiting the lodging period.

**The Connétable of St. Mary:**

Very much on the same basis as the previous speaker, I think we have got to this stage. The public want this matter done and dusted; they want it over with. I would hate to say that for the want of a bit of salt we spoil the soup. So if this is the debate we should be having, let us just say yes, let us have it. It is not going to take any longer to debate 8 or 6 or whatever. There is an extra choice there. Let us just get on with it and then we can level it back and say we might have done something except we were not allowed to debate that amendment. I do not want my answer to give you any false hope of support for it.

**The Connétable of St. Lawrence:**

I seconded the proposition but I wonder whether the Senator is able to elaborate on the reason for the delay when he sums up?

**The Deputy Bailiff:**

Does any other member wish to speak on the proposition to vary the lodging period to enable this amendment to be taken?

**Senator P.F.C. Ozouf:**

To take the last question, my understanding is that the approval process that is required for an amendment is that it is the Bailiff or Deputy Bailiff that must approve it. There is no delegation which is perfectly understandable for a main proposition. I thought that this was a relatively minor amendment. If I may address Deputy Tadier or Deputy Mézec - I cannot remember which member of Reform - it is not just about the difference of Senators; it is fundamentally about the number of Deputies or M.S.J. (Members of States of Jersey), Senators, whatever you call them in the actual significant sections. That is the major issue. It is not the issue of the number of Senators; it is the actual underlying issue as has been explained. I am sorry; if I could have got it before 4.00 p.m. I would have done, but I hope Members might understand that last week might also have been rather stressful in a number of other different respects. I did do my best; I have always done my best to try and get things in order and a re-organisation of my life has had to happen and Members might also hear that I am not exactly on the greatest of form in terms of my oral abilities. So that is the reason why I urge Members to please, on this occasion, give me one latitude to debate the matter in the public interest which I think really is in the public interest, and allow me to have one day slack. In the public interest I think there are reasonable reasons why, and I ask Members for the appel.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. I invite the Greffier to open the voting.

<b>POUR: 35</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy M. Tadier (B)		
Senator A.J.H. Maclean		Deputy S.Y. Mézec (H)		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy of St. John				
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. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

**Senator L.J. Farnham:**

I wondered if before we could start I could just ask for a point of I suppose confirmation from the Chair and that is on the numbers required for all the amendments and the main proposition in relation to a majority of the Assembly.

**The Deputy Bailiff:**

Obviously I understand the Standing Order in the provision to which you are making reference; it seems to me that there is no requirement for any particular majority for dealing with the amendments. The most that that could apply for is dealing with the substantive proposition as amended, wherever that might be. But I would need to consider a little bit further and will do so as to whether in fact this requires such a majority at all or rather the amending legislation might require that particular majority because that is what will bring the changes into effect and I would just like the opportunity to reflect upon that. Very well, Senator. Do you wish to propose your amendment as amended? I will ask the Greffier to read it.

**Senator P.F.C. Ozouf:**

Thank you very much indeed. I am grateful.

**The Deputy Bailiff:**

Sorry. I will ask the Greffier to read it.

**The Greffier of the States:**

Page 2, paragraph (a) For paragraph (a) substitute the following paragraph: “(a) to agree that it should establish an Assembly of 44 Members comprising 6 Senators elected Island-wide, 12 Parish Connétables elected from within the current Parish boundaries and 26 Deputies elected from 6 Parish-based districts, each choosing 4 Deputies, with the exception of St. Helier Districts 1 and 2, which would each choose 5 Deputies in addition to their Parish Connétable.” Page 2, paragraph (b): in the table, for the word “Senators” substitute the word “Deputies” and in the second column, for the numbers “6” and “5” substitute the numbers “5” and “4” respectively.

**2.2.1 Senator P.F.C. Ozouf:**

I rise with some trepidation to make a proposal to effectively improve or add to a proposition that has been lodged by Deputy Andrew Lewis which is a proposition which he did not say which was identical to a previous proposition that I lodged and that was unfortunately withdrawn; I do not know quite what the circumstances of one of the many chaotic debates of the electoral reform of the composition state to be. But anyway it did not get through. I wish to start my remarks by saying that I have always accepted the expert analysis and conclusions of all the people that have looked into our elections. Clothier Commission, I came out in support; Electoral Commission, I campaigned for option B. I then supported the referendum outcome and then I put forward a further amendment mindful of the sensitivity of the fact that St. Helier had not voted and added a single Deputy. The reason why I have then lodged this amendment is because I thought that it was important that there is a debate once and for all and there is closure on the issues of Senator. I am a Senator and have been discharging that office since 2002. Those of us who have discharged that office I do not think feel that we are any better than anybody else. Certainly this House, this Assembly, makes sure that we do not appear to be better than anybody else because we are all equal. However, we have to be mindful of public opinion. At least we have to know what public opinion thinks and we have to do things that are sensitive to public opinion, and then work out on our conscience in our oath of office what is in the interests of the Island. I have been an election observer and I think there is only one other Member of this Assembly who has been an election observer too, and that is Senator Bailhache. Election observers will be here in Jersey at the May 2018 elections and they will be looking at our electoral system. That is the right thing to do. Any members are proud members of the C.P.A. (Commonwealth Parliamentary Association) and also those that work from the Francophone world are members of the Assemblée Parlementaire de la Francophonie. When you are an election observer you understand that it is not just simply an analysis of the electoral registers and the modalities counting. I think we have dealt with counting and that our system is good. I think, Constables, there is always room for improvement of electoral registers.

[12:30]

But those arrangements are good even though our electoral registers may be slightly overstated because of the 3-year crossover. What is also absolutely vital in understanding election observers is that they look at the fairness of the system. They look at the system to see whether or not it is legitimate. There are 2 principles that are relevant to this amendment and to this whole debate. They are voter equity and voter equality. Voter equity is that every citizen generally speaking, understanding that there are island states and there are islands in big countries who generally have a

similar number of votes when they cast. Every Islander should basically have the same right, more or less, of deciding the amount of people that they send to this Assembly to pass laws, raise taxes, make expenses applications, hold Chief Ministers to account and all the rest of it. The second thing is that there should be a principle where every Member of this Assembly broadly speaking represents a number of people and these were alluded to in Deputy Lewis' proposals. The fact is that Senators comply with both of those norms. They certainly are equal because everybody has the same number of votes and they certainly are fair because it is one Island constituency. So I want to be clear that in the event, in the certainty, that election observers will be coming to Jersey, the inclusion or otherwise of Senators will mean that we will effectively pass that important international test of voter equity and voter equality. Deputy Lewis, Senator Bailhache and all those other Members over many years have spoken about the numerous attempts to find a solution and there are in effect 3 options available to Members today. My amendment is one of them. The first is to do nothing, the second is to accept my amendment, and the third, in the event of that amendment being unsuccessful, is to support the unamended proposition brought forward by Deputy Lewis which was the original idea that I had to deal with the unfairness of St. Helier. Members will also be aware, and I have sent an email now around it, and they may have listened to Radio Jersey this morning. Since having stood down as Assistant Chief Minister I have had a little more time on my hands to understand exactly what people think, and that is the reason why I commissioned an independent survey; to understand. I am not saying that survey is perfect, I am not saying that survey is the actual result but I think it is interesting that that survey has once again returned a result which is a conundrum, the big conundrum that this Assembly has. The survey - many people may criticise it, so be it, I stand by it - I commissioned it, they did not know who I was because to say who I was would have invalidated it because I have a previous position. That survey resulted ... and I thank publicly all those 600 plus people who completed the survey both in terms of having been sent to a panel of 1,600 people on a database on Friday evening, who responded on social media: Twitter, LinkedIn and Facebook, and also to the accredited media that brought attention to it. I have to say to Members that a number of accredited media did not bring attention to it because they were unwilling to have a situation where a survey was promoted without the name being known at the time although I said I would then say so. Now, why does that matter? Well, the survey results show what I think most of us already know. But it confirms it and it is recent. It shows that, first of all, despite valiant attempts, and I know it had only run for 3 days, but the results of the turnout; the voter turnout, the survey turnout, was low, it was not great and our system of democracy is not great for a number of reasons including voter turnouts. Voter turnouts for Senators have, in the past, been higher than others and that maybe is a relevant factor. The survey said that 90 per cent of Islanders wanted change. Respondents said they want to be properly represented. The people that responded to the survey said that they understood the system and they also said that they understood that there was an unfairness in the way that Deputies were elected. That is the debate of the substantive proposition which my proposition maintains. My proposition proposes that there should be fairness in the way that the majority of Members of this Assembly are elected. But I fully accept that my original unamended proposition did not result in a sufficient number of Deputies and Constables and Senators being elected and therefore I amended it. Now, what is the dilemma and what is the conundrum is that the reality is that despite the fact there has been a Clothier survey, a Clothier report, many public meetings, many discussions, there has been an Electoral Commission with Parish meetings and a referendum. Many Islanders do not understand why their Senators are being taken away. Experts, of which there are a number in this Assembly, know why Senators may be being proposed to be taken away but the reason for putting a proposal to maintain them is to make sure that we do it with our eyes open. If Senators are to be removed we have to be sensitive and aware, and my survey, albeit Members may say it does not matter, it is not legitimate, said that an overwhelming number of Islanders wanted the Island-wide mandate. Okay, it may be possible to say it was a leading question, it is one of those things: do you

want sunny days? But it was nevertheless a question that needed to be asked and those Members who are shaking their heads and saying: “No, no, no” they are deluding themselves if they think that Islanders are going to accept easily the removal of their Senators and the removal of their Senators probably for ever, and that is the why, that is the reason why this debate needs to be had. This is the Parliament of Jersey, we call it an Assembly but it is our parliament. It is the font of democracy. It is the way that everybody ... we run by the rule of law and we pass laws and we expect people to comply with them. We pass bills of expenditure, we raise taxes, we hold Ministers to account, we elect Scrutiny Panels. We make decisions like yesterday, sensitive difficult decisions and so the legitimacy of the Parliament of Jersey must be good. There must be a situation where people think that we are fairly and properly elected and that the process is also legitimate. We have put off for too long outside scrutiny of our system but it is coming, and I wish to say to Members, in both this amendment and in the main proposition, of the consequences of doing nothing. If Members do not want to support my amendment I urge them to support Deputy Lewis’ amendment because the consequences of doing nothing are that we will be cast as a non-democratic state, a democratic state with low voter turnout; that will not change, or will it? That is the debate we need to have. A democratic system in which there is one person in St. Lawrence, which has 2 Deputies, a representative in Grouville or St. Peter that has one but with a similar population. Without naming and saying that in any way my friend, my own Deputy in St. Saviour No. 3 ... I live in St. Saviour No. 3 and I did not get a vote in a Deputy last time. I happen to think that Deputy McDonald is a very nice gentleman indeed but it shows the unfairness. I represented St. Helier No. 3 and 4 and they had 4 votes. So we cannot continue to have a situation where there is a disparity of votes to that extent. Now the public have already decided that we are going to keep Senators. Brexit means Brexit. Constables means Constables and they are going to stay certainly for the foreseeable future. Now, Constables means Constables. Sorry, I beg your pardon. I mean Constables mean Constables; I do apologise. The question is, are we willing to make a decision and basically say that Senators no longer have a place in this Assembly? Senators have been, whether they like individual Senators or not, they have been the people that have discharged all the high offices of Jersey politics since the reforms of 1948. The great late Senator Cyril Le Marquand and all those others, they have commanded an Island-wide majority. There were advantages in having an Island-wide debate because everybody votes in it. There is no doubt that an Island-wide vote on a senatorial election does deal with national interests and does deal with the overall issues that affect the Island. In no way do I say that Constables and Deputies do not care about the Island, but it is true and it must be true that district Deputies, even perhaps larger constituencies, do not address those Island-wide issues in the way that the Island-wide election does. I refer, with the greatest of respect, to our sister Island of Guernsey and I follow Guernsey politics as I know other people do in this place and we look to see, does the Guernsey system of super-constituencies result in a proper debate of Island-wide issues in Guernsey? I just posed the question. I do not think it does to the extent that we have in Jersey. The Isle of Man is the same. The Isle of Man does not have an Island-wide mandate. So the people want the Island-wide mandate but perhaps they do not understand the consequences of having it in the fact that there is then effectively no real scrutiny or certainly the ability for the media to scrutinise all of the other deputorial elections to that extent. That is not to say that they are not legitimate and they are not good elections but we have to admit that they are patchy. A Member in the coffee room told me yesterday that in one St. Helier hustings meeting there were 20 people that turned up. In a St. Saviour one there were even less. In Grouville, my good friend the Deputy of Grouville tells me that they are literally climbing off the windowsills. In St. Peter there was a proper good election. Now, there is no doubt that this is something that needs to be fixed but what I can do is I can say that Senators do have a proper test of public opinion; those national debates do happen. The matter of taxes and spending, what the overall issues are, and nobody can say that a Senator is partial to a particular constituency, a particular part of the Island, and in a system without party politics it is the great leveller. Now the



matter before Members is that while understanding that the senatorial system does work and it has commanded a proper debate of proper matters of national importance and, I believe, has resulted today in Jersey being a jurisdiction which looks at the long-term issues rather than the short-term issues. I know that the public think this Island is badly governed. I know that members of the Island think that the Council of Ministers is not doing a very good job. I know that members of this Island think that this Assembly is not doing the job and I am pleased that the cameras can show what goes on in this place. But the system of democracy needs to be improved and the matter before Members is: are Senators a requirement for future long-term thinking and long-term democracy? I will be supporting Deputy Lewis' proposition if my proposition is not amended; let me clear about that. Well, it would be because it was originally my proposition. But the debate about Senators must be had and it must be had after lunch, after the adjournment, after I sit down as to the conundrum. Are we willing and can we get away with telling the public that they have lost their Senators? Are the people going to accept an election where their Senators have been rejected by this Assembly and they have been removed without having asked them recently? I hear noises everywhere but this is a debate that has to be had and it has to be had now, and with the greatest of respect to my friend, Senator Farnham, we cannot have a referendum a couple of months before an election. You need to fix the general election principles a year before. So I have to do it, it falls to me to ask Members whether or not they are willing to basically throw out Senators, say goodbye. Because Senators are Senators, by the way, Senators are not Senators that are elected in districts; I have never seen ... but I think that is an issue of principle we can deal with later. To me the issue is: is the Island-wide mandate something we are going to dispose of, despatch to the pages of *temps passé*. Are they gone, because now the time is to decide it and this is the debate to have it? The debate to have it in the full knowledge that I know, as a result of the survey that I commissioned yesterday, that the majority of respondents of that survey, I think 70 per cent, said they did not want them to go. Now, if Members want them to go they are going to have to explain why because for all of the proposals that have been brought forward: Clothier, Senator Bailhache's Electoral Commission, all the rest of them, still there is not an acceptance in our Island community that the position of Senator should be deleted and be cast to those pages of *temps passé* and that is the debate that I urge Members to have, with respect, without venom, without personalities, in a proper place which is the Parliament of Jersey. I move my amendment and I ask for the adjournment and express the hope that this debate can happen quickly, properly, without personality but with the full knowledge that we may be doing something that the people do not agree with. I move my proposition.

[12:45]

**The Deputy Bailiff:**

Is the amendment seconded? **[Seconded]** Is the adjournment called for?

**LUNCHEON ADJOURNMENT PROPOSED**

**The Deputy Bailiff:**

Very well, the States stand adjourned until 2.15 p.m.

[12:46]

**LUNCHEON ADJOURNMENT**

[14:25]

**The Deputy Bailiff:**

Very well, the amendment proposed by Senator Ozouf, as amended, having been duly proposed and seconded, we open the debate. Does any Member wish to speak on that amendment?

### 2.2.2 The Deputy of St. Martin:

During long weeks in this Assembly, Members have different ways of engaging. Some spend their entire time in their seats; some spend time in the coffee house; some, who are capable of multi-tasking, descend to the downstairs where they can work and follow the debate via the speakers, and I try to do a combination of all those. When in the Chamber, however, we all have our different confection of choice, some healthier than others. My preference is mints, the extra strong type and in preparation for this week, as some Members will know, I sought out a wholesaler, such is the length of time that I expect this debate to take. However, it is important that we take whatever time is required because, to be absolutely clear, this is an important debate, a vital debate, one that has the potential to change, possibly for ever, the way that Islanders elect their representatives to this Assembly. Personally, I think our task this week is to seek out the fairest and most equal, most acceptable, system that we can and I expect that Members have, like me, spent an enormous amount of time thinking about the various votes that we may take this week. At this very early stage of the debate I wanted to be very clear with Members as to where I am coming from and I would like to start with priorities. In my view, above all else the public must have the final say, regardless of where we end up this week. For me, we simply cannot and must not enforce changes to elections. Changes to take place, without the support of the electorate, I do not think are negotiable. So, with that decision made then there are considerations that need prioritising. My list has always been this, and in no particular order: Constables, Senators, super-constituencies, fairness and equality of vote, reduction in the number of States Members. I was hugely grateful for the helpful and informative comments of P.P.C. To be honest I have been waiting for their recommendations over the past months and I have to be honest with Members and say I am very disappointed that they could not be the ones bringing this proposition today. They were charged to go away and come back with their recommendations, and while I might be upset that they have not managed to find an acceptable proposition, it does, however, clearly demonstrate how difficult it is to reach consensus on this tricky subject. I was particularly upset, because as I read their comments I found myself increasingly saying: "Why did they not bring these proposals forward?" What we have, as their not proposed option is exactly what I want; it ticks all my boxes and I think it also ticks the boxes for the majority of the public as well. So, as we know, Constables are in and I am pleased about that. I always said, and I reiterate it again now, if there is only one seat for St. Martin's I will happily give up my Deputy's position so my Constable, the elected head of my Parish, can represent me and my Parish in the States Assembly. So, with the Constables in we can at least now concentrate on making the best of the other options and, to my mind, the next priority is fairness. I will come to options A, B and C in a minute, but the one thing that stood out for me from the result of that public vote was the fact that people want change. They want super-constituencies, they want a fairer system; more equity, more equality. So super-constituencies, yes, and I am not overly bothered which option we go for when it comes to super-constituencies but, surely, the fairest one would be preferable. But it is not a deal-breaker for me. In the same vein, I would ask Members to look at the P.P.C. paper, page 11, the table that shows how the various options conform, or otherwise, to the Venice Commission.

[14:30]

Surely if we want a system that conforms, we want one that conforms as well as it possibly can. So returning to the options, I voted for option B in preference over option A, or C, and I will stick with my opinion there. However, while I thought option B was the best of the 3, it did not really deliver what I, and many of the people I speak to, wanted. Therefore, I need to point out that I also value Senators. I am very clear in my mind that it was the 2 terms that Senators used to serve, in the old Assemblies, that delivered the stability and underpinned the continuity of past Assemblies. Regardless of the fact that they now only serve one term, for me the Island-wide mandate is still crucial. There are Members, I know, who will vote today to remove Senators. However, I just

cannot resolve in my mind, how, if you on one hand promote fairness and equality of vote for all, you cannot on the other hand vote for the retention of Senators, the fairest and most equal way across the whole Island of electing States Members. I fully accept that we cannot legitimately elect more than 8 Senators, maybe not even legitimately elect that many at a time, but it is my view that we still need them; our most senior ministerial positions should come from the senatorial benches: people elected by everyone across the whole Island. I mentioned I was an option B supporter and an active supporter at that, and I can understand that those, who I sat beside at various hustings meetings, might feel I have jumped ship but that is not quite the case. Option B was the best of the 3 options. I was not prepared to accept that the status quo was the way forward; after all, we need more fairness and more equity, more equality, but the options of super-constituencies and Senators was not available. It is now, it is available here today and that is where I will be putting my support. I will also, as I said in the beginning, be supporting the amendment that - if we agree something this week - says the electorate should be consulted, especially about Senators. There are very many people who want to retain an Island-wide mandate. I would remind Members that our near neighbours abolished this position not very long ago and are now considering asking their own Islanders whether they want to reinstate it. So to be clear, the answer is simple: fairness and equal vote for all? Yes. Super-constituencies? Yes. Senators? Yes. Ask the public? Absolutely. I fully realise that we have been here before and if you look at the P.P.C. paper there are 62 various attempts to reform in recent years. Surely we can be the Assembly that does better and finally gets there. We can have a system that retains Constables, that reduces our numbers, that gives voters more equity and equality, that retains the Island-wide mandate and I would urge Members to vote with those sentiments. I know only too well at the very end of this debate I am faced with a very difficult decision of moving to a system, which is new, that I know the public wants, or retaining the status quo. Thank you.

### **2.2.3 Deputy S.Y. Mézec:**

I hope, at least in this first debate on this first amendment, that there can be a little bit of leeway given that obviously a lot of the issues in this amendment transcend the original proposition as well. So, I will have to touch on a couple of those issues just to make my point on why I will not be supporting this amendment. Many Members will know that this is an issue that I feel incredibly strongly about, in fact it was the issue that got me into politics in the first place and I am sure there will be some who, on that basis, will be wishing we had dealt with this 10 years ago, so I would have never been motivated to get into politics in the first place. But, the simple fact of the matter is that our electoral system is broken: it does not work, it is overly complicated, it is unfair and people do not engage with it; that is the real problem with it. Seventy per cent of the public at the last election did not vote. By my calculation it was the lowest election turnout since before I was born and despite moving towards a general election day our election turnouts are getting worse. When general elections were meant to make our turnouts get better they have done the opposite and virtually everybody agrees that something has got to change. I have got very strong views about what I want that change to look like. I put it in my manifesto what change I wanted to have. I have campaigned very hard, I have worn out the soles of several pairs of shoes campaigning and working hard in that referendum in 2013 for the option which represented most closely what I wanted out of electoral reform, and I think that myself, and the other campaigners in the option A team, worked very well together, worked really hard and we were incredibly proud that in that first round of voting we got 40 per cent of the votes and in the final round we got 45 per cent of the vote. But it was not enough, we lost; option B won and that is the option that is represented in the unamended version of this proposition. I was upset that it lost; I felt very strongly in the principles that underpinned option A. I lobbied Members, some of them may remember my very annoying emails at the time and, truth be told, that when the States did reject that referendum result I was quite glad. I felt glad, as somebody who had fought for something and lost, that the option that was won was

thrown out and kicked into the long grass. The reason I felt glad is because I felt like there was something better waiting around the corner; that if option B were rejected then that would be fine, because after making that mistake in a few months' time the States would come up with that solution. Oh, how naïve I was. I then got elected to the States and I became a member of the Privileges and Procedures Committee and I believed, right from the very outset, that the work we were doing was good, it was constructive. I thought it was right that we engaged with States Members in the way we did, and it was towards the end of the work that that sub-committee was doing towards the deadline we needed to meet, to get something passed in good time for the next election, that a few of us began to realise that the work that P.P.C. was doing was just not going to culminate in a proposition that could carry the majority of Members in this Assembly and that, most importantly, would improve what we have now. The options that we toyed with, I think, represented only a marginal difference in voter equity and made our system more complicated. We would be moving from having 3 categories of Member, one of which was elected Island-wide, and the others who were elected on a Parish basis, to one where one is elected Island-wide, one is elected on a Parish basis and one is elected on a large district basis. That makes things more complicated, which, even if you are having a marginal improvement of voter equity, I do not think really balances that out and ultimately that is what is represented in this amendment. Now, I was 8 years old when the work on Clothier started working, I am now 26 years old and I am scared that it will not be until I am 50 years old that anything happens; that anything happens at all. This has been going on for almost 20 years and no progress has been made. I look towards our next election, in 2018, and I have visions of a disaster; I have visions of even more uncontested elections, I have visions of an even lower election turnout than last time, and bear in mind we are having election observers come to see that and I just think that is going to be incredibly worrying for democracy. As a staunch option A supporter I have, therefore, come to the conclusion that there is only one fall-back option that we can go to and that is option B from the referendum, the option that won. That means people like me, who feel very strongly about what our election system should look like, I have to compromise, because if I do not compromise this will go on for another 20 years and it will be partly my fault and it will be also be partly the fault of other Members, who are not prepared to compromise on what they might ideally like to see our election system look like with what I think is the reality, which is that there is only really one option for reform that has a degree of a mandate behind it that we could potentially nail our colours to that mast and say: "It might not be perfect from my own point of view, but bear in mind we are an Island of 100,000 people, there are probably 100,000 different views on what our electoral system should look like, to say this is the option with the greatest mandate and so we should go for it." That is why this particular proposition, P.133, has been lodged and the key reason why I am opposing this amendment, and all the other amendments, is because passing any of those amendments deprives this Assembly of the opportunity to put right what the States got wrong in the last Assembly; it was a mistake to have rejected that referendum. Had I been a States Member at the time I probably would have rejected the referendum and I would be feeling even more guilty about it now, but that was a mistake that the public ... all of us in this room will have probably had people come up to us at one point or another from people, irrespective of how they voted in that referendum, saying: "How dare you lot ignore what it was that we said then?" I have certainly heard it lots of times, including from other option A supporters; people who did not like the result, but felt it should have been implemented anyway. So if we accept this amendment, we cannot have that debate, we will be debating a proposition which is not what that referendum was about, so we will never be able to go to the next election and tell our voters: "This was the States Assembly that undid the damage that was done by the previous Assembly." We simply will not have had the opportunity to do that and I think, really, we should be grateful to Deputy Lewis for having brought this proposition forward, to give us that opportunity to have a straight debate on that question. So, I hope Members will reject not just this amendment, but every amendment and to that point I want to say that I agree

wholeheartedly and enthusiastically with Senator Ozouf when he said, on Radio Jersey this morning, and I quote: "I am certain that this amendment will lose and it deserves to lose, because it is not the referendum." I agree. He did say that on the radio this morning and I agree that that is right and I hope that we can have that debate on the referendum, because that result, that option has the greatest mandate behind it; more than anything, more than the survey of 600 people: that had 17,000 people come out to vote. I am sorry, that is a much better survey; a referendum is the greatest, most democratic form of survey you can have, rather than a form of questions which some could argue do not necessarily lead people in the right way to give a clear indication of what they think. I did the survey and, I will be perfectly honest, I did the survey more than once, because it was not secure, and I looked at those questions and it was missing things, you know, so I do not think we can take that sort of thing too seriously when we have had a referendum. Now, I accept that the process of that referendum left much to be desired. I was highly critical at the time of the conduct of the then P.P.C., I was highly critical of the conduct of the chairman of the Electoral Commission, Senator Bailhache, and I disagreed with him supporting option B. I was annoyed that it was not simply a yes or no question on option A, but we are where we are and this is now our opportunity to say that we will fix this and we will make progress towards something which is much better than what we would otherwise have. The amendment of Senator Ozouf, as well as stopping us from having that debate, I do not think represents a step forward for our electoral system. We maintain the confusing and overcomplicated 3 categories of Member and we move from having 2 layers of constituencies, to 3 layers of constituencies; that is more confusing, and there is only a marginal improvement in voter equity. We have seen the sheet that has been handed out that shows that if voter equity is your main concern, and it is my main concern, that the unamended P.133 provides the best voter equity out of all of the options that we could have a choice of voting on today. So not only do we have the opportunity before us to make our electoral system significantly fairer than it currently is, we have the opportunity to accept a referendum result, the greatest democratic exercise of opinion polling to find out what the public would be prepared to accept in reforms to our election system and we have the opportunity to try and restore some faith in politics and put right the mistake the Assembly made last time. If we do that I think we can look forward to an election in 2018 - that hopefully people will want to engage with - with a degree of positivity and say: "Yes, democracy can work, it does work and we can get something good from it at the end of the day." This amendment deprives us of the opportunity of doing that and, on that basis, I hope Members will reject it.

[14:45]

#### **2.2.4 Connétable M.P.S. Le Troquer of St. Martin:**

I am pleased to have followed on from the Deputy of St. Martin; we did not discuss whether or not we would be speaking in the debate, or what we would be saying, and I was not going to say anything at all, or I did not think I was, because I have had other things on my mind this week, as Members are aware. But, I sat down at lunchtime today and put a few words together I would like to speak this afternoon. I will try not to stray on to the other amendments as well. I think it is very difficult in a debate like this and I might only be speaking the once. I had hoped that Members would not be coerced into things and I do not mean that by Senator Ozouf's proposition, not at all, but just to remind Members of a few facts. We did not, and I say "we", being the previous Assembly, do what the public wanted. We have heard that so many times. How often have I heard: "You did not do what we wanted you to do." I just remind Members, because some of you are new - I am sure everyone has researched their paperwork and their reports already - it was a 26 per cent turnout, and I do not want to go into figures for long, because it is easy to just ... not make up figures, but confuse people. It was just a 26 per cent turnout of the A, B and C options and that very first vote, between A and B - the Deputy of St. Martin has said how close it was - but 39.6 per cent, I think, and 41 per cent; it was that close, and the option C, which fell away, and unfortunately

I suppose it is the one that Senator Ozouf was close to bringing in this time, on this occasion. I know the second round put option B that much ahead - but only 45 to 55 per cent difference - but I remind Members: 26 per cent turnout, one in 4 people, bothered to go and vote. It was not a resounding endorsement to bring in such change at that time. What did we, as Members at that time, what tools did we have to work with in this Assembly? We did not have a lot and now, and since then, we continually read in the media and listen on the radio, the overwhelming support of what the public wanted. I do not see that as overwhelming support of what the public wanted at that time; a split of 50/50, of 26 per cent of Islanders. In that referendum, St. Martin had a big turnout, we had 39 per cent turnout, and I believe it was St. Helier - and this is the Parish that is trying to get the representation - I think it was a 16 per cent turnout. That was the time for them to vote. Do not say nobody ever goes to vote. That was the time that people should have voted, especially that Parish, because they wanted to see the change, in my view. We continually hear of the apathy of the voters, but because we do not listen, and I say because of that, that 26 per cent that is what I think we do listen to. I remind Members, as well, and I am sure Members will have done their research, but we read the States turned down the changes that were proposed. Well, what it was: the States, some Members lost it, because some of us did vote for it, but the proposition that was brought forward after the referendum was a 21/28 vote and it was lost. We did support it and we spoke at the time, not fully supporting, or not fully endorsing what had been proposed, but that was the result and some Members did vote for it. I was one of them, as was the Deputy of St. Martin. So, we now come to this week and again we hear this is another last chance to implement what the public voted for. Unfortunately, the Senator's proposition, as I said earlier on, is one that fell away quite early on. As an aside, since 2013 we have had another referendum, a yes or no vote, simple question answer and that worked. I am not going to say it worked because the vote for the Constables was 62 per cent, I think, in favour, 37 against. But that was a yes/no answer and we had a clearer direction, we did know where we were going on that occasion. So I return to this amendment now. I am not sure, I do not know what the public want out there. I think most, if not all, of us here today want to give the public what they want, but are we all sure what the public want? I do not think we are. I do not think the public realise the consequences of any decisions we make today. Some do; those that follow closely will do, but if most people, as we have heard, are not interested, are they realising what is happening today? While accepting that option C was rejected last time, the 2 main concerns I have received now, from parishioners in my Parish that they have told me, and we have not had much consultation, have we, on this this time? Something great is being proposed today, or numerous changes that could go through, of the 2 most important things that they have spoken to me in recent weeks is losing the Parish Deputy, and I thank the Deputy of St. Martin for the comments that he made about the Constables - not only for myself, because I know we work closely together, but also the other Connétables - because we know he did support option B at the time. But, that is what people are concerned with; they are concerned about losing their Parish Deputy and it is because they have got a good Parish Deputy - and there have been good Parish Deputies in the past - but they do not want to lose a Parish Deputy. The second point: they are concerned about losing their ability to vote for a Senator. They want the Island mandate, do they not? People have spoken to me this week, they want the Island mandate to remain, and those are the 2 most important things they have said to me. I think we all accept that they cannot have everything. We all accept we cannot have everything that we want, we cannot spread it out that finely. However, this proposition does retain the senatorial position and I believe goes some way to satisfy in providing and covering the important position so many people wish to retain. I thought that all the Ministers should be Senators, but we have got 6 Deputies and the work those 6 Deputies do as Ministers is tremendous. Maybe we should have all the Ministers sitting together, rather than just the Senators; change it round and have our Council of Ministers with all our Deputies there as well. But that is something we have spoken about and I think there was a proposition, I think it was the Deputy of Grouville had brought something about some certain

positions on the Senators being Senators. As an aside, and it has been mentioned briefly, I would like to do it in a different way. I would like to thank P.P.C. for the concerted efforts that they have undertaken over the last 2 years. They have consulted with Members; the public do not realise that, I do not think they do. They have consulted with Members as much as they can, we have had presentations, we have had lunchtime briefings trying to bring every time. I feel very sorry, I am saddened for them. I can understand their comments that they put in the comments paper. It is a virtual surrender, I think, on their part, despite all the hard work, so I thank them, certainly on my part, for everything they have attempted to do. But I think it shows the level of - not confusion - but unsureness, if there is such a word - that is because I wrote this at lunchtime - by the vast majority of people as to the way we should be going forward; we just do not know. The other thing I would like to remind Members and the public, and I hope some of them are watching, or listening on the radio. They may think I am taking a very defensive attitude or not realising the level of dissatisfaction towards this Assembly, but we stand in this Assembly week after week, sitting after sitting, doing ourselves down every single week: how bad we are, the public are not happy with us. Now, I am not burying my head in the sand, I hope I am not. The people who say: "Oh, you are not accepting what the public really think." We have got a beautiful Island, we have got beautiful facilities. **[Approbation]** We have got so much for us and if it was that bad, people would be leaving, not coming to this Island; we are trying to control them coming in. Let us not do ourselves down that badly, this Assembly does work. Just to conclude, I mean just 2 weeks ago we saw how Members of this Assembly worked on the hospital funding debate and it showed the system works, and that is what I would remind members of the public out there. Yes, we might sometimes maybe look foolish. I hope we do not, but they have not sat in this Assembly and spoken in a debate and had all the papers to go with it. It is quite easy to read a local newspaper and think you have come to a decision, but you want to be at all the lunchtime briefings and all the evening briefings and everything else we go to, trying to make this Island better for everyone. So, I will, this afternoon, support Senator Ozouf's proposition today for the reasons I have given and I also thank the Deputy of St. Martin for his words. Thank you.

### **2.2.5 Deputy A.D. Lewis:**

I am really pleased to follow the Constable there because he, on many occasions, has stood up in this Assembly and said: "I want to listen to the debate and I am for the turning if I hear what I want to hear in the debate." So, I am going to try and turn the Constable. If I could first remind him of the results that he alluded to in the referendum, because I have looked back through all the minutes, all the Hansard transcripts, as I said earlier, and there was considerable debate about the validity of the referendum and even about the questions that had been put into it, which was debated in P.5. In St. Martin, the Constable said they had a 39 per cent turnout. It is good for the referendum, compared with other districts. In the recent by-election for Senator they only had a 25 per cent turnout. Does that make Senator Ferguson's election invalid? I do not think so. People turned out for the referendum, because they are really interested in this subject, as I think the Constable mentioned in a different context; they were interested. Referendums across the world are often not that well supported; Switzerland has them very, very regularly and they are quite low turnouts. Brexit was a different situation it had quite a high turnout. This was a valid result, it was quite scientific as well. There were months and weeks, even years of work went into this from the commission, P.P.C. before them, and Clothier even before that. It was not a random referendum with a random set of questions; it was well thought through. Some have said, and again I will refer back to transcripts and it may be mentioned again today: "It was too complicated, it should have been a yes/no answer." I explained in my opening words about how that was done. There was an interim report given out to all members of the public, every household, the final report was sent out as well. The suggestions of what would be in the referendum, the questions, was put to the public before it was even put to this Assembly, rightly or wrongly, but it was. So, they knew exactly what

they were going to be voting for and they knew why. It was in context. When you take a more random market research technique, as Senator Ozouf has referred to today, bearing in mind I am a member, and have been a member for many years, of the Market Research Society; I am a qualified market researcher. So, I hope I can assist Members here in how these statistics can be put together. There are lots of different types of surveys you can do. The one that Senator Ozouf commissioned was perfectly legitimate, perfectly valid. There are some flaws, as Deputy Mézec suggested, about the fact that you could go on the site several times and perform the same exercise; one minor flaw. However ...

**Senator P.F.C. Ozouf:**

Point of information, if I may, Sir?

**The Deputy Bailiff:**

If the ...

**Deputy A.D. Lewis:**

I do not want to give way just at the moment, the Senator will have the opportunity later. If you ask a direct question, such as: "Do you wish to have Senators in the States of Jersey; do you want to retain that?" - which was one of the questions - "Yes or no." Well, it is a bit like saying: "Do you want to pay income tax: yes or no?" Put it in context and say: "Well, the other information is you will have to pay 25 per cent G.S.T. (Goods and Services Tax) and all of your hospital bills will have to be paid for by you" and so on; you put it into context, you might give a different answer, just one example. Also, if you are talking to somebody in the street, as the Senator said some of the survey was conducted, do we really expect them to admit they do not understand our political and electoral system? They would not. They would not want that embarrassment and say: "Well, no, I do not understand how it works." They will say: "Yes, of course I do." The Senator said that the majority said that they did understand the system we have. So, coming back to the question in mind, which is the amendment of Senators, one of the things we are trying to do here is get things simplified, so you have, in this case it would be 2 types of Members, not 3 as the Senator is suggesting. I spent yesterday afternoon doing a number of media interviews. I was interviewed by a charming member of our media, who was not from Jersey but had been here quite a while. I spent the first 10 minutes of the interview, albeit it was not the interview, explaining our system; it normally takes a lot longer than that, she was a bright person. But that is the point: it is not simple. This simplifies it. You put the Senators in, it overcomplicates it. Simplicity is important. We want a greater turnout at the poll. People will turn out if they understand the system. Only 30 per cent of our population are indigenous. Many people have been exposed to other systems that are more familiar around the world than ours. The referendum had a 26 per cent turnout, much higher in some Parishes; they should be proud of themselves. St. Mary had a 36 per cent turnout but, again, they only had a 23 per cent turnout at the by-election. Senator Ozouf's survey, as valid as he may think it was, 0.6 per cent of the population. It was a good piece of work, as Deputy Mézec has suggested. Somebody mentioned earlier on, I forget who it was, about Deputies and Senators as to the Senator would have Island-wide issues at heart and he, or she, would speak about those more so than anybody else. I have stood in this Assembly, on numerous occasions, and fought for living wage, changes in our tax system, higher education funding; all national issues, if you like. But, I still get involved in Parish affairs, I am a regular attendee at most Parish Assemblies, I am involved with all sorts of initiatives in that greater Parish, it is a large Parish. Senators do not do that. You touch the flesh when you are doing a campaign as a Deputy, because you have to. I work in a super-constituency already. The Senator will know that, because he has been a Deputy there himself. You really do touch the flesh, as the Constables do in their Parishes. That is important. As a Senator, you do less of that. But, the real conundrum here, the thing that concerns me, is that



if a Senator, or rather I would have hoped that somebody that was not a Senator brought this amendment, a Deputy or a Constable. I see lots of flashing lights here, are we about to be put into the dark? We have flipped and flopped between 6 or 8, 8 or 6, 4 at a time, 5 at a time. I wish somebody had brought forward a proposition that was really worth debating again which was, maybe 12 Senators again, or 24 Senators, or a presidential system. How many times are we going to have a debate about whether we have 6 or 8? We know we have 8 at the moment. If we went to 6 we have got even less people with a large mandate that the public say they want to do the big jobs. I said in my opening words that we have 6 Deputies - and the Constable alluded to that - currently doing big jobs in the States and they do a good job. Some may disagree with that, but they are only elected on less than 400 votes between them. Is that right? In a democracy that I would like to see, and others, that is not. The lights have gone out, is this an omen?

[15:00]

**The Deputy Bailiff:**

Yes, I think that is the omen.

**Deputy A.D. Lewis:**

The lights have gone out. For those listening on the radio, the lights have just gone out on the Senators. For those on television, you may have been plunged into darkness.

**The Deputy Bailiff:**

I am afraid that was the only way of curing the flickering was to turn the lights out.

**Deputy A.D. Lewis:**

So, 6 Senators, it is not enough to have that Island-wide mandate, to do those big jobs that some have alluded to, as did the Constable of St. Martin. Eight, we know, from all the research, is too many on a ballot paper and somebody alluded to that in one of the speeches earlier. So, which is it to be? Well, the public said they understood that, they got that, they understood it and that is why they voted for option A and option B. A won in St. Helier, B won overall. But we can keep having the flip flop debate: do we have 6 Senators, do we have 8 Senators? Or, we have a sensible debate about constituency politics where everybody - and I mean everybody in that system of large constituencies - gets elected on a larger mandate. Surely, those here understand that. That is what we are debating today in the substantive proposition. What Senator Ozouf is doing here is trying to hold the flood back, keep going down a route whereby we maintain some Island-wide mandate. I will finish shortly, but I wanted to just bring people's attention to something that one of our Senators did say in the debate a number of years ago. This is about why would one of us now stand in the current system we have as a Deputy? We saw a couple of casualties in the last elections. Sorry, a Deputy standing as a Senator. Why would they do that? In the past they got an extra 3 years. So, what the Senator said was: "Why should a senior Deputy, in the future, take the risk of standing for an election as a Senator? If we look beyond the next election, as we should, once my current senatorial colleagues have grown old and gone, who will stand as Senators? A host of newcomers? Candidates who do not think they could get elected as Deputies?" I make the point to emphasise that the old order of Senators, as senior respected Members, promoted as they were from Deputy ranks, has gone. Killed off by what? A single election day that this Assembly voted for; that the Mori poll said they wanted. We cannot keep going back. If somebody wants to bring a proposition that has a presidential nature to it, or has 24 Senators, or even 12, many Members might take that slightly more seriously. But to tinker around the edges, and if you go back through Hansard and you look at all these debates that we have had on this very proposition that is before us today, in various different guises, it is the same thing: flip flop, 6, 8, 6, 8. Can we move on to what the public say they wanted, a clear, simple, precise system where everybody has a nice big mandate

to get on and do work in our national government, in our national parliament, which is the Jersey States; and the Constables focus on their parochial activities and do that very well and bring their concerns about national issues to the Assembly, as they can still do and as they will still do with my proposition; and the rest of us focus on those big issues predominantly. But, assist the Constables when they need it, but that is for the next debate. I would urge Members to vote against this for all the reasons that I have said. We have had this debate so many times and it has usually been defeated. We need to move on and please, Members, do not dish the referendum, people that bothered to turn out in great numbers, in national surveys to get national opinion polls, which this was not, this was more than that. 0.25 per cent is accepted as a reasonable sample in a national opinion poll of some kind. This was not an opinion poll, this was more than that, this was a referendum, and 26 per cent of people turned out. So I please urge Members not to dish that referendum, it is almost insulting that those that bothered to participate, who were generally interested in our democracy and what we have and what we presented to them, and it was scientifically done over a long period of time by some eminent individuals and parliamentarians from this parliament, this Assembly, that had significant input, rightly or wrongly, to that commission, and others that were truly independent that gave their view and discussed it with the public to a great extent. Biggest consultation process ever in Jersey. Thank you.

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

*Merci Monsieur. Je suis content que je peux adresser l'Assemblée toujours dans ma langue maternelle, le français, qui reste toujours une des langues officielles de cette Assemblée. Vous serez heureux d'entendre que je vais finir et je vais parler en anglais pour qu'on puisse tous comprendre. Je continue un petit peu. Des fois, quand je rentre à midi et je réfléchis un petit peu sur ce qu'on a discuté pendant le matin, je me pose des questions. Même, je me pose des questions en français et cet après-midi je me suis demandé, "est-ce qu'il est malade, celui-là? Est-ce qu'il est malade, ou est-ce qu'il est malin?" C'est ce qui reste à voir.* But I will finish the rest of the speech in English, because we know that all of the British citizens in this Assembly will not necessarily understand French, so we will continue. But, to summarise, I was thinking what is Senator Ozouf playing at with this proposition? Not only did he vehemently support option B at the last election - I could not quite dig out the speech that he gave after the referendum supporting why we should implement option B in its amended form because, as he said, he put the very proposition to this Assembly that Deputy Andrew Lewis of St. Helier is putting to the Assembly - but something seems to have changed there and I am wondering whether the Senator is entirely well when we hear that he went on the radio this morning saying that he hopes this amendment loses, because it is not what people voted for. Looking specifically at this amendment to the amendment, which we know was lodged late anyway, but thankfully there is enough of his friends still in the Assembly to let him take this and I hope that the same privilege is granted to other Members who may lodge things late in the future. His own report does not even really make sense in many areas. For a start, he says on page 1 in the amendment to substitute 44 Members, but in his report at the top of page 3, he says 43 Members, so I am not sure which it is, but I presume we go by the wording of the proposition and not the report. Then there is a sentence a paragraph later on, which I hope that the Senator, in summing up can shed some light on, because it does not seem to make any grammatical, or any logical sense, when he says: "In the spirit that I make this further amendment to give Members the maximum choice to make a reasonable, but imperfect ideal option." I will read that again: "I want to give Members the maximum choice to make a reasonable, but imperfect, ideal opinion." No idea what that means at all. I think it is gobbledygook and I think it is gobbledygook, because it reflects the substantive proposition, which is also a complete nonsense. Now, the Senator says he wants to make things clear, he says that we have election observers that come from around the world and that they are going to be looking at our electoral system, but that is not true. We will have election observers. They are not interested in what categories of States Members we

have; they are not interested in the makeup of the Assembly, those are matters for us, any more than we would pontificate on what other Commonwealth, or indeed international, parliaments choose by way of their constituencies. What they will be interested in, of course, is whether the count is done in the correct way, whether there is anything going on that should not be, whether there are any mechanisms in place to make sure that the count is done properly, *et cetera*. But that is really what they are there for, to make sure there is no corruption. That is, essentially, what they are there for. Now, there are a couple of points, which I think the Senator needs to clarify. Incidentally, I think the lights flashing could have been one, or 2 things; they could have been former Senators, who have since passed on to the other side, trying to tell us something today. I am not sure which way they would be wanting us to go, or it could also be the light bulb saying: "How many States Members does it take to change a light bulb?" The answer to which would be: "There is nothing wrong with the light bulb, but perhaps they can ask the public to see what they think about which light bulbs need to be changed." Also, I think it is unhelpful for the Senator to get involved in this kind of amendment to, ultimately, try to keep the Senators, notwithstanding the fact that he has tried to get rid of them in the past, because it convolutes the argument. We have heard the Constable of St. Martin saying that he thinks that the majority, or many, of his constituents, I do not know if it is the majority, think that Senators should remain. If it is that many, why did they not vote for Senators to remain in the referendum? I will be the first to say that it was an imperfect referendum process, it was an imperfect Electoral Commission, it should have been an Electoral Commission which was independent: that is what we initially voted for. It should have been a simple yes/no question and we should have had better options put to us and to the public with clearer options and the referendum should have abided by the principles of the Venice Commission and there should have been parity of arms for all camps. But that is all in the past. We know that there was a referendum and, certainly, there was nothing to stop people, who felt strongly one way, or the other voting in that referendum. 26 per cent of those who could vote, did vote and we know that there was an overwhelming support for options A and B put together; that, if people really felt strongly about keeping the Senators, and that applies to the Deputy of St. Martin as well, if he felt so strongly that there was a better option out there - which was super-constituencies with Senators - he could have put that on the table. Indeed, that is what other people were saying; they said, in supporting option C, not everyone was saying that they supported the *status quo*, and I will carry on talking to try to provide a distraction from the more interesting light bulb, which is going on. Luckily I do not have to compete with anyone painting at the same time.

**The Deputy Bailiff:**

Deputy, if you did want to pause then you are perfectly at liberty to pause for a few minutes and then continue afterwards. Very well. Thank you, Deputy, if you would like to continue.

**Deputy M. Tadier:**

Yes, and I think when we ask the question, and we are being selective, of course, about what we are asking here so, of course, you could ask the question: "Should the Senators be retained in one form or another?" The public may say yes, they may say no, but the point is they did have an option and less than 19 per cent were so dissatisfied with options A and B, of those who voted, that they got knocked out in the first round. Now, the problem is, if we say: "Do we want to keep Senators?" then the Constable of St. Martin is quite right, because we have to ask the question: "What about the role of Deputy?", because the 3 positions really hang together as a package.

[15:15]

If we believe that we need an Island-wide mandate, for whatever reason, and I do not accept that premise myself, I think because once we are in here we are all equal, and interestingly enough, if Senator Ozouf had asked different questions in his very limited online poll, which incidentally I

completed 2 or 3 times with different devices - I did it once on my phone, once on the States computer, and I tried to do it once again at home but the poll had already closed - and that would have definitely recorded 3 different versions, all correct, and I do not see how the Senator can say to Deputy Lewis that it is impossible to not make multiple contributions because, if you make it from different computers and from phones then ... but that is by the by because I think it is not of any scientific, or any great importance, or validity, anyway, so I should not really ... even to mention that is to give it credibility. But the point is: the current system that we have hangs together as a package, we have some Senators, who ostensibly deal with Island-wide issues, we are being told. We have Constables, who look after the Parish, represent the Parish interests, and we have the constituency Deputies, some of whom are in the Parishes, or in their own districts within the parishes. That is important, because it means that, on a low level, there is a link between the constituents and the people in all 3 of those areas. But, as soon as you take one of these blocks and say we have already agreed that the Constables must stay and we do not have any real way of knowing what the opinion is on the Senators and I do not think we should have a referendum on it, personally, because I think we have referendum fatigue now and especially if we do not honour the results of the referendum. Then to say that there are strong arguments, if you ask people: "Do you want to keep your Deputies?" they will say: "Yes, we want to keep our Deputies; yes, we want to keep our Senators; yes, we want to keep Constables." If you ask them: "Do you think all States members should be on an equal footing, should they all be elected in equal constituencies?" they will also say yes to that because that is a sensible answer to give to that kind of question. Then you get into a situation where you do not have any logical outcome. So, in other words, this requires leadership, it requires some kind of leadership and, frankly, I am quite baffled from the option B team, who were there on the platforms saying: "We support option B, because it is the least democratic option" and now they have the option of putting this into place, with a couple of modifications to make it more palatable, which was already on the table by Senator Ozouf in the first place. They are saying: "No, we do not want to do this." Now this idea that only Senators can deal with Island-wide issues, or the only debate you get to do with Island-wide issues takes place during the senatorial hustings, I do not think it is correct. The idea, of course, well we know of course that in the U.K. (United Kingdom) and in Guernsey even that their parliament has a problem, because nobody can speak about national issues, because they are all elected on a constituency basis, so your poor Liberal Democrat, who is elected in Devon, cannot say anything about tax rises, he cannot talk about Brexit, or anything else like that, he can only deal with parking issues that relate to Devon and he does not comment on anything else. Now, of course, that is complete nonsense and I hope that Deputy Truscott will back me up on this, but certainly in our hustings, in Les Quennevais and Communicare, I thought it was very interesting: we had a diversity of questions and I struggled if any of the questions raised in that hustings were of a parochial nature and, if they were, they were very much in the minority. The type of questions that were being asked were to do with long-term care; they were to do with tax; to do with G.S.T.; to do with health; to do with education. We had questions about the legal side of things, so people were asking about costs for lawyers, and they were also asking about disability and helping people with those kind of areas, and I struggle to think if any of the local parking issues, which perennially will come up and, anyway, we are quite capable of dealing with those as, and when, they come up with Parish meetings, or with community meetings and that is what happens. So, I do not accept this idea that only Senators can deal with that and it has already been said that, if we do want Senators, how many of them do we need? What is the optimum number? Should there be the same number of Senators as there are ministerial posts? Do you necessarily need an Island-wide mandate to become a Minister? Well, that has gone out the window. That is no longer the case. We have always chosen from within the Assembly, according to who we think is best suited for the job and who can garner the most political support and that is normal politics. So, I think the arguments for removing Senators are well rehearsed and the next time somebody says to you: "But I want an

Island-wide mandate”, and you can understand that, mathematically, on a superficial level, it does seem the most democratic, because they all represent the same land mass, the same population. But there is another argument, of course, that it is less democratic, in the sense that any individual influencing the outcome of the vote has less influence in terms of a Senator, you have got much more influence in smaller districts to determine the outcome of any single election, or any single person getting elected. Of course, the more Senators you have, if it is 8, rather than 6, if it is 6 rather than 4, then you risk the distortions that Andrew Renwick, Dr. Renwick, told us about under the multi first-past-the-post or multi-member plurality, as it is called, where a large minority can control the majority, if not all of the seats, and we do get those lower-placed Senators ending up with perhaps 40, 38 per cent of the vote, where 60 per cent of the public have not voted for somebody, but that person still gets elected. So, I think I am going to leave the comments there, I am sure that there are other people who are also going to talk about why now is the time to put the nail in the coffin of the Senators. But I think the point I wanted to make, the final point, is that when a member of the public comes up and says: “I really want people to be elected on an Island-wide basis, I want to keep Senators”, first of all I say: “Really, which of the Senators currently would you like to keep?” just to see what they say and, hopefully, they will say there is one of them that is not beyond redemption there, but let us find out. That is an icebreaker, of course. But then say: “If you do want to have the Island-wide mandate and if you want to extend that, how would you run the election, would you do it so that we have ...” and I will call it quite a whacky idea, because I would like to see how it would work in practice, is that we keep the 12 Constables, or we do not, because some people think that everybody should be elected on an Island-wide mandate, and we have 25, 30, 35, 40, 45, stop me when you get too high, you say to your constituent, some I think just want 10. I am not sure how Government would work there, or the States Assembly would work, and say: “Can you design the ballot paper for me? Can you design the electoral system? Would you want single transferable vote to apply? Would you want it to be limited that you can vote for 44 Members, all with a cross, and you can use all 44 of your votes for 120 candidates on a non-list system? Or would you like to put 1 to 44, or would you like to put 1 to 10?” It really does not make sense in practice. Of course, the answer, and it always comes back to this, is party politics. It does not matter what system you have, if people really want to influence the direction of travel for government you elect people on a common party mandate and the party, or parties, that get the majority have the privilege of being able to form a government, or at least have the first stab at forming a government. It is a radical idea that, but strangely enough that is what some other countries do and it seems to work in different varying degrees. So, of course, I think it is much more than just simply how we distribute seats, but I think the argument for Senators has been well made and I think today is the right time and Senator Ozouf is right in bringing this proposition, so we can finally despatch the office of Senator, which was only created in 1948, of course, and it should never have been created in the first place, in my opinion.

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

I think today, and if we are back tomorrow, is going to be one of those debates where Members must put the Island’s interests before their own. There has been a lot of talk, even some Members have alluded to it in their speech - perhaps without even realising it - about how they might shape up in the next election and there has been talk in the coffee room, quite serious talk, about whether Members like the look of the electoral districts and I think it is important. This is one of the reasons why, further on in the debate I have proposed an amendment of a referendum because, as the Deputy of St. Martin alluded to earlier, we need the permission - I firmly believe we need the permission and the endorsement - of the electorate to make these constitutional changes. It is also about compromise and Deputy Mézec said he would be making a compromise and I think all of us are going to have to make compromise because, while we cannot agree with what we want, I think the same can be said for members of the public in the electorate. I do not think they are unanimous,

or even there is a majority; you can ask 10 different people and get 10 different views, and most people do understand the electoral system, even Deputy Lewis said he spent 10 minutes trying to explain our electoral system to a reporter; well, I think Deputy Lewis, perhaps, was not explaining it properly. You need to improve, Deputy, and understand it a bit better. I am jesting, of course. So, on to the subject of the Island-wide mandate and Members will be pleased to know that I am going to say the majority of what I have to say now, rather than go through it again and again in the following amendments, if of course they do come up, if this amendment is not won. Although I am reluctant to see a further reduction in the number of Senators, I think I am going to support this for reasons I will explain in a minute. But one cannot ignore the fact that - any Member with any empathy with the electorate cannot ignore the fact - the majority of Islanders wish to retain the Island-wide mandate, or a form of the Island-wide mandate - some in its current form - some would rather see a way of electing all Members by Island-wide mandate, but an Island-wide mandate, I think, is important and what the majority of Islanders want. I have served, I have had the privilege of serving as both a Deputy and a Senator and I know a number of other Members have and even one Member - I think it is just one Member - has served as a Deputy, a Senator and then was promoted to Constable - but he is not in the Assembly at the moment - so, he will have a really good insight about the different responsibilities and the different approaches that each office requires. Nobody has ever said that a Deputy could not do the job of a Senator, because that is completely wrong; there are many Deputies that are as able, if not more able, than Senators and other Deputies. We all have our own strengths and weaknesses, and that is part of the strength of this Assembly. But what is a difference - and I can say this with some authority - is that sometimes a Parish, or a constituency, position may not line up with the best interests of the Island, and I will give you an example. When I served as a Deputy in St. Saviour No. 2 and Deputy Kevin Lewis will know what I am talking about, at a time when there was an acute housing shortage and we desperately needed spaces for housing for Islanders, the Parish Deputies, working on behalf of the best interests - or what they thought were the best interests - of the residents in the immediate area, rallied together to stop new housing being built on a green line within the Parish. That is just an example of one of the pressures you face, so Parish, or constituency pressures, versus Island-wide interests. That is one of the reasons I think the Island-wide mandate, where it can be useful, it can bring in a measure of balance into a debate in the Assembly. Of course, there are many other reasons, but I will leave those, perhaps, until later on. A previous Assembly took the decision to reduce the number of Senators from 12 to 8 and, at the time, this decision was taken without the permission - or really the knowledge - of the majority of the electorate and I am not going to dwell on that; it has happened. At a similar time, I think the Assembly made the mistake of agreeing to a single true election day without agreeing the constitution of the Assembly. Of course, that led to the position we are in now and the logistical challenges of electing more than 8 Senators on a single election day.

[15:30]

I happen to believe that the decision - and I know my good friend Senator Bailhache will forgive me for saying this, I happen to believe that decision - may have influenced the direction of the Electoral Commission, because the States had just agreed a change to the Assembly, so why would the Electoral Commission want to go and reverse that when the whole idea is to move forward? So again that is looking back and we do not want to look back, but I think those are just a couple of the reasons why it was a mistake to do what we did at the time and reduce the number of Senators. Incidentally, Guernsey has been mentioned and they are very seriously looking at introducing ... I do not say "reintroducing", because there was the office of *Conseiller* in Guernsey was appointed and then it was elected for a couple of terms and then it faded away, but they are seriously considering, and many of our Guernsey colleagues that I speak to during the course of my duty, the majority of them say they would like an Island-wide mandate introduced in Guernsey, similar to

ours, for the reason to override some of the constituency challenges that they have. The Constables: I am a firm believer of keeping the Constables, they are the balance and the rudder we often need at times. But Members should be clear, they should understand that should Senators be removed from the States then Connétable will be next, make no doubt about it, this is the first step to a single Member States Assembly. Because the 12 Constables, I am not sure how many are Assistant Ministers, a number of the Constables are Assistant Ministers, but it would be a brave Constable who would take on a full ministerial role, because of the levels of responsibility they have in their own Parishes. So, what does that mean, after a couple of years of working with just Constables and Deputies, some of the Deputies, I think, are going to start saying: "Well this is not fair, we have 12 Members of the Assembly who, effectively, are unwilling to become Ministers." Sometimes I think, not all the time, but sometimes I think the Comité would make a good shadow cabinet, or even a good Council of Ministers, but that means then, with 12 Members excluded from full ministerial rank, a lot more work is going to be placed on the Deputies and, of course, that is going to lead to further debates and strengthen, it could well strengthen, the argument to go the step further to option A, which is on the agenda of many Members, which is their right, we are all entitled to our own views and while we all disagree I admire tremendously the Members that are engaging in the reform process and Deputy Lewis has done a lot of work on this. The Reform Party are very engaged in this and I admire them and respect them for that. Senator Ozouf and other Members, Senator Bailhache, have always been interested and fighting for their type of reform. We are all reformists, all of us, we all want to reform this and we will have to compromise to do it. But, if any Member thinks that reforming the States in this way is suddenly going to engage the population in politics, is suddenly going to make us more popular, then I think they are wrong. I agree with the Deputy of St. John: most of the problems we have are about the people, not the system. I remember in the committee system - we blamed the committee system for a lot of wrongs, but the system was not that bad. I happen to think ministerial government is better; that is my opinion, but the failings with any system are generally the people within it, wherever you are. I do not think, I am not convinced, and I do not think that changing to super-constituencies will make for a better quality of person. That is my view, I could be wrong, but that is my view. In terms of numbers, I will talk a bit about that. If this amendment fails, and I am going to support this amendment, the amendment of Senator Ozouf, but when we talk about constituencies and numbers, for once I agree with Deputy Mézec on voter equity; one of the main reasons we are doing this is to improve voter equity and I think we are looking at about 50 per cent, 49 or 50 per cent, of the population under Deputy Lewis' proposals for super-constituencies, which would be outside the Venice recommendations. But my next amendment, which looks at a slightly different makeup of super-constituencies ...

**Deputy A.D. Lewis:**

Sir, a point of order, I think. Members, if they wish, they can look at the chart I have distributed, which clearly says that is not the case.

**The Deputy Bailiff:**

That is not a point of order.

**Senator L.J. Farnham:**

The information Deputy Lewis distributed, I just looked at the deviation comparison, I cannot see anything about the Venice Convention, but I will have another look at it after and that is something we can talk about if we get on to the next amendment, but that is quite important. Just touching on the referendum, and I will be coming back to this at a later amendment, what struck me is I firmly believe that a referendum should be a yes or no answer, full stop. We should use the last referendum as a lesson in how not to do a referendum. I do not believe a States Assembly will ever

again ignore the will of the public in a referendum, whether it is binding or not, and we should not, we all learned a lesson from that. But it does not avoid the fact that in the first round of voting 9,820 people did not vote for option B, 6,800 did, so more people voted against. Because of the way we decided to carry out the referendum, more people voted against what was the overall winner in the first round. When you are making such huge changes - and removing the office of Senator from this Assembly is a huge change in my opinion, it is a huge change - then these sort of figures are important. Whatever we decide today, or over the next couple of days, we must put to the people for their endorsement, but more about that later. So, on balance, while I am slightly uneasy about supporting a further reduction in the number of Senators, it is about compromise and, to that end, I am going to compromise, I am going to support this amendment. Thank you.

### **2.2.8 Senator P.M. Bailhache:**

I do sense that the Assembly is inching slowly towards reform. I may be wrong, but I hope not. The problem with this amendment is that it gives an opportunity to those who want to see no change - the option C supporters - to wreck the proposition of Deputy Lewis. To keep Senators, all that Members have to do is to vote against the proposition of Deputy Lewis then we will keep Senators and we will keep Constables. It is true that we will also keep a completely inequitable distribution of Deputy seats, but the support of this amendment - or indeed the clutch of amendments in the name of Senator Farnham - will serve only to undermine, perhaps fatally, the proposition of Deputy Lewis. The crucial issue, and I will come back to this at a later stage, is whether or not we are prepared to respect the wishes of the electorate, as expressed in the referenda of 2013 and 2014. Are Members democrats, or are they not? Constitutional reform is a serious matter. It requires detailed discussion, consultation with all interested parties and, most importantly, public engagement. Any proposal should be thoroughly tested in discussion, scrutinised, and talked about with the public. It should be explained and discussed at public meetings so that people - the people who elect us - can have the opportunity to understand what is proposed and to express their views upon it. This amendment, and the amendments of Senator Farnham too, fail to pass any of those tests. This one is a new proposal, which is substantially different from the recommendation of the Clothier panel and substantially different from the recommendations of the Electoral Commission. No-one, in fact, has any idea what the public thinks about these amendments. To adopt changes to constitutional structures, without asking the public what they think, seems to me, to put it at its lowest, to be extremely bad practice. The possibility of retaining Senators, while moving to large districts, was, of course, discussed at length in the Electoral Commission, both with witnesses, possibly with Senator Farnham and amongst themselves. The issues relating to Senators were all addressed at paragraphs 5.1 to 5.17 in the Electoral Commission's report and it would take much too long to repeat all those arguments. It is not, of course, impossible to retain Senators with large districts as these amendments show, but why would we want to do it? Once elected, there is absolutely no difference between a Deputy and a Senator. We are all equal Members of the Assembly. Senator Farnham talked about the job of a Senator, but what in heaven's name is the job of a Senator and how is it any different from the job of a Deputy? Well, Senator Farnham is going to tell me later what the difference is, but I wish that he might have explained it to the Assembly, so that we could consider it. Some say that the Senators have a broader vision and that we need Members to take an Island-wide view of matters. I absolutely agree with that. With all the pressures crowding in upon us from the outside, we do need a substantial number of Members concerned, not with parochial issues, but with the real external challenges that we face and who are prepared to take an Island-wide view upon them. I do not want 6 Senators or even 8, I want 32 Senators, as proposed by Deputy Lewis, each taking, one hopes, an Island-wide view of what is in the best interests of our community. Some Members are convinced that the public do not want to lose the Island-wide vote and, of course, I respect those views. I think it was Deputy Mézec who said that Senator Ozouf's poll of 600 people, 70 per cent



of them wanted to keep Senators apparently, which is 420 people. Yet, in the only real test of public opinion as to whether or not Senators should be retained, 13,385 people voted for reform and the abolition of the senatorial role and only 3,239 voted for the status quo.

[15:45]

This is what bedevils reform. If you ask the public: “Do you like the Island-wide mandate?” then, of course, the answer is yes. But if you ask them numbers of other questions, as I think Deputy Lewis said, the answer to those questions will all be yes, and you will be left with a completely incompatible list of wishes that it is impossible to accommodate. Senator Farnham and perhaps others have criticised the referendum and suggested that option A should have been put to the people on a yes/no basis, but option A was not the most popular option. We could have put option B to the electorate, and that, indeed, was considered very seriously by the Electoral Commission, but option B would probably have failed as well because, if you add up option A to option C then you do not get a majority. So, where would we have been then? The only way in which it was possible to reconcile all these different aspirations was to put alternative choices to the electorate and to ask people to say: “Do you really want reform? Do you want option A, or option B, or do you want the status quo?” and 80 per cent of the people said: “We want reform.” I know that many people associate Senators with maturity, seniority, experience and, of course, they are absolutely right. But when people take the trouble to study the issues in the round, people realise that the only way to achieve reform is to move towards large districts and, as we know from the second referendum that took place, people want the Constables to remain and, therefore, option B is the only choice remaining standing. So what would bedding Senators to large districts do to the system? Who would stand for election as a Senator if there were large districts as well? I confess that I, for one, would not do so. I would, for reasons which I perhaps should not tactfully discuss in public, think that the electoral process for electing Senators leaves a great deal to be desired: having to explain in one and a half minutes after 15 other people what your answer to a particular complex question is, is not the most edifying experience, as anyone who has stood for election as Senator will know. But the real reason why we should reject this amendment, and the amendments of Senator Farnham, is much more simple. In seeking to reinstate the Island-wide mandate, the amendment ignores the wishes of a large majority of the electorate in the referenda. As we have heard many times, 80 per cent of whom voted for options, which eliminate the role of Senator and in favour of large districts electing a smaller number of representatives. The report talks about workshops with States Members, which appear to show that 64 per cent favour retaining the role of Senator, but the report makes no mention of the 80 per cent of the public who favoured abolishing them. It is, I am afraid, symptomatic of the hot political bubble in which we exist that we sometimes forget that we should represent the people and that their views are important. Of course, we are representatives and we have to exercise our judgment, but if we set up a referendum and ask the people what they want and the people tell us, on a specific issue, what they want and we then proceed to ignore the result, we should not be surprised if apathy, or disinterest, or anger are the result. In the House of Commons this evening, M.P.s (Ministers of Parliament) will vote to empower the United Kingdom Government to press the Article 50 trigger to leave the European Union. The majority of members in the House of Commons are passionately not in favour of leaving the European Union. They are remainers, who feel passionately that the decision was wrong. But, they acknowledge that the people of the United Kingdom voted to leave. In the House of Lords there are some 800 members, the vast majority of which are, in fact, remainers and who do not favour Brexit, but they will vote for Brexit just the same. In the *Financial Times* on Saturday there was an article and a headline: “Peers to adopt guerrilla tactics, while respecting will of people.” That is democracy. What is it that gives us in this Assembly the right to ignore the wishes of the electorate, as expressed in the referenda in 2013 and 2014? Is there something special about this Assembly, which means that we know better than the people? Do we think that we are more

intelligent than the voters and that, therefore, we are entitled to ignore them? 80 per cent of the people in the 2013 referendum voted for reform, which involved abolishing the role of the Senator. Why did we bother to ask them, if we were going to arrogate to ourselves the right to ignore what they said and to decide what we want to do? I feel so strongly that all those people, who took the trouble to get up out of their seats, to go along to the Parish Halls and to vote, because they believed that they were taking part in a proper exercise of representative democracy, were failed by the previous Assembly in rejecting the results of the referenda. It was a scandal and like Deputy Lewis I hope very much that it is a matter that this Assembly can put right. Some say that the results of the referendum are not binding and it is true that it is not binding in law, but it is, in my view, binding in honour. That is the view taken by the House of Commons, by the members of the House of Lords, and it ought to be the view taken by this Assembly. I hope that Members will vote against the amendment.

### **2.2.9 Deputy P.D. McLinton of St. Saviour:**

There has been a lot of mumbling and rumbling. If you were to go out into King Street now and find an ordinary member of the public - whatever that is - if you were to say to them: "So, Senator, tell me what you know about Senator?" Many would say: "Yes, it is an Island-wide mandate, everybody gets a vote for a Senator." "Deputy?" "Yes, that is a parochial thing, is it not, it is a district thing." "When they get into the Assembly, what is the difference?" "Do the Senators have more buttons, perhaps heated seats, perhaps even a commode, or a guaranteed seat on the Council of Ministers?" "No, no difference whatsoever." There was a time, yes, not any more. Yes, costs of the election, there is a considerable difference, but that will be about it. I have no conundrum over this whatsoever. It was interesting when Senator Ozouf was saying before: "We must reform, we must reform" and then: "Are we really going to reform? Are we really going to throw all this history away?" Honestly, reform, this is your opportunity to reform this Assembly. Senator Farnham, a very interesting line: "I think we should use the last referendum as a lesson." I would like to use the last referendum as a referendum. If we are looking for equity - and that is what this is all about, equity - then the most equitable way would be for every Member of this Assembly to be on an Island-wide mandate, which would make for very interesting hustings, let us be honest, or for none of them to be on an Island-wide mandate, that is equity. Interestingly, the Constable of St. Martin said, and this is what I heard, and I hope he forgives me if I misheard him, but this is my interpretation: "Not enough people voted for it to be fair. How do we know if they want it to be fair?" I think we can probably take it on board that the public of this Island would like it to be fair, as equitable as possible. I want to read you the dictionary definition of Deputy: "A person who is appointed to undertake the duties of a superior in the superior's absence." Interesting definition, is it not? We are not. We are equal, we are equal in all we do. People think we are not equal, but we are all equal. I would like equity, therefore, every Member of this Assembly sits here on an equal mandate with ... I love the fact that we call them super-constituencies, as we are on an Island 9 by 5, we call anything super-constituency it just amazes me. Interestingly, there are many governments throughout Europe who do not have a country mandate, do they? Talk to the U.K. Parliament, they are all voted for in constituencies, and yet they get a national mandate, so how important do we think we are compared to them? I urge absolute equity, wherever possible, both socially and in this Assembly, which loves to talk about itself relentlessly. Let us move this forward, let us seek and find equity within this Assembly, I vote that we reject any of the amendments and vote for Deputy Andrew Lewis' proposition. Thank you.

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

I was not going to speak in this debate. The 62 previous ones that we have had, I have partaken in all of them, but I felt I had to make a few comments. The public comments I get are far more concentrated on: too many taxes and an executive which does not listen. The only comments I hear

about the States are that people want 32 all-Island votes, 32 Senators and 12 Connétables. So, why have I not brought an amendment yet? I think it is something for the next election, because matters concerning taxation and spending are substantially more important to the man in the street, as is the question of the executive listening to them. As for the 3-question referendum, I suppose one would call it a referenda, going back to my classical education, because that was 3 referendums, or 3 referenda, rolled into one, since a referendum, by definition, is a yes/no question. I think it is somewhat specious to compare our referenda with the Brexit referendum, because the Prime Minister of the day, David Cameron, promised to comply with the results of that referendum and that was not a promise that was given here. What people really seem to want is a question of recall and I will be bringing a proposition regarding this shortly.

[16:00]

I do not want to lose the Parishes. They are very precious to the people of the Island. Guernsey have gone on to large Parishes and the Parishes have lost their importance completely in Guernsey. I am also aware that there is a body of opinion in this Assembly, which would also get rid of the Troy Rule, is this going to follow the Parishes? I think this is a somewhat misguided series of proposals and propositions and I am waiting to hear some of the arguments.

### **2.2.11 Deputy G.P. Southern:**

I shall attempt to be brief, because I want these amendments dealt with as quickly as possible, so we can get on to what I believe is the main and the serious debate around Deputy Andrew Lewis' proposition. Earlier today, when Senator Ozouf was speaking in his introduction to his proposal, I got a text from my wife, which said: "What is Senator Ozouf on about?" and, for the life of me, I did not quite know how to respond. What I picked up was: "I have brought this, so it can be lost and we can get rid of it, once and for all, and then we can go on to discuss option B+, option B, which I wrote all that time ago - it is my proposition - and we can get on and debate that and pass that." That is a strange sort of a logic, but I can see that from a man under pressure that it maybe might make sense. The fact is that when he came up with option B+ [**indistinct**], this, his invention, after all perhaps at the time he had a little more time to consider exactly what he wanted to put forward and did some research, maybe extensive research, of the latest that was coming from the public and got it right. Sometime later, 3 years later, thereabouts, under pressure, rapidly and with late entry, he got something that was basically wrong. Now, for the first time in certainly the last few years, to my knowledge, I have to follow Senator Bailhache and congratulate him and support him: his words were more impressive than I think I could have come up with, but said exactly the right thing and hit the nail squarely and fairly on the head. Why are we debating this? Because, 2 years after the referendum we owe it to the people, this is what they voted for. He was absolutely right: we owe it to the public to do what they asked us to do and that involves abandoning the position we have with the Senators on the Island-wide mandate. The content that Senator Ozouf did present was that he had done a survey and some people said, and I will just go through the list again, if you ask people what do they want, ask them: "Do you want Senators with the Island-wide mandate?" "Yes, please." "Do you want to keep your Parish Deputies?" "Yes, please, they are very useful." "Do you want to keep your Constables?" "Yes, please." "Do you want equality of votes, of equal weight, do you want the same number of votes with equal weight?" "Yes, please." "Do you want it to be fairer? Do you want to reduce the numbers within the States?" "Yes, please." "Do you want it simpler?" "Yes, please." Well, if you want any of that, you have to start looking at compromises some way down the list. That is the pragmatics of doing things. As a long-time supporter of option A, I admit defeat and say we are, to use Senator Walker's famous phrase, we are where we are; accept it. How do we go forward? We do not go forward trying to preserve the 3 categories of types of Member, which was one of the fundamental things that Clothier said all that time ago: "What you need is to move towards one type of

Member.” Now, that is not going to happen now because, in between times, we have had support for the Constables, so we have to accept that. We have had support for the super-constituencies. We have to accept that. That is the way forward, I believe we owe it to our public to, 2 years’ later it is delayed, but it is the right thing to do, I think. Just briefly, it is what the public want and the public do, despite what the Constable of St. Martin said, they do want equity and, if we look on our charts, we find that these 2 sets of amendments, Ozouf 1, Ozouf 2 and Farnham, in terms of deviation from what we should be aiming for in terms of equity, they are far worse than what will be presented towards the end of the day here in Deputy Andrew Lewis’ proposition. So, wholehearted support for the approach taken by Senator Bailhache, which points inevitably to getting rid of these amendments and getting on to the main proposition.

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

Just a couple of things that have not been covered. The Constable of St. Martin, in his speech, he was, I thought, a little critical of St. Helier voters for the poor turnout at election time and I think that perhaps is a question of chicken and egg because, as far as I know, St. Helier voters, those who take an interest in politics, feel disenfranchised. They know they have less political power, political influence, than voters in the leafy Parishes, particularly St. Martin. So, of course, they feel there is not much point in voting because, when they do vote, whether it is an election, or a referendum, they feel the States do not take much notice and, as I say, they have less influence than their country cousins. That is why, certainly from the point of view of St. Helier voters, we need to pursue a system that is fairer. The Constable was also concerned about the loss of the Parish Deputy and this is not, of course, the subject of this amendment, although we have heard some nostalgia expressed, not by all the Senators, but certainly by Senator Ferguson, for the role of Senator, and it certainly sounds good. One of the things I have noticed in presiding over hustings, chairing hustings in St. Helier Deputy districts, and I get a bit frustrated about it, is how most of the questions are about Island-wide issues. They are not really interested in bins and the benches and the cost of the flower borders, they want to talk about G.S.T., they want to talk about mortgages and unemployment, they have Island-wide concerns. I think it is naïve to say that we have to retain the Senators in order to retain an Island-wide interest in these issues, because wherever you live in Jersey you are concerned about these Island-wide issues and you will ask those questions to whichever candidate appears in front of you, whatever type of seat they are standing for. Senator Ferguson also talked about Guernsey and I was waiting for Guernsey to come up. I am a great fan of the system they have in Guernsey. I will not get into the fact that they have expelled their Constables; that is not an argument for today. But what is clear: it is simply wrong for the Senator to say that the Parishes in Guernsey have lost their importance, they have not. Of course, one reason they have not is because they have a system of local government, they have *Douzaines*, they have *Douzeniers*, who represent local issues at the Parish level extremely effectively. Of course, the great thing that Guernsey has that we do not have, and we will not have, even if Deputy Lewis’ proposals are accepted, they have voter equity, because all of their voters are divided into roughly equal groups and they all have the same power at the ballot box, and that is a system I hope one day we will move towards in Jersey, but of course while we retain the Constables we cannot get there, not yet. If we put the Senators back in, we are miles away from that state. I would urge Members to choose between retaining the unfairness at the ballot box that we currently have and nostalgia. That is what it is about today: do we want a fairer system for electing Members to this Assembly, or do we want to stay shackled to the notions of the past? So, I urge Members to reject these amendments and to move on with the main proposition.

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

I will be brief and I did always intend to speak just in this and when we get back to the main amendment from Deputy Andrew Lewis. I have concerns about putting back in the Senators, but

that does not mean I am even going to support Deputy Lewis. I have concerns over everything that is presented, the way it is presented, having Guernsey displayed, as the Constable of St. Helier said to me: "Guernsey had a report on to reform their States and they reformed their electoral process directly and then they looked at, they went halfway between ministerial and committees and I think they are working quite well." My problem and I have to stand here today and say I agreed - and I said I never do - but I agreed with a lot of Senator Bailhache's speech. But I also agreed with a lot of Senator Farnham's speech, because be careful what you wish for because this will be, he put it very nicely ... my issue is the reduction of numbers, whatever number we add up to, I, as a person who is trying to do 4 committees and running around and the resources I have ... the resources I have are fantastic, I just do not have enough of them to be able to continue with this. What Senator Farnham said about 12 people, who are automatically going to be in their Parishes and then come and sit in this Assembly who, reluctantly, and because of pressure of work in their Parishes will not take a Scrutiny chair, will not be a Minister, I mean the chairman of Scrutiny, it is much more, it is the same as you are holding the Minister to account. So, there are a lot of jobs in this House that none of these, however way you want to add them up, to me have been convinced that we will be able to carry on working unless people want to still be running around and running around a lot more. I also question - it is the way you present figures. Again we have ... I will just pick out the second one in all of them, they are all the same: St. Ouen, St. Mary, St. John, St. Lawrence, who will have the choice to vote for 5, or 3, or 4 Deputies and apparently they also have 4 Constables in each system working for them. No, they have not. They can vote for 4, or 5, or 3 Deputies and one Constable, the one for St. Ouen, the one for St. Mary, the one for St. John and the one for St. Lawrence, and those district Deputies will have to work in the district and they will have to sort the Constable allegiance, but the numbers do not say ... the numbers are the variance of adding the 4 and the 5, they are 9, then they add it and divide it by 9 and say: "You now have the convention, you are up, or below." You cannot tell me, and they said it, and they will say it again, you are not ... if you have an issue in St. Lawrence, or St. Ouen, would you go to the Constable of St. Mary, or St. John? Why would you? If you are one of the district ... if you live in that Parish, but you are represented by the district Deputies, who could be 3, 5, 4 or 3 ... yes, 5, 3 or 4; they have to go and work with that Constable. I do not have a problem with that, I am just painting the obvious, telling them how it is, and do not be disillusioned that people will then have a vote for 5 Deputies and 4 Constables, because they will not, it is quite clear; and I am glad the Constables do understand it because the Constables ... I think it was the Constable of St. Mary pointed this out very clearly last time and that is fair, that is right. I am just putting it out again. I think mixing up the ... out of the 2 speeches, I see where Senator Farnham is coming from and I know this is the long game to get the Constables. I am not saying which way it is, it will be the long game, in whatever way we go, the Constables will probably ... we will end up with one type of Member, which then makes it completely fair for all the voters.

[16:15]

Then Senator Bailhache said that the only way to go back is to honour what we did not honour before, but then I am in a funny position, because none of the St. Helier voters and many, I think, of St. Saviour's voted for option B. But then he did say, he did not put a yes or no question under all of them, because unless you added the 2 together you did not get a majority, which we said in the House all the time, this is ... we have never liked the transferable vote until it suits you and it suited very well. So, I am in a very funny position. I am not going to support Senators, because my real concern is if we change completely, fine, the vote will be on what it is, but we have 3 Members and we have 6, or 8, or whatever number of Senators we come up with ... I like whoever said it - I think it might have been Deputy Andrew Lewis - who will those people be? We saw 2 very fine Deputies lose their seats last time when they went to Senator. I have been 16 years here and I have been through 5 elections. I am no time very soon going to stand for Senator. No. If it stays, or if it

goes, I am not, because I am not saying I have a safe seat, I know my district, I know how to run my election, and I do not want to change it. As Senator Bailhache says, I do not want to sit in a room with 22 people, some of them, probably, are not coming through the ranks, brand new people, and have one and half minutes to answer a question; to me it is mad, absolutely mad. So, there is merit in not supporting this, and I am not. I have not completely made up my mind how I am going to go when we get back to the main debate, but I have spoken once on one amendment, so I will be voting all the amendments down until I get to Deputy Andrew Lewis' and then I need to keep on thinking. Thank you.

#### **2.2.14 Senator I.J. Gorst:**

I recognise that today, and tomorrow for some Members, is quite taxing and I think Senator Ferguson said that she had been in 64 of these debates. I do not recall quite 64, but I recall quite a few. I, like Senator Bailhache, hope that today, or tomorrow, probably tomorrow now, we are edging towards change. But I do not, at this point, with regard to this amendment, think that by voting for this one is not voting for change. One is saying that the change that Deputy Lewis is proposing, which is based on the referendum result, but not exactly the referendum result - let us remember that - it is a slightly amended referendum result with the number of Deputies in the St. Helier districts. It is saying that while one wants that change, i.e. the introduction of greater districts, one also wants to maintain the office of Senator. I will be continuing to vote in the way that I have done previously. I do not see a need to change my position. That, however, some Members might find confusing but that position is quite clear. In the past I have voted to retain Senators. This amendment allows the retention of Senators. At the same time, when the choice was between option A, B or C, I voted for option B. Many Members criticised Ministers and the Government for not doing what they accuse us of having said, or not said, during an election. I was quite clear with the electors during the election that I would support the retention of the Connétables, that I had supported option B, not only in the referenda, but also in this Assembly, but I also had a record of supporting Senators. The thing that I hope for today, because, unlike Deputy Tadier who suggests that election observers will just look to see whether our election process is pukka and free from bribery, or influence, or undue influence, they will also look at our underlying democratic processes and they will look at the equality of the system. That means the system has to change. I am absolutely clear on that. So, I find myself in a position, perhaps uncomfortably being at odds with some of my colleagues, of being able to, in the first instance, continue my position of supporting Senators. If that does not find favour with the Assembly today, let me be absolutely clear, I will be supporting change and I will be supporting the underlying proposition, be it amended or not, because I think that is today the most important principle for us to consider. But, when it comes to this amendment, I will maintain my commitment to supporting the office of Senator.

#### **2.2.15 Senator A.K.F. Green:**

I was one of those people that was not going to speak, but I am going to now because what I have heard from the man in the street, and I know that we all talk to different people in the street. I could go with some of what Deputy Southern said; if you ask those questions in isolation you will get yes to every single question. But what I have heard consistently is that some people are, and I have to say I am in favour of Constables in the States, let us make that clear, but some people are in favour of Constables being in the States and some people are not. Some people are in favour of large constituencies, some people are not. But I have not come across one single person that is not in favour of the senatorial at the Island mandate. I had a lot of stick, if you like, once before when the Senators were reduced, more than I have had about not supporting the referendum. The reason I did not support the referendum last time was complicated, but if I was to pick the main it was because it was not fair to St. Helier, it left St. Helier still underrepresented. But you can cut a

referendum, but referenda should be yes, or no, just as we had for the Constables: a very clear straightforward answer. The referendum we had last time for the reform of the States was a multi-choice paper, and I have said that before. As a caterer, you could say that 80 per cent of people went for roast chicken, but had roast beef been on there, i.e. they could keep the Island mandate, a lot more would have gone for it, would have gone for that. It is how you cut it, how you interpret it. So, we have a chance here, not often you have a chance to make change that could please the majority of people. You can please the majority of people by having an Island mandate, you could please the majority of people by keeping the Constables in the States, you could please the majority ... it will not be all because there are some who do not want super-constituencies, if that is the term we want to use, but I think there are enough people that want to see that change to make the election fair. Many people I speak to in St. Ouen, for example, say that: "I want to have the same number of votes as the people in St. Helier." Well, they can have that with Deputy Lewis' proposition, they can have the Island mandate and they can keep their Constables. So, I urge people, this is change, this is evolution, not revolution, support Senator Ozouf's proposition, or amendment, and then go on to support Deputy Lewis. Thank you.

#### **2.2.16 The Connétable of St. Lawrence:**

I will be extremely brief. We have heard reference today to the attempts by P.P.C. to come up with an acceptable proposal for constitutional reform and I think our comments make it quite clear that we were seeking a consensus so that, from the outset, and the chairman, Connétable Norman, in his election speech made it quite clear that he wanted to bring forward constitutional change, but he would only do so if he thought that what was going to be laid before the Assembly would find favour with the Assembly. Clearly, it has been a difficult task to bring anything forward and Deputy Andrew Lewis has, if I say, beaten us to it, that is what has happened. However, what I want to make clear to Members is that, had we brought forward our proposals for change - which we had been considering - they would have included the retention of the Senators as Members of this Assembly. So, had P.P.C. brought forward recommendations for constitutional change, they would have included the retention of the senatorial seats. I think that Members should be clear on that before they go forward to the vote on this. Similarly to the Chief Minister, my view has always been that the Senators should remain as Members of the States, because my own personal view is that the electorate favour the Island-wide mandate. They are very pleased to be able to go out and feel that they can elect, call them what you may, we call them Senators, they can elect people on an Island-wide basis. That has always been my belief and that remains my belief, having chatted to parishioners over the past few weeks since Deputy Lewis lodged his proposition and by speaking to parishioners, not only of St. Lawrence, but from other Parishes; they are aghast at the thought of the potential loss of the senatorial seat within this Assembly. I think it has been useful hearing from Senator Ozouf today with his survey - with the survey that he has conducted - it has been useful, but I have looked at the email that he sent us with the results and it pretty much reflects what States Members have told P.P.C. when we have been holding our elections during lunch times, asking questions: "Do you want this? Would you prefer this? How does this appeal to you?" Clearly, it states in the comments that, as we progressed through those monthly meetings, or those lunch time meetings, and Members saw the results of the answers that they had given us to our questions initially, they were not happy with the route that we were being directed towards, as a result of their responses, and they were saying things such as: "Well, if I had known that it was going to end up meaning this, I would not have given that response in the first place." So, not easy at all, but I just reiterate that had we brought something forward, it would have been to retain the position of Senator as a Member of the Assembly. Thank you.

[16:30]

#### **2.2.17 Deputy A.E. Pryke of Trinity:**

I shall be brief and I think I shall only speak once during this debate. Just hearing from the Constable of St. Lawrence about what P.P.C. would have brought, I am sad that P.P.C. did not bring it, because I think it would have been important for all that we have had with P.P.C., all the engagement that States Members have had over the last year. But, we have been on a long journey of electoral reform, many years, many debates, some of which I have been part of and some which I have not. We have ignored the public, unable to make a decision on how we need to reform. But I hope, I think, we can all agree that we need to have some sort of change. If that is so, then in what way? The public have agreed with the position of Constables and I wholly, 100 per cent, support that. This Assembly has agreed to that, so we are down to the role of Deputy and Senator. In each debate that I have been part of I have not changed my stance on the role of Senator. The Island-wide vote. This is important. Since the introduction of ministerial government, Islanders have had the chance to see, to hear, to question prospective candidates on Island-wide issues and other issues and the possibility here from a prospective Chief Minister. Voter equality is now essential. Many Members have explained the reason why and I will not go into that; we know the population has increased and we have not changed with the growth. When we speak to parishioners, and I have spoken to a few in the instigation of this debate, not many people have contacted me about it, they are all ready for change, they are all ready for some change to be on the journey and they begin to understand about voter equity. But it is a compromise at the end of the day; we cannot have everything because everybody wants a bit of everything, so it is a compromise. So we keep the Constables and Senators, then we do need to change those boundaries, and that is part of my compromise: 6 large constituencies to get the voter equity. But, in the last election I made it clear that I would support the role of the Constables and Senators and that has not changed. Thank you.

### **2.2.18 The Connétable of St. Mary:**

I have been involved in a great many reform debates; I have led a good few of them, and at times have been, as a committee chairman has to do, presenting the majority view, and not always being completely at ease, perhaps myself, with all aspects. I would like to say that I would just like to offer a couple of thoughts. I was on the Electoral Commission and I stand by the body of research that commission did. It was an incredibly in-depth process. The proposer of the main proposition has made reference to it, to the interim reports, to the endless rounds of interviews, to the public meetings, presenting our findings so that they could be considered again by the population, going out. I can tell Members that I am fully aware of the tension between different options. I am fully aware of why I believe and I understand that certain elements of our system are unsustainable, and people have touched on elements here. But I also know that the minute you turn your back on a reform debate, go away and give it time to rest, the certainty with which you knew why things were, or were not, possible seems to dissolve and other items, other things that are suggested, seem strangely seductive and it is very difficult to keep that intense understanding of all the different elements. This is an incredibly complex thing. We do not have an easy starting point. We would never, ever now, under today's modern standards, have devised the system that we have, but moving away from it is difficult because we have heard of the emotional attachments that people have. I was interested to hear what the Constable of St. Lawrence said, because it is certainly true; a lot of people have said to me they want to retain Senators. Generally, because of the experience that I have had in dealing with questions like this on the Commission at the time, I can recount the arguments why Senators really will probably wither on the vine, even if we do not remove them ourselves. Quite often, the members of the public I am speaking to can appreciate the arguments that I am saying. But it is interesting, is it not, that, having listened to what the Constable of St. Lawrence said, and I absolutely understand what she said and I completely would say I have probably had some of the same responses? But I said: "Can I just ask you, what did your Parishioners say they felt about Parish boundaries, rather than larger constituencies?" The answer was, as I had expected, they were very keen to keep the Parish boundaries. In that case, I cannot



understand if that really is the driving force, why option C did not succeed because it kept the Constables, it kept the Senators and it kept the Parish boundaries. The only answer to that can be that the vast majority of the population could see that it was not really the right thing to have, because, unless I am very much mistaken, that option with the Senators in it and with our Parishes did not find favour in any Parish. Yes, it beat option A but what I mean is it did not become the first option, it was not the winner, as we say, in the first round in any Parish. What do we know from that? What we know is that people still do not really know what they want. We are being told now, if we listen to what the anecdotal evidence is, that members of the public want to keep the Senators, but they did not turn out and vote for them in that referendum. That can only be because (a) they really had come to understand that they were not sustainable, in which case we would be wrong to support this proposition, or (b) they really did not want to lose their Parish boundaries, in which case we would be wrong to support this proposition. I still really am confused by this, because my feeling is, and I heard the word used - I think it was Senator Bailhache who used it - matter of honour that 4 years ago when we had the referendum, whatever the outcome, I felt that I needed to support it, because there is nothing more devastating to someone who is engaged in a process all the way through to be told: thank you very much for participating but, no, which is what the previous Assembly did. I always thought how difficult it would be if my constituents had voted one way and I had really felt the other, but the vote in my Parish was quite clear so there is no reason for me not to understand that. The only question that I have is: have things changed anywhere, perhaps, in the population? I do not know. Have more people become accepting of the way things need to change, or do they, perhaps, still cling to the nostalgia, as has already been said, and want to push on regardless with doing it the way we have always done it because it is our system and let us design it how we want? That is the actual thing that I felt quite often. I do not mind if it does not fit with everybody else. It is our system and we put it here and it should stay. I am not saying that is a legitimate viewpoint or not. I am just saying that is something that I hear. I was quite shocked, because it seems to me that I have just been waiting for P.P.C. to come up with a proposition and any day now it was going to happen. I think Deputy Mézec said something like when he was first elected, he thought, well, any day now it was going to happen. It had not really dawned on me; how stupid is that on my part that it was 4 years since the referendum? It has gone by in a flash. When does that result become invalid? That is the argument I am having with myself now, because my honour tells me that people of the Island voted and really we should accept the decision that they made. I am finding it very hard to be persuaded otherwise and that is the job that any of the proposers of the amendments have to do today. They have to convince me that that referendum result should not stand in today's world. I honestly believe, somebody was saying, why are we not having public meetings in the Parishes about these propositions? I said, what would I do if it is a rainy night and the football is on and 30 interested people brave the weather to turn up to my Parish Assembly and say, I like this, or I like that? Where does that stand against a legitimate vote at the ballot box when we have had all the electoral processes in place, all the safeguards, all the publicity, all the notice, all the possibility to vote by post, or pre-poll, or whatever, and we have had every facility for engagement and we have had every opportunity to get people on to the electoral registers so they can participate? We have thrown it open and said: "Please, come and tell us what you think." If Members do not think the options were right, or whatever, let us just put it into ball terms at the moment, we had put the referendum out and we told people come and vote. They came and voted and we did nothing about it. I still cannot get over that gross disservice that we did at that time. But, sometimes, you have to seize the moment and when the moment is lost you have to deal with something different. I really need some guidance here about the legitimacy of the referendum result now, because at the moment I am feeling that is what I have to support, as opposed to what will happen if we move on ... sorry, Sir, I do not intend to speak again if I can help it, so let us get it out here, if we move on to a situation when we get to the third amendment, I think it is, where we are looking at a referendum again and how that fits in

with the desire to have this all in place by the next election, because it is probably extremely tight, even if it is not impossible. Weighing that up, is that more important and the certainty of a change fixed in time, even if it is not in time for the next election? I am waiting for a wiser person than I; there must be one. There are at least 48 in this very room, 49, 50 at least in this very room and, therefore, I really do not know where to go with this, except my gut instinct still is: the people in my Parish and in the Island, as a whole, voted one way. I believe that really in this case I am indebted to them to support their choice.

**2.2.19 Deputy K.L. Moore of St. Peter:**

Certainly not wiser than the Constable of St. Mary, but I would like to reach out to her and agree with what she has just shared with the Assembly because, from my perspective, I cannot see that we have progressed since the last referendum. All we have done is return a new Assembly and if you look at this Assembly it is quite an interesting place, because, particularly when you look at the Deputies' benches, out of the 29 who were returned after the last election 20 of those 29 Members were either returned unopposed, or with fewer than 1,000 votes. What does that say about representation of the people in this Island? That tells us that it is time for change. I strongly believe that the super-constituencies, as developed by the Electoral Commission, are the way forward. They do not sit alongside Senators, because the super-constituencies will aim to give a stronger mandate to the Members who are selected in those super-constituencies. They will enhance the debate in those super-constituencies. We will no longer see people returned unopposed from them and it will be a very good thing for representation of the people and a very good thing for our democracy. I have a great respect and affection for my colleagues, the Senators. They are all dedicated Members of this Assembly, who work extremely hard.

[16:45]

But, at the end of the day, we all have an equal vote in this Assembly and it is our duty to enhance our democracy and ensure that every Member has a proper mandate when they return to the Assembly.

**The Deputy Bailiff:**

Does any other Member wish to speak on this amendment? Very well. I call on Senator Ozouf to respond.

**2.2.20 Senator P.F.C. Ozouf:**

I will attempt to make sure that my voice holds out. My job, I think, is to be an advocate, an advocate for Senators because I was hoping that there would be some proper debate this afternoon, that there would be some spirited advocacy, there would be some real evidence as to why Senators should go. I think the Deputy Greffier will tell me; I think there were 14 speakers, maybe 15 out of 49. It will not take long for me to sum up on a debate with 14 speakers and also to make some most fundamental and important points. I will not refer to every Member but I thank all those Members who have contributed to this debate because it is certainly a debate that matters. A debate that sees the end of the office of Senator is not something that is a casual one. It is an important one. It is the foundation of our democracy. Deputy Luce started by saying fairness and equality and how right he was. He was an option B supporter but today he is going to support my amendment because he wants fairness and equality and he wants the super-constituencies. He asked where P.P.C.'s information and proposition were. I have to say to Deputy Luce, the Deputy of St. Martin and all those others, is that I lament the fact that there is no proposition from P.P.C. I was on that subcommittee and so it has fallen to me to bring an amendment as a member of that subcommittee. I do so in the full knowledge that after the work of P.P.C., and I will come on to the voice of the people outside of this Chamber, but I will say that the work of the Members of this Assembly and their voice was to keep Senators. Effectively ... Deputy Southern shakes his head

but the finger-button exercises that happened, were they invalid, were they wrong? I ask Members to look at P.P.C.'s report. Deputy Mézec said that he was motivated to stand for the States. He wanted option A; it sounded all about him, it is what I want in the interests of me. P.P.C. failed, did they? No, I am putting forward a proposal that is based upon what P.P.C. has worked on in the last few months. He said he completed the survey that I did twice. I can tell him that the survey was more clever than that and will have noticed and picked up on a number but have discounted a number of them. But even if there is a number of Members, and I hope that they did not really think that they could get away with going on and trying to get my survey wrong by repeating it 2 or 3 times, I hope that people would be more honourable than that but perhaps they were not. But the survey was only completed twice by Deputy Mézec and he said it only gave, effectively, a marginal increase in the Senators' mandate. I thank the Constable of St. Martin. He spoke and for the first time he raised the issue of turnout. I am going to say that there is one issue, I have been known to say in this Assembly before, when the facts change I change my mind. Since the 2013 referendum result there has been a new fact and there has been another referendum, both in terms of Constables and in terms of Brexit. Some people say that Brexit must mean Brexit. With a 72 per cent turn out I think that people are entitled to say Brexit must mean Brexit. With an 86 per cent turn out in the Scottish referendum to remain part of the United Kingdom, I think people are entitled to say that that is a referendum that should be respected. When I look back and see the referendum concerning the non-Senators because there was not that option, but I will come back to that, what was the turn out? Was it 72? Was it 86? Was it 27? It was 26 per cent. I ask Members to consider whether or not today they believe that there is a mandate, that there is a legitimacy in a referendum result with 26 per cent because Members also now are here by virtue of another election, the general elections and that election did rather better. Congratulations Grouville, 46 per cent. Congratulations St. Brelade, referendum, Constables, 46 per cent. That sounds pretty more legitimate. It is not as good as 72 but it is a jolly sight better than 26 and all the others. When the facts change I change my mind and I really wanted to hear a spirited defence of the reasons why we were going to throw out Senators. I ask Members to think, 72 per cent versus 26 per cent. We had an interesting contribution from Deputy Andrew Lewis. I was really wanting to hear him fight, argue, say why the Senators were wrong but all that what happened is the lights went out on the Senators at the time but then, fortunately, the Chief Minister came to the rescue and with the usher put the lights back on again and after Deputy Tadier *il a parlé en français et je peux parler en français aussi, il a utilisé le mot "malin"*. Deputy Tadier, I have to say, for those Members who do not speak French, that says clever, smart, true, astute and wise, that is what he called me. Astute and wise, goodness me. He thought he could get away with saying it in French when nobody would understand him. **[Laughter]** But, of course, I can also speak in the French language. He said the more serious point, that he could also be a French parliamentarian and would know about election-observing missions. I can say to this Assembly that I have been an election observer for both the French Commonwealth and the British Commonwealth. Where Deputy Tadier has not informed himself is in the arguments of what election observers do. They do not just look at the urns. They do not just look at the electoral rolls. They look at the legitimacy of the system. They look at the legitimacy of whether it is fair and equitable. I say to Deputy Tadier before he stands up in French or English, let him get his facts right. Because when we have election observers they will look at the legitimacy of our system and even if my amendment is not accepted, what I know is that the amendment that I am bringing forward that improves the more legitimate arrangements that we have at the moment, which is, effectively, doing nothing, I know that my amendment passes that test of equity and equality because every Islander is treated in the same way. I am happy to give way if somebody would wish to confirm why I am talking rubbish.

### **The Deputy Bailiff:**

I am not sure that is a basis on which you can give way.

**Senator P.F.C. Ozouf:**

No. No, I was just wondering what I had got wrong, but I have not got anything wrong. When somebody brings up ... you are not supposed to have props, but this is not a prop, this is a graph. I do not know what this graph by Deputy Lewis meant. It did not seem to be telling me anything at all, apart from the fact that the addition of my 6 Senators was just as legitimate as his own amendment and certainly better than the doing nothing option. Casting aspersions by Deputy Tadier, as he did, on Senators I do not think did any credit to his arguments. He said that we should have never created Senators in the first place. Did he know better than the referendum in 1947? Did he know better than the referendum and all of those votes making Senators and all those elections of Senator Cyril Le Marquand and all those other great Senators? Did he know better than them? Maybe not or maybe he did. I thank Deputy Farnham for his gracious acceptance of my ...

**Senator L.J. Farnham:**

I am still a Senator, but only just.

**Senator P.F.C. Ozouf:**

Sorry, Senator, I do apologise. You see there is a point of order that is absolutely right but it is because Senator Farnham and I have known each other since we were Deputies and he will always be perhaps in my mind the Deputy Farnham that I stood with in this first Assembly. But I apologise because, of course, he is rightfully a Senator. He said he would support my proposition, which was 6 Senators. But I also say to him ... and I did discuss this with another speaker of another parliament and I also spoke with the Greffier yesterday about what is an issue of principle and what is an issue of detail. I do say to all Members in this important issue of a debate on a principle, there are certainly some things that are legitimate to look at in the Second and Third Reading in the legislation. I say to the Deputy of Trinity, it is proper and right that there is a discussion if Deputy Lewis' and my senatorial proposal maintains that there is a discussion about precisely what the makeup of those 6 districts are. That is an issue of detail, which a revising Assembly, a revising Scrutiny Panel, it means an amendment would be possible to do, which is not wrong. Members are voting in principle. Members are voting on the principle of whether or not to keep Senators and to change the super-constituencies into Deputies. But of course the detail will come back in legislation. Whether or not they are called Deputies, M.S.J.s or Senators, personally, and I say to Senator Bailhache with a great deal of respect, I think it is a trade descriptions issue to call somebody in a super-constituency a Senator. I have looked up the definitions of what Senators are from around the world and I cannot find a single person that is called a Senator that is elected in what is effectively an ordinary lower house deputation election. But again, I say that is an issue that can be dealt with later. That is an issue I do not think of substance. I think that that can be done later. So nobody I think should be worried about voting in favour of that. My amendment calls Deputies Deputies. Call a spade a spade. Call a Deputy a Deputy in a district and call a Senator a Senator with an Island-wide mandate and call a Connétable or a Constable in either language what they are. Now I was really wanting to hear Senator Bailhache do an advocate job. He is a barrister. He knows how to make the arguments. But what did I hear? I heard this was a wrecking amendment. Other things have been described as a wrecking amendment. He said that this amendment was covert option C. Is it really? No, it is not. Option C was to do nothing. This is not a covert option C. This is a pragmatic B++. B++, one, because of the Constable of St. Helier's problem that he is 33,000 and the Constable of St. Mary is 1,500 and so you needed to add an extra Deputy in, I agree. Apparently Deputy Lewis did not know of my original proposition. But I thank him; great minds must think alike. So actually we agree. But it is not option C covert because it is an amendment for change. It is an amendment of keeping the Island-wide mandate and sorting out the super-constituencies, while respecting the referendum result on Constables. So I say to Senator

Bailhache, this is not a wrecking amendment. This is not a covert C. He also asked, as a number of other Members did, who would want to do the job. Are we really saying if we have a senatorial election in May 2018 that nobody is going to want to do the job? Why did he stand in the last senatorial election, I wonder. Why did anybody who supported option A or B stand in the senatorial election? Why did some Members who avowed option A stand in the senatorial election. They must have thought it of some value otherwise they would not have bothered at all. 13,000 people voted for reform. Well, that is a pretty poor voter turnout, I am afraid. It is not passing the test of what is a minimum threshold. There was a discussion in the House of Parliament and, yes, there is a discussion in the House of Parliament this evening on Article 50. Perhaps with the benefit of hindsight there should have been a minimum threshold in the Brexit referendum and there should have been a minimum threshold in the referendum on 2013. But that is obviously what one learns in hindsight. But the facts are the facts. I say to Members again, 26 per cent versus 72 per cent. I think that matters. I am sorry I did not bring that before. Deputy McLinton, he is a really nice Deputy. He is very kind. He is always fair. He has always normally got something to say ... **[Laughter]** that is of interest. But there is one thing that I would respectfully say to him, which is the difference, with the greatest of respect, and I know he knows that I do hold him in very high regard, partly because he is a good neighbour of mine in the good Parish of St. Saviour. But there is an important point, is that there is a difference between Jersey and the United Kingdom, and that is the fact that we do not have party politics. That is the only flaw I saw in his argument. He said: "No, we cannot have Senators because it works everywhere else."

[17:00]

But everywhere else mostly has party politics. Senator Ferguson said she just cares about taxes and issues of importance. Spending and taxes. If I say to Senator Ferguson that the reason why we are here to discuss taxes and spending is the democratic right that we have to be here. So it is quite important to get the foundations right so we can go and talk about those issues that really matter to ordinary working and Jersey residents.

**Senator S.C. Ferguson:**

I regret I am being misquoted.

**The Deputy Bailiff:**

I am sorry, did you want to make a point of clarification in your original speech, Senator? Because Senator Ozouf has given way, it appears.

**Senator S.C. Ferguson:**

That is kind of him. I wonder if he would like to quote me accurately. Perhaps he could clarify.

**The Deputy Bailiff:**

What is your point of clarification? You can ask him for a point of clarification of his speech or you can give a point of clarification of yours if you believe it has been misunderstood.

**Senator S.C. Ferguson:**

Yes, all right. Sorry, the clarification of mine is that in actual fact I was interested in the question of constitutional reform as a matter for the next election.

**Senator P.F.C. Ozouf:**

I did not quite understand the point of clarification. I was hoping that I could get Senator Ferguson's agreement to vote in favour of maintaining the office that she now holds, that as a result of the discussion we had before asking the question, that the office that she has defended previously and the office that she now holds will be disbanded, and that is really all I wanted to say. I just

wanted to say that I agree with her. That tax and spending are the most important issues but you have to have good foundations on which to make those good decisions and our foundations are not good. I thank Deputy Southern for criticising me again. I thank the Constable of St. Helier for making sure that people know that the mandate for St. Helier is imperfect and that is why my proposition still adds an extra Deputy in each of those St. Helier districts. It maintains that issue and that is important. Deputy Martin said something quite concerning. She said a warning to the Constables. It is Senators first and it is Constables next. That is quite concerning. I just leave that to Members to make their own minds up. To the Constable of St. Mary I say this: if there is anything that one has learnt in the effluxion of time between the original times when she reduced the numbers of Senators and the referendum in 2013, and the referendum in 2014, I think it is this. We have understood what minimum thresholds are and what legitimacy is and what legitimacy is not. I say to her with the greatest of respect, as the Constable who has a great voter turnout in her district, even the turnout in her district was not good enough. I do not think you can trust the mandate to cast for the time ever the position of Senator. I just think in hindsight it is not sufficient. I do not think there are any other people that I have to respond to. In summing up, let me say this. Senators have been part of this Assembly since 1948. They are the Members who are equal in their vote. They are no different but they have one advantage of having been through an Island-wide election, dealing with Island-wide issues. I do not think that anybody would say that a Senator elected in any of the last decades does not have the legitimacy to serve this Assembly. So I say to Members in their decision of why they should end the senatorial mandate. Have we heard anything this afternoon which says the honourable position of Senator and all those who have held it in the past, is now to be cast away for ever? Have we heard arguments of anything that say we should? Yes, there is some tinkering to be done. Yes, the deputorial mandate needs to change. But of the Senators they are, to quote the Deputy of St. Martin, the fairest and the most equal and certainly, in my final remark, I will say this. My survey may not have been perfect. Certainly people who tried to do 2 or 3 go's at it were discounted and that is why there was only about 600. I do not think the people of Jersey are ready at this time to cast the Senators away. I think the people of Jersey want their senators. Now that does not mean that they do not also want to see a reform of super-constituencies in the deputorial mandate resolved. I think they want both. In fact, I think they want all 3. I think they want to keep their Constables, as imperfect as they are, with their 1,500 to 33,000. I think they want to stand and, very clearly, having better systems of electing Deputies, which my proposition does. My proposition is Deputy Lewis' proposition but it improves it by maintaining the Island-wide mandate. How will we work out how to do that modality of elections? Let us consider this later. Let us consider how to get of course a better system of elections of Senators and a better system where the Deputy of St. Peter is so right when she says it is an imperfect election. But perhaps a lesser number of Senators and a better system of deputorial elections will mean a better system of electing Senators too. Perhaps we will not have so many Members. Apparently we have been told already that we are not going to have many senatorial standing. If we do not have many senatorial standing, if we do not have a very good senatorial election, then surely the majority of this Assembly at that stage will throw the Senators out. But I say there is no legitimacy at this time for doing what the people do not want, which is to throw the senatorial election out. I have heard nothing in this debate. I was wanting to hear the absolute wash of evidence, the evidence, the advocacy to say the Senators should go. But I have not heard it. If Members can vote against my proposition to keep Senators then I ask them to vote on their conscience and consider the evidence. I have given an evidence-based actual example and legitimate reasons why Senators should be kept. It clearly is what the public want, the referendum, I am afraid, in hindsight was not legitimate, and that should be borne in mind. I ask Members to keep and to vote on their conscience and to vote in favour of what is the most democratic and proper election that is tried and tested and has served this Island for the last 6 decades, and ask Members for the appel.

**The Deputy Bailiff:**

Before I put this matter to the vote as requested by the Senator, I wish to clarify a ruling that I gave prior to the luncheon adjournment in response to a query raised informally I think by Senator Farnham, relating to the voting requirements for any vote to alter the constitution of this Assembly. Standing Order 89A requires that notwithstanding any other provision a majority of elected Members is required to pass any proposition to alter in any way the membership of the States of Jersey, and presiding officers have in the past interpreted that as including an in principle proposition and an amendment to in principle propositions. Accordingly, it appears to me, that to pass any of the amendments and indeed the in principle proposition a majority of 25 will be needed to achieve that end. Accordingly that is the ruling that applies from this vote onwards for the remainder of this debate. The appel is called for. I invite Members to return to their ...

**The Connétable of St. Mary:**

May I just ask a point of clarification? You can probably help me, Sir. I understood that Senator Farnham was in principle agreeing with this amendment. Does that mean his own amendments have been withdrawn or not?

**The Deputy Bailiff:**

No, because if this amendment fails Senator Farnham can still bring his amendments following on.

**The Connétable of St. John:**

What would happen if this amendment succeeds? Does Senator Farnham ...

**The Deputy Bailiff:**

If this amendment succeeds Senator Farnham's amendments (2) and (4) go away. They automatically fail, but (3) is a different subject matter dealing with the referendum and that would still be voted on. The appel is called for, I ask the Greffier to open the voting.

<b>POUR: 19</b>		<b>CONTRE: 25</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator P.M. Bailhache		
Senator P.F.C. Ozouf		Connétable of St. Helier		
Senator A.J.H. Maclean		Connétable of St. Clement		
Senator I.J. Gorst		Connétable of St. Mary		
Senator L.J. Farnham		Connétable of St. Ouen		
Senator A.K.F. Green		Connétable of St. Brelade		
Senator S.C. Ferguson		Connétable of Trinity		
Connétable of St. Peter		Deputy J.A. Martin (H)		
Connétable of St. Lawrence		Deputy G.P. Southern (H)		
Connétable of St. Martin		Deputy of Grouville		
Connétable of St. Saviour		Deputy J.A. Hilton (H)		
Connétable of Grouville		Deputy K.C. Lewis (S)		
Connétable of St. John		Deputy M. Tadier (B)		
Deputy of Trinity		Deputy of St. John		
Deputy E.J. Noel (L)		Deputy J.M. Maçon (S)		
Deputy of St. Martin		Deputy S.J. Pinel (C)		
Deputy S.M. Bree (C)		Deputy R.G. Bryans (H)		
Deputy T.A. McDonald (S)		Deputy of St. Peter		
Deputy G.J. Truscott (B)		Deputy S.Y. Mézec (H)		
		Deputy A.D. Lewis (H)		
		Deputy of St. Ouen		
		Deputy R. Labey (H)		
		Deputy S.M. Wickenden (H)		

		Deputy of St. Mary		
		Deputy P.D. McLinton (S)		

**2.3 Composition and Election of the States Assembly (P.133/2016): second amendment (P.133/2016 Amd.(2))**

**The Deputy Bailiff:**

The next amendment for consideration is that lodged by Senator Farnham entitled Composition and Election of the States Assembly, second amendment. I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

Page 2, paragraph (a) – For paragraph (a) substitute the following paragraph – “(a) to agree that it should establish an Assembly of 48 Members comprising 12 Parish Connétables elected from within the current Parish boundaries, 8 Senators elected on an Island-wide basis and 28 Deputies elected from 6 large districts, in accordance with the table set out in paragraph (b) below;”. Page 2, paragraph (b) – For the table substitute the following table – District 1: St. Helier North, 6 Deputies to be returned; District 2: St. Helier South, 6 Deputies to be returned; District 3: South-East District, 4 Deputies to be returned; District 4: East Central District, 4 Deputies; District 5: North Central District, 4 Deputies; District 6: West District, 4 Deputies. Page 2, paragraph (c) – For the number “44” substitute the number “48”.

**2.3.1 Senator L.J. Farnham:**

Thank you to Senator Ozouf for launching the debate and although his amendment was rejected I think Members now have an opportunity, although the chances are running out, to keep the Island-wide mandate. I brought this amendment because, as I said earlier, today has to be a day of compromise. Judging by the speeches and the voting pattern to the last amendment I believe all Members are prepared to compromise and are putting the interests of the Island first. We must continue to do that. I will touch briefly again on Senators in a minute, although most of what needs to be said I think has been said. I just wanted to explain why I produced a different option in relation to the super-constituencies. Firstly, I felt that the alignment of the Parishes in this, and I did circulate some documents to Members last night with useful information which they should have. I think the Parishes are more aligned. I think the Parish interests, and bearing in mind that the Deputies in the super-constituencies and the Constables are going to be working together representing a larger district. I think it is important. So just to run through them. Districts 1 and 2 of St. Helier, which incidentally the voter equity for St. Helier is improved in this scheme because I have maintained the number of Deputies for the St. Helier District, while reducing the number of Deputies in the other districts. District 3, East, is St. Clement and Grouville. District 4, St. Saviour and St. Martin, East-Central. I also renamed them because I thought it was sensible that the names did relate to the geographical areas of the Jersey map. Deputy Lewis is North District but the majority of the North District I think was in the west of the Island. It is a minor detail, but perhaps an important one. District 5, which is Trinity, St. John, St. Mary and St. Lawrence, entitled North-Central, I think provides a good balance of country Parishes with St. Lawrence, which stretches right down to the south coast of the Island. Of course arguably we save the best until last and that is the west with all the western Parishes working together. A question that I have asked myself, and perhaps some Members might wish to address it, perhaps some Constables might wish to address it. While we are working out the figures and I am working with Professor McLean’s figures, who has been assisting the P.P.C. is that when we look at these constituencies and the number of representatives they include the number of Constables and Deputies in those districts. My question is perhaps for some of the Constables, if for example let us look at District No. 5,



North-Central with Trinity, St. John, St. Mary and St. Lawrence. 4 Deputies representing those Parishes and 4 Constables. Would the Constables see themselves as being a representative of just their Parish or a representative of their Parish and the district?

[17:15]

That is an important question because I am sure that also the representing ... I am not talking about in general debate but particularly in a debate in Parish and constituency issues. Because I think most Constables will see themselves as perhaps their Parish representative first but at a close second the representative of the district. I see that being perhaps a positive way forward. But it certainly raises a question in general debate, but particularly in a debate in parish and constituency issues. Because I think most Constables will see themselves as perhaps their Parish representative first but at a close second a representative of the district. I see that being perhaps a positive way forward, but it certainly raises a question. Also, according to Professor McLean's formulas, this option of super-constituencies improves the number of population in districts above or below the Venice Commission, which reduces to 28 per cent. Under this scheme, 72 per cent of the Island's population will be working within the Venice Commission, which is an improvement. While it might not be deemed by some Members to be as important as voter equity, which is only marginally different to that in Deputy Lewis' scheme, it is still an important piece of information to remember and it certainly is going to be helpful. It is certainly a vast improvement on what we have now where something like 73 per cent of the population are outside the Venice Convention when it comes to that equation. I just want to touch on something Senator Bailhache said earlier, and a number of other Members have said, and I am referring to the C team. There is not many of my C team or the C team here at the moment. Senator Ferguson is here, Deputy Labey has disappeared - both of them actually - the option C campaign was not a campaign for no change. Option C was for change but not this change. Voting for option C was not a vote to keep the Senators. It was a vote for change but not this change. I did try to insert an option into the referendum question, which was "none of the above", because unless you wanted A, B or C you could not express your vote. Perhaps that is why there was a low turnout. Perhaps that is why 1,727 people chose not to exercise their second vote. I do not know. But that was just one of the issues with that particular referendum, and we will address that in a little bit more detail in the amendment in relation to the referendum. I think really I do not want to try the Assembly's patience. Most of what has been said about the Senators has been said. This amendment retains 48 Members. Now while that might be slightly more than some people would wish for, it is still a reduction from the 53 that we had. When I look around the Assembly I do not see many idle hands. Between ministerial government and Assistant Ministers and Scrutiny and the other panels and committees, together with the constituency work of the Constables and the Deputies, we are a pretty busy Assembly. Some of the Parish sizes have doubled and trebled since 1948. The population has almost doubled. We are very well represented. While we could reduce by a couple more or 4 or 5 or 6, I do not think whether we have 44 or 48 I do not see it being a huge difference. In actual fact, I see it being a bit of a benefit having slightly more Members, and there is a bit more capacity for Members to deal with their constituents and serve the public better. Finally, as I said earlier, I quote the Deputy of St. John again, because we agree on this. It is not necessarily the systems that make for good representation. It is the people that work within them. I do not think that the super-constituencies will see much of a change. I do not think it will change the dynamics of the Assembly that much. Those of us that have put our name forward for election will continue to do so. We do not do it for the money. Many of us it is not a job, career, or profession. It is giving service. But as long as we have a system where Members are remunerated in the way that they are, and I will not go into detail, other than to say different tiers of Member and different work levels getting paid exactly the same and for some people in society it is just simply not enough to encourage them or enable them to afford to give up an existing career to come into politics. Also

there is no notice period. If you lose an election you are gone. There is no pension, there is no financial support. Now Members might ... I am not saying I particularly would want that for myself. As I said, many of us do it as a service. But in reality that is the reason why there are so many good people that simply cannot afford or risk their careers to stand for the Assembly. Addressing that problem is going to provide far more, in my opinion, opportunity to improve the calibre of this Assembly than playing around with the electoral districts and removing Senators. As I said, earlier, I think we all want change. There is no doubt about it. The Island wants change. We are going to have to come to a compromise. I hope this amendment, which was brought to give Members ... and I did speak to a number of Deputies, and all the constituents who were a bit uneasy about the districts in the original proposition. This is just an opportunity to fine-tune those. It is something I think which is an improvement. It certainly provides improvement in terms of the number of people that will be working within the Venice Commission guidelines on representation. Also for those people who are not sure, who did not vote for Senator Ozouf, please this is one of the last chances to retain the very important office of a Senator. When I say that, I do not mean we are more important than any other Member and we exercise the same power - I do not like to use that word - the same rights in this Assembly. But the fact is we are a unicameral Assembly. We do not have an Upper House and I know some Members have, but if you go back and look at the reasoning as to why we were structured this way in 1948 it is because we have Deputies representing the constituencies and their districts. We have Constables representing the Parishes and local government, and we have the Senators representing our small Island nations and national interest. We are all in one Assembly because we do not have town councils or county councils. We do not have Assemblies in other parts of the Island. We do not have an Upper House. That is why it is important that we have that mix of Member in this particular type of parliamentary system. I urge Members to think carefully, to put the interests of the Island before their own interests or before their own political ambitions and vote for what is right and keep Senators in the Assembly.

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

I wonder if the Senator would clarify something. I think he asked the Constables whether we would feel that we would have a mandate within the super-constituencies and I do not quite understand that because I cannot see we would have a mandate. A mandate comes from our individual Parishes.

**Senator L.J. Farnham:**

The Constable raises the very conundrum I was referring to because the figures worked out by us all in relation to voter equity includes the number of the Constables in the super-constituency, so are the Constables going to be representative of the super-constituency or just their Parish? That is something we need to address.

**The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] It is not quite 5.30 ...

**Senator P.F. Routier:**

I was going to propose the adjournment. I cannot imagine the next speech will be less than 5 minutes.

**Deputy M. Tadier:**

Unless of course no one wants to speak then we could go straight to the summing up.

**The Deputy Bailiff:**

I suppose that is a legitimate question. Does anyone want to speak on the proposition? Yes. In which case the States stand adjourned until 9.30 a.m. tomorrow morning.

ADJOURNMENT

[17:25]