

**THE STATES assembled on Tuesday,
2nd July 2002 at 9.30 a.m. under the Presidency
of Senator Pierre François Horsfall, O.B.E.**

**His Excellency the Lieutenant Governor,
Air Chief Marshal Sir John Cheshire, K.B.E., C.B.,
was present**

All members were present with the exception of -

Senator Corrie Stein - ill
Kenneth Alan Le Brun, Connétable of St. Mary- out of the Island
Alan Simon Crowcroft, Connétable of St. Helier- out of the Island
Shirley Margaret Baudains, Deputy of St. Helier- excused
Paul Francis Routier, Deputy of St. Helier- out of the Island
Alastair John Layzell, Deputy of St. Brelade- out of the Island
Jacqueline Jeannette Huet, Deputy of St. Helier- absent
Maurice François Dubras, Deputy of St. Lawrence- out of the Island

Prayers

Subordinate legislation tabled

The following enactments were laid before the States, namely -

Road Racing (Hill Climbs and Sprints (No. 2) (Jersey) Order 2002- R & O 58/2002.

Hospital Charges (Long-Stay Patients) (Amendment No. 4) (Jersey) Order 2002. R & O 59/2002.

Matters presented

The following matters were presented to the States -

Island Plan (P.69/2002): second amendments (P.69/2002 Amd.(2)) addendum - P.69/2002. Amd.(2) Add.
Presented by the Public Services Committee.

Bonne Nuit packaged sewage treatment plant: purchase of land (P.105/2002) - addendum - P.105/2002. Add.
Presented by the Public Services Committee.

Prison Board: report for 2001 - R.C.25/2002.
Presented by the Home Affairs Committee.

THE STATES ordered that the said reports be printed and distributed.

Matters lodged

The following matters were lodged "au Greffe" -

Machinery of Government proposed Departmental Structure and Transitional Arrangements (P.70/2002) -

Second Amendments - P.70 Amd.(2)

Presented by the Policy and Resources Committee.

Draft Civil Evidence (Jersey) Law 200 - P.111/2002.

Presented by the Legislation Committee.

Projet d'Acte (200-) mettant en vigueur la Loi (2001) (Amendement No. 8) réglant la procédure criminelle- P.112/2002.

Présenté par le Comité de Législation.

Projet de Loi (200-) (Amendement No. 9) réglant la procédure criminelle- P.113/2002.

Présenté par le Comité de Législation.

Draft Magistrate's Court (Miscellaneous Provisions) (Amendment No. 9) (Jersey) Law 200 P.114/2002.

Presented by the Legislation Committee.

Agriculture and Fisheries: policy report 2001 - P.115/2002.

Presented by the Agriculture and Fisheries Committee and referred to the Policy and Resources and Finance and Economics Committees.

Public Lotteries Board: appointment of member - P.116/2002.

Presented by the Gambling Control Committee.

Agriculture and Fisheries: policy report 2001 (P.126/2002) - withdrawal

THE STATES noted that the President of the Agriculture and Fisheries Committee, in accordance with Standing Order 22(3), had requested the Greffier of the States to withdraw the proposition relating to the Agriculture and Fisheries: policy report 2001 (P.126/2001 lodged 'au Greffe' on 14th August 2001), the Committee having lodged a revised proposition at the present meeting.

School bus service - questions and answers (Tape No. 746)

The Deputy of St. John asked the Deputy of St. Peter, President of the Public Services Committee, the following question -

- “(a) Would the President inform the Assembly what steps are taken to ensure that a full police records check is carried out for any drivers of school buses who are not be required to hold a PSV licence because of the size of the vehicle?
- (b) Would the President confirm that some pupils are carried in school buses free of charge and, if so, would he explain the criteria used to decide which pupils have to pay a bus fare and which do not?”

The President of the Public Services Committee replied as follows -

- “(a) As the contracts for supplying the school buses are provided by bona fide coach and omnibus companies, the occasion should not arise where a vehicle supplied under the contract is driven by someone who does not hold an appropriate PSV driving licence. The company and the person involved would both be breaking the law. Public Services Committee policy is to award contracts to operators with duly licensed vehicles and drivers.
- (b) Free transport is provided for certain pupils who have not been accommodated by the Education Committee in the catchment primary school and have been allocated places in out-of-catchment primary schools. This is a legacy from the days that the Education Committee operated the school buses. Demand for the service is reducing as places become available in the local catchment primary schools.”

Proposed residents' parking scheme - questions and answers (Tape No. 746)

Deputy Geoffrey Peter Southern of St. Helier, asked the Deputy of St. Peter, President of the Public Services Committee, the following question -

“A final consultation with the residents of St. Helier over the provision of a pilot residents' parking scheme in the Stopford Road area was held in February of this year. As there has been no visible progress since that time would the President -

- (a) give the reasons for this delay in implementation?
- (b) inform members of the number of occasions residents' parking has been discussed by the Committee since February and state when, prior to this week, the issue was last discussed?”

The President of the Public Services Committee replied as follows -

“(a) The Committee had intended introducing a trial residents' parking scheme by this summer. However, many issues raised during the consultation process by residents and businesses in the area have to be resolved. A number of these issues had been identified as crucial to ensuring a fair trial, in particular, enforcement, eligibility for permits, cost of permits, abuse of the system and monitoring the trial. There is also the cost of the trial and the potential loss of revenue to the States, the Parish of St Helier and the Committee. Resolving these issues to a point where the Committee could be reasonably confident that the trial would provide a fair assessment of the benefits of a residents' parking scheme requires resources which are currently not available, in short supply or already fully committed to other important areas. I would add that some of these resources are not within the control of the Committee, for example, Law Drafting and the Honorary Police. The Committee has re-affirmed its intention to introduce a pilot scheme but has postponed launching the scheme until these significant issues can be resolved.

- (b) The matter has been discussed by Committee on four occasions since February. Prior to this week, the issue was last discussed last week.”

Fencing on the New North Quay - question and answer (Tape No. 746)

Deputy Gerard Clifford Lemmens Baudains of St. Clement, asked Senator Nigel Lewis Quéérée, President of the Planning and Environment Committee, the following question -

“With reference to the fencing recently erected by the Harbours Department on the New North Quay, would the President inform the Assembly -

- (a) whether such a fence would normally require planning consent and, if so, whether consent has been sought or obtained in this case?
- (b) in the event that it has been constructed without consent, what action the Committee intends to take?”

The President of the Planning and Environment Committee replied as follows -

“In the Committee's view, the fence in question is exempted development by virtue of Class 7(ii) of the Island Planning (Exempted Development) Regulations 1965, and thus does not require development permission.

The relevant part of Class 7 exempts the following -

“Development by public or parochial authorities.

The erection or construction by any public authority of -

- (ii) barriers for the control of persons, and such similar structures or works as may be required in connexion with the operation of any public service administered by them.”

Draft Mental Health (Jersey) Law 200- question and answer (Tape No. 746)

Senator Christopher Gerard Pellow Lakeman asked Senator Stuart Syvret, President of the Health and Social Services Committee, the following question -

“Would the President inform the Assembly of the current progress of the draft Mental Health (Jersey) Law 200-, in particular would he -

- (a) state when the initial review of the Mental Health Law was carried out by the University of Wales?
- (b) indicate how many drafts of the Law have been prepared and the dates on which drafts have been prepared;
- (c) indicate to the Assembly when the draft legislation is likely to be presented for debate, and if not within the next two months, would he specify his reasons for such delay?”

The President of the Health and Services Committee replied as follows -

“(a) Phil Fennell, a Lecturer in Law at Cardiff Law School, reviewed the need for reform of the present legislation during 1990, and presented his initial report and proposals in November, 1990.

- (b) Five drafts have been prepared to date -

the first in July 1997,

the second in September 1998,

the third in July 1999.

the fourth, which was circulated for full consultation on the proposals, in July 1999; and

the fifth, which followed the consultation exercise, in March 2000.

- (c) The draft law referred to in question (b) was based on the present U.K. legislation which itself has been now identified as having a number of serious defects by the United Kingdom Authorities relating chiefly to human rights issues. Therefore the United Kingdom is undertaking a fundamental review of its Mental Health Act at the present moment.

As I stated in my letter to Senator Lakeman on this matter, dated 31st December 2001, ‘However, as you are aware, it is unlikely that the outcome of consultation on the U.K. Act will be presented to Parliament before the end of 2003, and it will not be possible to proceed further with our new legislation until then’.

The Senator will be aware from national media reports that the U.K. Government announced in Parliament on Tuesday 25th June 2002, a consultation procedure on its proposals for a draft Mental Health Bill.

We will be following this process closely. Once the final intentions of the U.K. Government are made known, we will be able to review which parts of the proposals for our new legislation need to be reviewed, especially in view of a likely new definition of ‘mental disorder’.

It is vital that the new Jersey legislation dovetails successfully with the U.K. Law. We must therefore wait until the U.K. revisions are completed before proceeding with the new law in Jersey. However, in

the meantime, we are planning to amend the present law to address the more immediate pressing deficiencies with it. These amendments are very much a stop gap until we can produce a new law, which will be as soon as it is practicable to do so.

However, again referring to the President's letter to Senator Lakeman, the Human Rights Audit of the Committee's proposals to amend the existing Law has now been undertaken.

Arising from this audit, two points require further clarification. Once these points are clarified, which hopefully will be within the next month, the Committee will be forwarding its proposals to the Law Draftsman."

Collective responsibility in the proposed ministerial system of government - statement

Senator Frank Harrison Walker, Vice-President of the Policy and Resources Committee, made a statement in the following terms -

"Members will be aware that a number of parish meetings are to be held on the subject of collective responsibility. For the benefit of States members, and for those members of the public who may not be able to attend a parish meeting, I wish to make the position of the Policy and Resources Committee absolutely clear on the subject of collective responsibility.

The Committee views were published on 9th April 2002 and have been further developed in the draft report and proposition on the 'Machinery of Government: Structure of the Executive' that was circulated to all States members on 13th June 2002. The Committee is presently involved in discussions with the Privileges and Procedures Committee about the content of the draft report and proposition, and it is anticipated that this document will be lodged shortly.

It is appreciated that the public has not yet had the opportunity to read this document, and the relevant section of the report is therefore being circulated with this statement. This provides a detailed account of how the Committee believes the convention of collective responsibility will function in practice, and I particularly draw members' attention to the Exceptions on page two of this extract. From this it can be seen that the Committee acknowledges that there should be exceptions to collective responsibility. It has already stated this in its comments on P.25/2002, and further details about the proposed exceptions will be given in the Committee's report and proposition.

The Policy and Resources Committee believes that its proposals in respect of collective responsibility offer the best way forward, and are entirely consistent with the decision by the States to move to a ministerial system of government.

**Extract from Appendix Two of the draft report and
proposition on the 'Machinery of Government:
Structure of the Executive'
(Circulated to States members on 13th June 2002)
'Collective Responsibility**

Jersey's Council of Ministers will work on the basis of consensual and collective decision-taking. In many ways this should be self-evident because if the Chief Minister is forced to take an issue to the vote s/he can expect discontent and trouble not only with the other Ministers but also on the floor of the Assembly. With collective decision-taking goes the notion of collective responsibility.

The object of discussion at the Council of Ministers is to find solutions and take decisions by which Ministers can stand collectively with reasonable conviction. This being so, the aim is rarely - unless considerations of timing make it essential - to arrive at an immediate decision, even if this means leaving a substantial minority of Ministers dissatisfied. Simple voting in the Council of Ministers is normally a thing to be avoided, and a Chief Minister may decide that any decision reached at a particular meeting is likely to be divisive and

unsatisfactory, and that consideration should be adjourned to a later meeting to allow further reflection and, perhaps, a degree of informal discussion.

Collective responsibility requires that Ministers should be able to express their views frankly in the expectation that they can argue freely in private while maintaining a united front when decisions have been reached. This in turn requires that the privacy of opinions expressed at meetings of the Council of Ministers should be maintained.

It would, of course, be wholly unrealistic to imagine that all Ministers are equally enthusiastic about every Council decision. They accept, however, the need to support the collective will on issues, because they also accept the need for unity and coherence in the work and policies of the government as a whole. Of course, if a Minister feels so strongly about a decision reached in Council that s/he considers s/he must criticise it publicly, s/he has no option but to offer his/her resignation. There are exceptional circumstances in which a Minister would not be bound by collective responsibility, and these are listed below under the heading 'Exceptions'.

The Council may decide collectively to allow its members to speak or vote independently. Such cases must be rare, if collective responsibility is not to be eroded, but they can arise. One example in Jersey's recent political history might be the debate on the Termination of Pregnancy Law or, in the future, a discussion about the opening of a casino (a policy matter which has moral or ethical dimensions).

In all normal circumstances, however, it is self-evident that the standing and cohesiveness of a government could not long survive if its members were in open public disagreement with each other on public issues of any importance. This does not mean that there is nothing about which Ministers may disagree. They have a right to express their own views on matters of conscience, or to state an opinion on issues outside the ambit of government responsibility.

In general, however, collective responsibility applies to action and comment over the whole field of government policy. In particular, decisions of the Executive or of Ministers on behalf of the executive bind all its members. For them to be so bound, it does not follow that they must have participated actively in the decision-taking process. A Minister is bound by a decision of the Council of Ministers at a meeting that s/he has not been able to attend. If s/he feels sufficiently strongly that the decision was wrong, s/he may ask for it to be discussed in Council again, or s/he may resign; but s/he may not remain a Minister and publicly criticise it.

Collective responsibility also binds members of the Executive in relation to the exercise of a Minister's legitimate discretion, without specific recourse to the Council. Under their powers, Ministers will be required to take decisions day in and day out; it would be impossible to obtain Council sanction for all of these, but intolerable if they were to be publicly criticised by other members of the Executive.

Decisions reached by the Council of Ministers are binding on all Ministers and on Assistant Ministers in the lead department involved in a particular decision. Decisions are normally announced and explained as the decision of the Minister concerned.

In summary, Collective Responsibility has the following features: A Minister may speak against any proposal in the Council of Ministers, but must subsequently either support the policy decided upon or resign;

- (i) Where the policy of a particular Minister is being challenged, it is the Council of Ministers as a whole which is being challenged. Thus, the defeat of a Minister on a major issue represents a defeat for Council;
- (ii) Every Minister must be prepared to support all Council of Ministers' decisions both inside and outside the States;
- (iii) Collective Responsibility does not apply to a Minister's responsibility for his personal mistakes;

- (iv) Any major shift of policy proposed by a Minister must be cleared by the Council of Ministers before it is announced.

Exceptions

There are circumstances under which Ministers have freedom to speak publicly against policies and decisions of the Council of Ministers -

- (i) **Matters of conscience.** There will inevitably be issues where Ministers will be guided by a fundamental religious or moral belief (rather than political ideology).
- (ii) **A declared position.** A Minister joining the Council of Ministers may have a previously declared position on a particular subject. It would be unrealistic to expect them to change their position for the sake of the Council's solidarity. Equally, it would be unacceptable for the Minister to "crusade" in support of that declared position in the knowledge that the Council of Minister does not share their view.
- (iii) **Constituency matters.** Issues may arise where there is a strong and specific constituency interest which conflicts with a Council decision. In these circumstances, a Minister from that constituency must have the right to represent that interest if s/he so wishes. Where this is so, the Minister must first make clear their position to the Council of Ministers.
- (iv) **Inconsequential matters.** Collective Responsibility applies to Council policies and decisions. Where small matters of detail arise, where there can be room for disagreement without those policies or decisions being called into question, Ministers will have the freedom to express themselves.
- (v) **Unresolved issues.** Issues will be raised from time to time which the Council of Ministers has not considered or on which the Council has not taken a decision. Until a Council position is established, Ministers will be free to express themselves. However, if the matter is likely to be discussed by the Council Ministers should consider refraining from comment until after the relevant Council meeting.
- (vi) **Collective exemption.** The Council of Ministers may agree to waive the requirement for Collective Responsibility on any particular matter. However, a personal or political dislike of a Council of Ministers' decision is not, in itself, sufficient justification for an application to suspend Collective Responsibility.

Conduct in dissent

Where a Minister exercises their right to a free vote, or to speak publicly against a policy or decision of the Council of Ministers, in accordance with one of the recognised exemptions, they must express themselves towards other Ministers in a responsible way. Even in disagreement, courtesy and respect are due to ministerial colleagues.

Chief Minister

These procedural guidelines apply to the Chief Minister in the same way as to other Ministers.

Assistant Ministers

Assistant Ministers are bound by the convention of Collective Responsibility in respect of decisions taken within their department, even if they have not been involved in taking the decision.

In respect of decisions taken by other departments, or by the Council of Ministers itself, with which they have had no involvement, Collective Responsibility will not apply. However, Assistant Ministers are expected to observe the guidelines on courtesy towards other Ministers and Assistant Ministers outlined above.'

Change in Presidency

Senator Pierre François Horsfall O.B.E. retired from the Chair prior to the consideration of public business and the meeting continued under the Presidency of Miss Catherine Mary Newcombe, Greffier of the States.

Draft States of Jersey (Amendment No. 8) Law 200 P.106/2002

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, adopted a Law entitled the States of Jersey (Amendment No. 8) Law 200.

Draft Air Transport Permits (Amendment) (Jersey) Law 200- P. 108/2002

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, adopted a Law entitled the Air Transport Permits (Amendment) (Jersey) Law 200- .

The Deputy of Trinity declared an interest and withdrew from the Chamber prior to the consideration of this item.

Bonne Nuit packaged sewage treatment plant: purchase of land - P.105/2002 Addendum - P.105/2002.Add.

THE STATES, adopting a proposition of the Public Services Committee -

- (a) approved the purchase from the Parish of St. John of 1,566 square feet of land at Bonne Nuit Bay St. John, as shown on Drawing No. 760/014, for the sum of £10.00, for the purpose of accommodating a packaged sewage treatment plant, with the public being responsible for all reasonable legal fees in connection with this transaction;
- (b) authorised the Attorney General and the Greffier of the States to pass on behalf of the public the necessary contracts; and
- (c) authorised the Treasurer of the States to make any necessary payments in connection with the transaction.

Population Policy - P.101/2002 Amendment - P.101/2002, Second amendment

THE STATES commenced consideration of the proposition of the Policy and Resources Committee concerning Population Policy, and rejected an amendment of Senator Paul Vincent Francis Le Claire that in paragraph (e) after the words “work in the Island, should” there should be inserted the words “, once having completed at least five years continuous residency in the Island,”.

Members present voted as follows on the amendment -

“Pour” (12)

Senators

Le Maistre, Syvret, Kinnard, Le Claire.

Connétables

Grouville, St. Martin, St. Peter.

Deputies

Breckon(S), St. John, St. Ouen, G. Baudains(C), Martin(H).

“Contre” (31)**Senators**

Horsfall, Quérée, Bailhache, Norman, Walker, Le Sueur, Lakeman.

Connétables

St. Ouen, Trinity, St. Saviour, St. Brelade, St. Lawrence, St. John, St. Clement.

Deputies

H. Baudains(C), Trinity, Duhamel(S), Grouville, St. Martin, Le Main(H), Vibert(B), St. Peter, Dorey(F), Troy(B), Voisin(L), Scott Warren(S), Le Hérisier(S), Ozouf(H), Fox(H), Bridge(H), Southern(H).

Change in Presidency

The States re-assembled after the lunch adjournment under the Presidency of the Deputy Bailiff, Michael Cameron St. John Birt.

Connétable of St. Mary - attendance

The Connétable of St. Mary, having returned to the Island prior to the consideration of the amendment of Deputy Michael Edward Vibert of St. Brelade to the Population Policy (P.101/2002), was present for the remainder of the meeting.

Population Policy - P.101/2002. Amendment - P.101/2002 Amd.

THE STATES commenced consideration of an amendment of Deputy Michael Edward Vibert of St. Brelade that for paragraph (f) of the proposition there should be substituted the following paragraph-

“(f) to agree in principle that there should be a policy of nil net annual inward migration, this policy to be reviewed five years hence;”

and in paragraph (h) for the words “does not exceed 200 persons” there should be substituted the words “remains at zero”.

After discussion the States adjourned, having agreed to resume consideration of the amendment on Wednesday, 3rd July 2002.

THE STATES rose at 5.35.p.m.

C.M. NEWCOMBE

Greffier of the States.