

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 13th MARCH 2008

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

PERSONAL STATEMENT

1. Senator F.H. Walker (The Chief Minister):

Would it be possible for me just to make a brief statement?

The Bailiff:

Yes, Chief Minister.

Senator F.H. Walker:

I think I may owe you and the House an explanation as to why I have not been much in evidence in this sitting and will not be much in evidence I have to say for much of the rest of the sitting. I hope you, Sir, and the House will understand that there are exceptional circumstances in Jersey at this time. It is absolutely vital, in my opinion, that I have time to deal with them. Sadly, I do not have the luxury of time when it is very necessary to respond to things immediately. I hope on this rare occasion that you, Sir, and the House will understand why I am taking myself elsewhere and attending to States business but not doing so in the Assembly. **[Approbation]**

The Bailiff:

Thank you, Chief Minister. Before the debate continues on the Draft Civil Aviation (Jersey) Law, I would like to inform Members that I have given leave to Deputy Southern to ask an urgent question pursuant to Standing Order 15 on the grounds that a statement was made by the Minister for Social Security by way of press release rather than a statement to this Assembly.

QUESTIONS

2. Urgent Oral Questions without Notice - The Minister for Social Security

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

Will the Minister explain exactly what the additional support to be provided for G.P. (General Practitioner) visits announced in the media yesterday entails?

Senator P.F. Routier (The Minister for Social Security):

I have just had about 10 minutes notice of this so I will do my best to answer the question. It is recognised that when people were applying for income support there would be some people who previously had H.I.E. (Health Insurance Exemption) who would not qualify for H.I.E. under the new system. We always anticipated that those people would make application for special payments because we recognise that - the same with all the other transition arrangements that we have put in place where people to move from one system to the new system - it would be appropriate for them to have a transition over a number of years. It is only now, since we have had all the applications in for income support, we are now aware of those people who used to have H.I.E. who are no longer going to have the benefits of being able to go to the doctors for free. We recognise that and we want to put in a special arrangement. Some people have requested that they have a household medical account. We have decided to do that. Of course as people who also were H.I.E. we have already made arrangements for free prescriptions so they are covered for those. Every person who used to have H.I.E. and did not qualify for income support will receive an H.M.A. (Household Medical Account) of money put into their account of £1.96 per week. That will allow them to go to the doctor for up to 4 visits a year. That is precisely what the medical profession are telling us is the number of visits which people would require to go if they are healthy. If they are not healthy and if they have any chronic conditions they then can apply for further visits which will be agreed between the department and the G.P. If anybody has any concerns about going to the doctor who were previously on H.I.E. they can go to the doctor without any fear of not being funded for their health requirements if they have an urgent medical need.

2.1.1 Deputy G.P. Southern:

Can the Minister firstly state to Members why he did not make a statement in this House when the House was sitting and decided to make this decision, which affects some one in 8 of H.I.E. recipients and income support recipients... why he chose to make the statement in the press and not to this House?

Senator P.F. Routier:

I think Members will recall that during the income support debate it was recognised that there would be some occasions where there would be amendments and additional changes to income support as we go along as we learned more about the system. It was no disrespect to the House at all. It was more about getting the information out to the people themselves and to the G.P.s. I wanted to ensure that they be put in place as soon as possibly we could. Perhaps if I was at error not to have made a statement, I apologise for that but I thought it was more important that the people who really wanted to know about the medical benefit should be told.

2.1.2 Deputy G.P. Southern:

Thank you. In terms of accurately informing recipients of this benefit, is the Minister aware that this morning on the radio he said: "The patient does not actually pay any money to the doctor" which is an incorrect statement because all ex H.I.E. recipients will now pay £5 on a visit to the doctor?

Senator P.F. Routier:

I am afraid the Deputy's information with regard to everybody paying £5 is incorrect because if he was to speak to many of the doctors or the majority of doctors they do not charge £5. They have made a commercial decision not to charge £5.

2.1.3 Deputy G.P. Southern:

In the measures which came to this House, did the Minister not explain to Members that a nominal payment of £5 was an important part of the income support and the G.P.'s benefit that he was introducing?

Senator P.F. Routier:

In the negotiations for introducing income support the G.P.s themselves made it clear to us that their negotiating team wanted to have a £5 charge. The G.P.s are commercial enterprises who make decisions for themselves. I have no clear indication from all G.P.s but certainly I am aware that the majority of G.P.s have made a commercial decision not to charge their patients £5.

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

Just to expand slightly on that theme. It concerns me that obviously this then will entail that exactly the same people in the same position, depending on which G.P. they go to, may be charged £5 and then pay the rest of their account out of their own money which is saved at Social Security. Is the Minister going to do anything so everybody is treated in the same way?

Senator P.F. Routier:

G.P.s are commercial enterprises who charge varying rates for their services. You will find that even if some medical surgeries decided to charge £5 they may be one of the ones that charge less than the ones that charge a higher amount. I am not sure that there can be any mechanism which can ensure that the patient is dealt with in... the patient decides which G.P. they want to go to and the G.P.s advertise their charges and the patient decides whether they want to pay that. In the circumstances of H.I.E., obviously for the people who were on H.I.E. the income support system covers the costs.

2.1.5 Deputy G.P. Southern:

Would the Minister explain to the House exactly which groups of people have been omitted from this aspect of income support? Will he inform Members where the additional £100,000 - or approximately that figure - is to come from to cover this new arrangement?

Senator P.F. Routier:

It is a cross-section of the community who used to have H.I.E. You must remember that H.I.E. was a very badly targeted benefit because it went to a lot of people who had fairly high incomes. Although it had a lowish level income bar to it, it disregarded a lot of benefits. It disregarded many of the benefits which are provided. That is the purpose of income support, to include all those payments. There are a cross-section of the community who had high incomes who have now been taken out of the system which is what income support was intended to do. With regard to the additional funds, it is not additional funds. It will be money which we already have allowed for within our income support budget because we did anticipate that people would be making applications for special payments.

2.1.6 Deputy G.P. Southern:

Just finally could I press the Minister to put in writing a description of which groups have been affected and who is going to be affected?

Senator P.F. Routier:

I gave that answer to the Deputy yesterday casually when he asked me the same question. While I am on my feet may I please remind Members to please ensure that if anybody asks them about whether they can go to the doctor if they are on income support, they can go to the doctor and they must go to the doctor. If they have any medical concerns they should go to the doctor and not be concerned about whether it is going to be paid because income support will pay their fee.
[Approval]

PUBLIC BUSINESS - resumption

3. Draft Civil Aviation (Jersey) Law 200- (P.18/2008) (continued)

3.1 Deputy R.G. Le Hérisier of St. Saviour:

With great reluctance I would like to move a reference back. I am well aware that the rapporteur has been valiantly putting the case forward for the proposal albeit not perhaps with full enthusiasm. The reason, Sir, for calling for the reference back is the misplacement of the office in the wrong Ministry. This is an international convention and as such it should be placed in the Chief Minister's office. Quite why it has ended up in the Criminal Justice Ministry defeats most of us. There is a real issue, Sir, of governance. To whom is this position responsible? Is this currently legal - we have heard much of this in the last day or 2 - as the corporation sole? To whom is this person responsible? Are they indeed beyond the legal concept of a sole operator? Do they have the ability untrammelled to close the airport, be there some kind of deficiency which they feel merits that? It is, Sir, a deviation from the Business Plan. There was no note in the Business Plan, properly put and properly discussed, that this was coming even though there has been an attempt financially of - I suppose it has to be said - the smoke and mirrors variety to say that now you see the cost and now you do not. Moving on, Sir, there is the issue which has essentially been admitted, and I do not wish to get into personalities, but it essentially means the transfer of a civil servant. While I have no reason and indeed do not know the person to impugn the integrity of that person the point remains, Sir, this is a very important regulatory role apparently meant to be exercised with total independence. It seems very odd that the staffing of this position has been predetermined and will be done by a transfer within the system when one would have expected somebody of total detachment to have occupied the position. Given all the current debate about these issues at the moment I would have thought this is somewhere, Sir, where we have to be particularly careful. I must congratulate Education and Home Affairs who clearly did not until a

few days ago regard themselves as airport operational and regulatory experts but have managed to rise partly to that challenge. There is the issue, Sir, of whether we need further scrutiny by the Ministry who is promoting it I should add; not necessarily by the Panel. But of course, Sir, if that scrutiny were to occur in a formal sense we would not of course, after the protocol adopted this week, see the actual legal advice although we could ask questions and hope somehow that we would evince that advice. The other issue which I know there is a long history to and I know people, Sir, like the rapporteur and former presidents like Senator Norman have struggled with, there is the issue of this seems an ideal pan-Channel Islands office and yet again we are setting-up another bureaucracy. **[Approbation]** These are vital issues, Sir, where it is quite clear that the job is very much incomplete. It is quite clear that people are being pressured; be it the Ministry for Home Affairs or be it the gentleman in question. We are really, Sir, contradicting so much about the sovereignty of the Assembly, about the way in which we set up Regulations that we are going to look extremely foolish if we rush this through. I hope, Sir, this will not be a fight to the finish. I hope the rapporteur will act in a gracious and honourable way and say: "I hold my hands up. This is incomplete." He does not have to admit this of course: "We have been put under undue pressure. Let us please go away and get this right because we are in grave danger of getting this badly, badly wrong." **[Approbation]**

The Bailiff:

Deputy, may I just ask for some clarity, please, in what you are asking because the Standing Orders allow for a reference back only in limited circumstances. Those limited circumstances are: (a) where further information relating to the proposition can be provided to the States; or (b) an ambiguity or inconsistency in information relating to the proposition which has already been provided to the States is in evidence. It does not seem to me from what you said that the second part of the qualification for a reference back exists. I would just like to be clear what further information relating to the proposition you are seeking because much of what you said, it seemed to me, expressed dissatisfaction with the proposition for various reasons. The remedy for that is simply to vote down the principle so that the Minister has to come back and deal with it differently.

Deputy R.G. Le Hérisier:

I suppose the main area is clarification in terms of what are the particular powers of this person, to whom will this person - if at all - answer and why was this position placed within Education and Home Affairs as opposed, for example, to the Chief Minister's office? There is an inconsistency, Sir, in the sense that we have been told that all these positions must go through a very thorough business planning process. There has been no evidence adduced to this effect, although obviously under the new protocol we will not see it. Sir, in clear terms, we have not seen or caught wind of the gist, shall we say, of the legal advice. We have not had a definitive answer on why there is not a pan-Channel Island office, e.g. linking-up with Guernsey.

Miss. S.C. Nicolle Q.C., H.M. Solicitor General:

If I could just add that so far as the points for clarification are legal ones and the last speaker did refer to being able or not being able to get the legal advice, I am here and can answer any of the legal points which arise if that would be of assistance. I think a number of those points probably are legal ones.

The Bailiff:

Am I correct, rapporteur, in thinking that there was some urgency to this matter which you drew to the attention of the States?

Deputy A.D. Lewis of St. John:

Yes, Sir, there is. We have an obligation to meet an audit which will take place in 2009 which we are not ready to complete. **[Members: Oh!]** Then the operation of the airport could be in jeopardy, Sir. I do not know how much plainer I can put that, Sir.

Deputy A.J.H. Maclean of St. Helier:

Can I interject about the audit? It might be helpful for Members to realise February 2009...
[Interruption] Yes, I know it is but it would be useful...

The Bailiff:

The Deputy is helping me to make a decision as to whether there should be a reference back.

Deputy A.J.H. Maclean:

In connection with the pressing need for this, the Assistant Minister for Home Affairs just mentioned that it was a pressing need and that in fact it was February 2009 when the audit was being undertaken. There is considerable work to be achieved before that. There is something in the region of 18 annexes running to about 200 pages each that the airport needs to sort out; questions that need to be answered. It is not something that can be done in 5 minutes. If we want to be compliant with I.C.A.O. (International Civil Aviation Organisation)... and if we want to meet our obligations it will take a considerable amount of work between now and then to be able to achieve that. It is pressing in terms of time.

Deputy G.P. Southern:

Sir, if I may?

The Bailiff:

Deputy, do you have a particular status in relation to this...

Deputy G.P. Southern:

No, no, Sir, just trying to...

Senator T.A. Le Sueur:

In case either Senator Ozouf or Senator Cohen has any observations, can I raise the défaut on both of them? [Laughter]

The Bailiff:

Yes, it is propose that the défaut on Senator Ozouf and Senator Cohen be raised. Those in favour? Those against? The défaut are raised. My understand from Deputy Le Hérissier is that he is seeking a reference back essentially in order that further information can be sought from the Minister as to the office of Director of Civil Aviation and as to whether or not the Director of Civil Aviation should be accountable to the Chief Minister's Department or to another department rather than to the Minister for Home Affairs. That does not seem to me to be a sufficient reason for a reference back. If Members are dissatisfied with the principles of the Bill and the way in which they have been presented to the Assembly then the remedy of Members is to vote against the principles and to make it clear by that vote that they expect the principles to be presented in a different way. The application for a reference back is refused. Do you wish to continue your speech, Deputy Le Hérissier, on the principles of the Bill?

Deputy R.G. Le Hérissier:

No, Sir. Sorry, Sir, I cannot pick it up at a later point?

The Bailiff:

I am asking you. At the moment you have been speaking on the principles of the Bill. You asked for a reference back which has been refused. I was asking you whether you want to continue your speech on the principles of the Bill.

Deputy R.G. Le Hérissier:

Yes, Sir, I will. The points have been made. It has been turned down. The Solicitor General has said she will answer legal questions. The point still remains despite the pressure - and it is unfortunate that all these things bubble-up at the last minute - this is to quote a phrase, Sir, bad government. I am very sad for the rapporteur that despite the very valiant way in which he has proposed this he has been put into this position. I would really counsel him, Sir, and his Ministry not to proceed any further. **[Approbation]** This could end up a very unfortunate debacle and we are all going to look pretty stupid quite frankly, Sir.

Deputy R.C. Duhamel of St. Saviour:

Sorry, Sir, I do think I have spoken. I was going to make a point of order.

The Bailiff:

Sorry, you have spoken. Yes, you are quite right.

Deputy R.C. Duhamel:

If I could make a point of order, Sir? You did overlook, perhaps wittingly or unwittingly, the ambiguity of the situation in that the appointment has been made. The usual procedure is to approve laws first. The Law does stipulate as part of what is being asked for the creation of this post but it has already been created and filled.

The Bailiff:

Deputy, I think there is a difference between an ambiguity in information provided to the States and Members' dissatisfaction in the way in which matters have been dealt with.

Deputy R.C. Duhamel:

Inconsistency then.

The Deputy of St. John:

Perhaps I could assist. This is a Designated Director's post. It is not a Director's post.

3.2 Connétable G.F. Butcher of St. John:

I wonder if the Assistant Minister could answer 2 questions for me. The first one would be as Jersey is such a small airport would there be any exemptions under I.C.A.O. - which I am informed that that is how to pronounce it? The second question is why as the Chicago Convention was signed in 1944, we find ourselves in the position now 60 years later of wanting to conform with it?

3.3 Senator P.F.C. Ozouf:

Sometimes it seems, Sir, that the Assembly often gets on to a wave of personal problems with a single proposition. It seems to me that this is an example of that. May I say that this is not the fault of the Assistant Minister for Home Affairs that we are in this position. I respectfully suggest to Members, if I may, that they must be cognisant of the simple fact - and the Constable of St. John has asked the questions - that Jersey, as the U.K., with responsibility for various international matters for Jersey has required us to be compliant with the Chicago Convention. There is an audit in February 2009 which requires us to separate the operational and regulatory arrangements for the airport. I have to say to Members, this will cause embarrassment to both Jersey and the United Kingdom if we do not separate these functions. That is the advice which has been received. That is the advice which the airports have received. There has been some discussion among Members during the course of this debate as to who would be the appropriate body to regulate. There is absolutely no doubt that there has to be a separation. The airport operational side and Economic Development cannot continue as regulator and operator. It must be separated. If that is accepted - and that is the clear position of the United Kingdom and the clear position upon advice with Economic Development - it follows then that another department of the States must be the regulatory body. There was some discussion I can say as to whether or not it should be the Chief

Minister's Department or Home Affairs. It was the view of the Council of Ministers, either in full session or in discussions with Ministerial colleagues, that the position would be better suited for Home Affairs who are used to dealing with regulatory issues. There was a debate, and it could be in either one of those departments. It is true that that is the case but it does not matter whether or not it were to be the Assistant Minister of the Chief Minister's Department or Home Affairs as to whether or not this proposition were before. Of the fact that this proposition is required and of the fact that this proposition needs the approval of the Assembly to avoid embarrassment there is absolutely no doubt. I am sorry to have to ask Members to lift their eyes above the personalities and above the issues [**Members: Oh!**] - I am sorry, Sir. I am sorry. Members may wish to object but that is the position. I can see Members shaking their heads but if they know something that I do not in terms of the requirement for the separation of the operational and regulatory things then they are basically saying that they know better than the people advising. I am sorry, but Members need to take responsibility for the advice that is given. They need to also examine whether or not there is an alternative option. The Assistant Minister for Economic Development, who is I am sure acquainted in a more detailed way than I am with some of the issues concerning the airport, will no doubt explain to us some of the realistic problems that exist between now and February next year in terms of the detail of the need to comply with the audit that is happening next year. They are real issues and they must be dealt with. I would ask Members to carefully examine the evidence that they have been given in terms of the requirement for separation and to support at least the principles of this Bill. If there is a need for Scrutiny to scrutinise the legislation in more detail then that is perhaps a matter which could be dealt with after the preamble of the Bill has been dealt with. If a Scrutiny Panel wishes to scrutinise the legislation then that is their right. But as far as throwing out a proposition which it seems to be absolutely plain that we need to agree, I think that that would be an extremely unwise position for the Assembly to take.

Deputy S.C. Ferguson:

Can I ask for a point of clarification, Sir? Is this not inconsistent with the fact that E.D.D. (Economic Development Department) is responsible for both the J.F.S.C. (Jersey Financial Services Commission) and Jersey Finance?

Senator P.F.C. Ozouf:

Deputy Ferguson will, I am sure, understand that there are different standards on dealing with safety considerations for the operation of an airport. It is absolutely correct to say that I have the responsibilities for Financial Services but I do not run a bank. In the case of the airport, the Economic Development Department is the operator of that establishment. We do not run banks. We do not run a deposit taking operation. That is the difference.

The Bailiff:

Is this a point of order?

Deputy R.C. Duhamel:

It is, Sir. Under Article 85 I would like to propose that we move to the next item.

The Bailiff:

The proposition of Deputy Duhamel is that the Assembly moves to the next item on the Order Paper. The proposition is in order. Is it seconded? [**Seconded**] Standing Orders provide there should be no debate on the matter. Seek an appel? I ask any Member who wishes to vote to return to his or her seat. I ask the Greffier to open the voting which is for or against the proposition that the Assembly moves to the next item on the order paper.

POUR: 23		CONTRE: 18		ABSTAIN: 0
Senator B.E. Shenton		Senator L. Norman		
Connétable of St. Ouen		Senator W. Kinnard		

Connétable of St. Mary		Senator T.A. Le Sueur		
Connétable of St. Clement		Senator P.F. Routier		
Connétable of St. Helier		Senator M.E. Vibert		
Connétable of Grouville		Senator P.F.C. Ozouf		
Connétable of St. Brelade		Senator T.J. Le Main		
Connétable of St. Martin		Senator F.E. Cohen		
Connétable of St. John		Senator J.L. Perchard		
Deputy R.C. Duhamel (S)		Connétable of St. Saviour		
Deputy of St. Martin		Deputy J.J. Huet (H)		
Deputy G.C.L. Baudains (C)		Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérisier (S)		Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		Deputy P.J.D. Ryan (H)		
Deputy G.P. Southern (H)		Deputy D.W. Mezbourian (L)		
Deputy S.C. Ferguson (B)		Deputy A.J.D. Maclean (H)		
Deputy of St. Ouen		Deputy of St. John		
Deputy of Grouville		Deputy I.J. Gorst (C)		
Deputy of St. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy of St. Mary				

The Bailiff:

The Assembly, therefore, moves to the next item on the Order Paper.

The Deputy of St. John:

I wonder if I could ask when this will be moved to and also say that if Members want a more intricate briefing on this I am more than happy to provide one, Sir, by way of some kind of meeting with all Members if they wish.

The Bailiff:

May I suggest, Assistant Minister, that you perhaps confer with your Minister and any other interested parties and that the matter is dealt with in the arrangement of business under M.

4. Rear Seat Belts and Child Booster Seats (P.27/2008)

The Bailiff:

We come to P.27/2008 - Rear Seatbelts and Child Booster Seats, in the name of Deputy Le Claire. 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 appropriate legislation shall be introduced to require the wearing of rear seatbelts in vehicles; (b) to agree that appropriate legislation shall be introduced to require the use of child seats or booster seats for children under certain sizes to ensure effective restraint of vehicle occupants who might not otherwise be appropriately restrained by seatbelts alone; and (c) to request the Minister for Transport and Technical Services to make the necessary orders under the Road Traffic (Jersey) Law 1956 to give effect to the proposals.

4.1 Deputy P.V.F. Le Claire of St. Helier:

I do not intend to take much time in proposing this, this morning. If Members like, I will take a long time in responding to any concerns but I feel that such is the great support that I am enjoying

in discussions with my fellow Members and on review of the minutes of the various committees that have been provided to me that I have reviewed and also, might I add, the excellent report from Transport and Technical Services officers in regards to this proposition. I would just like to make a very short introduction. In the U.K. the Department of Transport estimates that around 10 front seat passengers are killed annually by unbelted rear seat passengers hitting them in a crash. Rear passengers who refuse to belt up not only risk killing themselves but also those in the front of the car. In a crash at 30 miles per hour, a back seat passenger without a seatbelt is thrown forward with the force of 3½ tons. An unbelted back seat passenger travelling in a car at 30 miles per hour when it crashes will continue travelling in the front seat at almost 30 miles per hour. Unbelted back seat passengers are 3 times as likely to suffer death or serious injury as belted passengers. Unbelted back seat passengers are likely to suffer chest injuries, broken ribs, broken hips, broken thighs, facial wounds, fractured skull or abdominal injuries such as ruptured spleen. 75 per cent of passengers thrown from a car die. All the safety features you pay for in a car were tested with the assumption you would be wearing a seatbelt. Without a seatbelt those features are not designed to work. Sir, for once I enjoy large support in a proposal that I would rather not have personally brought to the States Assembly. I did take great effort to try to pass this over to the Chief Minister and the Council of Ministers who I am delighted to say are supporting me in this proposal today. But the call for more evidence which unfortunately has been the reason why we have got so far behind other countries in recognising this issue made me believe that I should push ahead with my proposal which was lodged prior to any announcement from the Chief Minister to me that he intended to take a proposition. Sir, having spoken to the consultants, nurses, ambulance drivers, fire service personnel and police officers who have remained neutral throughout this, their opinions have made me realise, Sir, in a nutshell as put to me by the senior consultant at the hospital: “Forget the statistics. It just boils down to common sense.” Sir, I make the proposal.

The Bailiff:

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

4.1.1 Deputy J.J. Huet of St. Helier:

I hope you do not mind me going backwards a bit. I am thinking about the very first car I had. It was an Austin A35. I think they were known as little grey bombs. They had no seatbelts at all. I only had this car because I had managed to crash my husband’s car and take the headlight off the first time I drove it. I think he thought it best to buy me a car of my own. I have to say it had no seatbelt. My child used to sit on the front seat from about the age of 18 months. Like most women, I would think, the seatbelt was your left arm that always went out to hold them back so that they would not fall forward if you had to stop. We never thought it at all odd that your child stood in the well of the car and peered over the dashboard. I have to say I am not proud particularly but I can remember my son’s first words were: “B idiots.” Obviously he picked that up from me when I used to moan at people that I did not think were very good drivers. We have seatbelts now, Sir. I have to say I still find them uncomfortable. I do not know whether it is because I am short or what. I prefer to sit in the back seat because I do not like them because I always find they throttle me but never mind. What I am saying, Sir, is if we pass this law I would like to know if we can police it. That is what it comes down to. As far as I know we have not managed to police the law that says no making telephone calls in your car. When we went to this demonstration at the Town Hall I met the gentleman there whose sister died because of that. I thought if we cannot police that, what makes us think that we can police the back seats of a car. The demonstration that we saw down the Town Hall was very good but I did not think it was really a fair demonstration in one way because it showed a daytime accident. It showed it was in England. I had checked out the casualties that we had had over here. They were not daytime accidents. I know that they did make a big difference and it costs a lot of money for the people who are injured and there were these 4 deaths. But of those, 3 of those people were in cars that were related to drink. I have to say that because it is related to drink would they have put their seatbelts on anyway? I somehow do not think they

would because this is what drink does to you unfortunately. You lose sense of responsibility. I am not convinced really. I know what they said, its cause. I do not think it will make any difference because if it is related to drink, people do not put their seatbelts on, it will make no difference. As I say we cannot police it now. What makes us think we can police it then? I think if people agree that it should be but I, myself, think it should be left to the responsible individual whether they use the seatbelt or not or put one in the car. I think we can over-regulate ourselves. I think Jersey is beginning to be a place like that, that we are over-regulating ourselves. I am not saying I am not sorry for what has happened to those people. I am. But I believe most of that was down to drink not to common sense.

4.1.2 Senator T.J. Le Main:

That is quite an amazing speech from the Assistant Minister for T.T.S. (Transport and Technical Services). I am not going to say a lot but for someone who lost his only son in a road accident not a month before they brought the seatbelt legislation, to which I was opposed at the time, I would just like to offer you the heartbreak and the agony that a family go through when they lose a child in an accident, predominantly who could have been saved had they been wearing a seatbelt. That is all I have got to say, Sir. **[Approbation]**

4.1.3 Deputy S.C. Ferguson of St. Brelade:

Like Deputy Huet, I do wonder if the proposer has spoken with the enforcers of this proposition. Too often we bring legislation to this House which criminalises another section of the population and really they bring propositions that cannot be policed. Herbert Spencer said, I think, that the ultimate result of shielding men from the effects of folly is to fill the world with fools.

Deputy C.H. Egré of St. Peter:

I believe we are not quorate, Sir.

Deputy S.C. Ferguson:

Oh dear, can I start again?

The Bailiff:

Would you mind taking your seat, Deputy, while I send out a call for one or 2 Members to return to the Assembly? Deputy Ferguson, you may resume.

Deputy S.C. Ferguson:

Now where was I? All this is doing is going to criminalise a whole section of the population and put the burden on the police services with something that is difficult to police. I still see people driving round using mobile phones. There are always, to quote Spencer, fools in this world. Surely those people who care about their children and those people who are aware will belt-up. The Clunk Clunk campaign which quite a lot of Members will not remember because they are too young... the campaign by Jimmy Savile did a great deal more for seatbelt wearing than bringing in the law. I really have grave concerns about this.

4.1.4 Deputy F.J. Hill of St. Martin:

I was quite intrigued to hear from Deputy Huet arguing that we should not have a law if you cannot police it. If that is the case we should have no laws at all because we know we cannot police all the laws all the time. What laws are done are for the maintenance of good order and for the safety of people. I am quite ambivalent about the law. If now one is being asked yes or no, I feel I must say yes because I think it makes more sense to have a law if we are now being asked to introduce it. It makes more sense to introduce it simply because it will protect those who may well be vulnerable. It is all very well saying it is down to the responsibility of parents. At the same time I think if we have a law in place what it will do, it will have to ensure that people do the job rather than leave it down to individuals. I am going to support it but I would certainly argue against those people who

say do not introduce a law because you cannot police it. I think that is a bad way. We may as well forget all laws altogether.

4.1.5 Deputy C.J. Scott Warren of St. Saviour:

I will be supporting this proposition without hesitation. I went with some other States Members to the presentation held several weeks ago by Headway at the Town Hall in which very graphic and horrific images were shown. The danger of unrestrained back seat car passengers to front seat passengers was fully explained. Sir, I used to wear a rear seatbelt in a taxi, *et cetera*, most of the time but not all of the time. Since I saw the video clips and since I appreciate now the weight that an unrestrained person sitting in a rear car seat, the weight they become - which I understand is in tonnes - when a car has an impact, is in a crash. Sir, from now on I will always in future wear a rear seatbelt. I also, Sir, fully support the provision for child seats and booster seats for young children. Sir, it is my opinion that if the introduction of this law in Jersey saves just one life in the next few years it is worth introducing it.

4.1.6 Deputy J.B. Fox of St. Helier:

I shall support this proposition. I think it is absolutely ridiculous that we do not have such a law. I can go back to the time when I was actively frontline policing and believe you me you would not like to go and tell so many families, like I used to have to do, that they had lost a loved one on our Island's roads. You do not get that amount of accidents that are occurring nowadays. Yes, the quality of the car has changed as well. Yes, there are other circumstances that have changed. Nevertheless, everywhere else we go, whether it is in Europe or the U.K., it is now law when sitting in back seats that you are belted-up. If you get used to the habit it does not become a problem after a while. That in itself makes common sense. As to policing, if you do not have a law you cannot police it. If you do not have a law you cannot prevent bad practice continuing to occur. I also agree with the other parts of the proposition that it is very appropriate that we do have the bumper seats and all the rest for young children to make it appropriate to give them the protection. We all have responsibilities for the protection of our young people but you must remember it is not only our own young people that we have responsibilities for. When people take their children to school, nurseries or whatever, often they are taking other people's children. It is a wider responsibility. I do not think I need to say any more. If we have a policing problem, let us bring back the police motorbikes. **[Laughter]** They are the most effective deterrent that is going. They do not have to be 1100cc. They can be 300cc, 400cc, but at least they were there as a major deterrent and also they are there for our consciences for when we are not doing the things that we know we should be doing.

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

Yes, and motorcycles do not have seatbelts. **[Laughter]** Deputy Huet started by referring to her first car. I would like to just very briefly recount the experience I had in my second car when I was driving down La Grande Route de St. Jean late at night and I saw some headlights coming towards me that did not seem to be describing a straight line. I figured out that the car coming towards me was going to hit the bank on my side of the road. I did the obvious thing. I slowed down a little, figured out where the car was going to hit the bank, pulled on to the other side of the road and put my foot down. I had not allowed for the fact that the car was going bounce off the bank on to my side of the road. I hit it head on at about 40 miles an hour. The car then finished roughly where the windscreen used to be. I lost the steering wheel. It came off my hands and skidded straight round and went into a wall; 4 people in the car. I was the most severely injured. I had a slight cut on my finger. None of us were wearing seatbelts. Seatbelts can save lives, yes, but they are not the panacea that some people assume they are. Before too many Members commit themselves to supporting this proposition, I would like to run through, if I may, a few facts which people may not be aware of. As I said, everybody says seatbelts save lives. If everybody says that, who is everybody? It seems there is a phrase that does the rounds that everybody knows that. It is

something which irritates me, Sir, because it is usually used by people who would like to persuade others to agree with their point of view but they do not have the information to back up what they are saying. It relies on assumptions, Sir. Also I would just like to make the observation that just occasionally when someone does suggest politicians should do this or not do that, just sometimes the Statesman like thing to do is to inform them that they are wrong and that you cannot support what they ask for because it is important for politicians to be able to differentiate between pressure groups and public opinion. I am absolutely sure that Deputy Le Claire means well, which is why I might suggest he should withdraw this proposition because if he does succeed in getting it through, Sir, it gives me no pleasure to say this, I can virtually guarantee that injuries and deaths will rise and not fall. I am quite sure that is not what he intends. I will explain why in a moment, Sir. I am also disappointed with the Minister for Transport and Technical Services, Sir. He started out, I believe, with the right intentions also, shall I say albeit on the single, though nevertheless important, issue of personal freedom. Sadly it seems, Sir, that the Council of Ministers persuaded him to change course, presumably a bit like the old army's volunteer process. In being persuaded, Sir, it does seem to me that the Minister failed to do the research one might expect his department to do because after all, Sir, I believe he is a non-driver. In fact, I think the last we heard, his car was in a field somewhere. The Minister at least has the resources for research; something not available to Deputy Le Claire. I did suggest to the Minister there were one or 2 avenues that he might explore in order to find out just why it is that seatbelts do not in fact save lives. I am not sure that the Minister did that, Sir. Perhaps he missed my message. But I notice in the comments which he has supplied, as I understand it, on behalf of his department, he does make the case for personal freedom but unfortunately, as I say, leaves out most of the factual evidence because his published comments are like most people's perception of the benefits of seatbelts. It only refers to their ability to minimise injury in the event of a crash and then only in some cases. In fact, Sir, there is an ongoing debate as to whether seatbelts should be abandoned in favour of air bags. The reason for that is because seatbelts can cause injury as well as minimise. Only a few years ago, very sadly, there was a local fatality caused by seatbelts; information I received from paramedics. I was surprised recently to learn, Sir, in answer to a question that I put in this Assembly by the number of whiplash injuries sustained which is generally - though not always - caused as a result of wearing a seatbelt. According to the figures we received, I make it an average of around 25 cases a year of damage to tendons, ligaments and muscles. This, especially in the case of ligament damage, can lead to a lifetime of pain and mobility problems. It can in the most extreme circumstances lead to paraplegia. It is unfortunate, Sir, that we now live in an age where people are no longer expected to look after or take care of themselves. There is a culture which encourages people to believe they can come to no harm because somebody else will protect them. The States will make us wear seatbelts and everything will be all right. Because, for example, believing that a seatbelt will save you from any injury is a pretty vain hope if your vehicle is hit from behind or even the side. Unfortunately all the tests which governments have done and which persuade people that seatbelts are a good idea generally use test rigs with dummies. They are mainly analysing head on impacts. Real life crashes are not usually like that especially in Jersey with its lack of motorways and country lanes. In other words, Sir, the benefits of seatbelts is undoubtedly beneficial but not all they are cracked up to be. They can reduce the chance of serious injury if you are involved in a crash. Members may ask why is it that wearing them increases your risk of death and injury? The simple answer is, Sir, that wearing seatbelts means you are more likely to be involved in a crash. While Members may think that Deputy Baudains is having one of his senior moments again, you do not have to take my word for that because government research both in the U.K. and elsewhere has proven that. It is not my idea. It is research done by government. If people do not believe that you do not tend to take more chances when you are feeling safe, I can only give the example of when I raced motorcycles up until a couple of years ago, Sir. You leave the line with the back wheel spinning, the front wheel in the air, lock-up the front wheel coming into the corner, which is always a bit exciting, slide the motorcycle around the corner. I can assure Members I would not do that if I was wearing a pair of sandals and shorts. You are protected so you take more chances.

The more protection you have, the more chances you take. Referring back to that government information, Sir; before the introduction of the seatbelt law in the United Kingdom, the British Government commissioned research taking information from around the world. The result was a predicted 2 per cent increase in car occupant fatalities. In Ireland the actual figure turned out to be 4 per cent, that is an increase. They predicted a rise in injuries to pedestrians of 11 per cent, and other road users a rise by 13 per cent. That was a prediction; the actual figures turned out to be an increase of 12 per cent and 8 per cent. In the United Kingdom the compulsory wearing of seat belts by children, which we all know is a good idea, was accompanied by an increase of 10 per cent in fatalities and an increase of 12 per cent in injuries, and that Seat Belt Syndrome, as it is known, includes severed intestines, ruptured diaphragms, spinal damage and increased risk of head injury. The danger to adults from seat belts includes, as I have suggested, a lifetime of pain from whiplash, severe neck injury and I have mentioned paraplegism, notwithstanding the inability to free oneself should the vehicle capsize - when the vehicle is upside down the weight is on the seat belt and you cannot release it. Depending on the situation, that can create danger itself. Of course, there are other issues. Who is going to be responsible for ensuring that the rear passenger is belted-up? If it is a driver, I can already imagine the accidents caused by drivers watching their passengers instead of looking where they are going. What about seat belt adjustment, if you are travelling in the back of a car which is usually somebody else's car and the seat belt is not adjusted to suit you? I do not particularly like self-retracting belts; I adjust mine so it is in a comfortable position. You cannot do that in somebody else's car so what will probably happen is I will not wear it; or, forcing me to sit in a position that is uncomfortable and possibly may injure me as well as makes me feel one of Deputy Hill's human rights issues is coming on. I ask Members to consider for the moment the issue of taxis. Taxi drivers do not wear seat belts, or not normally. I do not see a queue of them at accident and emergency, neither have their numbers been depleted by fatalities, nor are their passengers similarly affected. I believe this project came about because of some recent accidents involving inappropriate speed, too much alcohol or both. I have to say that if someone insists on driving at 100 miles per hour after they have had 27 pints, I really do not think legislation in this Assembly is going to help a great deal. In fact, knee-jerk remedies like this, as I have said, could make things worse. If Members do still doubt what I am saying, if I might I would just refer to a few excerpts here from this study that the United Kingdom Department of Transport commissioned because it analysed the effect of seat belt laws in Sweden, West Germany, Denmark, Spain, Belgium, Finland, the Netherlands and Norway, and used the United Kingdom and Italy as controls; a slightly more comprehensive study, with due respect, that Deputy de Faye did with his comments. The author of this research was alarmed to find that the predominant effect was of increased numbers of injuries to non-car users and similar effects were also reported from Australia, New Zealand and Canada, so this was not just a 5-minute research. The report predicted that in the United Kingdom deaths to other road users would climb by 150 per year in the event of compulsory wearing. The prediction was for an 11 per cent increase in pedestrian injuries with other road users climbing by 12 to 13 per cent. In the United Kingdom that represents an increase of 7,000 pedestrians injured and 36,000 other people injured. What happened when the law was imposed is the increase in deaths to pedestrians was 135 a year and the increase in deaths to cyclists was 40 a year. In a recent study of 19,000 cyclists and 72,000 pedestrian casualties seen at the time suggests that seat belt wearing drivers were 11 to 13 per cent more likely to injure pedestrians and 7 to 8 per cent more likely to injure cyclists. It has been proven a seat belt driver takes more chances; it has also been proven that when he has passengers who are belted he takes even more chances whereas if passengers are not belted, he does not. I would urge Members to reject this sincere but sadly misguided proposition.

Deputy G.P. Southern:

Could I ask a point of clarification from the previous speaker? Could he quote the paper or papers he is referring to and indicate clearly where reference is made to either driver seat belts in the old legislation or rear seat belts and the dates of these papers?

Deputy G.C.L. Baudains:

I do not have those particular papers with me but I would have thought that the figures I have given were quite self-explanatory. I can either give the material to the Deputy or I can advise him to simply put into his search engine “U.K. Department of Transport seat belt” and it will pop up right in front of him.

Senator J.L. Perchard:

Can I also ask from the previous speaker a point of clarification? When he speaks of the dangers of wearing seat belts is he referring simply to this proposition of wearing seat belts in the back of a car or seat belts in total?

Deputy G.C.L. Baudains:

Again, I thought I had made it quite clear that the analysis that I referred to, to start with, was to do with drivers wearing seat belts. We have seen that overall the idea that other speakers have referred to that wearing a seat belt automatically saves lives is not so, and I went on to explain that drivers with passengers who are unbelted likewise take more chances than if their passengers are unbelted.

4.1.8 The Connétable of St. John:

I would just like to address Deputy Huet’s comments regarding the policing of this law. Having spent a number of years in the Honorary Police and with the confusion over various legislation with children of a certain age having to wear a seat belt, those of a different age not having to, I think this will simplify the thing for the enforcement services. I think it is a good thing and I am going to support it.

4.1.9 Deputy J.A. Martin:

I will be brief. I think my mouth has dropped open with the comments by Deputy Baudains. I cannot believe that most people wearing a seat belt feel so safe that they really are in total disregard of what is going on, on the rest of the road. His research seems a bit vague to me that wearing a seat belt causes injury. The worst example I think the Deputy gave was that seat belts cause whiplash. Well, I think most people would rather have whiplash than kill the passenger in front of them or end up through the windscreen and it is an unfortunate side effect but it is the best we have at the moment. Just to go back, and I respect Deputy Huet and Deputy Ferguson’s remarks; I also learnt to drive years ago and never felt quite comfortable with my eldest, who is now 27, being in a car if he was unrestrained and I will not, as Deputy Baudains suggests, be turning around to find out whether my back passengers have a seat belt on. I do not start off on my journey, and my son who is nearly 16 and has 16 year-old friends look at me and I say: “Sorry, it is up to you. You belt-up or you get out of the car.” I do not feel I can take any more liberties but I have asked them to belt-up because I think it is for their safety. Just about the policing. Well, 30 years ago we would all be standing here thinking it was okay to have a bottle of wine and a few beers and drive home and it was not and it was probably hard to police. Today that is not on. I think if either of these Deputies went round the Parish Halls, the phones are being policed; people are going to Parish Halls for using mobile phones and it is also self-policing because many times if I see someone on a mobile I am very abusive to them and they certainly put the phone down because I make hand gestures. Not the hand gestures one might think, just pointing to the ear and the phone and they very quickly put it down. It will become a thing of the past. I was taught to drive probably about as long ago as Deputy Huet. I passed my driving test at 17, but on the test I was taught to have 2 hands on the wheel at all times and personally, if I had my way, you would not smoke in a car; you would not be allowed to eat in a car - you do need 2 hands and concentration. As for the second part, about the children being belted-up, I needed my 2 children to be belted-up so I had concentration because if they could swipe their bottle or whatever they had in their hand to keep quiet while they were in the car, I am sure they would do it. I do find that part of our law is already quite behind, when I read about 3 year-olds and one year-olds in carry cots; not good restraints for

children. I do think that, yes, you will have the argument and I know we are going to hear from Deputy de Faye, who is the Minister and he is totally entitled to his opinion, but he talks about it being civil liberty and people can decide. What I will say, and it is a comment made, is that people who love their children will look after them. Well, I am sorry, some parents are not responsible in many different ways and they do not, for some reason, feel that they have to put their children in the right restraints. If this is law, the children will be protected so I have no objection to any part of this and, as I say, so far I find Deputy Baudains' statistics very spurious.

4.1.10 Deputy J. Gallichan of St. Mary:

The first thing I would like to make quite clear is that personally I do not dispute it is an excellent idea to always wear safety belts. Following on from Deputy Martin, there is already a law that covers this. It is the law of me as the driver, and me as mum. I also make it quite clear when people get in my car that if they do not put their safety belts on in the rear they will not travel with me. It is not only because I am concerned about them as passengers; it is because of self-preservation having been in accidents myself with loose things coming at me that were not tied down; it can just as easily be your father-in-law coming at you at 40 miles an hour from the back seat as it can a can of baked beans which does quite a lot of damage. I just think it is very important to cut through the initial "this is a brilliant idea" feeling you get when you read this proposition, and I am not saying it is not but to look further. We still have a duty to analyse, is this doing the right thing for Jersey? I would just like to ask a couple of questions here because part (c) of the proposition says that it will request the Minister to bring necessary orders. I understand that part (a) could probably be addressed by Orders but part (b) might require an amendment. Either way, I would just like to ensure that we look at the Jersey perspective on this. I know that when the laws were changed in the United Kingdom a couple of years ago there was an awful lot of confusion. I would just like to raise a couple of concerns that have been raised to me so I can have them addressed. These all concern, by the way, the second part, part (b). There is an anomaly where if you are having an unexpected journey, for example, you find that Suzie cannot get home from the netball match so you give her a lift as well, but if you do not have the appropriate restraint for that child then under the U.K. law that is fine for a short, unexpected journey. I would just like to point out that most journeys in Jersey are short and all at low speed technically, if you go by the U.K. standards. I would just like to see how the confusion for parents and for enforcement officers would be addressed. I would like to also address the problem of modern cars. Everybody has talked about their old cars and the lack of safety belts. When I chose my car, which is now 6-plus years old, it was the first car that had side-impact bars and I chose it because I had 2 children and I wanted them to be secure. Since then things have moved on. Masses of cars have that high rating now and more and more cars have this device on all the passenger safety belts where you can simply slide them down and lock them in at the press of a button. My children have travelled at the different stages of their development in this car with the right safety belt crossing the right part of their anatomy for them to be safe at the right time without the requirement for a booster seat. Can I please implore that legislation is sensitive to that because I do not want to be stopped for not having a child in a booster seat when that child is appropriately restrained? I have mentioned loose objects and baked bean cans. I would just like to raise everybody's consciousness to the fact that it is not only people in the rear seats of your cars that can be extremely dangerous. I have seen the damage a bottle of wine will do that was placed on the back seat when it hits the windscreen - not of my car but I have seen it happen. If that had hit the passenger in the front seat instead of the windscreen it would have been just as bad. The problem I have with this is you cannot legislate for all of these things. You have to draw the line with responsibility. At the moment the responsibility for everything in the car rests with me as the driver and we have done a terrific job of encouraging people through education in the last few years with different campaigns. I did not go to the presentation at the Town Hall, but I have seen that demonstration before. I am convinced by the advert of the pizza delivery; I am sure everybody has seen that. This woman knows the person that killed her; everybody has seen that advert. Just because we legislate, we cannot take the

responsibility away. I took 3 teenagers, only one of which I knew - I was picking them up as a favour the other day - and I was so impressed when they all got in the back seat of my car and without any prompting from me they all belted-up. We have been bringing our children up to do this and as that message is reinforced it is working. Basically, I would really like some technical information as to how this law will be designed for Jersey and how, as a Member, I will be able to scrutinise that law if any of this is done by Order without me having a look. Standards of cars have moved on and I think blanket legislation needs to look at that. I think that is all I can say except that I did hear the Headway spokesman saying that she would be pleased to see a law because although people were being more responsible this would give them the authority of a law to be responsible to. I do echo past comments. I am partly allayed by the Constable of St. John's speech that if we are going to pass this law we must ensure it is policed. I was heartened by Deputy Fox, I must say. So many times recently I have also seen people on mobile phones and thought if only there was a police motorcyclist riding up and down this traffic lane, on Victoria Avenue, as there always used to be. You know, stop alongside the car and look through the window. You do not get those people re-offending; I do miss those motorcycle policemen. It was always my ambition to be one but it was not possible when I was at school and I think I will finish there before I get too into reminiscing.

4.1.11 Senator F.E. Cohen:

I had intended to speak at some length in support of this proposition. However, Senator Le Main's very powerful speech means that there is little I can add. I would just like to commend Deputy Le Claire for bringing this proposition forward. By so doing he will undoubtedly save lives and I hope Members will support this proposition.

4.1.12 Deputy G.P. Southern:

Here we are almost 10.55 a.m. and we are still debating this. I really cannot believe that we have not come to a vote. It is a good job I do not do closure motions very often out of principle otherwise I would be seriously tempted. I have heard some strange arguments in my time in this House but I think today takes the biscuit. We are told that we should not be introducing rear seat belts because people get drunk in cars and they would not use them and the implication of that is drunks do not count either. We are told that if they are not drunks, by another contribution, they are fools and the implication again is if we let fools get on with it and kill themselves we will have no fools left and that would be a good thing. I really cannot believe that was intended but it nevertheless appeared to be the consequence of inaction. Then, of course, we are treated to an exhibition of pseudo-science and pseudo-research by the excellent Deputy Baudains in his own, as ever, inimitable style.

Deputy G.C.L. Baudains:

It was not my research, it was government research.

Deputy G.P. Southern:

The research you did was to go to the internet and put in the right set of words and start looking at the documentation. It is called a literature search. I am sure when he did, he did not find one paper suggesting this; he found of the order of 300, some of which are literature reviews in themselves, examining 300 other research pieces of work; and, yes, he has a point. Yes, if people feel safer in great, big cars; if they feel safer because they have the seat belt on; if people feel safer because of the protection around them, the crumple zone in front of them; yes, they are likely to drive a bit more recklessly and one might see an increase in accidents in general and harm to, particularly, pedestrians. That is probably true but that is a relative consideration in the whole range of consequences. It is like saying there is an increased risk of heart attack by taking this pill and there may well be. You look at the figures and you say it is 0.3 of one per cent increased risk compared to if you do not take it - you have this blinding headache permanently, 24 hours a day. It is a

balance of risk so, yes, you can always go to the research and say: "Increased risk." The concrete evidence, there were 2 isolated incidents. I had a car crash that was almost head-on with 4 passengers and I was not wearing a seat belt and I walked away - the miracle escapee as a lesson on which we should legislate. I do not think so. The single incidents where, we have heard, that somebody wearing a seat belt died. Yes, it does happen; it does not guarantee it. So this statement that seat belts are not a panacea is not revolutionary, but it is pseudo-science. Yes, you might get whiplash by wearing a seat belt if you are in an accident, but as Deputy Martin pointed out that is far better than smashing your head against the windscreen or having your ribs stoved in by the steering wheel. That is the balance of risk. Now we talk about, yes, if we belt-up people in the rear seats we are going to drive like Stirling Moss and that is obviously a name that is as ancient as Jimmy Saville. Again, I really do not believe this. What we have listened to is a series of wild justifications for inaction that are completely unjustified. Let us get on; let us get this debate finished and voted for. **[Approbation]**

4.1.13 Deputy G.W.J. de Faye of St. Helier:

Before I say anything else may I express my sympathy to all those who over time here in Jersey have suffered family bereavements from road traffic accidents, fatalities in particular, and also express my sympathy and understanding for people who have suffered injuries. I do have a feeling for that. I myself was personally involved in a fatal high speed motorway accident and I stood by watching someone die unpleasantly on the road way as paramedics fought desperately against overwhelming odds to try and save them. I do want to assure Members that there is no callous indifference on my part to what some of the effects of poor driving can be. Indeed, I sent round a chronology to Members only recently to underline how this particular issue has been dealt with over the years. It is a serious issue and I have to say I was disappointed that at one point in the debate the House went inoperative. I think that was a particularly sad lapse. This is legislation that cuts both ways. On the one hand there will be Members who will welcome it as having the possibility to perhaps save lives and restrict injury, but we must also remember that we are restricting liberties, albeit marginally - this will impact on a very large number of people who drive, have driven for perhaps decades, safely and responsibly, who have never had an accident and who are now going to be told: "You must do this and you must do this or face criminal sanctions." That is one of the reasons why I think it is useful that this debate has come to the States. I do not think it is a matter that I, as a Minister, in circumstances where people's personal freedoms are being imposed upon by criminal sanction should have decided one way or the other, so it is right that we are having this debate. It is clearly not the first time this debate has taken place and I was interested to see a note of what has happened in the past and Members will also have realised that as far back as 1994 the then Defence Committee did decide that all passengers in rear of cars should wear seat belts. Interestingly, only a matter of months later it was the Public Health Committee who decided that they did not wish to support that legislation and they brought up the fact the freedom of the individual to choose should take priority over health matters. I am not pursuing something that is new here. This has been a consideration that has weighed on some States Members minds in the past and I think is certainly worthy of at least being represented in this debate even though Members by majority may ultimately disagree with that position. Members will look at this chronology and see how the views continue to change over the years, and indeed I do want to clarify a matter which I think has cast an unfortunate slur and innuendo over both myself and the department in terms of what might be perceived as a dereliction of duty. I think Members will recall at the last session the Constable of St. Helier put a question to the Minister of Home Affairs along the lines of had the Minister approved use of rear seat belts in principle and did the Minister consider that it was taking the Department of Transport and Technical Services, which had taken responsibility for that particular aspect, a very long time to deal with the matter. My recollection is that the Minister responded that, yes, she had approved it in principle and that she did think it was a very long time. I have no quibble with the Minister's response in terms of the time taken, but I do wish to point out to Members that, in fact, the latest position of the Home Affairs Committee was

that the matter should be under review, and that was in response to a request made by Deputy Bridge. I do have the minutes, but I do not think it is worth exploring in too great detail, suffice to say that reviewing the matter of seatbelts as a whole is not quite the same as approving the use of rear seat belts in principle. My department was not under that responsibility. We were under responsibility to have a review of the subject, and review has been produced as Appendix A to the comments of the department. I undertook to ensure it was produced for this debate and Members will now have that review before them. I do take Deputy Baudains' point about the level of research, but as I think it is fairly clearly among the reports, it has been very difficult to research this matter in the Island. It is noticeable that Deputy Le Claire's proposition is almost entirely based upon U.K. Government evidence. The fact of the matter is there is very little evidence; records are simply not kept by the hospital to indicate precisely how accidents happen, whether seat belts were in play or not, and so on. It has been very difficult to provide helpful research but I hope that if nothing else, Members will realise that despite my own personal opinions, I have not been obstructive in any way in terms of the department getting on and providing to this Assembly the information that this Assembly requires. In respect of the debate before us, I think it is unfortunate about how in many ways we have had to approach this, as it were, almost by being railroaded by a media campaign, the result of which is that in effect there has been no public consultation on this particular matter at all. It may be that Members feel that is unnecessary and, indeed, Members may have been approached by members of the public and have formed their own view on that account. I can certainly say that I have not been approached by more members of the public personally on any other issue that I can recall in my entire time as a States Member. With very few exceptions, it has been: "Please, Deputy, will you make the case for not making this compulsory?" I have to say, why have people approached me in that way? They have even stopped their cars, wound down the window when I just happened to be standing by a pavement and made their point. I think it is worth reflecting on the current law and, in a sense, how we got here. The current law says safety belts at the rear of the car; of course, the front of the car has been in legislation for some time, but in terms of the rear, children up to the age of 14 must wear their safety belts. I think one has to consider why did the States of a few years ago make that type of legislation. I think it was to ensure that children became acclimatised to the use of seat belts and would continue to use them; we know now that is exactly what has taken place. Indeed, people coming to Jersey from other countries where the rear seat belt is compulsory put their rear seat belts on and think nothing of it and are surprised to find out that we do not have compulsory legislation. I do want to make my position completely clear in that respect. I have been widely misrepresented. I have been accused of being against rear seat belts. Journalists have pushed me to the extent of saying do I wear a front seat belt? Of course I do; I do not break the law. I do want to make it absolutely clear that rear seat belts have been fitted under European legislation to cars for many years now. Indeed, I understand from 1987; rear seat belts are a fact of car manufacture. I would urge people to wear rear seat belts particularly, and especially, if there is someone sitting in a seat in front of them. Anyone who has the slightest concern for their safety should wear a rear seat belt so I am not against rear seat belts, and how could I be? Rear seat belts are compulsory for use by children under 14 and my position has always been that and continues to be so. I do take on board the concerns of people who are finding, and this generally is the response, that the arm of the nanny state is extending too far. It may be that Members today will say: "We will go this far and then draw a line in the sand." I can remember that Senator Shenton some time ago suggested that I suffered from a generational issue. That may be true but I did learn to drive when cars did not have seat belts, seat belts were not compulsory, and there are many, many people in this Island who are considerably older than me. They were not particularly keen on wearing front seat belts when they were made compulsory, but they are law-abiding citizens so they do it but do not necessarily like it. It has been very obvious that people really are objecting to a further extension of that legislation which was seen by, certainly, the older generation as something of an imposition and this is seen as yet another encroachment by government into their personal lives. I have 2 interesting comments from middle-aged gentlemen who stop to speak to me. One said: "I am beginning to wonder what

is special about living in Jersey. I always thought that it was quite good that we did things slightly different to everybody else” and I think that is a prevailing view here. Also, interestingly, a gentleman who said to me: “I agree with you and I know that many of my friends do, but we are too embarrassed to say so.” I also believe that is a genuine remark and it indicates how people are worried about being seen to be politically correct. The matter, of course, is before the House but I do think that we should have concern every time we impose legislation on people’s behaviour, particularly when backed by criminal sanctions. I was disappointed, I have to say, in Deputy Le Claire’s report when I looked up the section that was to deal with what was described as personal choice on page 9 and then found no argument relating to the values or not of personal choice whatsoever. That is my position. I happen to be of another generation, the generation that learnt to drive without any seat belts at all and perhaps time has moved on. If it has, as I have made it absolutely and abundantly clear, as Minister I will follow what the Assembly wishes. I do have some comments though on the booster seats and I really would urge Members to reject this part of the proposition because I think it will cause more difficulties than it is likely to have any benefits. Indeed, if Members care to refer to Deputy Le Claire’s proposition on page 29, they will begin to see why I say that. The U.K. clearly recognised that there is quite a significant issue to insisting by law on the use of booster seats in the back of cars. I am sure there are some grandparents in this Assembly, and I know there are parents, and I am not sure how we stand on single parents, but I am going to highlight the position of single parents with children at school. They often have very busy lives, not just having to go to work but looking after the children as well and rely on all sorts of external support to assist. If we make booster seats compulsory by law it could make it extremely difficult for uncle, aunty, grandpa or friend down the road, or whoever it is, to go and pick up your child and transport them from A to B because they do not happen to have a booster seat. It is also, I would have thought apparent to Members, pretty ludicrous to say that to get around that we will attach a booster seat to every child so they can carry a bag with a booster seat everywhere they go just in case they need a lift. I think Members should be very clear about potential unintended consequences of laying this type of proposal into law. If you look at page 39, the U.K. clearly recognised this difficulty and it says: “Are there any exceptions to the rules?” Yes, there are 3 cases where a child between 3 and 12 years-old may travel in the back of a car using no more than an adult seat belt. The first one is basically what I am referring to: short and occasional journeys made for reasons of unexpected necessity. So, interestingly, not regular school runs but you do not need to worry if you are picking up a friend’s child because he or she has been unexpectedly detained at work. It seems to me that it is quite clear that the U.K. recognised that there was a problem here and came up with a form of solution for it, the unexpected necessity. I am not quite sure how it would work if we built it into the law but I have to say that I do not think that under proposition (b) that I am in any position to build that into the law. In other words, we will be stuck with child booster seats and that concerns me because as we did look into research at the department I became aware that there are alternatives that are available in, I believe, the United States where you can buy a triangular shaped device that alters the position of the belt so that it does not cause potential threat to a child’s neck and internal organs as an adult belt fastening would. Belts can be properly adjusted. That is all very well, but I then need now to refer Members to some of the difficulties that we face here. On page 5 of Appendix A, under the heading: “3.6 Children”, about the third paragraph: “For example, all new restraints are expected to comply with United Nations Economic Commission for Europe Regulation 44.03 or better”, meaning they have been designed, manufactured and tested to internationally recognised standards. However, Jersey’s current legislation points to British standards that are no longer current, a matter already highlighted and included in a draft revision to the Motor Vehicles Construction and Use (Jersey) Order 1998 which means I have some difficulty in standing before you in the Assembly today and saying that I am aware of this potentially useful alternative, but I am not at all sure I can introduce it because it may not conform with British standards and it may not conform with the U.N. (United Nations) requirement necessarily. However, what I do want to say to Members is that I would urge them to reject (b) because the technology is changing rapidly and I do not want to see the Island

locked into a corner which makes life worse for numerous parents and cousins, aunts and uncles and so on around the Island because a booster seat is compulsory under the law, and if you do not have one you cannot give that child a ride to wherever they need to go. I think that there is a severe danger of unintended consequences here and I would rather that both myself and the department had some flexibility in this matter so that we can have a broader look at all the technology available and see what a sensible option for the Island might be. I am grateful to Members for having listened to my views. I hope Members will also realise that there is very strong feeling out there among the older generation of Jersey who are not at all happy about the proposals being put before the House, no matter how sensible Members may think they may be. It is being regarded as an imposition on personal liberties and freedoms. It is being regarded as yet another extension of the nanny state and it is not going down very well in some quarters. I think it is important that Members are aware of that.

4.1.14 Connétable S.A. Yates of St. Martin:

I have got a couple of things to say. This seems to be legislation for common sense. Is legislation for common sense necessary or desirable? When I get behind the wheel of a car I put the seat belt on. Do I put it on because it is the law or do I put it on because I feel comfortable, I feel safe, I feel safer? My driving is impeccable. I never exceed the speed limit. I always keep to the right position on the road - an absolute perfect driver - but I can never account for the vehicle who is going to come in the opposite way, overtaking an oncoming vehicle right into my path. I put the seat belt on because it is common sense. Wearing a seat belt in the back seat? Yes, I wear a seat belt in the back seat when I am in France or in the U.K. I do not wear it over here because I do not really think it is necessary. Maximum speed 40 mile per hour. Perhaps I should; perhaps it would be common sense to get into the practice of it. Now, common sense. When you go on the road or throughout life, common sense basically is how you run your life. I would not think about going for a day's fishing trip in somebody else's boat if it did not have a compass, a set of life jackets or a radio. I would not get on to the boat. Whenever I get on a boat my eyes are looking around: where is the compass, where is the radio, where are the life jackets? I do not have to ask, but I will not go because I have been at sea when uncomfortable, unfortunate things happen. I do think there may be a case for exemption of taxi passengers. I feel that when taxi drivers pick up a passenger who may be elderly or infirm, maybe these passengers do not have the mobility to get the seat belt on. I think it is quite important because the driver is going to take responsibility for belting his fare up and I really think there might be a case for exemption for taxi passengers. How effective is this legislation going to be? We have heard boy racers coming out of pubs and clubs at 2.00 a.m. By that time common sense has gone out of the window so you cannot legislate for that. I think I will put the last word to my old, late physical education teacher at Victoria College, dear old Reg Nicole. He would come into the gymnasium and find some boy playing the fool on a piece of apparatus and he would say: "Get down from there. If you persist in doing it you are going to kill yourself" and then he would raise his fists to the heavens and beat his head: "Why do they call it common sense when it is so rare?"

4.1.15 Senator W. Kinnard:

I am in support of this proposition. I think most of the arguments have already been put, but what I am standing briefly for is to disagree with my Ministerial colleague across the floor in saying that I think Members should vote part (b) of the proposition and I will explain why. The Minister for Transport and Technical Services is asked to make necessary Orders to agree appropriate legislation and so on. It seems to me that no one is suggesting that a child seat would not be appropriate for use with a particular baby, and reference was made by the Minister to a new triangular device that can be used with a seat belt which is used in the United States in respect of restraining children. It seems to me that any appropriate legislation or Orders that may or may not be made by the Minister could quite clearly take account of such an option so that it was not so prescriptive that a certain, particular type of seat could only be used if an alternative such as this

triangular device was found to be appropriate. I would also say that such changes could be quite easily incorporated by making Orders under the relevant law. I would suggest to Members that it would be appropriate to vote in favour of part (b) of the legislation, that it would be quite permissive, I am sure, in enabling any new devices to be sanctioned and made available for use provided that they were to meet the appropriate standards. Also, the Minister made much of the report saying that certain aspects of the report were not appropriate, in his view, or would not work. Again, we as Members here today are being asked to approve what is on the face of the proposition of the report and it seems to me that the Minister would have every opportunity in devising what the Order should be or what changes there should be to the legislation in putting forward those arguments. I think that Members should wholeheartedly support the proposition and vote for it in its entirety.

Deputy G.W.J. de Faye:

On a point of order, I am very grateful to the Minister for Home Affairs for her opinion, but I would like to ask the Solicitor General just how flexible I am in face of what the proposition says. I do not happen to agree with the Minister's interpretation that I have the level of flexibility that is being suggested. I would be grateful if the Solicitor General could give me an indication in the light of what it says in part (a) and also in part (b) where it, in fact, says: "To agree the appropriate legislation to be introduced to require the use of child seats or booster seats" for children under certain sizes and it makes specific reference to not otherwise appropriately restrained by seat belts alone. I have to say, in my view, I think I am quite restricted in my approach but I would be very pleased if the Minister for Home Affairs is correct and the Solicitor General can confirm that she is correct.

The Solicitor General:

I think it is probably best if I run over the Order-making powers that the Minister has. There are 2 articles that have Order-making powers relevant to seat belts. Article 41 is an article which empowers the Minister to make Orders requiring the wearing of seat belts. That article does not apply to children under 14, which is dealt with in the next article. Insofar as adults are concerned, the Order-making power is quite simple, it is in 41. So far as Article 42 is concerned, which is the one that applies to children under 14, that works the other way around. It specifies circumstances in which a child under 14 must wear a seat belt and says that will happen unless the Minister makes an Order excluding the requirement. The circumstances under which the child must have a seat belt is if a seat belt is fitted or required by or under any enactment to be fitted in the front or rear of the vehicle. If you have a vehicle that has a seat belt already then the child under 14 must wear it. If the vehicle does not have a seat belt - and I have to say I do not know what the probability or possibility is of there being vehicles without seat belts - then that would not apply. There is also a power under Article 77 to make Orders as to the use of motor vehicles and trailers, their construction and equipment and the conditions under which they may be so used, so there is a power to require a vehicle to be constructed or equipped so as to have seat belts in it, or indeed booster seats. Article 42, which is the one that refers to children and seat belts, defines seat belt for the purpose of that article to include any restraining device for a child, so if a booster seat is a restraining device and an Order is made requiring there to be booster seats in cars which are to be used for carrying children then the booster seat would come within the definition of a seat belt under Article 42 and the requirement would follow from the article. It would have to be excluded by the Minister rather than imported by the Minister; the requirement would just be there.

The Bailiff:

Perhaps I could just add from the chair, because an interpretation of the proposition is a matter of procedure rather than a matter of law, that the proposition (a) and (b) both refer to appropriate legislation. Appropriate must mean appropriate as viewed by the Minister as the Minister is the

person who makes the Order. So, to that extent, subject to the legal restrictions to which the Solicitor General has referred, the Minister does have a discretion.

Deputy G.W.J. de Faye:

I am grateful both to you and the Solicitor General and to the Minister for Home Affairs.

The Bailiff:

I call upon Deputy Le Clare to reply.

4.1.16 Deputy P.V.F. Le Claire:

I think that was a most helpful intervention by the Minister for Home Affairs, the Solicitor General - who has given us many words of advice over the years and I am sure we are all going to miss her in her last week. I am glad she was here today to put those points across, they are quite relevant. No doubt from *Hansard* the Minister will be able to draw upon those. Also, for your guidance, Sir, in reading the proposition as it relates in terms of appropriate legislation. I would ask Members if they would forgive me if I do not go into length with... **[Approbation]** There are minutes that explain what has been happening and we were circulated a chronology of those minutes on Monday evening by the Minister, so on Tuesday at lunch time and during lulls in debates, I did run across to the Greffe at the last minute and I was very kindly helped by the people over there and they were very helpful in providing me with all the minutes that relate to this, dating back to 1984. I do have those minutes with me and basically what happened, just to tell Members, was that as far back as that time the Defence Committee thought it was a great idea to have seat belts in all the vehicles - front and rear seats - because of the information it was presented by its officers. Who would be wise enough to ignore that kind of advice? They put it to the Health and Social Services Committee, as quite rightly pointed out by the Minister, who at that time politically kicked it into touch and said: "Let us leave it as a matter of choice" much as they did when I first raised the issue that we needed a tobacco strategy. What the Minister forgot to mention was that subsequently, within a matter of weeks, they reconsidered it and based upon the overwhelming evidence and presentation from the orthopaedic trauma surgeon from the Accident and Emergency Department they reversed their decision and informed the Defence Committee that now, being provided with the evidence, fully supported the fact that where seat belts had been worn there was evidence that extensive and serious injuries had been allayed and, where they had not been worn, serious injuries occurred at great cost and detriment to society and the people's families, *et cetera*. So, the decision of the Health Committee was reversed very quickly. But quite bizarrely instead of taking that anew, and this is where the Minister is not correct I am afraid, they decided: "No, let us just go ahead with the children." It was not done as some kind of progression to make children get used to wearing seatbelts. It was not done as some kind of 'let us learn to buckle up for when we get into the front seats.' It was politics and politicians interfering with their decisions with the advice that was given by the professionals, and perhaps maybe not timely advice reaching a Committee that was consulted in the old format of the States. We do not have that anymore. We do not have Acts banded around between Committees taking a year and a half for a decision any longer. Since that time we have had an acknowledgement by all of the Chief Officers and the relevant departments that this was the right thing to do, and the progression that was pushed by Deputy Bridge, as the Minister mentions, was to go ahead and look at other legislation as it pertained to seatbelts in buses and minibuses, because there are issues and those do need to be looked at in relation to how we provide safety for the children in buses and minibuses, and I think we need to look at those in a European perspective because that was the advice in those minutes from the Chief Officer of the police at the time. I do not want to take up a lot of time any longer going through speeches, and I will speak to Members individually. If they want me to stand again to identify a personal point, I will. All I can say is that it really does behove us to ignore the fact that we have a duty and responsibility of care. Not only for those that may not like this, the elderly who may not wear well with this, but I am afraid elderly people suffer more in car injuries in the

rear seat; the evidence is there. If Deputy Baudains wants to look for the evidence from reports, it is in my reports. We have a duty of responsibility of care to the people that respond to these emergencies. We have heard today from Deputy Fox, who was a frontline police officer having to respond to these issues and then going on to the doorsteps. I have spoken first-hand in the last couple of weeks with people that have done too much of this and we have a duty and responsibility of care to our workers in trying to improve their workplace, and turning up to those situations is, in my view, going to be a lot better for them if we introduce this legislation. The last thing I have got to say, Sir, is I want to personally thank Senator Terry Le Main, Sir, for what was probably one of the most emotional contributions I have heard. I did not really want to bring this proposition because I was one of those old Jersey people; the Jersey way, the Jersey way - but the Jersey way is that we love our children and it saddens me greatly that Senator Le Main had to make that point today. I make the proposition and ask for the appel. **[Approbation]**

The Bailiff:

I ask any Member in the precinct who wishes to vote to return to his or her seat. I ask the Greffier to open the voting which is for or against the proposition of Deputy Le Claire.

POUR: 35		CONTRE: 2		ABSTAIN: 1
Senator L. Norman		Deputy G.C.L. Baudains (C)		Deputy of St. Mary
Senator W. Kinnard		Deputy G.W.J. de Faye (H)		
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator M.E. Vibert				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy C.J. Scott Warren (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy A.J.D. Maclean (H)				
Deputy of St. John				
Deputy I.J. Gorst (C)				

5. Jersey Charities Commission: Feasibility Study (P.28/2008)

The Bailiff:

Now we come to Projet 28 - Jersey Charities Commission: Feasibility Study - in the name of Deputy Gorst, and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Chief Minister to undertake a feasibility study into the creation of a Jersey Charities Commission and, if appropriate, to present proposals to the States for approval within 3 months regarding the establishment of such a commission.

5.1 Deputy I.J. Gorst of St. Clement:

My proposition today is a simple straightforward request to undertake a feasibility study into the creation of a Jersey Charities Commission. In fact, it is so simple and so straightforward that it is difficult to understand why such a body does not already exist, especially when one considers the admirable tradition of honorary service and charitable works that the Island is justifiably proud of. Perhaps it is not such a surprise when we consider that it took over 50 years for the U.K. to introduce the current Charities Act 2006 which was first recommended by Lord Beveridge in 1948 in his report *Voluntary Action* in which he, in effect, proposed the creation of a U.K. Charities Commission together with other recommendations. Members are probably more familiar with his first 2 reports *Social Insurance and Allied Services* and *Full Employment in a Free Society*, the 2 reports which became known as the *Beveridge Report* and led to the creation of the U.K. welfare state; but I digress. Jersey has previously always resisted the creation of such a body on the grounds of unnecessary bureaucracy and the potential for it to become administratively burdensome. While I appreciate these very real concerns, I am firmly of the opinion that the time is now right for us to grasp the nettle once and for all. I was prompted to lodge this proposition after having read the consultation document on the proposed N.P.O. (Non-Profit Organisation) Law. I do not want to comment on that draft law in detail, merely to say that had a Charities Commission already been in existence it would easily have been able to deal with the issues raised by that consultation paper. The correct time to discuss that legislation will be when it is due for debate. I will, however, make the following observations that the U.K. Charities Commission have themselves made. Firstly, that effective regulation involves putting a strong emphasis on giving support and guidance to charities to prevent problems and abuse occurring in the first place; and, secondly, the Commission believes firmly that its success as a civil regulator of charities is largely based on the respect and trust placed in it by the public and charities themselves. The value of this trust cannot be over-estimated, it is one of the most effective regulatory advantages upon which they rely. So what might the objectives or benefits of a Jersey Charities Commission be? Well, if we look at the U.K. Charities Commission's objectives we will see that they are as follows. To increase public trust and confidence in charities; to promote awareness and understanding of public benefit; to promote trustees compliance with the law in their control and the management of charities; to promote the effective use of charitable resources and, importantly, to enhance the accountability of charities to donors, to beneficiaries and to the general public at large. I would propose that a light touch Commission, one which applies on a risk-based and proportionate approach to regulation, one which works in partnership with charities promoting best practice, and enabling charities to maximise their impact and encourage innovation and effectiveness would be the type of Commission which would be suitable for the Jersey environment. Sir, as I stated in my opening comments, this has been too long in coming. I hope, however, that Members might have had time to read the appendix to my report in which the Jersey Law Commission, once again, called for the creation of a Jersey Charities Commission. If Members have not found my report and arguments compelling then I trust that they will have at least been convinced by the arguments put forward by the Law Commissioners. Sir, I maintain the proposition.

The Bailiff:

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

5.1.1 Deputy P.J.D. Ryan of St. Helier:

I have to admit to being somewhat surprised when this proposition was lodged by Deputy Gorst, particularly as Deputy Gorst is now the Assistant Minister for Treasury and Resources. Sir, the Corporate Services Scrutiny Panel has called for perhaps a feasibility study on at least 3 separate occasions in 3 separate Scrutiny Reports. The first was the Overseas Aid Commission report, and there were 2 other G.S.T. (Goods and Services Tax) reports, both of which called for the Minister for Treasury and Resources to carry out exactly this kind of feasibility study. I believe that the Minister for Treasury and Resources, even if he has not put it in writing, has certainly agreed on the floor of the House on at least one occasion - possibly more - that indeed he is in the process of looking at a feasibility study, or carrying out some kind of study anyway on the feasibility of some kind of Charities Commission. So I think that the Corporate Services Scrutiny Panel could be forgiven for believing that this kind of work was already being undertaken, Sir. I would look for some kind of an explanation from the Minister for Treasury and Resources.

5.1.2 Connétable D.J. Murphy of Grouville:

I am afraid I am going to reiterate what Deputy Ryan has said, and that is I was a member of the 2 Sub-Panels, one of course was the Overseas Aid Panel and the other one was the G.S.T. Sub-Panel where we made these reports and we asked for a Charities Commission to be set up. In the case of Overseas Aid it was basically so that we could sort out the wheat from the chaff as we had little one-man bands coming to Overseas Aid for help, but they could not get it because it was not classified as being of sufficient strength. If we had had a charities register or Charities Commission of some kind this could have been sorted out so that Overseas Aid would then know they were dealing with people who were not men of straw. On the G.S.T. Panel, of course, we went into a lot greater depth on it because we were dealing with the taxation basis here and we tried our best to identify charities on a proper basis and we, as Deputy Ryan has said, were assured that it was being looked into and we had not got anywhere at all. But I am delighted that somebody has done something at long last and I, for one, shall be supporting the proposition and hopefully we will get it done very quickly, and I hope sincerely that a point is taken that this must be done cheaply. The charities are there to raise money to give away. They are not there to raise money to give to the States in licence fees or to accountants in accountancy fees.

5.1.3 Deputy R.G. Le Hérisier:

As Members may know there is a proposal coming to this House for the better regulation of charities in order to avoid them becoming vehicles for terrorism funding. A discussion should have taken place as to whether the body most suited to deal with this was indeed a Charities Commission or a form thereof, or it should be appended to the Jersey Financial Services Commission. As Members will know, Sir, the proposal is it will be appended to the work of the Jersey Financial Services Commission. I fully support Deputy Gorst's proposition. Sadly, it is coming a bit late in the day, largely to do with reasons of the I.M.F. (International Monetary Fund) visit in October. There is a pressure to get, it appears, such a law in place. The view of a working group from the charities sector, Sir, which I am a Member under the leadership of Advocate Lakeman - he of fond memory. The view of this group is that the law being proposed is totally over the top. It is bringing unnecessary bureaucratic burdens to bear upon charities and it does not sufficiently discriminate between those facing risks and those not facing risks in terms of terrorism funding. It is, in other words, Sir, a sledgehammer to crack a nut. It does however, Sir, though have the positive side that it does call for the registration of charities, but in calling for that registration it calls for an awful lot of paperwork to help with that registration. To that extent, Sir, obviously that job would have been better done not by the Financial Services Commission operating as a Charity Commission, which is essentially what it is being asked to do, but by the kind of body into which

Deputy Gorst wishes an investigation or feasibility study to take place. Just to give you, Sir, an example of where our current route is leading us to as opposed to what you might call a Charities Commission route; the Charities Commission of England and Wales has, indeed, looked at terrorism and it echoed a Home Office review which said: "Actual instances of abuse have proven very rare." It then says further along in its report, Sir, that the effectiveness of our approach to dealing with the possibility of terrorism funding is to strike the right balance between the provision of advice and guidance and, where necessary, intervention based on evidence and proportionality. This, Sir, goes through all of its work, basically identifying where the risks are through a proper process of risk analysis and, in the case of Jersey, Sir, that could well involve charities who do send money overseas over a certain sum - for the sake of argument, for example, £10,000 - or who work overseas and by so working also inject money into certain economies. Their view has been that this has to be done on a very selective basis, not going like a machine gun on all sorts of fronts. That is why, Sir, the working group certainly would support, if I may speak on their behalf, this approach and quite frankly, Sir, unfortunately the meeting we were due to have with the Chief Minister has, for obvious reasons, been delayed and will not now take place until early April. But it has to be said, Sir, that the working group is going to, I am afraid, argue very strongly against the so-called revised version that has been put forward and it would much prefer the kind of philosophy that is embraced in the paper, from which I have just read a few excerpts, and the kind of philosophy which Deputy Gorst is clearly pushing forward.

5.1.4 Senator T.A. Le Sueur:

In the absence of the Chief Minister I am quite happy to confirm my approval of the undertaking of the feasibility study and I do so equally as Minister for Treasury and Resources. But I think I just need to make a couple of observations. Deputy Ryan has made some comments in the light of Scrutiny Panel Reports on specific matters such as Overseas Aid and Goods and Services Tax. But I think what we are looking at here is a rather wider remit because the focus of this, as has been clearly set out by several speakers, is in relation to the existing consultation on draft N.P.O. arrangements in advance of an F.A.T.F. (Financial Action Task Force) visit, and I think realistically that we are here going to be facing a 2-track - possibly parallel, something like that - approach. Maybe in his summing-up, Deputy Gorst could give his understanding that he also feels this is the sort of way we will be going, because a feasibility study is fine as far as it goes but does not necessarily go as far as what we needed to satisfy those authorities. I say that because I think I was a member of the Legislation Committee in former days when we had an earlier Law Commission report on charities - the one appended to this report is, I think, their second report. Although the Commission reports have been well accepted there has always been an issue about the need and the resources and the cost implications. For one reason or another it has been, I think, felt more convenient to park it in a pending tray rather than do anything about it. I think at the time of the Law Commission report there were acknowledgements there would be costs to be incurred, either by the charities themselves or by a body set up as charity commissioners. The feasibility study may well indicate a preference in that direction but I think there is no getting away from the fact that there will be cost implications in some way or other, and it is up to us, I think, to see how those can be minimised and how maybe what needs to differentiate between different classes of charitable body, because on the one hand you have got the consultation document on N.P.O. that gives a very wide definition which will include things like sporting clubs as well as very high profile international charities. On the other you have got the very real concern about anti-terrorist funding which can come in a variety of ways. I say that because while it is possible to undertake a feasibility study and report back within 3 months that will not necessarily be the end of the matter, and I think one has to have something permanent, something more substantial in place before the end of this year, and that is why I suspect that some sort of 2-pronged approach may be necessary. To the extent that the consultation on the N.P.O. draft might well lead to a more simplified approach being adopted I am sure many of us would welcome that. At the present time that consultation is still under way. I am anxious that we do not have a muddying of waters by having a

consultation on the N.P.O. law and also feasibility study going along in different directions. I am emphasising therefore the need for the parallel track approach, except that the objective should be that those parallel tracks should ultimately converge, and maybe we can have one solution for one problem. I say this not to denigrate this proposition which I welcome, but to indicate to Members that it is not perhaps quite as simple as it appears on the surface. Having said that, Sir, I will still undertake to support the proposition.

5.1.5 Senator P.F. Routier:

We have heard from members of the Scrutiny Panel who have previously called for the establishment of a Charities Commission, and I understand that. I think all the speakers have spoken in favour of this proposition and I hope Members... well, they will be aware that I am president and chairman of 2 voluntary organisations which would no doubt come into the remit of either the Charities Commission or the process that was going ahead with the Financial Services Commission. Members must be aware that there is some nervousness among charities with regard to being dragged into the remit of the Financial Services Commission, so I think that this proposition should be welcomed because I believe that it is - regardless of the inspection which is going to be happening towards the end of the year - something that should be in place and it should have perhaps been in place for quite some time. I welcome the proposition. I heed the words of the Minister for Treasury and Resources and on behalf of the Chief Minister the concerns that there needs to be the 2-track approach. I do not think that should need delay matters at all. I think we should get on with both areas to make sure that we do satisfy the needs of the people who are going to be inspecting the Island later on in the year. But also there is the need of the charities who will be far better served by having a Commission which they can register with. I support this wholeheartedly.

5.1.6 Deputy J.B. Fox:

I would like to reiterate both the last 2 speakers because one of the things that has come to light with this I.M.F. inspection is that there is a need for us to be seen to be whiter than white and above board. But it is not necessary to achieve everything at the one time; it is desirable but not necessary. The thing that I perceive is that we must get it right. I have had correspondence which I passed on to Deputy Le Hérissier's sub-committee that there are concerns that we have not got it right from the Law Commission challenging points through their membership and, again, it is an area that needs to look at. I support this dual-track, if that is what it is, because I think the timing is very appropriate. Like most things, if we had done things before it would have been a lot better, but it is better that it comes up now than it comes up next year or the beginning of next year to bring this one forward. I hope that within the 3 month period that has been allocated that we shall have advanced so much that we can look forward to having an alternative to Financial Services administering this anti-terrorism legislation coupled with all the other safeguards for local charities. Yes, Sir, there are a lot of local charities that are so concerned; they are talking about that it might force them to close down. We cannot afford that. This Island runs very much on its charitable support, not only within the Island but outside the Island and throughout the world, so I wish every speed that we do not have any delays and that it can be brought back with a positive result.

5.1.7 Senator F.E. Cohen:

A Commission is essential to reassure donors, government and the public. Small charities need have no worries. The U.K. Commission does not require charities with incomes of less than £10,000 per year to prepare accounts. They only have to submit their income through a very simple website. It is easy to implement and it takes literally 2 minutes. I wholeheartedly support this proposition and I urge other Members to do the same.

5.1.8 Deputy C.J. Scott Warren:

I should firstly state that I am the chairman of a local charity - Triumph Over Phobia - which is affiliated to a national charity T.O.P. (Triumph Over Phobia) U.K. I certainly, Sir, support a feasibility study being carried out into the creation of a Jersey Charities Commission. This seems, Sir, to me to be an eminently sensible proposal. We all know that there are serious concerns at the moment about the draft N.P.O. Law. I do support necessary safeguards but obviously wherever possible we also need a light touch approach. I believe we need to ensure that we have in place the most appropriate means by which to both regulate and encourage the work of the numerous local charities. I fully support this proposition.

5.1.9 The Deputy of St. Martin:

I do not intend to be very long, Sir, because I know the mood of the House is to support and I will be giving my support as well. It was just to make one observation, which I have made before. I would ask that when a proposition is lodged to request anybody to do something - it does not matter whether it is the Chief Minister or any department - that there would be comments made available to Members before the debate rather than have to hear them on the floor of the House. There is an inconsistency and I would ask that possibly something could be taken on board so every Ministry ensures that there are comments to Members before the debate rather than on the floor of the Chamber.

5.1.10 Deputy J.A.N. Le Fondré of St. Lawrence:

I endorse many of the words said so far, and also note I am involved in one or 2 charitable bodies. The reason I stood, Sir, is I wanted to elaborate a little bit further on this N.P.O. Law that we all keep referring to because I was very concerned to find out that its remit, as such... that such bodies notable for potentially being under suspicion for funding terrorism include the St. Lawrence Parish magazine, the St. Lawrence Battle of Flowers Association and even the St. Lawrence Twinning Association which my St. Lawrence Deputy happened upon. **[Interruption]** We know St. Lawrence is obviously very dodgy because it has some very dodgy political representatives, and they would all be caught and I think this is the point of the proposition by Deputy Gorst, is to try and achieve a far lighter touch as a solution. What I would also like to ask though, Sir, is when the feasibility study looked into is to make sure that the purpose of the body is quite wide because sometimes we have an awful lot of community functions that are not necessarily charitable, that do go to the very heart of what Jersey is about. On that note, Sir, I support the proposition.

5.1.11 Deputy S.C. Ferguson:

I also must confess to a vested interest. I am the Honorary Treasurer of the Jersey Animal Shelter. We have had a number of discussions about the Financial Services Law - the Money Laundering Law - and they are extremely onerous and they are not proportional. That is not the debate for today certainly, but this underlines why I would much prefer to see a Charities Commission. From my days as a banking supervisor most money laundering - in a former life, as one says...

Senator T.J. Le Main:

I thought she was an engineer. **[Laughter]**

Deputy S.C. Ferguson:

Yes, and a pilot, and I have done a bit of rally driving. **[Interruption]** **[Laughter]** No, my science was computer science. But most money laundering is caught by the banks, not by the examination of the books of account. Members will have seen in the papers the case of the Governor of New York resigning. Well, in fact, he was caught by a computer analysis of bank transactions and suspicion transaction reporting. Banks have extremely sophisticated methods of detecting suspicious transactions and reporting them quickly. This is the glory of information technology, so I would much prefer to see a Charities Commission and I will be supporting this proposition.

The Bailiff:

I call upon Deputy Gorst to reply.

5.1.12 Deputy I.J. Gorst:

I would just like to thank all Members who have spoken for speaking. I would like to apologise to the Corporate Services Scrutiny Panel if they feel I have stepped on their toes. It certainly was not my intention, but it was to start something moving forward. With regard to the comments made by the Minister for Treasury and Resources - and looking at the difficulty sometime in defining charities - he is absolutely right and the United Kingdom went through a process of changing themselves from what was, I believe, a Victorian law with relatively narrow definition, which could be broadly interpreted, to defining charitable purposes. I think this is something else that was picked up by the Deputy to my left regarding what would be in and what would be out of scope. That, of course, is the purpose of a feasibility study. I would like to thank Senator Cohen, as he touched upon the subject of proportionality and a proportional approach. I think that is critically important when we are looking at this particular subject. The Minister for Treasury and Resources also touched upon this idea of a twin-track approach and I fully understand that at this moment in time it is what needed. If we could have stepped back in time, of course, I would have preferred that we had gone for the Charities Commission at day one because that is the correct and appropriate approach for regulating and encouraging the charitable sector within Jersey. However, as Members in this House are keen to say, we are where we are, and therefore I appreciate that both will be brought forward together. The time for the debate about the N.P.O. law, as I said earlier, will be once it has been lodged. But I would make a plea to what are being called the Ministerial benches opposite, but certainly to the Ministers that will be ultimately involved in bringing forward this piece of legislation once the consultation process has come to an end, and that is that they do indeed listen and listen extremely carefully to the charitable sector because it is important that we do and that we do not do anything to damage that, because Jersey, Sir, after all has a charitable sector, as I have said earlier, of which it is justifiably proud. Islanders are generous, not only in their commitment of time but also in the amount of money which they donate, and I believe that the time has come when we, as a Government, should work with charities, we should support them, we should help increase donor confidence and encourage and support best practice. Governments in other jurisdictions have in recent years realised the central role that charities play in social provision and social cohesion and they have partnered together with what academics have started to call the third sector. Those governments have realised that voluntary organisations might just provide solutions to problems where both State and market have failed, and I was interested to read in my *F.T. (Financial Times)* this morning, part of Alistair Darling's budget yesterday was that he extended the gift aid scheme to the charitable sector which means that they will be able to net over the next 3 years an extra £300 million from the Treasury, which is enhancing people's giving towards that sector. I hope, Sir, today, that Members will indeed start down a route of support and proper recognition for Jersey charities, and I maintain the proposition. **[Approbation]** I call for the appel, Sir.

The Bailiff:

I ask any Member in the precinct who wishes to vote to return to his or her seat. I ask the Greffier to open the voting which is for or against the proposition of Deputy Gorst. If all Members who wish to vote have done so I will ask the Greffier to close the voting. I can announce that the proposition has been carried; 39 votes were cast in favour and one vote against.

Deputy I.J. Gorst:

Could I have the one against, Sir, please.

The Deputy Greffier of the States:

Deputy de Faye voted against.

POUR: 23		CONTRE: 18		ABSTAIN: 0
Senator B.E. Shenton		Senator L. Norman		
Connétable of St. Ouen		Senator W. Kinnard		
Connétable of St. Mary		Senator T.A. Le Sueur		
Connétable of St. Clement		Senator P.F. Routier		
Connétable of St. Helier		Senator M.E. Vibert		
Connétable of Grouville		Senator P.F.C. Ozouf		
Connétable of St. Brelade		Senator T.J. Le Main		
Connétable of St. Martin		Senator F.E. Cohen		
Connétable of St. John		Senator J.L. Perchard		
Deputy R.C. Duhamel (S)		Connétable of St. Saviour		
Deputy of St. Martin		Deputy J.J. Huet (H)		
Deputy G.C.L. Baudains (C)		Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérisssier (S)		Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		Deputy P.J.D. Ryan (H)		
Deputy G.P. Southern (H)		Deputy D.W. Mezbourian (L)		
Deputy S.C. Ferguson (B)		Deputy A.J.D. Maclean (H)		
Deputy of St. Ouen		Deputy of St. John		
Deputy of Grouville		Deputy I.J. Gorst (C)		
Deputy of St. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy of St. Mary				

6. Appointments Commission: re-appointment of member (P.30/2008)

The Bailiff:

We come finally to Projet 30 - Appointments Commission: re-appointment of member - and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion in accordance with Article 18(1) of the Employment of States of Jersey Employees (Jersey) Law 2005 to reappoint Advocate Rose Edith Colley as a commissioner for the Jersey Appointments Commission for a period of one year.

6.1 Senator T.A. Le Sueur (Deputy Chief Minister - rapporteur)

It may be a surprise to some of us to realise that the Appointments Commission has been in existence for less than 6 years because I think now we take it, I hope not for granted, but we take it as a permanent feature and a very valuable feature of the machinery of government. That, I think, is due in no small measure to the quality of the people who have served on that Commission. We have here one of the existing members of the Commission who is prepared to stand for a further year, that is Advocate Colley. I thank her for her services to date and acknowledge with gratitude, the fact that she is able to put herself forward for reappointment for a further year. Her experience has been vital to that body to continue the good work it does, and I am very pleased to propose her reappointment.

The Bailiff:

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

6.1.1 Senator W. Kinnard:

I would just like to say that I have served on a couple of appointment panels with Advocate Colley and I can vouch for her absolute professionalism. I think she is an excellent member of the panel

and I am very delighted to see that she has put her name forward for reappointment. I wholly endorse the proposition.

The Bailiff:

Deputy Chief Minister, do you wish to reply? Well, I put the proposition. Those Members in favour of adopting it kindly show. Those against. The proposition is adopted.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Bailiff:

We come next to the Arrangement of Public Business and I invite the Chairman of the P.P.C. (Privileges and Procedures Committee) to propose it.

7. Connétable D.F. Gray of St. Clement (Chairman, Privileges and Procedures Committee)

Because of a number of alterations and additions, the arrangement of public business was reissued to Members yesterday by the Greffier on green paper and it is that order that I am proposing now with one addition, Sir; on 29th April, P.18 - a Draft Civil Aviation (Jersey) Law. That is the one addition, Sir.

7.1 Deputy C.F. Labey of Grouville:

I am just wondering if Members... because some have indicated to me, that they may wish to take my census and rezoning propositions above some of the Appointed Day Acts and Regulations. But it is up to the House.

The Bailiff:

Are you asking that it be put top of the list, Deputy?

The Deputy of Grouville:

Yes, but it is up to the House. Yes, I will propose it.

The Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to comment on that?

7.2 Deputy C.J. Scott Warren:

This was concerning another matter. Is it appropriate for me to comment?

The Bailiff:

Yes, there seems to be general assent to moving the Deputy of Grouville's proposition.

Deputy C.J. Scott Warren:

This is a matter regarding P.35, my proposition, which is down at present for 1st April. It is just to notify Members that at some stage I have to go for a medical procedure off-Island and it is possible that I may not be able to take this proposition and may have to defer it to 29th April, but at present I would like to keep it on the 1st April list.

7.3 Senator T.A. Le Sueur:

I have got no strong feelings about the order of debate for census and rezoning sites, but we do have a Standing Order which says that we normally take things in the order in which they are lodged unless there is a good reason to the contrary. While they may well be important to the Deputy of Grouville I do not know if that is sufficient reason to the contrary to move this along. So

I suggest to the Deputy that if there are valid reasons to putting it higher up the list she ought to explain to us just what those reasons are.

The Deputy of Grouville:

It was just indicated to me by some Members that they may be contentious and it was felt that they may wish to take these at the beginning of the session rather than the less contentious items.

7.3.1 Deputy G.C.L. Baudains:

I am not quite sure that I understand the reasons behind wishing to move this up the Order Paper, Sir. I am not aware of it being time critical and we are going to get through all of the business in due course. I really do not see that it makes much difference, Sir.

The Bailiff:

I think I sense that Members want to leave it where it is then, rather than move it. So subject to the addition of projet 18 is the... Deputy Le Claire.

7.4 Deputy P.V.F. Le Claire:

I believe that we were told that the Draft Civil Aviation proposition is coming back next session?

The Bailiff:

29th April.

Deputy P.V.F. Le Claire:

I just wondered if maybe one of the Members of the proposing Ministry might indicate as to whether or not there would be an opportunity to brief Members on some of the concerns in the interim.

7.4.1 The Deputy of St. John:

I was going to mention that, Sir. If Members would like a briefing, which sounds like they would, I would certainly be very happy to give it to explain more precisely the work that is going on and to allay any fears that they may have and explain more thoroughly as to the need for this. I would be delighted to do that and I will inform Members as soon as we have a suitable date to do so, Sir.

The Bailiff:

If Members are content the Greffier will inscribe those arrangements for future public business.

APPRECIATION TO RETIRING H.M. SOLICITOR GENERAL

8. The Bailiff:

That concludes the matters on the Order Paper but there is one further matter, I think, before the Assembly adjourns. There will be another private occasion upon which Members can say their farewells to Her Majesty's Solicitor General but this is the last meeting of the States at which Miss. Nicolle will be present. I should like therefore on behalf of all Members to express our appreciation to her for quite outstanding public service which she has rendered to the Island over the last 40 years. **[Approbation]** Lawyers are not always renowned for brevity and clarity but I am sure that Members would agree that the advice which we have received or they have received from her has been uniformly clear and concise and, if I may say so, correct as well. Many of us hope that she will apply her energies to writing on the law of Jersey when she retires, but I know that all Members will want to wish her a long, happy and fruitful retirement. **[Approbation]**

8.1 Senator T.A. Le Sueur:

While it might seem that that is a tribute just from the Law Officers can I, on behalf of all States Members, I think, endorse those comments. I have had dealings, as many of us have, receiving advice from the Solicitor General in a very courteous and thorough and professional way. She will put herself out to help us whatever the difficulties are and I shall certainly miss her advice, and I am sure we all shall. Having said that, Sir, I still wish her a very happy retirement and I hope she now gets to have a little bit of time off from the inordinate amount of work that she seems to have done for us over the years. **[Approbation]**

8.2 The Solicitor General:

There is not anything I can say except thank you. If I thanked individually every Member past and present that I feel I should thank we would be here for a very long time and, probably in breach of Standing Orders, go on long beyond when the House should adjourn. So, really no special mentions except thank you to Deputy Huet for the peppermint crèmes, Deputy Reed for the toffees, which have come my way over the years. They have never affected my legal advice **[Laughter]**, I can assure Members of that. Apart from that I really would like to thank Members both for the appreciation that they have just shown and also for all the courtesy and consideration that I have had from Members, again past and present over the years. Thank you. **[Approbation]**

The Bailiff:

That concludes the business of the Assembly. The meeting is closed and we stand adjourned until 1st April.

ADJOURNMENT