

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 9th OCTOBER 2013

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[09:30]

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

1. Machinery of Government Review Sub-Committee: Final Report – in Committee debate (R.105/2013)

Connétable L. Norman of St. Clement (in the Chair):

We now turn to the in Committee debate on R.105 - Machinery of Government Review Sub-Committee: Final Report - presented by the Privileges and Procedures Committee. For those who may not be fully familiar with in Committee debates, our rules of debate - Standing Orders - remain in place. The only differences are that Members may speak more than once if invited by the President and there is no vote taken at the end of the discussion. The States can fix a time limit for the debate. It has been suggested by the Privileges and Procedures Committee that we should be able to complete this discussion during the morning but that is a matter for States Members. The Greffier, in his usual efficient and effective way, has produced for us some guidance notes as to how the discussion will take place because it is a very meaty document. The discussion will take place in 5 bite-size chunks and each session will be introduced by a Member of the Machinery of Government Review Sub-Committee. Without further ado, I ask the Chairman of the Machinery of Government Review Sub-Committee, Deputy Tadier, to give us a brief introduction after which I will ask Deputy Young to introduce the first part of the discussion. Deputy Tadier.

1.1 Deputy M. Tadier of St. Brelade:

First of all, can I thank Constable of St. Clement for agreeing to chair this meeting and just to explain briefly perhaps, the format of this morning. We envisage roughly splitting this up but it will be split up into 4 parts, then a conclusion and if we could try and roughly allocate 40 to 45 minutes per slot, although the first 2 may be more meaty, may require slightly more time. We will be guided by the discretion of the Chair on that issue. We were asked to do this piece of work alongside the other reviews that were going on. So that Members are aware who was on that Committee, and who I would also like to thank for their hard work and input, we had Deputy Vallois, Deputy Le Fondré, Deputy Baudains, Deputy Young, the Constable of St. Clement and obviously myself. I would like to thank them all for the input they made over what was over a year of long work, sometimes many discussions taking place, lots of different permutations of possible findings and recommendations *et cetera*, and of course, our officer, who is perhaps the most long-suffering of them all, who I think did a very good job with the report. **[Approbation]** I do not need to read the whole of the foreword out. Members will have the report in front of them but to start with the quote which came from the Clothier Report in 2000: “An effective democracy requires not just an Executive but the balance of a strong Assembly which holds the Executive to account and scrutinises its actions as well as contributing to the formation of policy.” We were very much aware that there has been a shift when we adopted Ministerial government and there are very many different views, both in the public and in the Assembly as to whether that is desirable and what the consequences were, both positive, negative and neutral and what perhaps the unintended consequences of that was. As a Sub-Committee, we very much had that plurality of views among ourselves. There were Members who came to it initially thinking that the committee system was best. There were others who thought the Ministerial system was either best or ultimately necessary and the only way forward and there was a whole range of views in between. It is safe to say that many of us have changed our opinion slightly as we have gone along and that will be reflected in the fact that some of these recommendations will be wholly supported. Others will be not necessarily supported by the whole of the Committee. I think that needs to be taken on board. This should be very much seen as a Green Paper and this is the starting point of the discussion today. So that Members know the amount of work that went into it, a vast amount of interviews took place both with Members of the Assembly but also with the Civil Service because

the 2 need to be looked at together. It is not simply the workings of this Assembly but how we interact with the Civil Service, the departments and also, ultimately, the public. The last thing I want to do before I hand over to my colleague on the left is to talk about the bullet-points which we find on page 2. These were the key principles which we identified in the end, which we think are key to any good government: accountability, sound corporate governance, objectivity, prudence and transparency. Those will be things that will come up. Another theme that was explored was that of inclusivity, which was a difficult area because clearly it means different things to different people. When you have a Ministerial Executive government it stands to reason perhaps that not everyone can be part of that Executive but on the other hand we also acknowledge that we are all elected representatives on different mandates, different sized constituencies but we are all here presumably to represent our manifestos, our constituents and it is important that we have some kind of mechanism to be able to do that in the Assembly to make a difference. We are very much mindful of the fact that no one group, no one individual, whether that is Scrutiny, the Executive, Back-Benchers or Committees have the monopoly of skills or knowledge and it is important, I think, for any functioning Assembly that those are able to be fed back. It is very much a way of how do we strengthen the Executive? How do we make sure that the Ministers can work as a team, can work cohesively but at the same time make sure that individual Back-Benchers, non-executive Members can be part of the process without necessarily reverting to the old committee system that we had. That is very much the tensions, if you like, that we were looking at. I think that is probably sufficient for me to say at this point before I hand over to Deputy Young.

Connétable of St. Clement (in the Chair):

Thank you, Deputy. I call on Deputy Young, who will introduce the first part of the report regarding the Executive. Deputy Young.

2 The Executive

2.1 Deputy J.H. Young of St. Brelade:

As a Member of the Machinery of Government Review Sub-Committee I drew the short-straw in tackling this part of the report - and I say that not in any negative sense - but I think the task today, as my colleague has said, encapsulates what we are trying to do for the whole of government. That is to try and find a way where Members of this Assembly can work in a collective, collegiate way in the committee system. Of course, there was a great deal of divided opinion and the task we set ourselves between the 2 extremes of creating a very centralist tight control more appropriate to party politics, or the Ministerial system from one extreme to another, where we revert to the all-inclusive, all Members in government committee system. The task we set ourselves is can we find a hybrid solution? We were conscious to the fact there had been several attempts to do this since Ministerial government had been introduced in 2006 following the Clothier recommendations on the way government should work in making Executive decisions. Those efforts have failed so we had some guidance, if you like, where previous Members tackling this job had not succeeded. Yet what we still have to do is to address the fundamental problems which are listed on page 2, the issues of uncertain accountability for where those decisions are made and who makes them, and whether or not our government machinery provides proper sound corporate governance in the way that public bodies are required to do everywhere. In fact, in U.K. (United Kingdom) Government with the Localism Act 2011, those principles have been espoused and public sector bodies in the U.K. are looking at this same issue. Questions of transparency and how safe we make our structures in decision-making. The recommendations we have here, turning to those, the first 2 are really just commonsense and administrative; I will not dwell on those. Those are listed in pages 16 and 17 of the report. It is about something that has gone wrong in the past.

[09:45]

New Members elected to this Assembly did go through some process of establishing what their interest areas are, what their aspirations were, what they could bring to government. All that seems to have fallen away and we are proposing that that should go back. They are administrative. Looking now at the big issues in terms of the Executive, the Chief Minister, the number one issue. Some took the view: "Well, all the Chief Minister is really is just the chairman, just the chairman of a committee". What we have is a committee of Ministers and the role of the Chief Minister is not substantial. There are questions about that. Obviously that is very unsatisfactory because it places the person in the position of Chief Minister without the kind of tools to effectively do what the public expect. There is no doubt that the public expect our Chief Minister to lead government. There is a great difficulty there because without a party political system in place, members of the public or States Members are required to elect that Chief Minister without having the prior knowledge of an electoral mandate based on policies. Recommendation 3 on page 18 is that we are saying that we want longer. The best substitute we have for this policy statement election is the candidates for the Chief Minister's vision for strategic policy. We are saying that it is just simply not long enough, that we are currently seeing those statements to give Members a chance to digest what will be the number one political mandate for the next 3 years when this Assembly elects a Chief Minister. We did debate other things about whether we should require people to declare that they are going to be Chief Minister candidates before the election and to set out policy platforms. We decided that was going to be a restriction and we therefore did not include recommendations but the longer and the more emphasis we can get on that policy statement produced by the candidates for Chief Minister, that is crucial to the whole functioning of government. That is recommendation 3. Recommendation 4 obviously makes commonsense. At the moment there is not enough opportunity to question the Chief Minister candidates when they come before the Assembly and present their policy papers. The critical thing now is on the question of how big should the Executive be? I think our view of the Machinery of Government Review Sub-Committee hardened as this work went on. Initially, because we spent over a year doing it, there was an even balance of opinions; those who thought that the Troy Rule that says that the Executive must be in a minority by 10 per cent was an unnecessary waste of space, it just interfered with everything we do and made life difficult and we should get rid of it. But equally there were fundamentally sincerely held views that that was absolutely an abrogation of the principle that Clothier proposed when Ministerial government was introduced. Of course, it also contravenes the way in which Ministerial government works elsewhere. As we went into this our view has hardened and the recommendation is strongly that the Executive should be in a minority. Obviously that has absolute impact on the numbers of Members. You will see no recommendation listed here on the number of Members because that all became subject to the completely separate debate which absolutely got completely lost and therefore that obscured our thinking. But our report addresses what we want Members to do. But if we have a minority, if you go with recommendation 5, we need to have enough Members to do the job, bearing in mind we have all these sub-committees and things which are really important parts of government. Recommendation 6 is clear to the sub-committee Members and I think there is a total majority, unanimity on this, that when the States of Jersey Law was written it was far too prescriptive. It prescribed all sorts of details of rules and has put us in a rule-bound situation, unnecessarily in some points. One questions whether this should have been in the States of Jersey Law? Could it not be in regulations or what could it be? So recommendation 6 is that there should be a flexibility to change the portfolios and for the Chief Minister to propose changes to the structures, the number of different Ministers, within the Troy Rule. Obviously, we see that as a very sensible part of going along with the policy statement produced by the Chief Minister because the Chief Minister will be best placed, once elected, to know what portfolio of Ministries that he or she needs to perform their policy mandate and then, having structured the number of Ministries they can then determine the

right candidates to propose. That flexibility does not exist. We have had lots of debates in this Assembly about a Minister for Justice, a Minister for Children. Personally I think it is ludicrous that our Minister for Property is not a Minister on his own. But we all have opinions. There are lots of issues there and frankly, the system stops the Chief Minister from doing that. We think that needs to change. We thrashed around on recommendation 7. We thrashed around a long time about the procedure for the election of the Ministerial team. There were a number of permutations. One was that the Chief Minister should have absolute power to appoint his own team, hire and fire power without recourse to the Assembly. The other was that every Member should be individually approved and that individual candidates could be nominated from the floor of the Assembly as Members wished. We have concluded and what we propose is a kind of a compromise. There are opposing views on this but the current compromise is that the Chief Minister will propose to the Assembly a group of Members, candidates for the Ministerial team and that then should be put to the Assembly, not *en bloc*. We believe that there should be a separate vote on each Member. We would not have the situation where we have now, where we can have chopping and changing *en route*. It would be a simple yes, no, on each of the choices. Going back to the recommendations of Clothier, the proposal is that the Chief Minister would have 3 attempts at that. Of course, if the previous attempts had failed, the Chief Minister would know which of the appointments had not been agreed and would be able to review. We think that procedure is a compromise position and on the third attempt, if the Chief Minister's slate of Ministers is not approved - and you only need one of the candidates for it not to be approved - for the thing to work then the election would fall away and we would have to go through it again. That may seem laborious but it was a way that we concluded, as a Sub-Committee, of trying to find a way where there are sharply divided opinions between those 2 extremes, at finding a solution that we believe allows the Chief Minister better control over their choice of Ministers, which they do need, and not to have Ministers on their team that the Chief Minister thinks would be completely contrary to the mandate that they put forward when they were elected but at the same time allows the States a veto over those appointments. I can see from Members' views that they are not particularly impressed with that but there we are. That is the hybrid proposal. [Laughter] You see the difficulty of this task. Recommendation 9. If you just give me a moment, please, to refer to my notes, here. The issue is that at the moment we see this chopping and changing of recommendations being done too quickly. There is just not enough time. At the moment it is 2 days so the suggestion is that they will have 5 days after the process of the Chief Minister being elected to be able bring forward his or her candidates to the Assembly. I think accidentally I have covered recommendations 10 and 11 *en route*. I apologise for that, mixing them up. I think those are the recommendations about the starting point of what happens when the Chief Minister is elected and a Council of Ministers is formed. Of course, all that happens very quickly. I keep going back and it is referred to later, the Machinery of Government Review Sub-Committee want it to be policy-based because it is absolutely essential that we have less focus on individuals and more on policies because we are far too dependent upon individuals. There is no doubt about it, that we are a small community and we are going to have some outstanding Ministers. We are going to have some average Ministers and we are going to have some poor ones. I am sorry to say but that is the reality and I know those people and I remember the debates in the Electoral Commission: "Oh, if we make these changes we are going to have these super-heroes coming through, these wonderful ..." No. This Assembly reflects our ordinary community and we are human with strengths and weaknesses and we will have candidates with all their foibles and the lot. But we want to be more policy-driven and less dependent on personalities, so policy statements, proper mandates and so on. Of course, without a party political system that is really difficult. I am not advocating one because I know the Jersey public does not want that but there are those who see that as a solution. But they are in a minority. What happens when the Council of Ministers gets going? I do not think it was intended ... there were those that think that the Council of Ministers at the moment is functioning like a committee. I am told, and of

course I am very new in this Assembly, that things are much better now than they used to be. **[Approbation]** But, of course there are those that see ... **[Interruption]** No, I have learnt that. My naivety left after the first day of elections but I still have plenty of naivety left. There were those that see the Council of Ministers at the moment as some kind of medieval baron, some kind of feudal system where Ministers sit there completely in command of their own area and defend it like the plague against all-comers for resources and cross-committee issues, all these turf-wars. I do not think when you read Clothier - and I know it is not very popular at the moment but it is really worth re-reading Clothier on this - that it was never intended that Ministers act as one-man bands. Absolutely not, because it is riddled with how Ministers need support. They need to work co-operatively with others and other Members to reach their decisions. I think where that kind of debate took us ... we have to face this issue of collective responsibility. It is a real tough one. At the moment we do not have that. Ministers are completely free to take their own positions. They can run the civil servants in all sorts of different directions and so on. This is not satisfactory. I know there are those that say centralisation and giving us collective responsibility will enhance the power of the centre. Well, at the moment if they do not have it, they cannot do the job effectively and that is the overall view of the Machinery of Government Review Sub-Committee. We need to give the tools to the Council of Ministers and the Chief Minister to do the job. Collective responsibility. But we could not define what that would be so somewhere in here, and I am just trying to find it, we have said that there should be a discussion at the Council of Ministers in agreeing what the rules are about that at the Council of Ministers' election time. In fact, we believe this is the sort of discussion that would go on at the time the Chief Minister selects their candidates before they come to the Assembly. I have just been told recommendation 14 lists this. Now we come to the role of Assistant Ministers and a huge amount of debate about this. I do not think there is any doubt that there is a strong push for more Ministers but, of course, if we retain the Troy Rule we can have less Assistant Ministers. It is a problem. Of course, the other problem is that we have a massive range. All the interviews showed we have everything from complete delegation and real power in an Assistant Minister, full access to information, full delegation to frankly, just being on the periphery and not being trusted to do anything and not knowing what is going on and just being a repository of blame if things go wrong. **[Approbation]** This is not acceptable. Assistant Ministers told us this.

[10:00]

How can you have this complete disarray of functioning? We have said this and we have put a number of recommendations in here to strengthen the role of Assistant Ministers. This is recommendation 17 that they should be the person who would make the executive decisions when the Minister is not available and that they should attend the Council of Ministers and that they should see all the papers. We have heard talk about Assistant Ministers going to the Council of Ministers not even getting the papers or maybe getting them the day before, not being able to brief themselves, which is just totally unsatisfactory. There has to be this access to information. It seems to be the system is defensive of that information so that needs to be changed. Therefore, recommendations 18 and 19 deal with that. We seem to have caused a lot of upset by this word "Junior" Minister. There was a body of view that says get rid of them entirely. They are a complete useless thing **[Laughter]** but I have to tell you, no. The Machinery of Government Review Sub-Committee love Assistant Ministers but we do not love their name because it has almost become contaminated. It has become a poisonous, contaminated name. We searched around for another name. It is not because of the individuals. It is just because of the lack of clarity of the role and the fact that we had a recent upgrading of an Assistant Minister to a Minister because of that same issue proves that. I think that the word "Assistant Minister" is just not seen with enough respect. I think in the UK, they talk about Junior Ministers, Under Ministers. There needs to be a new phrase. I have to say that the Machinery of Government Review Sub-Committee

are not wedded to Junior Minister, entirely open to any other phrase but there is no question that some of the Ministerial portfolios are so big that they cannot do the job. Okay, I am being pointed at and told I am out of time. I am going to close and hand over to my next colleagues, thank you.

Connétable of St. Clement (in the Chair):

Thank you, Deputy Young. This section of the debate on the Executive is now open to Members. Senator Gorst.

2.2 Senator I.J. Gorst:

I want to start by welcoming many of the recommendations that the Machinery of Government Review Sub-Committee have produced in their report and I think we should all appreciate that this in no way has been an easy task. In actual fact they were slightly pushed ashore, as it were, with the recommendations of the Electoral Commission and changes to the makeup of this Assembly. But they have picked up or set sail again and come forward with what I think are some very good recommendations, so I would like to thank them for that and thank them for their determination in bringing forward this report. Firstly, we should recognise that a number of recommendations that the Machinery of Government Review Sub-Committee have made reflect largely recommendations that the Clothier report recommended over 10 years ago. Clothier, at the time of publishing that report, hoped that we would resist the temptation to pick and choose. Unfortunately, as we now all know that temptation was not resisted because temptation is difficult to resist. Therefore, I am particularly pleased that what the Machinery of Government Review Sub-Committee has done is sought to rectify that in some way and bring forward some of those recommendations to try and rectify the non-resistance of that temptation. If I speak about the specific suggestions in regard to the Executive, I give my support to nearly all of those recommendations, certainly regarding Ministerial appointments and portfolios. That is recommendations 6, 7, 8, 9, 11, 21, 22 and 23. I am not going to go into them in detail because otherwise we will be here all day. My only reservation, and when the Machinery of Government Review Sub-Committee visited me I made a suggestion around how could we deal with ensuring that the Assembly was still appropriately involved in approval of Ministers while at the same time allowing the Chief Minister to bring forward their particular slate. We had a discussion at that meeting about whether that approval could be sought on a Minister-by-Minister basis or whether it was better to do it on a slate basis. On balance, I understand exactly the problem that the Machinery of Government Review Sub-Committee is trying to solve by suggesting it should be done on a Minister-by-Minister basis but if I refer back to what Deputy Young said about trying to ensure that this is not about personalities but about policies, I fear that on a Minister-by-Minister basis we may again drop down to the level of personality rather than policy. Therefore, although I could be convinced in the opposite direction that a slate approach would be better, dependent on how the process was run on the day because, let us say for argument's sake the second Minister of the day was refused by the Assembly the Chief Minister then had to go away, it would not give any direction other than on that second Ministerial appointment what the Assembly felt about the other 8 Ministers. We would have to think about the mechanisms of that working because the Minister might want to then change some of those individuals or those portfolios around. I understand that it was intended, if I read the report correctly, to give a steer to the Chief Minister, although I am not sure that it would give a steer fully in the way that the Machinery of Government Review Sub-Committee was intending and the problem that they were trying to solve, I am not sure would be fully solved. Can I also say, and this is, I appreciate, a thorny subject and one which again, bearing in mind Deputy Young's comments, we need to try and move away from the individual and personality issues to how we want government to function, and that is that I support the recommendations regarding collective responsibility which might seem on the surface a difficult issue but there would need to be parameters set around matters of conscience, matters of long-held policy and opinions for

individuals coming into a Council of Ministers, rather like there is in the Isle of Man system. They seem to make collective responsibility work well outside of a party system. I support collective responsibility but some of the technicalities of how it would work, how Ministers would be expected to act collectively when they had long-held policy opinions or they had matters of conscience would need to be thought about and factored into such responsibility. Those recommendations are 12, 13, 14 and 15. They will really strengthen the operation of the Executive. If we strengthen the operation of the Executive, that allows proper accountability and it helps Scrutiny to function as well and hold Ministers and the Executive to account which, if we are stepping back from our individual positions, we would accept does not work very well today. It works far better than it has in the past but we still need to strengthen that so that Ministers and the Executive can be properly held to account by Scrutiny. Can I just then talk about minority government, recommendation 5, and the support of the retention of the Troy Rule? I am firmly of the view that, in the absence of party politics, the retention of minority government is absolutely sensible and it is a principle that we should abide by. The question is who are the Executive and what bit of the Executive should remain in the minority? Surely it should be a voting minority. If we accept then that the Council of Ministers are the Executive and other Members might want to talk about the Assistant Ministers, Deputy Ministers or Junior Ministers. I do not particularly like that term, and Minister of State is one that they use in the U.K. but I am not sure that that is one that we would want to incorporate into our system. But if we say that the Executive is the Council of Ministers and the one or 2 Deputy Ministers, Assistant Ministers within that department, and that would be the only group that we would expect to vote *en bloc* then we could consider whether there could be more people carrying out that sort of function as well but they would never, other than when they were voting on a proposition from their own department, be expected or be considered to be part of the Executive. We need to make sure that there is a voting minority at all times. I will not say too much, I do not think, about the Assistant Ministers. I think the recommendations regarding changes to the timing and the process surrounding the appointment of Chief Ministers and Ministers hopefully are largely non-contentious and are, in fact, a good piece of housekeeping. I just want to comment on recommendation 14 suggesting the shortening of the time necessary for the development of the Strategic Plan. That seems to be a reasonable idea but it depends upon whether the Assembly also adopts collective responsibility because if it does not, the time built into the current system is needed to build consensus, firstly at the Council of Ministers and then across the community and in the Assembly. The Machinery of Government Review Sub-Committee makes some recommendations around the changes to the Strategic Plan on page 33 of the report. If 2 of those were to be approved i.e. perhaps it was a Council Strategic Plan, or it was a different document altogether, then that shortening of timescale would not be a problem but if it remains as it currently does, then it does not give enough time to deal with it. Finally, recommendation 4 suggests that there should be an extended period of up to an hour of questioning for each candidate of the Chief Minister. I think it is a nice idea. I am not sure that it is something that I would want to inflict on this Assembly or on the listening public. 40 minutes is a good length of time and if we are moving much more towards what I think the Machinery of Government Review Sub-Committee is proposing, i.e. the Chief Minister's policy document really flows through to the Strategic Plan and is the mandate for that government which I fully support and I think is exactly should happen, I am not sure then that Members need 40 minutes to question the individual. It should be about the policy that the Chief Minister is standing on and bringing forward. That is exactly what we tried to do within the confines of the current system of me bringing forward my manifesto, incorporating that into the policy statement, other Ministers bringing their manifestos and trying to incorporate that into the Strategic Plan and I think that is exactly the process that we should be following but it perhaps should be clearer than it currently is.

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

I like Deputy Young **[Laughter]** so I feel immensely sorry for him and indeed, all the rest of the members of this Machinery of Government Review Sub-Committee who have beavered away for a best part of a year to try and address some of the issues and failings that we all know exist in this Chamber.

[10:15]

We always refer to reports that come to this House and end up on some dusty shelf somewhere and never opened again, and now I am tempted this time personally to go find the highest, dustiest, most remote shelf and stick this on it. I was warned that something messy was coming when I heard in the first 3, 4, half dozen lines, first paragraph certainly, of what people had to say was in the absence of party politics. In the absence of party politics we have a mess. We juggle here and we adjust there and, yes, we want to get some decisions made on policy basis and not personality basis. That is an admirable aim but I do not think this does it. I am struck by the Irish joke: "How do you get to Killarney? If I were you, sir, I would not start from here." That has been the problem of this Machinery of Government Review Sub-Committee. You would not start from where we are to try and create a proper system. I am also struck by the principle of Ockham's Razor. The more simple an idea, the better that idea is. The more beautiful, indeed, it says, is that idea. This is far from simple. I recognise that when I came - I think the speaker did as well - to recommendation 11. The Chief Minister designate should be able to propose a maximum of 3 Ministerial teams. My immediate reaction was: "And then what?" Then the Chief Minister falls? What? We have got to a dead end? We have not got a government. Have a new election. Is that what we do? The fact that that is there and is a complete dead-end says it all for me. The speaker then said: "We want to give Ministers the tools to do the job." I think he then said: "But we do not know what tools to give them." Let us give them a rake. Let us give a spade. Let us give a little trowel. We do not know. Laudable aims and a lot of effort but, please, from what I have heard so far I do not think I have heard anything which will make a great deal of difference apart from: "We want to give the Executive more power." I am thinking: "Yes, in the old days the Executive had less power and that is because it had a committee system and people knew what was going on." For the first time for ages, I must have had 5 minutes spare - what was I doing - I went to the website and looked at the agenda for the Council of Ministers. It did not take me long. It did not take me 5 minutes. Item A agenda, transfer of items to agenda B. There was nothing to see. It was all top secret. Everything was under B. That is one of the things that is going wrong. Address that issue. Maybe we do elsewhere. Maybe we will come on to it. Then that might be useful. A bit more open, transparent government. That would be a good thing. But chance would be a fine thing. Give the Executive more power? I do not think so. Not in my book. That does not work. They have far too much power as it is. Institute, what is it called, collective responsibility. Where has the Machinery of Government Review Sub-Committee been for the last year, last 2 years? Vote after vote, the Ministers line up in support. The Assistant Ministers, very often, with a few notable exceptions, all line up as well. We need more collective responsibility? I do not think so. We have seen it already. It happens day in, day out in this Chamber. Then finally, we have some sort of debate on changing the cap badges on the Assistant Ministers' caps. I have not heard anything here so far that I think is worth supporting. I think the problem lies in ... yes, there is a problem with getting to policy. Yes, there is a problem in getting a link between people's votes and the policy that appears in this Chamber, whether or not we adhere to that policy but the answer to that does not lie in what we have just heard. It lies elsewhere. A good attempt to address some issues but this does not do it. Please let us not see wholesale changes that are being proposed so far on this particular suggestion.

2.4 Deputy R.C. Duhamel of St. Saviour:

Ockham's Razor. Yes, I use it frequently. **[Laughter]** It is a blunt instrument. I think one of the difficulties we have - and it is highlighted on page 8 and Deputy Southern referred to it in part - is that of the elephant in the room. When we moved to the new Ministerial system what we did not do when we set out the States of Jersey Law was to adequately define the different functions of different Members in the House and indeed the States Assembly. The central decision-making power was passed over to the Ministers but in doing so what was forgotten about was the opportunity to tie in not only to an in-House democratic efficient system to allow those Members who have been voted here on a particular manifesto to try and come together and persuade whoever is going to be running the government of the long-term strategies that this Island is wishing to endorse. It has been long said that we have problems with the electorate. We are struggling to get more people to turn up to vote and indeed there are counter-movements in the U.K. and elsewhere where localism is beginning to creep in. Localism is not government from the centre by a Council of Ministers or an equivalent government, it is putting people back into the mix and allowing people collectively to do the things that their elected representatives are not wanting or able to do. This is clearly evidenced by groups setting up like Avaaz, A-V-A-A-Z, with Mr. Ricken Patel, whereby the Internet is being used to greater effect to get people to come together and to collectively implement the things that their governments cannot or will not do in ways that groups of people can do. It has always been an issue as to how do we get the continuity from wishing to be here as representatives of the people who elect us on the basis of trying to bring forward the things that they would wish us to do or at least defining systems whereby those requests can be delivered up to the central Assembly and further on to the government system in order to properly define the direction of the Island. We do not do it. I have struggled on the Council of Ministers, as people can probably appreciate, for a long while to try and implement long-term strategic planning as a particular aim. Although it has been picked up by the Council of Ministers it has been a long while getting to where we have got and we are still not quite at the end of the tunnel. We do have a mechanism that is being formulated at the moment as to how we can begin to work together in order to put forward sustainability as the key driving-point of the government actions and to get a balance between all the individual Ministers that would necessarily comprise best decision-making in any particular area. There is no doubt in my mind that we do have to work together and in doing so we have to find clever ways to bring those Members who would not wish to work together to come to the table. But I think we are getting there. But what we are not doing is finding mechanisms to tie us back into what the Island wants us to do, what flavour of government the Island wishes us to be and to set out on a regular basis in those particular departmental areas, which require expressions of thought and thinking as to what the longer term future might hold for us in a way that allows more people to participate. We have a suggestion that in choosing a Chief Minister the Chief Minister, in the absence of parties, is going to be the party leader but we do not know what we are going to be voting for because it has been suggested that it would be difficult or cause repercussions to have potential Chief Ministers to come out well before the elections take place and to indicate to the public whose votes they will be requiring to get in, what they would wish to do in order to reflect the local ideas and directions. If we do not have a system of that type then potentially we will be voting blind and we will be doing what we are doing to basically vote for ordinary Members who come forward with particular manifestos promising this, that and the other, only to find that for whatever reasons, when they get to the States Chamber they are not particularly popular with their colleagues or well-understood, and the opportunity to reflect their voters' preferences disappears. I think this is really what government is all about. It is not to elect certain persons who will be in charge and because they are sound people they are automatically going to be expected to give overall direction which is going to be the best on every occasion. There are 2 ends of any particular argument but I think that the way we are moving at the moment is still to consider appointing people on the basis of their abilities to come forward and display some kind of administrative or diplomatic kind of efficiencies for getting the jobs done without displaying any

interest or whatever in the setting out of the longer term policies which are the basis of what they should be doing. We did have the suggestion by the current Chief Minister when he was elected that we would have, perhaps for the first time, an opportunity to pool all of the individual manifestos together into some kind of strategic document and to perhaps produce a matrix of different policies that individual Members who had been voted in were wishing to pursue. That did not really manifest itself in any particular shape or form that does adequately represent all of our views in a way that consensus-building is expected for any parliament or government. In the absence of political parties we are making the job a lot harder than perhaps it should be. I think I would have preferred to have seen, although it is very difficult, a greater discussion as to whether or not, in moving in the directions that are being suggested, which generally, in keeping with Deputy Southern, I agree with, we are passing over or wanting to pass over more powers to the Council of Ministers without knowing what it is they might represent. I think I would have preferred to have seen a greater discussion on the reasons why we cannot have some system that adequately reflects why political parties are a no-no in Jersey. It has not always been the case. If you look back in the history books, there were the reds and the greens and the roses... Laurel and Hardy. No, it was not Laurel and Hardy. Might well have been. But we have had kind of party systems before and I think one of the things with a party system is that you get what you vote for. There is an organisational ability within the party structure to define the bigger things that this government has tried to put forward.

[10:30]

There have been some attempts at the moment within Council of Ministers to direct other departments and that is potentially extremely dangerous as well in the absence of a clearly defined and centrally agreed overall direction. We have set up on occasion 3-way Ministerial oversight groups, 2 Members by default. So it is the Chief Minister and the Minister for Treasury and Resources and one other. If the voting structure is applied to suggest that whatever comes out of a 3-way Ministerial oversight group is the way you are going to play it then you know what the outcomes are pretty well going to be. So that raises huge issues as to the ability of the individual Ministers who are the legal persons responsible for their particular departments to bring forward the ideas and the policies that they have been voted in to bring forward. So we have only looked at the tip of the iceberg on this one. Before I could give any support to overall collective responsibility in the narrow sense and in the wider sense whereby the Council of Ministers, in the absence of clearly stated overall long-term aims have the ability to out-vote or veto any other groups of Ministers wanting to move in a different direction and I think we are just kind of lining ourselves up for problems which are not going to be adequately sorted out in a way that is open and transparent and ties us into what the local democracy would like us to do. One last thing; I have always asked myself if it would be nice in bringing forward this strategic statement that you have a flavour as to what type of direction it was going in, in the sense of was it a left or a right or Labour, Liberal or Conservative or any other kind of party in between. What type of flavour and overall direction this government is coming in. I do not think we have ever really done that. I do not think we have ever really considered that and in a lot of issues we appear to lurch from one situation to another situation and try to solve the problems in a piecemeal fashion which is what the problem is all about. Governments under party systems are joined up and co-ordinated and I think we really have to give a bit more thought as to what the next party is going to be.

2.5 The Connétable J. Gallichan of St. Mary:

I almost had a bit of *déjà vu* there of people discussing what they wanted to see in the document not what was in the document. We are at a different phase of the consultation. Personally, I would like to thank the Machinery of Government Review Sub-Committee for the hard work they have done and particularly the Privileges and Procedures Committee for arranging this in Committee debate to

enable us to air our feelings about the recommendations they put forward. This is one of the most important debates we are going to have had for some time because it is fundamental to how the next Assembly will be constituted and the next government will function. Everybody, and especially Islanders, deserve better and should get better. Nearly 3 years ago a group of Members from all across the areas of the Assembly, and I think Senator Breckon, Deputy Vallois and myself remain ...

The Connétable of St. Clement (in the Chair):

Sorry to interrupt you, Constable, but the States are not quorate. I invite Members who are in the precinct to return to their seats. We are now quorate. Please continue, Constable.

The Connétable of St. Mary:

It is a rare gift that I have to empty the Assembly and it is moot that I was just saying how important I felt that this debate was for the Islanders as a whole, that there are so few people here. 3 years ago, a group of Members from different areas, different aspects of this Assembly with different viewpoints and different hopes and aspirations came together in an almost unprecedented way to work together with senior officers to tackle this issue because we saw it as central to making a more effective, efficient and inclusive States Assembly and government. We hoped then to have agreed, changed and implemented in time for the new Assembly, this Assembly, and we were fearful that if this was not achieved, then the States Assembly would limp on in the same unsatisfactory manner for another 3 years. Unfortunately, as we feared, no changes were made then and after the elections, the new government and Scrutiny functions were constituted once again in a less than optimal way. In the final year of this Assembly, we cannot allow this to happen again. Changes are needed in the processes that will take place at the very start of the next Assembly and unless we grasp the nettle now and individually give the Privileges and Procedures Committee a clear steer as to what we think is desirable as much as to what we cannot support or accept, then nothing will change yet again. I warned the Machinery of Government Review Sub-Committee, the Privileges and Procedures Committee., that as much hard work that has gone into this, the hard work begins after this debate. If we are to have a truly efficient, and this is crucial, a truly accountable government from the off after the next elections, then certain fundamental changes have to be agreed now to take effect before then. The Privileges and Procedures Committee have decided to structure this debate in sections. I did have a word with the Chairman about my concerns about that but I do understand the reasons because like other speakers, I have some feelings about certain recommendations that change depending on whether other recommendations come to fruition. But for the recommendations deemed to be part of this first phase, I will briefly go through so that the Chairman can know what my personal views on this are. I welcome recommendation 3. For me, recommendation 4 is not palatable. As has already been said I think 40 minutes allocated to the Chief Minister's question time, already double that for the other appointments, is enough. I think there is a risk that you are fishing around at the end of the time otherwise looking for questions simply to fill the time and when we are going to have, hopefully, a well-contested election for the office of Chief Minister, then we are risking a very protracted sitting. I do not see how, if we have 3 or 4 candidates that would take almost 4 hours to do, we would keep everybody isolated. I just do not think it is practicable. Recommendation 5, the Troy Rule, is a key point for many. I personally think that in the current scenario it is important and I would not propose to remove or alter it at this time. But I think it could be reviewed in the future, because I think if we get the machinery of government right and once people are convinced as to how it is working in the future, this is something that we can look at again on its own. Broadly speaking, I support recommendations 6, 7, 8 and 9. I am not convinced that recommendation 10 is robust, it is neither fish nor fowl, really, because up to this point the recommendations we have been looking at are broadly in line with Clothier. This one moves away

from it and I do not see the need for this recommendation. Having heard the Chief Minister speak earlier, I tend to support his views that the personality issue could be heightened if we accept this recommendation. I support recommendations 11, 12, 13, 14 and 15 but with the caveats that have also been mentioned that there needs to be a carve out for matters of clear conscience and for things put in manifestos, *et cetera*, and clearly stated at the time of election which the Chief Minister, if he selects that candidates for a Ministerial post, will be well aware of and will need to be able to work around. I do not support the title Junior Minister. I am quite relieved and quite heartened that Deputy Young was not wedded to it. I think something else could be found although I am offering no suggestion at this time [Laughter]. At the present time, I do not wholeheartedly support recommendations 17, 18, 19 concerning the role and access rights of Junior Ministers, as we will call them. This is due to a lack of clarity over proposals for appointment. Unless I have missed something, there are not any clear recommendations in the report for the appointment of Assistant Junior Ministers or Deputy Controller Ministers or whatever. So whether the Ministers continue to appoint their own assistants or whether that comes to this Assembly makes a great deal of difference. On page 27 of the report, it is clear that the Privileges and Procedures Committee can envisage a time when there would be a States Assembly involvement because they note that: "For now we note that while the rejection of a nomination for the post of Junior Minister might be unfortunate, it should not prove catastrophic for the Minister or Chief Minister in the event of rejection." In my view, it is crucial that if the Assistant Ministers are going to be appointed by the Executive, then we can accept 17, 18 and 19 but if the States Assembly can impose Assistant Ministers on a Minister, then I think it would be quite difficult for the responsibilities to be delegated in that way by organisation. I accept recommendations 21 and 23, but before accepting recommendation 23, I would like some clarification, if that can be given. The final sentence on page 30 reads: "We would not expect the Chief Minister to fall if his or her revised list of Ministers was rejected, neither would we propose that the Chief Minister be forced into 3 attempts to reconstitute their council successfully." So what does happen if the States do not endorse the Chief Minister's reshuffle? If nothing happens, then what is the point of recommendation 23? I may have missed something but I think I would like that clarified before I could adopt that. I think that takes me up to the limit on that particular section. I would like to close by saying I am urging all Members who are here to say something about what they really consider to be important because it is vital that the Chairman of the Privileges and Procedures Committee. gets an indication from this Assembly, that the working committee can be focused on to what is achievable in the final vote because if not, we will go into the next elections without a satisfactory change to the machinery of government and the Island, as a whole, will be the loser in that situation.

2.6 Senator S.C. Ferguson:

I was intrigued by the talk of the variation of Ministries and I am looking forward to the debate on the variation of Scrutiny. The other thing is, we have had a lot of talk about collective responsibility and everybody is very keen on it but I am quite certain that people listening, if there are any people still listening ... and I am a bit exercised on this, too. How do we effect collective responsibility in the legislation? Has the Attorney General been consulted and will somebody explain how the legislation will be framed, what the framework will be, to ensure that there is collective responsibility. It is one of these wonderful airy terms that people talk about but how are we going to do it? That is all I have to say at this point.

Senator I.J. Gorst:

Would the Senator like to give way?

Senator S.C. Ferguson:

The Minister can have the floor.

Senator I.J. Gorst:

You cannot have collective responsibility in legislation, nowhere else does that, you have to do it in a Code of Conduct that the Ministers agree to.

Senator S.C. Ferguson:

Which is really quite interesting because we were told some of the amendments to the original States of Jersey Law took away any vestige of collective responsibility. Has anybody consulted the Attorney General?

The Connétable of St. Clement (in the Chair):

Deputy Tadier, I am going to look for your guidance? The next 3 speakers I have are all members of your Machinery of Government Review Sub-Committee. Would it be better if Members other than members of your Machinery of Government Review Sub-Committee spoke and then ...

Deputy M. Tadier:

I am happy with that. I did want to just address a few issues which might be helpful but we are here to listen to the States Assembly first and foremost, so I think that we hold back.

The Connétable of St. Clement (in the Chair):

We will do that and come back to the Members of the Machinery of Government Review Sub-Committee. Thank you, therefore I call on Deputy Higgins.

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

2 of the key principles that I want to see in anything we do is transparency and accountability and I think the States has failed on both. Deputy Southern, when he mentioned about looking at the Council of Ministers' minutes on the Internet, everything was in the secret part, part B. So there is no transparency there. We know that we ask for information and we are denied it. We try to hold Ministers to account and very often we fail because it is fudged and there are issues.

[10:45]

So we do not have transparency. We do not have accountability. Whatever system we come up with, if they do not have those 2 key elements in it, I will not support it. I want to address collective responsibility. Collective responsibility sounds like a good idea, possibly, and one of the things that is needed is that if you are going to have collective responsibility is all Ministers are treated equally, all Ministers are consulted, all Ministers have a part in the decision-making. But the Council of Ministers we have at the present time consists of about 3 or 4 different tiers. You have the inner-grouping, which is Senators Bailhache, Senator Ozouf and Senator Gorst in that order. They are the principal decision-makers. **[Laughter]**. They are the people who are making the main decisions. I am afraid I have upset Senator Maclean because he thought he was in the inner-group when I said it on the radio that he was not. My information from sources within the Council of Ministers is he is definitely not in the inner group. Where Senator Le Marquand is, I am still not sure. **[Laughter]**. Well, he is there at the present time but where he is within the Council of Ministers, I have no idea. I know other Ministers I have spoken to have said: "Were you consulted on that?" Or: "Do you agree with this?" "No, I was not consulted but I do not agree but I have to support it." "Why?" "Well, because I need money for my department, or I need support for my department." That is not how the Council of Ministers should be operating and I believe that each Minister should have an equal part to play in decision-making. So I am telling people out there what I have been told, what I believe is correct, based on information from numerous Ministers, not one, not 2, but people who are telling the truth of what is going on behind the scenes. First of all, if we are going to have collective responsibility, they all have to get access, they all

have to be involved in the decision-making. The Troy Rule is paramount in the absence of party politics because without it we will not be able to hold the Executive to account because if they are the dominant group, you can forget about Scrutiny, it is not going to be worth the effort, you can forget about Members trying to get whole government to account or to try and get greater transparency. If we do not have party politics and you have a block that can step in and replace the existing block with alternative policies and go to the electorate, it will never work. I also happen to believe that what the Chief Minister is suggesting about, well, he wants it both ways, collective responsibility, having some Ministers and Junior Ministers on the inside who are bound by the vote and others is a total nonsense. We have enough toadies and wannabes in the House already who are people who support the Council of Ministers because they want to be a Minister or they are an Assistant Minister who feels they do not want to blot their copy-book because they want to stay as an Assistant Minister. It is the be-all and end-all for some people. I just do not see any change that would be acceptable unless there was greater transparency, greater accountability and the Troy Rule has to be left in position. I will just leave it at that for the moment.

The Connétable of St. Clement (in the Chair):

Deputy Martin?

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

I will keep it brief because I am on the Privileges and Procedures Committee but I was not on the Machinery of Government Review Sub-Committee and when it came back for about the sixth time I said: "Give it to the House," because I feel a bit like Deputy Southern, we are in a bit of a mish-mash here. I listened very carefully to what the Constable of St. Mary said and I get this desperate feeling that we have to do something no matter what. Three years ago she was right. We were nearly at something but it looked too much like a committee system involving a lot more people. But it is a lot better than what we have here. The first speaker to uphold this was Senator Gorst who is, obviously, our Chief Minister and be careful what you wish for because I think Deputy Higgins has just said, what is collective responsibility and the word "accountability"? The Chair of the Public Accounts Committee and the Chairmen's Committee think they are under collective responsibility and who would be responsible may give them more clarity. I absolutely do not agree. The nuclear weapon is to get rid of the whole Council of Ministers if one is wrong because it should fall on the chief, and that is the Chief Minister so he falls and everyone falls. Do you think this is going to happen many times in Jersey? You get the system, you get the people and that is really where we are. I will have a lot more time to discuss this around the table. I am very concerned about what the Constable of St. Mary said about Assistant Ministers being one, and I have no beef with my Minister about how much information I get. Politically across the divide, myself, the Minister and the other Assistant Minister, the Constable of St. Peter, are probably quite different, and I think that makes for healthy debate. Unfortunately, it does not happen in a lot of other Ministries and I do not necessarily agree with Deputy Higgins when he says people are toadies, they want to be a Minister - and I have said it so many times - their actual politics, they might be Head of Scrutiny or an Assistant Minister but their politics are exactly the same as the Council, so why would they question them? Why would they go against them? They are going to vote with them anyway. I do not think this does it. Where are we now? October. Probably a week from now next year, we will be having an election or the election around about that time, mid-October somewhere, and I do not think we should be rushing into this. I do not think this does it. I have always said I will stand on my own. I was probably one of the only ones or the few in the House when it did come to it under the other thing, I think it was Senator Breckon's actual proposition but it was very nearly there, which nobody ever went back on and looked at and said: "What did not get through?" The Assistant Ministers, the Constable of St. Mary, I do think they should not just be selected. If it goes to the Council of Ministers, the Council of Ministers can have

the whole lot, all-in, all-out. If they want other people to work with them, they should be elected by this House. That has always been my philosophy and, if you want them to have extra responsibility, which is to say it might happen in some - I have only been the Assistant Minister for Health and Social Services so I cannot say what happens in other departments - but I do not have a problem. But if somebody does have a problem, which they have told this Machinery of Government Review Sub-Committee, then resign, because I certainly would not work for a Minister who did not keep me informed, but if you cannot resign you should be elected by this House with the powers that go with the job and then that would be okay. You cannot have it both ways. You cannot say: "I went to his assistant or her assistant and they are not telling me anything." If you are elected by this House, you get the powers given to you by this House and the responsibility and the knowledge. I have grave concerns of where we are. I have a lot more to say on the next part because they are even more concerning. It is all right if you think it is a counterbalance. With not having parties, what would a shadow Assistant Minister appointed by a Minister or appointed by the Chief Minister be? Would it be another friend?

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

I also have grave concerns as to where we are because it is now an hour and a half since we have started, and I thought this part 1 of the 4 sections was the most straightforward and less controversial. There we are. I do not intend to speak for very long but I would like to throw my general agreement behind the views given by both the Chief Minister and the Constable of St. Mary. I have a problem with recommendation 6 and that is the ability of the Chief Minister to choose his portfolios. I question whether that is not completely inconsistent in a good way in moving forward because I cannot see how we can go out of one session of an Assembly with an Economic Development Department, for example, and potentially go into the next session when we do not have one. I would like a lot more explanation as to how this movement of Ministries would happen. I would only like to add at this point that I also feel that working together is the secret to everything that we should do. With that in mind, I would like to say that I think it is definitely important that not only does the Chief Minister get to have the Ministers he wants but it is also important that Ministers get to pick their own Assistant Ministers or Junior Ministers. I cannot agree with Deputy Martin when she says that Assistant Ministers should be chosen by the House. I can think of nothing worse than trying to do a job and be given an Assistant Minister that I did not particularly want to work with. I think it is important that people pick their partners and they pick people that they can work with, and I will say no more.

2.10 The Connétable of St. John:

I think there was a saying when I was young: "You have got a carbuncle on a boil", and this is what we are getting to here. I was here in the early 1990s when we started looking at Clothier and it went on and we are still doing it now, how Clothier was going to resolve all our problems. We had a system that worked and it worked well although it was slow, but not as slow as some of this because this had been going on for years, this debating a way forward. Yes, we might have had to look at our neighbour once or twice, not under my time but prior to myself, when they re-debated the reservoir at Grouville or down St. Saviour's way. That came back to the House twice but in general things happened. We have a system here, which is a hybrid of the local government in the U.K., which Clothier cloned to come up with Clothier, of which it was put in place in local government, which has now failed in some of those governments and they have returned to the committee system. Some of those local government areas, they have returned to the committee system, so I do not have a great deal of faith at all in Clothier. If it is not working over there where it all came from, why is it going to work here? As for Assistant Ministers, and call them what you will, but I have been to the Council of Ministers as a chairman of a Scrutiny panel, to be met outside where they have their luxury piece of salmon, ready to go in for their lunch and all their

other fancy food for the Council of Ministers. I have been there, waiting outside, and I have seen an Assistant Minister – who was the Assistant Minister of a department that we were discussing yesterday - and I said: “What are you doing outside?” She said: “I am waiting to go in to the Council of Ministers because my Minister is away.” I said: “Why are you not in there already? You should be up to speed.” “No, I have never been told what I am supposed to be doing.” The lady is no longer in the Chamber but I thought: “What is going on? This is an Assistant Minister in charge of a big department while her Minister is either off-Island or ill”, I do not know what it was, and I thought: “This is incredible.” But that was not the only time over my time in this House when I have spoken to Assistant Ministers who do not know what their actual portfolio is or supposed to be. You challenge them. You get to know pretty quickly if they are up to speed but, most of the time some of the Ministers themselves are not up to speed. I had a Minister yesterday have a little chat with me in the corridors of power and ask me for some information on something that had been going on for 12 months. It has just come to a head within one of his departments and he is now trying to resolve it 12 months after the issue started. It was quite a simple little issue because I gave the information to the senior officer who was dealing with it at the time. I said: “Do X, X and X.” He took a much longer route that has taken 12 months and it is still not resolved. Now it is on the Minister’s desk. What is going on when silly little issues take 12 months for the Minister to find out about it and I knew about it this time last year? There is something wrong if the Ministers are not up to speed. There is something wrong with the entire system. I am not at all happy with what the Privileges and Procedures Committee has come here with. They have done a lot of hard work and I appreciate that but, paying lip service to the Chief Minister, I think he should have the power to hire and fire because, possibly, we would get things moving in the right direction. There would not be this disharmony that we hear in the Chamber from time to time or most meetings that one Minister is doing his own thing or the other. But, in fact, the people they are criticising, those Ministers generally are better-versed than those who work in these collective pods around the table.

[11:00]

That is how it comes to me, now as a Back-Bencher and just a Member of a Scrutiny panel - no longer a chairman - but I have seen all the mish-mashes that come out, hence my compliments to the 2 new Ministers, who came about 2 years ago in this House yesterday, because they have come to grips with their subject. Many of the others have not and that is down to the Chief Minister to make sure that his Ministers are on top of their game and not have to be bailed-out by other Ministers or Assistant Ministers in debates. That Minister should be able to be on top of his subject and it is very noticeable by members of the public out there when you go to various meetings around the Island and the public say: “That particular Minister is excellent. That one is not on top of his game or her game”, and 50 per cent of the Ministers are in for criticism and the other 50 or 40 per cent are praised. It is across the Island. Those are the comments I get from the public. There is an awful lot of fudging going on because that is the only way that the Chief Minister’s Department can work under the current system. Something does need to change there. Take this all away and come back with something that is workable because I do not see a great deal of this that is going to make a great deal of difference in the next 3 years. We need a system that is workable and it is maybe going back 15 years and doing what was happening in a slower way, where everybody was part and parcel of the government, or maybe look at some other system from elsewhere because, definitely, what you are coming up with at the moment, as far as I am concerned, will not pass muster. I am sorry to say it, all the hard work that has been done over the last few years. There are as many people outside the government sitting in this Chamber as in, but where are our Ministers today? Those who are in power, missing. Why are they not here in the middle of this debate? Running the Island, you say, Chief Minister. I would challenge you because this affects their future or the future of this Island, and to see Deputy Green and Senator Le

Marquand, the Chief Minister - Mr. Le Gresley has just gone out - but to see those 4 Members only in the Chamber and I do not see any others around ... sorry, the Minister for Planning and Environment, my apologies. They have been here all morning apart from their comfort-breaks but, in general, Sir, I would expect the Ministers to be here to have some input in this debate and they are not. I am really disappointed. I am not surprised but disappointed.

2.11 Deputy R.G. Bryans of St. Helier:

I really am amazed. I stand up here and I do not recognise what I have just heard. I have not certainly seen it from my perspective. I think it is a matter of perspective. When going about my business as Assistant Minister, I have always been invited when my Minister could not attend to the Council of Ministers. I have never sat outside waiting to be invited in. I have always been in there doing my bit, and maybe that is just something to do with the system that we have at the Education, Sport and Culture Department. Certainly, my colleague Deputy Le Hérissier would agree with me on this particular aspect that we are kept up to speed in many respects in all that is dealt with in the Council of Ministers, but I do have some things that I would like to say that are relevant to that. One, I think Deputy Martin referred to it, a couple of other people have spoken about it, is the assertion that Assistant Ministers do not receive enough information. I think that is absolutely true and I have stated that within the Council of Ministers. I think there is a concern that too much information could flow out but I do believe, as Deputy Southern says, that transparency and a more open government is where we should be going. I think that is paramount. Because we need to, in particular, as an Assistant Minister or Junior - I do not really care to be honest, it makes me feel younger to say "junior" - walk a parallel path with our Ministers and, particularly, when they are not available, we need to be up to speed in the way that the Constable of St. John talks about. We need to be up to speed to deal with some of the issues that are really quite vital to this Island. What was referred to by Deputy Young that I think is important, and this is the background to some of this, it reminded me of when both these Senators were going for Chief Minister, and I had discussions, as I feel all the Assembly had with the Chief Ministers or prospective Chief Ministers at the time, was what their consideration was of us. I remember they both thought I should be in the Social Security Department at that point in time and it confused me because as an ex-teacher and as the Chair of Governors, I thought the Education, Sport and Culture Department would have been the right fit. Subsequently, that was decided upon so that was great, but it says to me something that is a flaw in all of this and sits behind what we have here today. In business, if you go for a job, you are expected to hand in some sort of C.V. (curriculum vitae), which says: "This is what I have done. This is what I am doing. This is what I would like to do and these are my skills, hobbies and attributes." Subsequently, you are then given a job spec. If those 2 things marry-up then it is fantastic. It is a good fit. You get elected in and nobody knows a great deal about you unless you have already been within the government for some time. I think it is that observance of these skills, hobbies and attributes in particular that allow me - I can only reflect on what I have done - to work across borders. So I work with the Economic Development Department and I am working on the Public Sector Reform because they align themselves with the things that I am most interested in, in particular, so I think it is important in the way that Deputy Martin was describing before. Full credits to these guys, it is a thankless task that they have embarked on but I think behind this, to me the danger is not ignorance but the illusion of knowledge, and we really have to drill down through this information to find what is the bedrock behind all of these suggestions that we have here. They have done a good job in taking this to where we are but we do need to get to a point when this notion of inclusivity is working. To do that, to some degree, you have to step up to the crease and be counted, so it is not just enough to stand back and wait to be invited on board. You have to let your point of view be known. That is all I wanted to say.

2.12 Deputy M. Tadier:

I will try to keep it brief and try to address some of the issues that have been brought up but also just give some background as to what discussions were made, because a lot of these issues clearly will have been thrashed out at great length in the committee and sometimes we came up with, perhaps, unexpected views. Maybe some of the things that we put on the shelf were correct. I said it in my foreword, really the sticking issue is always going to be in a non-party system, when you have an Executive government, where does the balance lie? Does it lie with the Assembly, as we have all been elected, and how much power do you cede to the Chief Minister? It is quite right, whoever said it, and it has been said a few times, it is not about personalities because the personalities in this Chamber will change. We all have our foibles, as somebody said, but in the future you do not know what you have. So it has to be personality-proof. The system has to work no matter who you have in government on either side of it. But the individuals and their skills when they are elected in this Assembly, as Deputy Bryans has said, are also important. I am sceptical about the ability for the Chief Minister to be able to appoint slates without coming to the Assembly for any kind of endorsement or approval, yes or no, because although it has to be about policy, which should be quite rightly led by the Chief Minister, it is important that we have the best person for the job. There still has to be meritocracy there. Deputy Bryans said that he has a background in education. It makes him a good candidate for education but policy also factors in. That is why we have recommended this list that when you get in, you write your list down of what you want. But let us not be politically naive because a list, just because you have a skill base, if your face does not fit politically, you are never going to be put in that position until there is a shift, until you can convince the majority of your colleagues, until you are trusted and your politics are shared among the Assembly. So let us not be naive but let us hope we can move towards a system where our skills are also used, but we do need to safeguard against patronage. I do not think any of us would want a system where we elect a Chief Minister and then he appoints people there and we think: "Why has that person got the job? Is it simply because their face fits? Are they necessarily the best person for the job? Are they being told what to do? Have they been appointed for their loyalty or for their skill?" These are the kind of things we need to bear in mind when we are thinking about those issues. Remember, under the current system, we have elected Ministers who have the confidence of the Assembly, as far as we know last time we tested it, who were not the Chief Minister's choice. They were put there by the Assembly to work together with the Minister and, hopefully, they do come forward with some kind of consensus. It becomes critical because you will not be able to put yourself forward as an alternative for a Minister anymore under this system. We have to be very aware of that. So a Minister will be appointed essentially. The Assembly will be able to say yes and no. In reality, we are not going to reject the Chief Minister's slate more than 3 times because that would lead to a nuclear option of having to get rid of the Chief Minister. So, essentially, we are stuck with what we have. The Strategic Plan, therefore, becomes even more important. There was discussion about whether the Strategic Plan should simply be the Council of Ministers' Strategic Plan, but we thought the safeguard was that, in the absence of being able to challenge Ministers individually, that the Strategic Plan needs to be amendable and inputted by the Assembly at large. It does mean that it is a long process but that is something that is necessary to go through. I would also add, do not get too hung up on the fact that there is an hour of questioning for the Chief Minister because there will not be the same questioning for the individual Ministers, so it swings and roundabouts. If we are going down the road of making the Chief Minister's position more important, an hour of life in this Assembly questioning the Chief Minister, our potential candidate, is not too much. If we do not have questions, we will not use the full hour anyway but we noticed that time ran out the last time when we were questioning the Chief Minister and that is not really an acceptable thing to happen, so let us not get stuck on the idea of an hour. Lastly, I completely share the scepticism of moving towards a slate system and a non-party system but I also accept the fact that how many times have we seen Members who may still be in the Assembly from decades ago, and we see the same issues coming up at election time and nothing

gets done. Fort Regent was an issue in the 1990s. Nothing gets done about it. Affordable housing is a perennial issue. Nothing gets done about it, although stuff is being done but it is still not being delivered. We know these issues are there and that is because there is no policy that we put towards the electorate and that brings us back to the essential part that was touched on certainly by the Constable of St. Mary in her closing remarks. We are here to represent the public and the public must have a way of influencing policy direction and decision-making in this Assembly. If we are frank, that does not happen at the moment. We get elected, it may as well be by magic, and we do not know who we are going to get, at least at the moment, and this is something that will come up perhaps in further debates, the Chief Minister can go to the public and get an Island-wide endorsement. There is the possibility that you could have 2 successful Senators or candidates who have disparate views for the Island. One says: "I want to increase spending so that we can have better hospitals, better provision for the elderly, better schools in the public sector" and one says: "I want to cut public-spending because I think we need a more efficient government." They both get elected, let us say, first and second in the polls and then one of them becomes Chief Minister. How do we all feed into those manifestos? We cannot get away from the fact that if you want a system that works without the contradictions, you need party politics. We have had people standing up and saying that but I would also challenge those who have said: "Form the party." If you want party politics, go out there, form the party, start working with Members in the Assembly who have shared views. If you think your ideas are more viable and you have a positive plan, join up with members of the public, Members of the Assembly and make the party. Do not simply bleat on about it all the time. Nonetheless, we are in a position where we do not have that and we have tried to do the best of a job, which I think is nigh impossible but it is a very important issue and, hopefully, some of that will help Members in their thinking.

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

I came here this morning not to speak but to listen as a Member of the panel to what Members' views were and in that regard, I am disappointed that the attendance this morning has fluctuated between 27 and 31 Members, currently 33, I believe, because this is a very important issue.

[11:15]

I want to speak generally, not about the detail. That is for others. I want to listen in that regard. There are those who think Ministerial government is fundamentally flawed and there are others who think that it is almost perfect. Most of the members of public I have spoken to fall into the first category and they are not particularly happy about it but the point is there is, frankly, a universal acceptance that what we have at the present time is far from perfect. So I would like to basically issue a warning to Members and that is the problem that Deputy Martin addressed, I think it was P120, why did that fail? The reason why we are having this in Committee debate rather than bringing in a proposition in the first place is because it is quite easy to identify the weaknesses. Finding the solution is somewhat more difficult because you could find 20 people who have 20 different solutions, and you bring it to this Assembly and they all get voted out. There is only one thing certain from that; you will end up with a *status quo* back where you started and that is what nobody wants, so I would like people to think very carefully about that. I have been listening to people like Deputy Southern, Deputy Duhamel, Deputy Martin, the Constable of St. John, and I would say to them, do not throw the baby out with the bath water. Do not dismiss this out of hand because if you do, all you will have [**Approbation**] is the system that you have now, which, virtually, nobody is happy with. Yes, it has been said if we had party politics, we would not have the problems we have now but to use a phrase I hate using: "We are where we are", we do not have party politics and looking at the U.K., I am not sure if we would be in advantage anyway. There seems to be a little appetite among the public to have party politics in Jersey so we have to work with what we have. I spent 3 years on the previous Privileges and Procedures Committee wrestling

with this issue. I have just spent a year on the sub-panel looking for solutions. It has not been easy. I am, therefore, anxious that we do not end up as we have before with a lot of talk, absolutely no progress, and at the end of it we have a proposition that people would say: “I would accept it but I do not like that part” and: “I would accept it but I cannot go with that part” so everybody basically votes against it and we end up where we started. We are not happy, the public is not happy so I would urge Members, do not go there. Do not throw it all out just because there are little bits and pieces you do not like. Clearly, the panel will get feedback from this in Committee debate, that is the whole purpose, so, ultimately, a proposition will be brought forward that will hopefully stand a reasonable chance of success. I was on the Privileges and Procedures Committee for 3 years, the Constable of St. Mary, the following 3 years, and it just goes on and on and on. The public are tearing their hair out just about as much as I am. We really cannot afford to fail.

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

I had actually indicated quite some time earlier purely to pick up on a couple of things the Chief Minister has said to clarify because, obviously, do not forget the whole point of this discussion is a bit of interaction to try to put out some of the thinking of where we went to. This debate now is basically replicating what we have been through for the last year. Deputy Baudains is absolutely spot-on in terms of we can go through so many iterations. It has been a difficult process. There are less polite descriptions in the nicest possible way describing what we have been through for the last year. But we all have very strong views in the same way as everybody in this Assembly has strong views, so whatever you are going to end up with is going to be a compromise. I just want to give a little bit of thinking to say that it has not just been plucked out of the air, which, hopefully, Members would not ascribe to us. The Constable of St. Mary gave some very constructive comments. It is a very important subject. It is boring. The public are probably not interested in this but it is incredibly important because it is about the structures going forward. You could argue that the presences we have is still a committee system in a way. Think about it. We have all the Scrutiny committees. We have the Planning Applications Panel. We have the States Employment Board. We have the Privileges and Procedures Committee. We have the Public Accounts Committee. We have the Council of Ministers where if the majority of the Ministers go against the Chief Minister, he cannot tell them what to do. Although it has been moved away from when you used to have 53 Members influencing the decision, you now have 11. That is what you are trying to deal with. I am not going to give way because it is an analogy I am using. I am being simplistic. I am being deliberately provocative.

The Connétable of St. Clement (in the Chair):

Continue, please.

Deputy J.A.N. Le Fondré:

I will continue, Sir. I am being provocative but I am saying that we do not have an executive set-up, necessarily, at the moment. The purpose of today is to get people to think. We want to hear people’s views but we want them to understand a little bit what the issues are; it is a jigsaw. You fiddle here, you have got to do this. In other words, what are the consequences of the Troy Rule and things like that? Do not forget the Chief Minister under what we are proposing is going to be a very important role. That is why it has already been referred to, why one would want to increase the question time. That then impacts on the role of the Strategic Plan. What Members have not done yet is, there is a comment in the report, which is to say that there are 3 choices that Members might wish to consider on the Strategic Plan. Members picked up on that particularly. Do you go with the *status quo*, which then Members can amend it? The same debates we have had previously. Credit for the Chief Minister, this time around, was a lot less painful, or is it just an “Ah”? Is it the Strategic Plan of the Council Ministers? They put it together, they are accountable for it, they just

tell us about it. Think about it, because there are consequences that come out of that process. I will just go through quickly on the report because I was scribbling as I was going along. The Chief Minister, which was the point I originally wanted to make about the issue, about the slate. Obviously the slate is a recommendation from Clothier, and that depends whether people like Clothier or not. In terms of a system it is a system, it works. The issue around, does one vote individually on the Ministers or not. In the report what we have said is that we thought it was better to vote on the Ministers separately but only to publish the results of that vote at the end of the total voting process. So you are not voting on Minister one, and if that fails that is it. You vote through the whole process and you only know the results at the end. That is what is in the report. The reason one has done it that way is to give the Chief Minister the indication of where the problem is if the slate fails. If Members do not like that, that is fine but the thought-process is, if the Assembly votes against the slate where does that leave the Chief Minister? He has got a maximum of 24 hours to sort out the problem. So how does he know? He may have an instinct for it but how does he definitively know that Minister 3 on his list is the problem and not Minister 8? If there was any other suggestions but that was the practical reason why we have done it that way around. The Troy Rule. I have to say I have heard this issue about that it should be on a voting basis, not on an individual basis. I find that a very prescriptive argument, a little bit spurious. If one is a Member of the Executive you have to be counted in as a Member of the Executive for the purposes of the Troy Rule. The principle of minority government is strongly laid out in Clothier from the point of view, again, in the absence of a party political system, and overall both on the basis of the interviews that we put through of the 48 interviews of people that we spoke to, which included the majority of every class of States Member, and the majority of Chief Officers. Troy Rule was one of those things that came out. It was fairly fine-tuned but then as you start examining it further, the line firms up. You can talk about the principles of minority government, that is what Clothier is about. All Deputy Troy did was put a percentage on it that again summarises the Troy Rule as being a principle of a minority government. That is very clearly set out in Clothier because it is a vote about democracy. To pick up a little bit on the Deputy of St. Martin, because again it comes down to we are putting the Chief Minister in place, with hire and fire abilities. People may have an issue about hiring using that analogy. Very clear response from everybody we spoke to that they should have the ability to fire. If you start going down that line, if you are saying the Council of Ministers is an Executive function and it makes a decision and it enacts it, that is about the collective responsibility and that is the ability to direct a department underneath. But then you turn around and say: "Well, okay, if we are giving the Chief Minister the ability to put this team together because it is a team, and therefore he should be able to choose who he wants to work with." Why are you then constraining him as to what roles they should go into? If a Chief Minister in his mandate and in setting up the Strategic Plan wants to put a Minister for Tourism in, at what point is that going to happen? Because you turn around and say: "So this is the thought process." People may not agree with it but that is what you want to eke out from here because if in his Strategic Plan or in his mandate, he says: "I do want to give a signal to tourism and I want to have a Minister for Tourism" and you are doing it within the confines of the Troy Rules, that means you are saying that you are going to switch between the number of Ministers and the number of junior or Assistant Ministers or whatever you want. Then we said: "Well, give him the flexibility to make that decision." He puts that in his slate and that comes to the Assembly for endorsement. There is a thought process there. In terms of the Assistant Ministers, again we have talked about it, it is a topic for discussion about whether they should be appointed by the Assembly or not, and our balance at the end of quite an interesting discussion was that they should not be. It is about the team and the danger of being a Minister foisted with an Assistant Minister that they just cannot work with, and that is not the most constructive way of doing things. I think that is probably me for the moment. I hope that helps. It is really just trying to give people ... there is a thought process

and I hope that just clarifies as to why we have got to where we are. The crucial thing is to turn around and say: “We want the feedback” obviously and then see if we can move forward.

The Connétable of St. Clement (in the Chair):

Deputy Tadier, if I could look to you for guidance again. We have spent nearly 2 hours on this particular subject. I was wondering if it was time to move on to the next section and perhaps have a wash-up at the end.

Deputy M. Tadier:

Indeed, I think that is the good way forward. Obviously we have overrun in one sense but that was all kind of anticipated because that was the more substantial one. We will be aware that lunchtime is normally at 11.45 a.m., and if we can ... 12.45 p.m., yes, indeed.

The Connétable of St. Clement (in the Chair):

Okay, we are in the hands of Members. If Members wish to come back this afternoon, that is up to them but we did say we would try to complete this morning so we should make an attempt to do so. So, if Members are content we can move on to the next section which will be led by Deputy Le Fondré, which is on the potential introduction of Non-Executive Members. Deputy Le Fondré.

3. Introduction of Non-Executive Members

3.1 Deputy J.A.N. Le Fondré:

Having just listened to the debate we have just had and that was what we thought was going to be one of the more straightforward ones, I am somewhat nervous of this next section. As we have identified in our report and during the debate, what we are proposing is a package of Members and obviously that is why we want to seek people’s views. Again, it is a case of it is very clear the Machinery of Government Review Sub-Committee was not unanimous on each proposal but there was a sufficient majority to then incorporate the items in the report. Where we are pretty clear is that if the recommendations regarding the Executive are adopted, there need to be checks and balances which are more robust. In other words, it would not be a wise move to implement greater concentration of authority into yet fewer hands without having the better checks and balances in place. Those comprise the flexibility and Scrutiny which Deputy Vallois will be dealing with later; the creation of an ombudsman and things like that which Deputy Young is going to be dealing with afterwards, and for the purposes of this part of the discussion, what are being referred to as Non-Executive Members. Again, what is in a name? I would be very happy if somebody comes up with a different title. It also comes back to the very principles of identifying the problems, as Deputy Baudains identified, in terms of the discussions we had in those 48 interviews. That goes back to this issue of inclusivity, the issue of the silo-mentality, and to an extent the issue of the greater influence, power, authority, depending which way you want to use the Civil Service as well which was a theme that came out in the discussions. It is worth understanding the background of how we got to where we are, and P.120/2010 has already been referred to a number of times, that is the designation, and as was identified by the Constable of St. Mary, it was brought to the Assembly by Senator Breckon. But it was the outcome of work and conclusions of the panel, and again to repeat, who are Deputy Vallois, the present Constable of St. Mary, the then Deputy of St. Peter, and that well-known radical and champion of political turmoil, our previous Chief Minister, namely the former Senator Le Sueur. That label I have just used in relation to our previous Chief Minister could hardly be less appropriate, but I use it quite deliberately to identify that this was a cross-political panel with input from the very top of government, and a lot of experience in there. They made various proposals and including that of, what at that point was referred to as “Ministerial boards”, and one of the express intentions of that proposition was to deal with the matter of

inclusivity and I want to quote an element from that report because it is relevant today. What they said is: “The Working Party was also concerned that since the 2008 elections an ever-increasing number of States Members have had no experience of working in an Executive role, and as a result there was a growing disconnect between some Members and the workings in Ministerial departments. There was, as a result, a lack of contact between senior officers and many States Members which was leading to some mistrust, and which it was felt could be overcome by a more inclusive system of government. It was also recognised that if there was greater political input from States Members into decision-making there would be less risk of senior officers having to inadvertently take on the role of political advisers which could jeopardise the political independence of the Civil Service.” Please note, that is the report from the Working Party which included the then Chief Minister. “It was recognised that, notwithstanding its many shortcomings, the former committee system had engendered a knowledge of the workings of departments as well as allowing a greater engagement for all States Members with departments and their staff and with the public. Committee Members being able to attend departmental and public events” and this is at another level but “such as prize-giving, retirements, concerts, *et cetera* as political representatives of the relevant committee and this gave a political presence which was appreciated by staff, users of service and the general public, as well as giving Members a better knowledge and understanding of the day-to-day issues facing the department.” I find that in some experiences as an Assistant Minister for the Transport and Technical Services Department, there have been a couple of meetings when you go along and they say: “We are really pleased to see you.” It is a relatively mundane run-of-the-mill issue but they like seeing the politician outside of the Assembly and the Civil Service. That proposition was not adopted and one of the reasons was because it was the perception that it was a back-door into the old committee system and there was a lack of clarity about the roles of the Ministry or board and was completely a decision-making body, and therefore where did the Minister sit? I think most Members should have taken part in the interviews because, as we said there were 48 interviews and they were all on a confidential basis, and unless one was a part of that interview even the Machinery of Government Review Sub-Committee do not know the comments that were received, how they were attributed and who to. But it was very clear that issues of lack of inclusivity, prevailing silo-mentality have still not been resolved, and the feedback was that they were getting worse. Within the sort of thought process behind this, going back to what is quite a useful quote from the Sir Cecil Clothier report: “If consideration of a particular issue is conducted in total secrecy until the announcement of a firm government decision, other opinions can only be expressed after the die is cast. It is an observable characteristic of governments everywhere that they are extremely reluctant to be diverted from the firm policy already announced.” Again, this is all about checks and balances and inclusivity. That is obviously not from the Machinery of Government Review Sub-Committee, that is from one of the most respected people ever to have reviewed our system. It has been referred to, it is what I call “defence in depth.” The number of States Members with significant experience of the Assembly and in particular with the workings of the departments is reducing. If you look at the last 2 elections, how many decades of experience we have left as the older Members - when I say the older Members, Members who have been in there since the 1990s or whatever - have stood down and retired. They would have had a broad width of experience because of that previous system, and at the moment one is not necessarily seeing that level of experience coming through under the new system. So when we completed our first draft of proposals we revisited the Ministerial board suggestions, and in order to reduce the accusation of a committee system we proposed a very clear split between the Executive decision-makers, namely the Minister, possibly the Assistant Minister and certain Non-Executive Members, and we went around and we discussed it further. We then modified matters to come up with the present proposals. The loose analogy: please note I say “loose analogy”, I do not want people standing up and saying: “Well, this is actually the situation here and therefore it is not applicable.” It is a loose analogy. It is that of the private sector non-executive director. If one goes

back to basic principles, the directors are meant to act for the company but also have to account for their activities to the company shareholders.

[11:30]

But such was the system at the time, and this goes back all the way to 1992 and things like the Cadbury Report and all that sort of stuff, that it was felt that matters needed to be approved, and it was all about accountability and that type of thing, and performance. Cadbury was a very well-respected report which was to do with corporate governance and has nothing to do with chocolate or teapots, by the way. The non-executive director now has a number of roles to fulfil and they are expected to focus on board matters, not to stray into executive direction, and are thus providing an independent view of the company that is removed from the day-to-day running. They should have a clearer or wider view of external factors affecting the company and its business environment than the executive director. They are therefore in place to provide a creative and informed contribution and to act as a constructive critic in looking at the objectives and plans devised by the executive team, and they are meant to monitor performance. The question that arises from all these feeds is can we learn from that type of structure and use it to resolve the issues of silo-mentality and most importantly the issues of inclusivity as well as the growing power of the Civil Service? Under the old system you would have had a lot of people influencing matters of decision-making policy. That is now focused in the hands of 11 people. What we are proposing under this revised role as we have called it, the Non-Executive Member, is that we are proposing that Back-Benchers should fulfil a role within the departments. In essence, it is fundamentally to be able to provide advice and act as a sounding-board for the Minister and his team. It is not to do any decision-making, and that has to be absolutely clear. Now, there has been a concern that there are too many roles identified in this position. In other words, in the report we identify 3 or 4 roles, and people say: "Well, each one might be okay but the 3 combined could be tricky." That is fine. That is possibly an overly strong reaction but if that is the prevailing group review then you can change that, you can modify that. The key point here is to give the Minister an additional perspective, advice and/or challenge at an early stage as policy develops and to be a real-time sounding-board as matters arise. It requires access to departmental information and to Ministerial decisions in advance of them being made. So it is about communication flow and information flow. So if the ancillary roles identified in C and D of the section of the report are felt to be too confusing that can be addressed, and just to address that point it is one the Chief Minister has privately raised. If the private sector non-executive directors expected to be monitoring overall performance, if one were to look at that really prescriptively, it is arguable that the role of the finance director or the managing director is to do with performance. But the non-executive director has a role there as well. It is at different degrees, and those principles are laid down under statute or near equivalent. Why should they not be applied roughly speaking to our system of government? Our view is that while this should be relatively informal, albeit a correct process, it will enable more Members to understand how departments work, and do not forget, the majority of 48 interviewees identified that this issue of lack of inclusivity, lack of communication, were key and important factors in their dissatisfaction with the present system. So even if a particular Minister might find this a bit cumbersome which it should not be, there needs to be an objective mechanism by which inclusivity needs to be resolved. That is the key point, and it is not just about giving more briefings and sandwiches, it is about having that interaction. So it is about the wider issue of transparency of what we do, and to ... I am taking some time, by the way, because the question is, in terms of questions and discussions we have had, people do not necessarily accept or understand what the roles might be. Politicians in the U.K. have the benefit of a number of sources of advice and information, other than the Civil Service. There is the Parliamentary Private Secretary, who is a politician, if you were in the Conservative Party of the 1922 Committee. Labour have an equivalent. There is also the Special Adviser, so there are 3 sources of advice to the Minister, other than the Civil Service. Over here, arguably, there are none.

The one comment we received was the risk that this role would weaken Scrutiny, and that is not the intention at all. If anything we want it to complement, and that is why we have insisted that individuals wanting to be a Non-Executive Member of a department have to be actively serving on Scrutiny in order to be considered for this post. But they obviously cannot scrutinise anything to do with themselves, we need to keep that clear. How they are appointed; we are not too worried. We suggested it should be the Chief Minister but it is about the team, but if people say: “No, it has got to be the Assembly” that is for feedback. The key point that is being proposed is that Scrutiny must have a formality of process and always be at arm’s length to the department it scrutinises, and then will be in the department, have access to information far earlier on a confidential basis and is there to act principally as a sounding-board. It will enable Members to have a wider experience of how a department works, but while objectivity is required there must be a degree of informality attached, and I am sure that the Members will be delighted to know that I shall be stopping imminently. But what I will say is that - just to go back to the Ministerial board proposal - I had a further discussion with the now Mr. Le Sueur relatively recently, and he was very clear still that Ministerial boards would be a significant improvement in the system. We have not gone to boards because of the feedback we had at that time, we have gone to a compromise. But that is someone with decades of experience with the right attitude towards this job; i.e. wanting to act in the interests of the Island and wanting to hold the highest political post that this Assembly can offer. Members do not like the recommendation and that is why we are here today to try and flush out the issues and to adapt ideas possibly. I think given an alternative solution, it is about dealing with the inclusivity bit and improving the understanding and communication. That is it. Thank you.

3.2 Senator A. Breckon:

Just a few comments, some of them are relevant to this and I think there are some general issues. I think the Machinery of Government Review Sub-Committee really had an unenviable task to try to bring this together. Years ago, I brought a proposition on Sunday trading and everybody said: “You need to change it.” But when I proposed something they said: “But do not do this.” You were one of the ones who agreed with me, and in the fullness of time we were proved to be right but at the time I got 6 votes. We were where we were then and now we are where we are. **[Laughter]** The question is, is this really a review of the machinery of government and who is it for? Is it for us or is it for the people? I think the Machinery of Government Review Sub-Committee have missed a trick here and we may need to go backwards to go forwards. If we are talking about inclusivity, and what we do, then we may need to think outside the box because to go forwards, we need to do that. What do I mean by that? I think Ministers’ portfolios are fairly extensive in some areas and questions are asked of Ministers but they cannot know where every tanker is today and if somebody runs over the grass or whatever, so the responsibility filters down. What we need to do is change the system. We need to do that and have a review of the machinery of government. For example, if we expand Home Affairs to do other things and we have under that, call them what you will, you have a Member with responsibility for something. Who is responsible for tourism? A civil servant speaks when something happens and it is an important part of the economy. Agriculture and Fisheries, who is responsible politically? Nobody, I do not think. Somebody might claim to be but who is? Under Home Affairs we could have Education with somebody with the responsibility. We could have other things and that then brings in the inclusivity; it means that we spread out more and would get involved with some, and somebody is accountable when questions are asked or when things need to be done instead of saying: “Well, it is ...” Who is responsible for broadcasting? We have got a terrible service of this new thing, digital thing. Well, who is responsible? Well, nobody is. Who would you ask? I have not got a clue, probably the Economic Development Department. A terrible service and the U.K. get 400 channels free, we get 14 with cartoons and some of them off during the day. It is absolutely rubbish.

[11:45]

The Connétable of St. Clement (in the Chair):

Sorry to interrupt you, Senator, we are on the section regarding the creation of Non-Executive Members.

Senator A. Breckon:

We are talking about the inclusivity and that is what I am talking about. I am nearly finished. **[Laughter]** But it is about people getting involved. That is why I say about thinking outside the box. It is about people getting involved but getting things done. It is very important because if we do that there is a public benefit and that is what we are here for. It is for the public benefit, and that is why inclusivity is important, that we address some of these issues and we think about this again because I believe it would be effective. We have already done that a week or so ago. We have had another Minister with another portfolio which has encompassed something we have done, we have got areas where we have talked about the elderly or children. We could actually have a Member with that responsibility sitting under some Ministerial system which is wider, has less departments, might even save money in the longer-term, and that is the sort of things in general that a machinery of government review should be looking at. We should look outside, not where we are now but where perhaps we want to be and what is most effective, and that inclusivity would include Members now. The other side of that, the Scrutiny could be topic-based, it would be very effective. We have done it before, you could sharpen that up a great deal by doing that. You will still have other things in place, the Public Accounts Committee, and you could focus in on some of the issues. That would be more effective and that is where the machinery of government should go, and that could embrace some of the principles that have come out of other reviews. Clothier, and things going back even further than that, 30 years or more. We could embrace some of that and we could ... the things we do we could do better and we could do them more effectively and we could be more inclusive. So that is all-embracing. Having said that, I do not think I have anything else to say unless you beg because I think those are my feelings on the matter because what we are doing at the moment is we have got Members who could make a greater contribution for the good government design whose talents are side-lined or wasted, and that is really not where we should be, we should be somewhere else. Thank you.

3.3 The Deputy of St. Martin:

I would just like to start by saying that I totally agree with the idea of more heads leading to better decisions. I very much like the concept of more information flowing and the theory of inclusivity. I would like to quote a few phrases and words that Deputy Le Fondré used and that is Ministers taking advice, Ministers taking an early challenge, and information flowing. The Deputy spoke about small extended groups having access to the Minister's department, his officers, his ideas and his policies. He also said, and I use his exact words: "A constructive critic." For me, what Deputy Le Fondré was describing is exactly what I see Scrutiny's role as, and I rest my case.

3.4 Deputy R.G. Le Hérissier:

Very much on the lines of Deputy Luce, and indeed Deputy Le Fondré did anticipate these issues. While I appreciate the outline he gave, I am almost reminded of that French saying: "It may be logical but is it reasonable?" I really think we are going to send the public absolutely crazy with these kinds of recommendations. I can see the logic behind them, I can see where it is leading, I can see the almost impossible dilemma which Deputy Southern drew attention to at the heart of all these recommendations, that it is based on a system like Clothier thought they were talking about. One that would lead to the development of parties and therefore lead to proper accountability. But yet we cannot make that final step so we are always stuck there in the middle, and to use the words of the Chairman earlier on: "We are always trying to devise a hybrid." We tried that many years ago with the Privileges and Procedures Committee when we tried the hybrid of super-

constituencies, which again emotionally never attracted people and only crept in under the radar as a referendum. I agree with the Deputy of St. Martin. I think the road to go, and certainly Deputy Le Fondré anticipated this, is to re-examine the role of Scrutiny. They have done some good work. I know these issues were discussed when the new regime took over. This distinction between Scrutiny only looking at completed policy as opposed to policy and development should probably be done away with. They could shadow Ministers and they could make meaningful comments right from the very beginning if they were asked to. But Ministers have to realise there is a broad variation, and one of the things I found when I entered the States many years ago, having come from a very sort of groupie situation when I spent a large part of my life working with groups, training with groups, operating with groups, was how fundamentally illiterate the States was in operating with groups. Utterly illiterate. There was much more praise for the awkward, I cannot say the word here, it is not something for family-viewing, but there was sort of this relish that: "I am an awkward so-and-so and I enjoy it and I will never change my mind and I will beat you into submission until you agree with my point of view." Luckily, that has moderated considerably but that was certainly part of the culture. What I am moving towards is, I think Scrutiny can work. It can be a real challenge. It has put a lot of the building-blocks in place and it can still operate, and here is where I am in a bit of a conundrum. It can still operate essentially until it reaches real policy divides, it can still operate and contribute to a consensus environment. The word "consensus" was always synonymous with the committee system. The problem was, as we know from Clothier, it was easy to get a consensus when half your Members were asleep. **[Laughter]** The other half, it was suggested, had not read the documents, and you had a semi-strong Chairperson. So everything flowed along smoothly. I have to tell the Constable of St. John, that was the other side of this nostalgic view of the committee system. I have gone around in a big circle; I used to have enormous debates with Deputy Dubras, who again came from a very groupie environment. We used to have enormous debates about was there true consensus in the States or could true consensus be developed, and I used to rubbish his point of view but I have probably mellowed a lot since then and I have probably come to the belief that it is much better to try and work in a consensus environment but make sure the dividing lines are known; make sure the divisions in the road are known where you cannot go any further. But until that point is reached, work hard at it. But I am afraid this is far too complicated. It is going to absolutely confuse the public no end. They are, as the Deputy said, they are going to ask: "What on earth is Scrutiny up to? Can you not enhance the role of Scrutiny?" I think you can. Just as this report speaks in a complimentary way about the Public Accounts Committee, I think it is quite possible to run consensus to quite a large degree, and - and this may sound absolutely ridiculous - at the same time strengthen the separation of powers in the system, for example. Like the Public Accounts Committee plays a role, Scrutiny plays a much more active role. When its views are not accepted there are ways in which it can continue to push them, and we have a much better, and I refer to the Chairman of the Privileges and Procedures Committee., we have ... despite the wonderful work the States of Jersey Complaints Panel do, we have it as a much better source of an independent power within the system which it is not perceived as being at the moment. I am afraid I have to disappoint Deputy Baudains and say, not for me. There are other ways forward and I really think working on Scrutiny, the Public Accounts Committee is the way forward.

3.5 Deputy G.P. Southern:

I am both sad and disappointed by this second element of what is being proposed, and I do accept what the previous speaker has just said. Is it logical and is it reasonable? This may be logical, I do not think so, and it certainly is not reasonable. This is what happens when you do not apply Ockham's Razor; when you start with a mess and build on it. It is like that kid's game, Cat's Cradle. You make a mistake in moving the string once in the first dozen moves and you never get out the solution, the cat's cradle does not work. So here we have got a Member applying a

completely false analogy to the business of government. He says it is like business and his Non-Executive Members are like non-executive directors so I have got 2 acronyms there, I have got N.E.D.S., what I shall call Neddies, and we have got Non-Executive Members, which I will call Nembies. **[Laughter]** But the fact is government is not like business, it is a completely different decision-making process. Businesses are not necessarily democratic. We have to be, and that is the fundamental difference. We have said that this somehow will make a difference in terms of the amount of information floating around. Yes, one of the biggest hurdles is XIV, policy under development. So we cannot even let a bit out of it for you, and we are told that these Nembies can squiggle around and advise Ministers, listen to Ministers, give them advice and hear what the policy proposals are in development. That is useful because that is done in confidence. So I could tell you but I would have to kill you straight away afterwards. **[Laughter]** That is not going to spread any information further around this Chamber whatsoever. As I said, the best solutions, the best answers, the best theories are the simplest ones and all we have done here is tie on a different set of acronyms, a different set of roles which will do absolutely nothing to enhance the efficiency or the effectiveness of this body. Again, so far, 2 stages, we are 2 nil down. I wait for the next one.

3.6 Deputy A.E. Pryke of Trinity:

I shall be brief because I am on the same themes as the other speakers and it is getting to midday. But I do have great difficulty in understanding the role of the perceived Non-Executive Members. Are they an adviser to the Minister, informing a policy? Or do they monitor policy or do they scrutinise policy? I think this is a muddle of everything and I think that is the worst out of the lot. It lacks clarity. But yes, the Minister does need to be held to account and I think we need to strengthen the Scrutiny function. We have worked out the numbers. Have we got 10 Ministers, or 11, 20 Non-Executive Members, 13 Assistant Ministers. In my maths it comes to 43 Members, and under the proposals if we get 6 S.M.C.s (Scrutiny Management Committee) which are not Non-Executive Members. Where does that leave Scrutiny? Immediately I have got 49 Members. I think that speaks for itself, and if Non-Executive Members wish to be fully involved, will they have time to be involved in Scrutiny? Nowhere does it mention how the other panels like Planning Application Panel or the Public Accounts Committee fit into that. So, it is definitely a no.

3.7 Deputy J.M. Maçon of St. Saviour:

Just to remind Members that obviously I did not sit on the Machinery of Government Review Sub-Committee so I do speak in my own capacity as a States Member. I am concerned about this. I understand where the Machinery of Government Review Sub-Committee have come from but I come to the fundamental belief which is, if you adopt and support the Ministerial system, by fact it means that you are excluding the talents and abilities of other Members. That is how it works, unless you want to go to a committee system and get rid of the Ministerial system, it does not work to operate both.

[12:00]

That is why, when I spoke to the Machinery of Government Review Sub-Committee I was very much of the mind to move back to a committee system because it is far more important for the public to get the best people in this Assembly, whatever their talents are, into the Executive side and get them making that part function because for the public that is the most important thing that we should be doing. Under these proposals it is going to be very difficult if you are a Non-Executive Member and you want to be scrutinising and going through all the paperwork that the Ministers are seeing and then you expect them to be part adviser, part whistle-blower, how are they going to be received and treated by the Minister that is doing that? Not only that but you have got to accept that the Minister even wants to listen to this advice because the Non-Executive Members have no power over the final decision; all they can do is advise. So again, there is not much power

there in the first place so you have got to question why you want to take up that role, and then you have also got to consider how the Ministers are going to respond to these Non-Executive Members anyway. What we have to say is, while some people want to have a consensual way of going through in politics, we have to accept that some politicians have very clear ideas about visions and ways that they want to proceed and that is exactly what they want and they are not going to compromise along the way no matter what it is, in which case you have got to ask yourself, what is this Non-Executive Member doing? I think however, it does ask a bigger question about when Assistant Ministers are chosen because part of these functions should be carried out presumably by an Assistant Minister as well. You have got to ask the question about what are Assistant Ministers doing? If the Ministers are not choosing Assistant Ministers which are providing enough challenge in the department to the Minister when they are making that process, that means we should be looking at the role of Assistant Ministers in greater detail rather than perhaps trying to import this particular model. As it is quite clear, I am not a particular fan of this approach. I think it muddies the waters and I think we have got to make that fundamental decision which is, do you want a consensus-based system which is a committee system, or do you want a Ministerial system where by default it is more adversarial and that is just how it is? Thank you.

3.8 The Connétable of St. Mary:

I am particularly glad to speak immediately after that last speaker. This is an ideal instance of how it would have been very helpful to me and I think to other Members who have spoken, to have heard the proposals for Scrutiny elaborated on by Deputy Vallois before we were discussing this because I think we have a sort of yin and yang situation here. I was quite saddened to hear Deputy Maçon say that, we need to get the talents on to the Executive. Of course we do, but the talents are just as valuable on the side of Scrutiny. What we should be doing here and what I am hoping will come out of this is we will be making Scrutiny strong and different to the Executive but not less than the Executive. That is what we should be striving for here, and I do not think that having the Non-Executive Members - it sounds like a kind of worm, Nematode - having those is the way to do it. Looking back, somebody did say in the last section of the debate what work had been done to analyse why Senator Breckon's - I think he was Deputy Breckon then - proposition had not gone forward, and the answer was largely because people could not understand the difference between the boards and the committee system, and I was very clear. I was not looking to go back to a committee system, but we could not get the position across. I have done a lot of analysis of things since then and I am no longer so sure that a hybrid system will work, and for that reason I am not supportive of the recommendations related to the Non-Executive Members. I would have liked to have heard how Scrutiny would have worked with this because I think the development of Scrutiny in the whole round of this is the lynchpin to whether this works or not because people needed to know in the last lot of debates we had how Scrutiny would work, how it would be populated. We have to make sure that not only do we get the election process right, so many times in the past Scrutiny has been the second choice of people. The ideal thing is people should be coming in thinking they can do good work on Scrutiny and aiming to do that, not because they did not make it on to the Executive but because Scrutiny is where they felt they could have the most impact. But in order to do that we do not have to just discuss how we populate it, we have to discuss the powers of Scrutiny and how we deal with the output of Scrutiny and how we strengthen, how this Assembly looks and values and judges the work that Scrutiny does. So that is why I am looking forward to hearing the next section of the debate and why I cannot be supporting this. Thank you.

The Connétable of St. Clement (in the Chair):

Deputy Tadier, I am just wondering in view of those comments and indeed the comments of one or 2 people who have already spoken in this part of the debate, if it would be sensible to ask Deputy

Vallois to present the comments on Scrutiny now and then have both parts the Non-Executive Members and the Scrutiny at the ...

Deputy M. Tadier:

I think it swings in a roundabout. I think Deputy Vallois will hopefully address the issues soon but I think Deputy Young was very keen to address briefly some of the points that have come up, so we could stick to the plan.

The Connétable of St. Clement (in the Chair):

All right. Okay, in that case, I will now call on Deputy Vallois.

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

I was on the Machinery of Government Review Sub-Committee up until 28th August and we did an extremely large amount of work, very good work, very good discussions, and we did look at previous debates. We have had interviews, so there is plenty of evidence there to support the report that is in front of you. It is not an easy decision hence the reason why we are having the in Committee debate, but the reason why I speak at this point is because this was the lynchpin for me. Although I valued a large amount of the recommendations that came forward from the Machinery of Government Review Sub-Committee, I could not wholeheartedly support the report in full asking for a hybrid system. This particular section is the reason why, and I understand why Deputy Young and Deputy Le Fondré came forward in the Machinery of Government Review Sub-Committee with these suggestions. I understand their logic and I understand why they came forward but as a Member who was on the previous Machinery of Government Review - which Deputy Le Fondré nicely emphasised I was on - there were concerns over the back-door to the committee system. As President of the Chairmen's Committee for the last 2 years, I have seen the way that Scrutiny works in a more governance-structured point of view. I had previously done a Code of Practice Review. I have been serving on Scrutiny other than 8 months during my whole 5 years in the States and as Chair of the Public Accounts Committee you identify some serious concerns and structural problems with lines of accountability and responsibility between the Executive and Scrutiny. One in particular, in my view and what I found in doing this review as well, was the clarity of what policies and legislation are for each department to deliver the public services that this Assembly gives them when agreeing things like the M.T.F.P. (Medium-Term Financial Plan) or the Strategic Plan. So the biggest issue is the clarity between the departments and the clarity of what the Minister is supposed to be doing, should they be involved in operational areas? The Non-Executive Members, in particular, concerns me because one of our big principles on the report or one of the principles from the Machinery of Government Review Sub-Committee was transparency. Although Deputy Le Fondré did mention transparency, I do not see that happening under this. I understand the transparency among Members but the point in principle of transparency for the machinery of government is for the public's benefit. The reason why I took that away was because I was concerned during the course of the review that Scrutiny was being left behind. I was concerned during the course of the review that we were too concentrated on the Executive. We were too concentrated on individual Members wanting to be involved in what each and every single Minister was wanting to do and not recognising the benefits of what Scrutiny can give and the improvements that could be made to Scrutiny. By introducing the Non-Executive Members, I feel that we are just going back to the start, back to point 1, of sitting down and saying: "All right, we think this is going to work. We think this is going to achieve something" but I really feel in my heart of hearts that this will not happen and we will be back to reviewing machinery of government again, suggesting other improvements. By all means, this report is not going to provide a perfect system, far from it, but that is why we have to keep reviewing things and keep up to date with what is going on. The Non-Executive Members is what some people might class as a

job for the boys so it is people being able to go into Departments, having a little chat with the Minister, saying: “Minister, I do not think this is such a good idea.” But telling the Minister to go in a way in which they do not necessarily believe may be appropriate and letting the Minister take the flak for that problem, that issue that is brought to the Assembly, rather than being under the Scrutiny system whereby it is being done with the housing review, where there have been discussions while policies have been under development. But Members have to realise that when that policy is under development, there are some discussions that are to be had that may seriously concern the public and can seriously frighten the public, but those discussions have to be had in order to analyse the risks. Those policies under development, discussions have been held in private but it provides the Scrutiny Panel, once that legislation is lodged, to be able to have that public hearing, to be able to have those questions and those challenges put to the Minister and the Department. So in terms of the Non-Executive Members, I cannot see how it could be any more transparent with the Non-Executive Members when you could have a much more improved Scrutiny system, which would enable more transparency. I just have to apologise to the Machinery of Government Review Sub-Committee because I did express my concerns. I have had very heated discussions with Deputy Le Fondré and he is very passionate about this, and absolutely rightly so because we have worked tirelessly over this. It is so important that we get some change because we cannot carry on under the machinery of government that we are in. It cannot carry on but the Council of Ministers have to realise they have a job to play in this as well, and there are issues from the Council of Ministers’ point of view that could aid Scrutiny to be a lot better in terms of being able to hold the Executive to account. So I am sorry but I cannot support the Non-Executive Members side of things, and I am sure the Machinery of Government Review Sub-Committee is already aware of this but I think it has enabled us to analyse, assess the risks and look at the different approaches that we could take, and that is a good thing.

3.10 Deputy R.C. Duhamel:

I think this thing is getting hopelessly confusing and out of hand, and you can just tell from names. If you ask the question: “When is an E.M. a N.E.M, or a Non-Executive Members an E.M?” the names are too close together and I do not think that we have had our ideas sorted out. If you do put Executive Members together with Non-Executive Members, you get M&N **[Laughter]** and that has never been one of my favourite groups. If we pursue this any further, it is likely to be seen as the potential nemesis for the government. It is wrong thinking. Think-tanks are not the exclusive area of some Members who might be left out of an Executive role. Think-tanks assist and help to guide the Ministers in coming forward with collective ways forward and strategies. It must be open to as many Members as possible. I think to try to artificially create job labels for those Members who do not fall into the system or would appear perhaps not to have some Executive or non-executive other role - sorry, junior minister role - I think we are just trying to design a government where the most important thing is the label on your shirt.

3.11 Deputy T.M. Pitman of St. Helier:

May I first say how good you look in that chair? You do not have to reply. It is okay. I find myself agreeing very much with Deputy Southern’s comments and a fair bit of what Deputy Vallois has just said. I think what it comes down to in all these longwinded debates is getting down to what government is actually about and who is it for, and it should be for the people, not just to consolidate power in the hands of those who believe they are right and do not want that view challenged in any way. I left Scrutiny after my first term in office because I knew the huge amount of hard work that people put in, very good reports by a variety of different people, very sensible reports.

[12:15]

The reality was that probably 9 times out of 10, it was just disregarded. I think 10 or 11 of us left at the end and I felt it had no teeth and I know Deputy Vallois will say she had tried to change that in this term. But this idea of Non-Executive Members, I think, can only fudge it and confuse it even worse. I am sure the intentions were good but I believe that it is just about giving that appearance, as I referred to in the beginning, of inclusivity. I do not think it will work. I think the problem does go right back to the fact that when people at Clothier were looking at government, they did envisage that party politics would take root and because there is such resistance to that from some in Jersey, obviously, we cannot manipulate a change to the party system from within this Chamber. That would not be right even if we could, but I think that is what it needs to make this all work. Would I want to be a Non-Executive Member? I do not think I would because when I heard someone saying about going to open fêtes and prizegivings, is that what politics is all about? It might be nice for people to see a politician there but it strikes me of when I was in Scrutiny and we went over to the Welsh Assembly and as beautiful as it was, and as I have said before, beautiful up-to-date building, very modern, but you got the impression that some people there were just being given things to fill their time, and I do not think that is for the best benefit of government or ever can be for the best benefit of the people. So I do think this debate is pretty worthless, I have to say, and I do not mean that disrespectfully. I cannot agree with some of the recommendations. I thought the Chief Minister might have spoken on this. I apologise for not being here earlier but I could not be. The real danger with this Non-Executive Members business, it seems to me, from coming in on the end of the other debate is it would concentrate more and more power and there is going to be nothing on the other side, no true counterbalance. Non-Executive Members, it might look good but are the public going to understand what those other people have said? I do not think they will. Are Members going to understand it? Is it going to improve inclusivity or is it just going to tie people up? Perhaps it will erode some of that challenge that is essential as a check and balance in all democracies. So I do not think I can support it. I think the important thing is to move on and look at the Scrutiny bit and see if there can be any assurances there that it is worth joining because to my mind, sadly, Scrutiny has not been worth joining on the Ministerial government. If we are going to move forward to do the best we can for the Island, for the public, I really think it just needs a change of attitude in those who have their hands on power and jealously guard that power. Certainly, if I were suddenly a Non-Executive Member, and I were given a job in Education of going to open fêtes and giving out prizes, I do not think that is going to make me feel particularly involved and I do not think it is going to lead to me contributing much, or anyone contributing much, to the development of government for the best of our people. So no disrespect to Deputy Le Fondré but I am certainly not in support of this.

3.12 The Connétable of St. John:

I was wondering why I put a black shirt on this morning. [Laughter] It is quite a black day the way this debate is going, a bit of paper here with half a dozen items on it but with the acronyms, with this, that and the other, this reminded me of my days on the Harbours and Airport Committee. Every time I went to the airport, there were acronyms for everything. I have been listening carefully to what has been said by the proposer of this particular part of the debate, and I will really take an issue with his comments about him thinking that what has been happening over the last several years or since he came in the House is the same as a committee system. I can assure him - I know he is shaking his head - it is nothing like that whatsoever. The only thing I can say out of all of this that I have heard this morning is that Scrutiny can benefit, if in part something comes out of this. If Scrutiny were brought in at the time of the conception of the idea by the Minister, as, in fact, has happened over the last several years under my chairmanship and under John Young's chairmanship of Environment, we get pulled in basically from day one by the C.E.O. (Chief Executive Officer) and the Minister to look at certain issues and the one I might think of immediately was the new bus contract, *et cetera*. We have been on board virtually all the way

along and, in fact, we have not had any disputes. We have made our comments, we have had many meetings up at South Hill or here with the Transport and Technical Services Department and we have had various things explained by the group that were running with it and, in fact, we have got where we are today and it worked well. If Scrutiny is going to work in the future, Scrutiny needs to come in from day one of any new concept. At the moment we have got over the last few months, also we have been looking more recently at liquid waste and the like, what is needed, therefore, we are part and parcel of giving advice from early on within. It does not prevent us from scrutinising the issue later on but we are there and we are taking a lot on board so we are far more familiar with what is going on. We are not looking at something that has already happened, we are looking on it as it is happening and if we believe things could be done in a different way we can challenge the department. That is what is good about Scrutiny because of the way it has been going on in the last 4 or 5 years. In the early years of Scrutiny it was quite confrontational with certain groups. I think it was Deputy Dorey of the day who said: "Scrutiny should be a critical friend" and I agree with him, a critical friend. If you are brought in early on you can follow it through and you do your small reviews and say: "Well, we think we are getting this area wrong or we could be running over budget," and assisting in that particular way. I think there is a lot to be done in Scrutiny, possibly because it has got quite a bad name. The previous speaker gave reasons why he came off Scrutiny and possibly it is time that we had the change of name from Scrutiny to Select Committee. I have said it before, that possibly that is the way forward so that we are getting to a point, we want to have change, there is change that can be made that will benefit the workings. If we are going to stick with the system we have at the moment of Ministerial and giving the Minister additional authority, which I am more than happy to go down that road, so that there is somebody who is accountable because at the moment he is only a figurehead. What is he really responsible for? Really nothing, I would say, because everything is being handled by other people. So let us give him a job that makes him earn his wages and move forward but, at the same time, let us amend the system where it can be amended for the better of the Island. Maybe it can do with a name change but also do it so that Scrutiny comes in very early on in a lot of these major issues, anything from the waste plant or whatever it may be, in planning issues for that particular panel; the same with other panels in their sphere. But as far as all these acronyms for what you want to call Members, *et cetera*, well the only thing to do with that is ... to me I think we have wasted a couple of hours this morning on this one.

3.13 Deputy R.G. Bryans:

Once again I rise to speak behind the Connétable but this time I agree. I looked at this and I have listened to some of the Members, I think we are beginning to knit fog at this point in time. You end up with that classic case that you used to find in education where it is the situation of who picks the unfit kids for football. What I think is we should work with the tools that we have already been given. I think absolutely it has been already well articulated that Scrutiny ... we work with Scrutiny and have found them admirable. As the Connétable said, if you get in there early enough and you explain what you are trying to do, they can help and persuade and influence what you are trying to do and I think we have done that all the way along. I will be very brief; I think Scrutiny is the way. Just restructure it, re-design it, have another look at it and make it work.

3.14 Senator I.J. Gorst:

I do not think that we should be critical of the Machinery of Government Review Sub-Committee for bringing forward this particular proposal because I think, as the Member of the Machinery of Government Review Sub-Committee that introduced this particular section said in their 47 interviews, Members were concerned about inclusivity and the Machinery of Government Review Sub-Committee have gone away and considered ways of trying to develop inclusivity. They have revisited the idea of the hybrid model, which was exactly what the previous committee tried to

achieve, as Deputy Le Fondré said, with not the re-introduction of a committee system but a board system. Senator Breckon again today has said we should think outside of the box but, I hate to say this, his thinking outside of the box was not so much that as saying that we should have the Isle of Man system. I think it is important that we have had the debate today about what Members see inclusivity as and do they want to see a hybrid system. I think most Members today have come to the conclusion that perhaps, although they are concerned about inclusivity, they are not so concerned that they want to see a hybrid system. It has been a very important debate because we need to understand what Members want. I have concerns about their hybrid system because where would these Members sit? If they are advising Ministers then they cannot escape from the fact that they are part of the decision-making process and it should be recorded as such but they cannot then at the same time be scrutinising what they are doing. So it is trying to understand what the role is. While I think it was right to have the debate and I think the Machinery of Government Review Sub-Committee have done all that they could in trying to address the issue of inclusivity, I am not sure that the hybrid model is the way to go.

3.15 Deputy C.F. Labey of Grouville:

I have not yet commented on the rest of it so I will try and encapsulate some of my comments to the other sections too. Starting with Scrutiny, I would like to agree with the Constable of St. John. Scrutiny possibly needs a name change. It needs quite a bit more than that but I would certainly support him, and I know he has mentioned this on several occasions, that Scrutiny needs to be given more power. It needs to be better resourced. It needs to be included and better communicated with. Some Scrutiny panels, committees, work very well, others do not. But Scrutiny needs to be far more valued by this Assembly. I have sat on Scrutiny and I would disagree with Deputy Le Hérissier in his comments when he said that Scrutiny should not just be at the end of the day, it should help form policy. Well, I would take exception to that when, as Chair of the Economic Affairs Scrutiny Panel in the last Assembly, I scrutinised the Rural Strategy. That was an excellent piece of work and Deputy Le Hérissier was a Member of that panel and we scrutinised the policy as we went along.

[12:30]

I believe you took on board our recommendations and accepted, I think, 28 of the 29 of them. Scrutiny can work extremely well; however, I have also seen it be shunned in the worst possible way by this Assembly. In the last Assembly when I believe we were debating, if my memory serves me right, something to do with the States of Jersey Development Company, I remember writing in huge letters across a particular proposition: “The day Scrutiny died.” I do not know if some Members here remember that but it was a very sad day for Scrutiny. So, possibly a name change. Anything to up it in whatever way, power, resources, communication, and I would compare it to the power that is given to chief officers and the S.M.T.s (Senior Management Team) and compare that with Scrutiny. I would ask Members, have we got the balance right here because I am not so sure we have. So, yes, Scrutiny has a very, very important function. Turning back to Non-Executive Members, I must confess I was more confused after Deputy Le Fondré’s speech than before it. If this is meant to be a hybrid of the old committee system then give me the committee system and, in fact, I always felt the committee system worked really well. It worked well. All Members of this Assembly were involved somehow with the policy-making, everyone was included. We discussed things around the table, 5 or 6 of us, so whatever was coming to this Assembly came with a certain amount of consensus; you were allowed to dissent your decisions if you did not agree. There was quite a lot thrashed out around the committee table which was hugely beneficial, it was hugely beneficial. Different members came with different points of view and we could discuss things there. So if it was a case of Non-Executive Members or going back to the committee system, then give me the committee system any day. I would flag up the only thing that

possibly did not work with the old committee system, it could have worked an awful lot better, was the presidents of those committees were not necessarily the members of the Policy and Resources Committee; the Policy and Resources Committee was chosen separately. More often than not they were the presidents but not always and that was the element that probably did not work in the committee system, there should have been all the presidents and those presidents in the guise of a council or the Policy and Resources Committee should have then been the driving force and co-ordination panel to drive policy forward. If I could just now touch on the original section of this report - I am sorry, I am moving backwards but I did not get the opportunity before - it is with the recommendation number 3 and the Chief Minister producing his policies have got to be published, it says: "Not less than 5 working days before the meeting at which the Chief Minister designate is to be elected." I am going to say something very controversial here, I think the Chief Minister should be publishing a Strategic Policy possibly even before the nomination meeting, or certainly straight after, so the electorate then can consider those policies. Again, it is not a question of voting on the personality, it is voting on the policy so the electorate get a say into which policies they favour rather than the personality. It does not have to be a long-winded strategic plan but it should be 6, 8 points, a charter, if you like, to drive forward the Island. The electorate should know which people are putting themselves forward as the Chief Minister and have an idea of exactly what they are going to propose when and if they get elected to be the Chief Minister. I am grateful for the Privileges and Procedures Committee giving everyone the opportunity to speak in this machinery of government debate or discussion. It is a discussion that we should have had before we had the reform debate because this is how we work and when we have decided the best way we can work and get the business done then surely we have then got to decide how best and how many people we need to drive these proposals forward.

3.16 Deputy J.H. Young:

I want to speak briefly on the issue of Scrutiny because I think it has been a very productive discussion.

The Connétable of St. Clement (in the Chair):

Can you do that as it relates to Non-Executive Members because we are having a...

Deputy J.H. Young:

Certainly. What I was going to say is that the principles behind the proposals for Non-Executive Members are important and I think they are as equally relevant to Scrutiny. First of all, from my knowledge as a civil servant for many years I know that policy decisions, policy development decisions are definitely improved by more heads than one. That does not apply to Executive decisions because that tends to not be as clear-cut. But when you are developing a long-term policy then testing those ideas by sharing them with political elected Members always produces a better result. There is great efficiency in that because there is a great danger in our present system that policy ideas come on the agenda and advance very quickly through the system, consume resources, even law-drafting time, and they get to the final stage when they have not been subjected to that testing, it is perfectly obvious in a number of debates we had here that there are snags and problems that could have been ironed out with a kind of broader-based process. Of course, it is not helped by the fact that the information access to non-executive members at the moment is not adequate. Of course, the Machinery of Government Review Sub-Committee had the view that: "Well we know that previous attempts to deal with this inclusivity issue of bringing more members in to provide that sort of function was proposed under the Ministerial boards which fell." I think a number of speakers have said they looked back at that debate and seen why those ideas did not run. Well, there were a number of problems. One was is that there was seen to be a conflict with the Troy Rule that if members became involved in that policy work on Ministerial boards, that would create

a conflict of interest position and would conflict with Troy. I think the same issue is being said here and, of course, then everybody convinced themselves that the answer is Scrutiny. From my point of view, I have certainly found it really worthwhile, as the Constable of St. John kindly said on our panel, to try and develop ways of working with Ministers where we can be taken into this policy development role. I have been criticised for it because it says it steps outside of the Code of Conduct and there are potential dangers of conflict because what if the proposal comes up with this rubbish how are you going to criticise it later on. So I think there are issues there that to achieve that separation it was how could we overcome these kind of blocks that were put in the way of having the kind of enlargement of the Scrutiny function, and that has led to the birth of the Non-Executive Members. Personally, it was a compromise view. I think it can be capable of being evolving into a more broader-based Scrutiny function but I think Members have got to be prepared to accept we cannot have this perfect structure with no conflicts in it, we have become so rule-bound. In the end we have got to be pragmatic. I think there is no better evidence than the need for this type of function of some process of involvement of Members who are not in the executive in the policy development advice work than the 190 *ad hoc* policy groups that the current Ministers have set up. At the moment, in our earlier report it was said that we should at least know about these. At the moment it is really difficult to know about them, who is on them, who is making decisions, who is influencing them. At least the Non-Executive Members proposal was intended to provide some kind of formality that we would know who are on these groups, who are doing the influence, and what. At the moment it is not possible to come up with that. So I think that those are the driving forces as to what led to the impact, the proposal of Non-Executive Members and I certainly recognise that there are issues there about the alternative of strengthening Scrutiny. But, please, if we go that way let us not box ourselves in to the inflexibility of a rigid Scrutiny system where we cannot go across the boundary of real-time policy examination where it is properly resourced and given real clout because I have certainly been very disappointed on occasions when I felt that Scrutiny has been given lip-service in this Assembly. I can recall one not too long ago on the Public Finances Law where frankly, it was a disgrace the way the thorough report, the expert reports produced and we had ... and the Minister is not here to answer it. I do not know what the rules allow me but I felt very upset about that indeed and that was an example of not treating Scrutiny with the importance that it deserves. So that was the evolution of the ideas, it is why they are there. I ask Members to reflect on the principles; reflect on the principles of what we need to do. Do not shut the door to some response to those arrangements to ensure that we get in the strengthening of the Council of Ministers because I stood as an advocate this morning to strengthen the role of the Council of Ministers. It was not my natural inclination. My background leans me strongly towards committees because, like other Members, having been used to working with committees I feel committees are a very good way on policy development, ticks all the boxes in terms of communication and so on. But I have learned to adapt; I have learned to adapt to the new world and I think what I have been trying to do was bring proposals to improve it. I hope we do not end up with cherry-picking, i.e. well we have all Ministerial improvements in here but we do not want any improved safeguards. That would be a total mistake and I would not support it. If we have the Ministerial strengthening, which I believe we need, we have to have the checks and balances and the safeguards to go with it, whatever form they take.

The Connétable of St. John:

Can I propose the adjournment, Sir?

The Connétable of St. Clement (in the Chair):

I am just warning I see one light, if we can just finish this section perhaps before lunch. Deputy Le Hérissier, do you want that?

3.17 Deputy R.G. Le Hérissier:

I will just add a couple of comments. Maybe when I was describing committees I was, to make the point, overdrawing the picture. But I have to say I do agree with my colleague, when they are running well they produce the kind of results and the kind of decision-making that she referred to. I would certainly like to make that point and not do a disservice to the people who have served on committees. The other point I would make, which I think Members should dwell on, is why there are hardly any votes of no confidence these days. It used to be a feature of the committee system and there used to be some quite remarkable examples of individuals who used to analyse a case in-depth, present the alternative and come in with a really sporting chance of winning a vote of no confidence, and that has virtually died away and it is worth pondering why. The third point I would make, there is often the case or sometimes the case where Scrutiny is the alternative.

[12:45]

When Deputy Duhamel was chair of the Environment Scrutiny Panel he had such an opportunity and he worked on it. I am not sure we pushed it to anything like the extent because Scrutiny was the alternative to the Incinerator proposal. The work that Scrutiny had done, the emphasis on recycling, it was the policy alternative. It was the only one that the States had because it was quite clear there were vested interests who wanted to push this through, come what may, and we know what happened; so much depended on Scrutiny. But let us ponder why we hardly have any votes on no confidence these days. I think it is a very interesting issue. You can even recall when John Le Marquand was a Senator, he ran a vote of no confidence totally disassembling the Harbour and Airport Committee's case for lengthening the runway. He mastered the technical arguments, he presented them and I think he won and brought the downfall of the committee. We never do that.

The Connétable of St. Clement (in the Chair):

Does anybody else wish to speak on the Non-Executive Members part of the debate? I think, Deputy Le Fondré, the Chairman agreed that we would wash-up at the end of the entire debate.

Deputy J.A.N. Le Fondré:

I am assuming this is the end of Non-Executive Members section therefore I am washing-up.

The Connétable of St. Clement (in the Chair):

Deputy Young was not given the opportunity of summing at the end of the Executive; I thought we were going to do that at the end.

The Connétable of St. John:

Can we vote on an adjournment?

Deputy J.A.N. Le Fondré:

No, I am doing the Non-Executive Members, Deputy Young has just spoken.

Deputy M. Tadier:

Would it be appropriate, I think, if Deputy Le Fondré sums up as I am sure he will not take too long? We finish for lunch and come back here at 2.00 p.m.

The Connétable of St. Clement (in the Chair):

All right, if the Deputy can do it within 3 to 4 minutes, that will be excellent.

3.18 Deputy J.A.N. Le Fondré:

I shall aim for faster. In trying to bring some of the arguments back we have gone into a whole range of areas, not unexpectedly. Number 1, the committee system is not on the agenda. There is no choice on that. When I say that, probably 50 per cent of the panel in varying forms would

support the committee but the view of the committee system will return to it in some shape of form. But the view was there was no way on Earth that was going to get through an Assembly so why even bother looking at it and I say that. If the majority of Members turn round and say: "We would like to go back to the committee system" fine, but we do not think that is going to happen. Therefore, you go straight back to the point about inclusivity and how you deal with it. To pick up a point again made about Scrutiny, how we value Scrutiny. The Deputy of Grouville and, I cannot remember, someone down there, made 2 very valid points, one was S.o.J.D.C. (States of Jersey Development Company) previously when effectively Scrutiny was whitewashed, the day that Scrutiny died. I think Public Finances Law this time round was another one. The amount of work and time that was spent on that with some top-class advisers and the whole thing might as well just not have come to the Assembly. So you have got to decide. If you claim you value Scrutiny then how do you deal with the points that the Executive do not particularly like because quite often they will find 3 or 4 points to like and they will leave the 5 or 6 key ones or, in the case of the Public Finances Law, all of them, aside? That is one of those things everyone has to address. I speak as the Assistant Minister but hopefully I have tried to look objectively at this. You have got to consider what it is like when the boot is on the other foot when you are in Scrutiny, when you have done that work, when you believe you have a credible case and nothing happens. Or what about the points when comments are arriving later and later? I think that was something we had when they arrived 24 hours before the debate. So it is all very well about this lip-service: "We value Scrutiny, we value the non-executive thing" but it is again if we are going to put more authority into the hands of the Executive, you have got to have the checks and balances. In terms of process and the purist argument, and then that will be me. Process: it is a little bit about picking up on what the Deputy of St. Martin talked about because I do not disagree with him in terms of this issue about - and the Constable of St. John - about going in and talking to people right up front in the development of policy and that type of stuff. However, over lunchtime Members might like to look at page 34 and 35 of the report, it is about governance and governance is the issue and governance applies to governments as well as to private business. In there we have identified certain risks, which is what they do in the world of governance as to how you deal with things, and one is the self-review threat and one is the familiarity threat. In other words, if one goes in as a Scrutiny panel, which is meant to be at an arm's length, I would argue, critical friend basis, and has a nice - I do not like the words "cosy chat" - chat up front about what this policy is going to be, that sounds great, but how do you make sure you have got the objectivity to challenge that process later on? It is a very fine line. Whereas the Non-Executive Members, because they are not part of that Scrutiny panel - we have said they should come from Scrutiny because that is the non-executive function - are not in that conflicted view and that is about the advice role. To use 2 examples; the Constable of St. John was absolutely right, the bus service. I was not able to take part in the bus contract, I would have loved to, but I was conflicted because of past clients or within the firm they operate I am connected with. But at one point the Transport and Technical Services Department asked a group of non-executive Members predominantly, some Scrutiny, some from what is called the Bus Users' Group, to come up to give us a steer on certain issues surrounding the strike and at that point one of the Members of that group, and it may well have been the Constable of St. John, said: "Minister, you have heard our views, go away and make the decision." So that was the bit about getting some influence in. The other one, and I am delighted the Constable of St. Brelade has just walked through the door because I am about to use him as an example. The Liquid Waste Strategy. The Constable of St. Brelade is a Member of the non-executive, he is a Member of Scrutiny not of the Environment Scrutiny Panel - I believe he is still in Scrutiny - and he is a Member of the Liquid Waste Strategy Group. He is sitting on there to give some advice and some feedback on where it is going and I think that is a good move. So if you are going down the purist argument, when we work together I would argue if we blend the views we get a better decision-making process. We cannot go back to the committee system so what has one got to try find as an alternative? The

Scrutiny is meant to be the critical friend; it is meant the arm's length objectivity angle. So you cannot get too close in to the policy development stuff because you then run this risk of the conflict argument. If one is going down the pure purist route then the Constable of St. Brelade should not be on the Liquid Waste Strategy. I am thinking about the States Employment Board. This Assembly in the past took a view to put 2 non-executive Members on a committee and they have decision-making powers and there were reasons for that. Public Accounts Committee, we have non-voting members on there who are not politicians, they are there to give a broader opinion, as one example. If you want to go along with this pure purist argument, in theory you should be addressing all those angles as well. I would argue that, yes, if one wants to define their role better, that is fine, but I think there is the scope to say if you want the pure purist argument you will end up with far less inclusivity and much more of heads banging against each other. It is better if you keep the decision-making side and the non-decision-making side separate but you do need some mechanism to address this inclusivity and the influence bit. So that is what I argue. I think the whole issue, which we will get on to next time, about strengthening Scrutiny, the flexibility and the resources, I absolutely support but there is the issue under governance which is Scrutiny cannot get too close, there is an arm's length bit and the role of - I do not like the title - the Non-Executive Member, but we have used it, like the non-executive director, is to try and address that inclusivity angle. Alternatives are welcome but if you are going down the purist view then the Constable of St. Brelade should not be on the Liquid Waste Strategy and I think that would be a loss.

The Connétable of St. Clement (in the Chair):

Just before we adjourn could I announce that the review of the Draft Public Finances (Amendment) (Jersey) Law 201- the response of the Minister for Treasury and Resources has been presented today. The States will now adjourn until 2.15 p.m.

[12:54]

LUNCHEON ADJOURNMENT

[14:15]

4. Scrutiny

The Connétable of St. Clement (in the Chair):

Before we continue the debate, could I inform Members that it has been lodged today Dental Health Services: Improvements in the name of Deputy Southern. Now, continuing with this in Committee debate on R.105 and we move to the section on Scrutiny which I will ask Deputy Vallois to introduce.

4.1 Deputy T.A. Vallois:

I would like to take this opportunity to thank the Machinery of Government Review Sub-Committee for having me on board the review and to be able to contribute to the many difficult discussions surrounding the many possibilities for a new structure to our machinery of government. My role as a Member of the Machinery of Government Review Sub-Committee was not only to work as a team with the other members but also identify a stronger and more flexible Scrutiny system, a system which enables efficiency, effectiveness and a constructive challenge to the Executive to create a more robust framework for accountability of those who make decisions and produce policies or legislation for the Island of Jersey. Members will see that appendix 3 of the guidance note establishes 14 recommendations. Pages 39 to 43 of the report 105 sets out the reasoning in a very simple way behind these recommendations. There has been much criticism levelled at Scrutiny during its evolution and it has been varied and, in many circumstances, acted

upon to aid improvements. Continued criticism is of flexibility and the teeth it has to ensure accountability. I firmly believe that the changes proposed to Scrutiny would go some way to improving the system and encourage greater inclusivity in a more transparent manner. At present the States Assembly appoints panels and panel Members to scrutinise particular departments and Ministers. To enable a more flexible approach, the sub-committee have proposed the States should only appoint a Scrutiny Management Committee who would effectively be accountable to the States Assembly to ensure that Scrutiny runs effectively. All non-execs would be able to partake in reviews and the reason why I say this is because the Scrutiny Management Committee has been established on the basis of the Chairmen's Committee which currently is established by the States Assembly, each individual chairman is appointed and we meet on a regular basis to discuss any concerns or any ways to improve the Scrutiny role, discuss agendas for work programmes, agree terms of reference and the budget for how Scrutiny works. The Scrutiny Management Committee would be very much a similar set-up to that of the Chairmen's Committee. Numbers is one which has been discussed thoroughly on the Machinery of Government Review Sub-Committee. We decided at this point to stick with the current number of 5 chairmen with the Public Accounts Committee Chair added on as it currently stands at the Chairmen's Committee. That, of course, could be considered too less an amount of people to run the Scrutiny function. The work programme would be drawn up by the Scrutiny Management Committee for annual work, so identifying policies and legislation to be reviewed. The Scrutiny Management Committee would enable a Member who is a non-exec to chair and carry out a review with at least 2 other Members. This bodes well for Members, in terms of enabling referral to Scrutiny or requests to be undertaken in a more timely manner without it being detrimental to the ongoing work programme. A review was undertaken previously as to the robustness of the Code of Practice, this means changes with or without reform of Scrutiny. It is extremely ambiguous and causes a few issues with how we can practice our roles in a more effective way. There will be a requirement for ensuring the appropriate skill and access to resources in place to enable the system to function that meets expectations, not only of Members but of the public, in order to aid improvement of policy and legislation for the Island. I will refer back to the guidance notes. The reason why this came about, there was a lot of discussion at the Machinery of Government Review Sub-Committee level of the Executive and until that discussion could be, to a certain extent, resolved, as you can see already in the R.105 that we have produced, I came back to the Machinery of Government Review Sub-Committee and suggested to them a way forward for Scrutiny. I have sat down and had this tested with various Members, a Minister and I have spoken to the Comptroller and Auditor General. I have spoken to other Members. I have presented it to Scrutiny Members to give them a flavour of what could happen in a more flexible system. The vision would therefore be that instead of having the rigid structure that we currently have of each individual panel being elected, you would have the Scrutiny Management Committee elected and it would enable separate, individual committees to be set up by non-executive Members on the agreement of the Scrutiny Management Committee who would be able to partake in a review of their particular concern or something that has been raised in the States Assembly, say, for example, there is a referral to Scrutiny that is not already in the work programme and cannot be established under the current work programme. Therefore, you are able to request that non-executive Member because they have clearly got an interest and clearly got concerns surrounding that particular area to chair up that review with 2 or 3 other Members and they have the resources to support them in place. The resource side of this is extremely crucial. Without the appropriate resources, it is difficult for Scrutiny to function at an optimal level and when I talk about resources, I do not talk about numerous amounts of civil servants. I do not talk about numerous amounts of people just sitting there and telling us what we can and cannot do. I have always been advised that Scrutiny is run by politicians and believe firmly that the resource required would look along the lines of what they have in the U.K. and was established by the Liaison Committee back in 2002 in terms of an expert panel who they employ. But what I am

asking for is a cool-down because 9 times out of 10, any review that Scrutiny does will have some economic implication, will have some financial implication or will have some legal implication. Therefore, being able to have what we would class as a cool-down contract where we could obtain advice or information from individuals expert in that field in a timely manner would enable the efficiency of that review ongoing and also other panels to be able to go in and out of that cool-down contract as and when needed. Also recognising the extremely good work that our Scrutiny officers do, there is a gap in terms of research assistance to aid the work of the Scrutiny office and we have discussed possibly the introduction of 2 research officers that would enable the pooling together of the information and informing that review for the Scrutiny officer to put together the report for the panel. There are, in particular, details and many Members have raised concerns with me individually or raised concerns with other Privileges and Procedures Committee Members. There are committee Members that have wider concerns. The reason why I believe this would provide more inclusivity is because one of our main principles of this report was transparency and Scrutiny plays an extremely important role in that of transparency. In order for Members to take part in whether you call it “aiding policy development” or whether you call it “critically challenging” or whatever words you wish to use, the evidence base of the review should come first and foremost. But the inclusivity means that by providing a more flexible Scrutiny system, you are enabling other non-executive Members to take part in particular areas of policy and legislation concerns that they can lead on and bring information to this Assembly when they are asked to vote upon changes to the future of the Island. I think that is pretty much where I will leave it for other Members to come back and provide either constructive criticism or solutions to alternatives. Thank you, Sir.

The Connétable of St. Clement (in the Chair):

All right, the debate is now open. I call the Constable of St. Mary.

4.2 The Connétable of St. Mary:

I just have a couple of things. I wonder if Deputy Vallois, if she deems fit, will come back and just give me some more information. Recommendation 33 says that only non-executive Members of the States should vote for the Scrutiny Management Committee, *et cetera*. I just wonder how that leads with getting Scrutiny backed up by the Executive as we have talked about having the Executive supported by other Members buying into it by accountability *et cetera*. I am just wondering if not having the Executive Members involved perhaps might affect that and does the Deputy have any ideas about how we could ensure robust engagement with the non-executive Members to ensure that there is a good turnout of people working on Scrutiny all the time because, obviously, that would be a problem if we had no structured committees. We would have to engage with Members to get them onboard. Thank you, Sir.

4.3 Deputy G.P. Southern:

That is a psychic light I have just put on now. There just might be some legs in this part. I do believe that we do have mechanism to Scrutiny which is probably overly structured. We have seen this year, for example, that the Health, Social Security and Housing Scrutiny Panel has been working on 2 massive projects at the same time with the same amount of resources, namely 3 Members. That is a very difficult thing to do. To review properly the proposed housing transformation plan where I think they missed a big chunk of it, but never mind, and at the same time, to be keeping a guardianship on what is happening over what plans are developing for the Health and Social Services Department which, again, was a massive plan and was an enormous task. If we had the flexibility to appoint other chairmen or to have other chairmen engaged in that area, then when the demand is on for Health, Social Security and Housing Scrutiny Panel why do we not have 3 or 4 panels working away on that area because the need is there? Similarly, when we come up with a Strategic Plan or heavyweight policies coming forward, I do not see any reason

why you should not be able to appoint 2 Scrutiny panels and look at the aspect of that because it is important at an early stage in any 3 or 4-year period to get things right. So that flexibility is worth trying absolutely. That does not mean to say that, routinely, these 5 Members will not be engaged in their hobbyhorse areas where their interest most is but it gives that flexibility to move over into another one and to appoint from the whole body of people chairmen to investigate particular aspects of policy. Where I think there may be problems is in examining policy in preparation. There is a danger there that you end up with the Executive beavering away to produce results and the Scrutiny panel beavering away to produce results and coming to the same results, i.e. twice the number of people producing exactly the same answer. I do not see - and it is something that needs to be clear in a system that does not have political parties - that there is a difference between policy differences and Scrutiny.

[14:30]

Policy differences is the business of politics and party politics is most commonly a vestige of that and the difference between political differences between the Executive and Scrutiny ... not the business of Scrutiny. One has to be very careful all the time. When you go to do Scrutiny, you take your politics hat off and you put your Scrutiny hat on. I say: "Hat" but I mean his head, yes, and it is very easy to confuse the 2. I can produce a socialist policy on taxation that is a mile different from what the Executive will do but it is not the same as Scrutiny, it is not monitoring Scrutiny and it is not making the Executive stand up and be accountable. That is a different process altogether. I can, however, take their policy and rip it apart and that is effective Scrutiny and what I am relying on there is not political dogma, opinion or policy. It is evidence. When your Scrutiny head goes on, you are saying: "What is the evidence and how strong a statement does it support?" That is where you go to. Look at examining the evidence and what can be supported on that basis so it is an area that I think we still have not got right yet. The risk that we confuse politics with Scrutiny is always there. It is ever-present and I am not sure that this solution will solve that but, nonetheless, the ability to be far more flexible as a system that is responding to what the Executive is doing I think is worth giving a good go to.

4.4 The Deputy of St. Martin:

I am not unsympathetic to the views of both Deputy Vallois and Deputy Southern. Deputy Vallois makes some good points about resources and the ability for Scrutiny to move faster and Deputy Southern certainly makes a very good point about the Health, Social Security and Housing Scrutiny Panel and the enormous amount of work they have to get through at the moment. But the point I would make is that I have enjoyed very much my 2 years in Scrutiny and that has been because I have been able to scrutinise subjects which I feel I know little about and I think it is important that Members, wherever they come from, if they are going to work in Scrutiny, are used to the best of their abilities and that means sticking to their specialist subjects wherever they can. I certainly, for myself, wanted to scrutinise subjects which I understood and I wanted people with me who I was confident in that also understood the subject. I think that sticking with a certain Ministry when you are undertaking your Scrutiny is important and I think the longer you stick at it with a certain Minister, the more you learn about his department, his officers, the policies and the way he works and it saves a lot of time, certainly time that other Members might have to spend getting back up to speed. I am a little bit concerned about people moving from one ministry to another and going all over the place and the amount of time and effort they may spend in getting used to a department but I am willing to listen. I am certainly being swayed by what Deputy Vallois and Deputy Southern have said but I still feel that, in my heart of hearts, certain Members are elected to Scrutiny panels to look at a particular Ministry and that is what they should specialise in.

4.5 Deputy S. Power:

I suppose I have been fortunate in that I have served on both Scrutiny and on the Executive and I think I can comment on both sides because I have been a scrutineer and, at the same time, I have also served as both an Assistant Minister and a Minister. But one of the points that Deputy Southern made, which I think is really important, is that if you look at the Corporate Services Scrutiny Panel and the workload it has, it is trying to evaluate and add value to the work of the Chief Minister's Department and the Treasury and Resources Department, 2 of the absolute dominant States departments in the States. You then look at the work of the Health, Social Security and Housing Panel and the work alone that has been generated by the Health and Social Services Department. Just those 2 Scrutiny panels alone - and I am very respectful of the other panels - it is a very unequal task to try and throw 3 or 4 Members of the States with 2 Scrutiny officers and a hired adviser for 3 to 6 months to analyse something as deep and as complex as the Housing Transformation Programme or to look at the huge amount of States responsibility that is now centred in the Chief Minister's Department and the equal amount of scorekeeping and attention-directing that goes on in the Treasury and Resources Department. So it seems to me when I was listening to Deputy Vallois this morning and listening to Deputy Southern and a number of other people who have spoken about Scrutiny that it is a hugely unequal task. I have just listened to what the Deputy of St. Martin was saying and, given my experience over the years with the Environment Scrutiny Panel both when it first was set up and then 2 years ago and then the Corporate Services Scrutiny Panel in the recent past, I feel that the Scrutiny Members really need to tackle this in a different way. I sometimes feel that a cross-panel selection of States Members that can tackle something like housing or tackle a specific area of the Chief Minister's Department or the Treasury and Resources Department where you have 4 or 5 States Members who have a degree of experience and can come in, hire the people they need to ... and I think budgets are incredibly important here and I do not like this constant carry-forward that has been going on over the last 5 or 6 years. Scrutiny needs to use the resources it has and, if necessary, it needs further resources which it has not used. It is almost as if there is a psyche in the States that we must penny-pinch and we must be very careful how we review government policy. I think that is a dangerous thing to do and time and time again both on the Environment Scrutiny Panel with Deputy Duhamel ... and I must say he was a good spender for all the right reasons because he did research and did hire people properly and on the other Scrutiny panels, we have never spent the budgets we had and there was outstanding work to be done. I favour the model where a panel is formed specifically to look at something from the resources of the Corporate Services Scrutiny Panel and the resources of the Environment Scrutiny Panel if there is a cross panel need. I spoke to Deputy Young this week about it and I spoke to Deputy Le Fondré about it and there may be a case in the not too distant future where a composite panel is put together which will review a specific area of government policy which might involve the Treasury and Resources Department or the Chief Minister's Department or the Planning and Environment Department. So having served on Scrutiny, there are Members who have an expertise in Social Security, there are Members who have an interest in agriculture, there are Members who have an interest in freight, ferries and shipping and there are Members who have an interest in housing. But that does not necessarily mean that that particular Member who has that expertise should be excluded from another review that is necessary because that work can be done by people as long as they have the ability to research and do it. We did 2 reviews in the last 2 years on population and migration and the follow-through has not been satisfactory. We are still in a position where there are no effective inspections and spot-checks going on in the industries we said needed to be looked at. There is still no increase in staffing levels and I find, much like planning when you approve a planning application, sometimes the panel needs to be told what is the follow-through. With Scrutiny, we also need to be told what is the follow-through. So there is a missing link in all this and really when we get involved in a debate like this, when we get involved in the machinery of government, we are not really talking about the machinery of government today. We are talking about ourselves. We are not really

extending what we are talking about in this Chamber out to other areas. We have to get this bit of it right first. If you look at the machinery of government reviews in Australia, they are talking about the whole public service and everything else. We are not talking about that here. We are really talking about how we approach our work. So I sometimes get hugely enthusiastic about the work I do and sometimes I get completely deflated because I feel ... I better be careful what I say here. I find that the result of all of the work is ignored or it is sidelined or it is almost as if we are doing the footwork for something that is almost a template and I find that very frustrating. There are tremendously effective people both on the Executive and on the non-executive. Most of the work that has been done in Scrutiny has been absolutely excellent. Somebody referred to Deputy Duhamel's Environment Scrutiny Panel. All of the conclusions of that one in 2006 and 2007 are absolutely right. I believe we did follow the wrong technology on the Energy from Waste Plant. We followed the wrong location but Scrutiny did its job and the result is what we have today. It is both an enabling and very rewarding process but it is also a deeply frustrating one. Some excellent work has come out this year out of Scrutiny and last year but I feel that there is a divide which has got to be bridged somehow. I take my hat off to those panels and the one that I have just resigned from for other work reasons, I take my hat off to the Deputy of St. Mary, Deputy Hilton, the Deputy of St. Ouen and Senator Ferguson and her team because it is a most unequal task. I am sitting here today listening to all the things that are being said and I am probably going to end up at the end of the day more confused than when we started. How do we benchmark this? How do we measure what we have achieved today? Will there be a result? Will there be something that we take forward on both this particular subsection debate on Scrutiny and on the bigger picture? I do not know. I had a speech prepared which the Constable of St. John did which I basically binned and I am winging it now. I feel passionate about the work I do in the States. I did and do feel passionate about the work that Scrutiny has got to do but the approach is wrong. Something has got to give, something has got to change and I hope that the conclusion of today's debate will be that there will be an innovation, there will be a change, there will be a new template, there will be a new relationship between these huge departments that devour time and those of us that wish to scrutinise certain aspects of it. So, Mr. President, I do not know if any of that made sense but [Laughter] I am ...

The Connétable of St. Clement (in the Chair):

I am sure it made sense to somebody, Deputy. [Laughter]

Deputy S. Power:

Yes, that is so reassuring from you, Sir, that my words have now fallen on deaf ears, particularly yours, so I think I will leave it at that, Sir. Thank you.

4.6 Deputy M. Tadier:

Could I address maybe some of the questions? I think what would be envisaged is that certainly we have our officer who is listening to this, I hope. Hello, if you are. [Laughter] I expect that she will be making notes as we go along but, at the very least, we have got this Hansard and we will be combing through that. I suspect that another helpful tool would be if afterwards and subject to the agreement of the main committee, it would be useful to send this out in a very simple tick-box questionnaire to say which recommendations Members agree with and which ones they do not agree with. That is a possibility. At least, visually, we could see which recommendations have support and which do not and which are areas of contention. I think that we have also got a fairly good steer from this debate anyway and certainly we can look at that when we conclude. If I can just add very quickly my experiences and I think that the Members, generally speaking, need that flexibility. Health, Social Security and Housing Scrutiny Panel is the perfect example. We saw something of it yesterday and even though politics was involved and it was a very political debate,

they were in a very difficult situation because the Assembly, quite rightly, expected comments from this panel but on the other hand, they have had so much of a workload. It has been said that Housing, Social Security and Health which are all undergoing massive transformations should each have a dedicated panel individually, you could argue.

[14:45]

But of course workloads change. It may well be that, in the future, the Minister for Home Affairs will be bringing through some legislation. In the past, we have had: “Why is it that Education and Home Affairs are on the same panel?” There is no logical reason that you should be looking at the Education, Sport and Culture Department and the Home Affairs Department, they just happen to sit together and of course one does the job that one is given. But we should not think that the individual grilling of Ministers at quarterly hearings is not going to take place. That will still take place by a dedicated team. It simply is the case that we give the flexibility for resources to be deployed and it is consistent with the recommendation that we have with the Chief Minister being able to realign portfolios as well. If and when he or she puts together essentially what is a cabinet, they can say: “We need some resources to be directed to the Minister for Children,” for example, and quite rightly Scrutiny should be able to realign. I would like to know Members' opinion of, and I suspected this would be controversial - maybe I should not have brought it up for that reason, for it has not been mentioned yet, I do not think - is that I personally think it is important that Scrutiny be allowed to choose its own members so we have a separation of powers between the Executive and Scrutiny. If we are going to allow the Ministers to choose their own team, because that is the team they have to work with, I think it is only right that we allow Scrutiny, the non-executive, to appoint Scrutiny Members and therefore to have more say about how Scrutiny and the non-executive will examine the Executive. That seems to stand to reason to me, but no doubt that might provoke some comments from other Members.

4.7 Senator S.C. Ferguson:

I will be incredibly brief. I like the idea of the flexibility for Scrutiny. There have been occasions where we have felt a little hemmed in. With regard to the comment by the Deputy of St. Martin in which he talked about scrutinising subjects which one knows something about. That is absolutely excellent, but one of the big things about the committee system was that you also got dumped into situations where you learnt something about a subject which you did not know anything about to begin with. I think that if you just stick to a subject you know something about, then you end up in a silo again because you are not looking outside, you are not looking at the general list. Deputy Southern mentioned a confusion of politics and Scrutiny in relation to the relationship with the Ministerial function and, yes, I think there is a disconnect here in that very often the problem with being a critical friend is that none of us likes being criticised and when Scrutiny is a critical friend, it is just business and it is not personal. I think perhaps this is a skill that has been lost along the way and perhaps we need to regain it. Perhaps then the Ministerial function will be a little more receptive to Scrutiny ideas.

4.8 The Connétable of St. John:

The problems that I have been hearing from Members have not only happened in the last 3 years; they have been going on for an awful long time. A lot of it is caused by personality clashes. I can just think of 2 Members in this room; I would probably say Deputy Southern and Senator Ozouf, the Minister for Treasury and Resources; 2 very strong characters; get them in a committee room and it is like a red-rag to a bull and it is very difficult to get over those personality clashes. Other people will deal with either party in a totally different way and you can get them eating out of your hands. But it depends on the clashes that you get - mind you I do not know if young Philip would eat out of my hand, but that said. But a lot of it is personality, and you are going to get that in any

government that we put in place. Sir, like yourself I have experienced being in government and in the Executive and non-executive, although some of it in the old system of government. But what I did find, and I have heard people - and I think it was the Deputy of St. Martin - saying: "You should tie up as many Members as possible in the subjects you know." Yes, I have been the Vice-President of Public Services which is now the Transport and Technical Services Department. Background of course is my drains; I have to mention that today **[Laughter]** because it would not be right if I did not in any debate. But that said, knowledge of that area obviously was very useful because I come from that kind of industry, and the engineering side. So I am very comfortable when I am talking about whether it is a Liquid Waste Plant or any different waste plants, because having worked on the construction of the steam boilers on the La Collette Power Station back in the early 1960s. So these areas are quite common for myself, and likewise we put the last phase in 1979 I think it was at the incinerator. So I am mainly very conversant. But on top of that, Members, and Senator Ferguson did touch on it briefly, the experience you gain by going on other committees - I went on Home Affairs in the last 3 years of the old system and had responsibility; because there was 7 of us round the table you all took responsibility for various areas. But now that responsibility has been given to Q.U.A.N.G.O.s (Quasi-Autonomous Non-Governmental Organisation)s and/or to paid executives. The Chief Executive Officer will get somebody in charge of that particular area and will call back directly to the Minister. But when I was in charge of the prison I would go down there and I was fully *au fait*, obviously the background as an engineer, law and order, that all came in very useful. You would go down there and you would spend some time with the Prison Governor and over your 3 years you would gain a lot of experience. Likewise I had responsibility for Customs and Excise. So when anything blew up around the table - and I say blew up, not literally - if there was something that we needed, I can recall on one occasion, prisoners had been released and were allowed to go off Island for extended periods and the committee of the day were not aware of it. So when we put a lockdown in place we had 2 or 3 prisoners that were off Island and created a bit of an embarrassment for the committee. But at least we were hands-on and we did something about it immediately. I mentioned it this morning. The Minister I spoke to yesterday about the scenario that happened that I was aware of just on a year ago and it is still not resolved because the civil servants along the way have been trying to resolve it in a number of different ways which have not worked. In fairness to this particular civil servant, he has only been on the Island for a few months and is probably not aware of how Jersey works. But it has taken that long for it to get to the Minister and that is where a lot of things do go wrong. I can well recall in one of my former roles, this chair of the Transport Authority. I was the vice-chair that I had responsibility for sea-routes at the time when we were negotiating the northern sea-route for a long-term contract. It was a joint working party. I can understand how frustrating it is. I hear Deputy Vallois say how frustrating it can be by not being brought into the middle-circle. But it is equally as frustrating for the Ministers because I recall when we negotiated the Joint Working Group between Jersey and Guernsey on that particular shipping-route, we had agreed between the people that had been elected, put in a tender process, the tender process was accepted by both governments of the day, and it would stand or fall by it. Then, after we had agreed that the contract was going to be issued to a particular shipping line, the States of Guernsey all of a sudden turned the whole thing on its head by replacing the members of the board with 3 other members. So they came into an emergency meeting saying: "We have changed our mind" so therefore the shipping line that was already in operation got the contract after we had given it out. It was very embarrassing. I am aware of other incidents in recent times under the Ministerial system where trying to work with your neighbours to the North has not been as fruitful as it should be. It is a shame that the Ministers do not share some of that information with Members, because if they did I think Members here would understand, we get frustrated on Scrutiny, but I can understand how the Ministers get frustrated also when they are trying to deal with certain areas. But if they were to share some of that frustration with the Members in the

Chamber - not necessarily in the Chamber but shall we say in the corridors of power - then I think we may all understand we are all trying to get to the same end. We are just keeping others in the dark and that does not help, because when we go off-Island, people meet you when you go over to Guernsey for the day or over to France, whatever you are representing, and they say: "Oh, Constable, can you help do so-and-so to oil the wheels?" You cannot, because 9 times out of 10 you do not know the issue. Previously we would know the issue, or we were aware because you sat on multiple committees: 2 major committees and up to 2 minor committees if I recall correctly. So there was a fair amount of interaction. You would get round the table before the meeting and 2 of you might have been sitting on one of the other committees, whether it is Harbours and Airport, Finance and Economics, and you would get an interaction of what was going on within those committees over a period of months. Therefore when you came to debate an issue, you had a very good idea of this has been happening, that has been happening and therefore let us try and resolve it. The debates happened outside of the Chamber in a lot of cases, so that when they came here you just did not nod it through but you were more or less aware of what had been going on. Yes, we had some very lively debates in some areas, but generally those people who were interested in getting involved, not just sitting on one committee or not anything at all, but those people who took on the responsibilities as they should and sat on 2 committees and the minor committees, they were more or less fully up to speed in what happened. I can remember the Deputy of St. Mary for the day, from having run inside of the tent instead of being outside and, I will not say it, in the tent... **[Laughter]** No, but it is true, because if you do not know you surmise. That is what happens. Therefore, the more that you can get from the Chief Minister's Department and the Ministries, be brought into the fold as a government, whichever side you are on, we are all going for the same ends; we want the best for our Island. Really I think it would be remiss if I had not said that because I think we are missing a trick here and therefore the closer we get to consensus the better. Yes, we are going to have our differences and we will vote different ways because the format may be somewhat not to your liking. But in general we need to be able to find a way of getting that much closer and using the knowledge of whether it is 47 Members we are going to have, whether it is 42, whether we stay at 51, use the knowledge of those people, but also allow those people to cross-fertilise as Senator Ferguson had said. The knowledge you gain by sitting on other panels, committees, whatever, is very important because you are learning all the time. Life is a learning issue. So that is all I have to say.

4.9 Deputy J.H. Young:

I will be brief. I am absolutely convinced that Scrutiny needs a new flexible structure. I would like to see that flexible structure mirroring whatever we end up doing in the structure of the Ministers because I think what is good for the Ministers and the Council of Ministers should be right for those who have the job of reviewing them. We need that flexibility for cross-cutting reviews because the challenges do not always fit conveniently into the vertical boxes that we have to work to at the moment. There are benefits of in-depth knowledge, but I think they are outweighed by the flexibility argument.

[15:00]

Just to describe my own panel which is a smaller panel; there are only 3 of us. The Deputy Chairman is chair of another panel. We are busy, but 2 major reviews have a massive impact on us. For example, in a review like Island-Wide Energy Policy, a lot of work probably ending up 5 or 6 months work and then Incinerator ash and so on. They can absolutely drag you in leaving you with less capacity to do other work. But despite that we have been able to do on-going monitoring. So therefore the type of discussion we had this morning about what sort of work the role of Scrutiny should do, monitoring and checking in quarterly meetings of work in progress, we can do retrospective reviews, but I still think the structure does not address -, and I think probably

the Connétable of St. John's comments also fit into this as well - this question of ongoing policy development where policy is emerging. Policy is not there, and therefore what Ministers are looking for is earlier ideas. It is all very well to have private meetings and private dialogue but that does not give you the transparency and the accountability that is absolutely required. For example, my own panel spent a lot of time, and full marks, full praise to the Minister for Transport and Technical Services and his department where we have had that relationship and it has worked well and we have been able to be open with each other and I think both sides have benefited. But that does present us as a panel with issues of potential conflict downstream. I do not see that an issue at the moment, but it could be. You cannot dismiss it. I think that therefore as a model for the future, there is still this issue of how Ministers get access to other Members in policy under an early development role which was after all the role of Non-Executive Members, which Members clearly said they wanted to see absorbed in Scrutiny. I think there is a problem there. One of the things that I found about Scrutiny I am hoping will change, is that we have very limited civil servant resource. When we deal with Ministers they have unlimited resources it seems. Wherever you have meetings you have very large numbers of people, excellent people. But therefore it means that Scrutiny panels have got to do this work for this long chain of communication which is slow and inefficient and inhibits the access to information. I would like to see, if we are not to have any Non-Executive Members, the numbers on the Scrutiny Management Committee increased. I think 5 is not enough. I think there should be at least enough so that enough Members would be there to effectively cover the whole ground of the Council of Ministers. I really think we need some new roles to stop this last minute responses from Ministers on Scrutiny because I think nothing serves to undermine the value of Scrutiny more than that. So I am in support generally with the principles behind this section. As I say, I do not think it deals with this issue about policy under development which the Non-Executive Members tried to deal with, and if we are to include that in Scrutiny I think Members need to recognise that there will be conflicts and we will just have to live with that and cope with that and work it out in practice. But there will need to be enough people in there to make sure that can be done effectively.

4.10 Deputy J.A. Martin:

I will be quite brief as I agree with a lot of what Deputy Young has just said, especially about the backup and the support that Scrutiny has. I said this many years ago after doing Shadow Scrutiny. We have what the equivalent was then to Bill Ogley and then underneath we have some excellent Scrutiny officers, but we lack that middle. I am with Deputy Vallois; we do not want a load of civil servants, but we are nowhere near even. I think Deputy Vallois has just said the budget, including staff, for Scrutiny is £1.2 million, somewhere around there. As you say, the Chief Executive and his few people in his office probably touch that budget every day. Just to question, and it leads on to what States Members are best doing. Yes, I am Assistant Minister for Health. But why could, a Non-Executive Member, if we had him, work on Scrutiny so long as it was not under their remit, can an Assistant Minister not? I totally disagree with the Deputy of St. Martin about testing yourself because I put myself on Economic Development. I scrutinised the Jersey Telecom selloff and with a totally fresh pair of eyes came to disagree with the then Minister for Treasury and Resources, Senator Le Sueur, and the Minister for Economic Development, Senator Ozouf, who in the end came around and said it was the best bit of Scrutiny that was done because we should not have sold then, we should have done it much earlier if we were going to do it. What I am saying, I knew nothing about it, loads of it went over my head but the questions were absolutely with no bias and basis for where I think they should have been. That is why I am saying, I know I am restricted now because I like to be the Assistant Minister at the Health and Social Services Department, I can leave there any time and I can go back and sit on Scrutiny, but I would like to do both. I do not see why I should be restricted. It does not really answer this in here because it did say Non-Executive Member who would probably have much more under the rules now, who could go into any

department, ask for any information in that department, the findings are that they could be on Scrutiny. So I really think it is lovely when we are all talking about Scrutiny in the round and we all say Scrutiny needs to be valued, Scrutiny should be a critical friend, and all the feet start stomping; until Scrutiny comes up and it is critical and it decides that something may be able to be done a different way or done in steps. What Scrutiny does have, and I have never ever had a problem with any one of the external advisers that we have been able to employ, is excellent people. So excellent some of them the departments tried to steal them off of us, or did employ them after in the terms of Jersey Telecom and in the terms of Income Support. That is one I will just touch on. This policy in development, we started on draft 1 and probably went up to in the 50s with Senator Routier when he was the Minister for Social Security, we did cover that from policy because it had been in the ether for years and then someone said: "You have got to get this in and got to get Income Support going" so it was done quickly. But 2 years of scrutinising policy and in the end, yes, there were some things we did not agree with and we brought them to the States as amendments, some we won, some we did not. They were not massive things; they were little things that we thought might help. Would I like to go down there again? I do not think so. It was a stop-start. Could I have asked the questions at the end after they had done the 2 years of the research? Yes, I think I could have scrutinised it, I probably could have scrutinised it better. So I have done both, I have done it right from policy and development. There are certain things when you go in, even at policy and development, like the housing ... and they did a really good review on housing but they only saw the final version. There were other versions the Minister had to decide on before he even got to the development of the policy, he had different reports. So I think Scrutiny does need to have the respect of this House. They will not always be friends. I would still like to serve on Scrutiny and be an Assistant Minister. I would like that to be taken into consideration, and definitely it might take a bit more money but if Scrutiny is going to be taken seriously it needs the backup, it does need what it says there, it needs a secretary, not just an officer for every panel, you need a secretary, then the officer is doing different jobs. There is much more that needs to be put in that leaves the politicians to do the work but behind there are people testing the departments. But do not tell me the Scrutiny Manager is the equivalent of the Chief Executive Officer of the States. I do not believe that and nor do they, and they run rings around a lot of Scrutiny and it has been going on for too long, so let us hope we can stop it. Thank you.

4.11 Deputy J.M. Le Bailly of St. Mary:

I did intend to speak earlier with regard to the Non-Executive Members but this was interrupted by lunch. I shall try to incorporate it with Scrutiny. There is no doubt that Scrutiny serves a vital purpose, however, we are always being told that a party system would solve all of our problems. Personally I do not think that a party system would be of any benefit to the Island or to the way this government would run. We only have to look at party politics in the U.K. to realise that one party puts the country on track, only for the next election and a different party to derail it. Our advantage is that every Member of this Assembly strives for the same cause. We have a greater strength in unity; we just have to use it more effectively. We try to do this with Scrutiny. It could be more effective. We all want change; this report goes a long way to achieving that. Change needs to come from within this Assembly. We all want to improve the way that this Island is run, however, this does not mean that the system is broken, but we should certainly try to repair bits of it. There are many positives in this report and no system is going to be perfect, it will never suit everyone. But this report does highlight a lot of areas of improvement. There are things which we need to grasp and implement now. Improvement is not final, it is ongoing. It should be, and constantly so. This is an opportunity for many Members who would like to be more hands-on, to use their expertise within a specific department, Members who at the moment are denied that opportunity and could do that as a Non-Executive Member, which would also strengthen and speed up the work undertaken by Scrutiny. I can understand the Minister for Planning and Environment's concern

because that could mean interference directly into the department. That, however, could be a very positive thing for the people of this Island. It is important to have people who are used to the nuts and bolts involved. That is not a reference to any of our Ministers. [Laughter] This report has the greatest chance of achieving change and making that change a success. The Privileges and Procedures Committee should be commended for their work and the best way to acknowledge that is to approve this report. Thank you.

4.12 Deputy M.R. Higgins:

I am supportive of changing the Scrutiny system that we currently have. I think one of the criticisms I had of Scrutiny when I was both a chair and a Member was that we spent a lot of time on bureaucratic functions, the idea of the agendas, the meetings, and probably not enough time spent on actual Scrutiny. If we can have specific Scrutiny panels that are going to focus on one particular thing, they do not have to go through all the rigmarole of being a standing committee and all the documentation that has got to be done and the rules that we have got to follow. You are focusing on a particular topic and you are going to produce a report on it, and I think that would make it far more effective. So I felt that a lot of time was wasted under that type of system, it was hidebound with rules. I know we talk about Scrutiny having resources and often an underspend, but the truth of the matter is I like the idea of having specialist support, being able to call in a lawyer who can give us legal advice at an early stage, on not only what the Ministers or the departments are doing but also to help us with our conclusions. The same also goes for accountants, or whether they include economic analysts, there are people who have specific econometric skills or whatever, when you want to analyse what the, for example, the Minister for Treasury and Resources is coming up with to see if it holds fire. Or if we are going to scrutinise some of the officials that we have who have got so-called specialist knowledge. I do think though - and this is one of the failings of the States as it is at the moment - for example, as a Back-Bencher currently I am looking into a number of areas. I am looking at trying to bring a vote of no confidence for someone and I am doing all the research and gathering all the evidence. There is a lot of evidence to be putting together to bring before the House.

[15:15]

I am also working on a proposition for a committee of inquiry into a particular area, again, it is all evidence-based but it is putting the evidence together, gathering it all to try and convince Members of this House whether to go with it. Now, I do not have the resources, my biggest enemy is time. You are balancing so many different things, as other Members are doing as well. But I also feel too that Scrutiny has been denied of resources. I felt years ago that both Members and Scrutiny, we should have some researchers that we can call upon, as they do in the House of Commons, I know we are not the same size, bigger state and all the rest of it, but who can do some of the groundwork for you or can do some of the investigations for you. Researchers, even a library. I can remember the rigmarole I had trying to get a book which was on human rights, it was a human rights handbook, I think it cost £125, and even to get that one book which could be useful for all Members in all areas took an awful lot of time and effort. It was almost like it was a sacred possession that had to be kept on a shelf in the Greffe. I do not think it has been moved since I was last there. The point is you have to go through all this sort of rigmarole. There should be a basic library, there should be basic research facilities, for Members and for Scrutiny. So all I am trying to say is I do support the idea of moving to instead of standing committees. I think it would be far better if we could have specific topics and draw Members in to deal with it. We could deal with multiple topics, as has already been said, whether it be on environment or whether it be dealing with the economy or be dealing with health, or the prison service or whatever, or home affairs. So broadly I am supportive. But what we need in this Island is effective Scrutiny and every attempt that has been brought to try and get better resources for Members is always flatly refused. I will leave it at that.

Senator F. du H. Le Gresley:

Mr. President, could I just ask a question of you. Sorry to disturb you. [Laughter]

The Connétable of St. Clement (in the Chair):

The answer is no.

Senator F. du H. Le Gresley:

What time are we aiming to finish today?

The Connétable of St. Clement (in the Chair):

I am totally in the hands of Members. Every Member must have the opportunity of speaking, how long they speak of course is a matter for them. I would like to think we could finish by 4.00 p.m. but that is totally in the hands of Members. I cannot deny anyone the right to speak.

Senator F. du H. Le Gresley:

It is just that I am chairing a meeting at 4.00 p.m. which involves a number of other Ministers which has been quite hard to organise and I would be reluctant to cancel it.

The Connétable of St. Clement (in the Chair):

That is understood, I hope what Members heard what the Senator had to say. If we can keep our remarks brief and apposite that would be appreciated.

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

I will do my best to keep my remarks brief and I think the points I want to make are new to this discussion. My understanding of this is that the recommendation is that any non-executive Member of the States would no longer be elected to a Scrutiny panel, but that we would have a Scrutiny Management Committee which would consist of 5 and maybe more Members. Deputy Young has suggested that there should be more Members than 5. My first thoughts on that are that I was intrigued by the fact that my understanding of part of the Electoral Commission Report was it identified that non-executive Members not then elected to serve on the Scrutiny panel were not contributing to the working of the States. I wonder how that would marry-up with this. Most of us sit on other panels, committees, that are part of the working of the States but it galled me a little to read that those of us who were not elected to a Scrutiny panel were not thought to be contributing. Therefore, if we do away with elections for Scrutiny Members I would like the Assembly to be aware of the view of the Electoral Commission. A couple of housekeeping points really with regard to this if we did indeed do away with Scrutiny panels. One of the comments that I found interesting on page 43 of this report is that the output of the Scrutiny function will be affected by the availability of States Members. I wonder if that should read "will be affected by the inclination of States Members" because if we have reviews which are going to be undertaken by *ad hoc* groupings of Non-Executive Members then it really is dependent upon the inclination of Members as to whether or not to sit on those panels. As we know at the moment there are a number of Members who are not elected to Scrutiny panels and, therefore, coming back to the Electoral Commission findings, not seen as contributing in any way to the working of the States. Deputy Higgins has just said that he is incredibly busy working as a Back-Bencher on propositions which are involved and need a lot of evidence, and he is doing that clearly on his own, they will be his propositions. But it does show that not every Member is able to contribute on a regular basis to a Scrutiny function. So I wonder what would be the position if the Scrutiny Management Committee proposed a review and there was no one available to undertake it, because I think that although it may seem unlikely that that would happen, nevertheless, I believe it would be a possibility and that would mean that we would not have effective Scrutiny. It would mean that our system of

government would be falling away. The Ministers at the moment give quarterly reports, presentations to their Scrutiny panels. Would that still be expected to go ahead and, if so, to whom would they present because there would not be a panel set up for them to present to. So, therefore, who would question the Ministers at the quarterly presentations? No Scrutiny panel in place, therefore, do Ministers continue with their quarterly presentations, because they would not have a panel to present to? Who questions the Ministers? Who holds them to account, other than perhaps on the occasions that a particular report was being prepared, a particular Scrutiny review was being undertaken? Deputy Martin is not in the Chamber but there is on page 42 a comment that explains why the sub-committee felt that Assistant Ministers should not be able to partake in Scrutiny, and the quote is from the Clothier Report of December 2000, which says that: "Good government calls for an Assembly in which there is a division between those who exercise executive power and ...". I am sorry, sir, I cannot hear myself speak at the moment with the noise from the Senatorial benches. I cannot see who is speaking but I can hear it. So let me start that quote again from Clothier: "Good government calls for an Assembly in which there is a division between those who exercise executive power and those who are in government but not in the Executive." Looking at that quotation from Clothier who is in government here? Clearly the Executive is. If we are not in the Executive we will no longer be in Scrutiny because there will not be a Scrutiny function, but we will be non-executive Members. At the moment non-executive Members have the option of sitting on a Scrutiny panel and I do think that option should be retained. I am sure Deputy Vallois will correct me if I have misunderstood what these recommendations are saying. The work of Scrutiny panels at the moment is very heavy. In fact when Scrutiny first began in 2005 we had a Social Affairs Scrutiny Panel which had 5 departments under its remit, and those 5 departments were Health, Social Security, Housing, Education and Home Affairs. It was very quickly realised that no way would a panel of 4 or maybe 5 scrutineers be able to undertake the role that was required of them and produce effective Scrutiny for those 5 departments. I do have concerns that without formally constituted and elected Scrutiny panels we would not be able to hold the Executive to account. I think there are some points that have not been raised previously. I would be interested to hear how the Deputy responds to them. I do not want to appear negative at all or too negative but certainly we have a system of government that requires that the Executive be held to account by scrutineers. I have real concerns that if we do not elect scrutineers to do that then the inclination of Members to not partake in Scrutiny I think would be damaging.

4.14 Senator A. Breckon:

Just a couple of points. I think the move towards subject-based Scrutiny is a good idea and I say that for a number of reasons. I think of the review on the dairy. There was another one with a review of services for vulnerable children and one of the health effects on mobile telephone wires. With those subjects, there were more Members willing to take part in those reviews than was required to do it. I think that is a good reason to go to a topic-based Scrutiny system. The other thing is I remember years ago, with Deputy Martin and Deputy Southern, we decided to look at youth unemployment and at the time it was the Economic Affairs Scrutiny Panel. As soon as you went to other Ministers or departments and they said: "What business of this is yours? Is it Education? Is it Economic Affairs? Is it Social Security?" I think if it is topic-based then within reason those doing the Scrutiny, the review, can go where they need to go without somebody saying: "We cannot answer your questions. We do not come under the remit of your panel." It will clear that out of the way. I think it is a better way to do it because think of a subject where somebody wanted to look at why people are unemployed in the longer term, if they wanted to look at that, whose remit is that? Does it come under the employment within the Chief Minister's Department, the Social Security Department, the Economic Development Department or the Education, Sport and Culture Department have anything to say about it? If it was subject-based within reason the panel could go where they wanted. I think that sort of subject would get

Members enough motivated to get involved. If it is topic-based and it is interesting enough I do not think there will be any shortage of volunteers. You can overcome the other gaps that might exist about Ministers turning up every quarter to say something or other. You can get around that another way by having that in a format that all Members can attend. That happens already through the Chief Minister's Department where Ministers give presentations. That could be extended and, as the Constable of St. Lawrence has just mentioned, you can do that another way.

4.15 Deputy T.M. Pitman:

Again, just a few points. I could not help wanting to comment on what I heard was apparently the Electoral Commission or the hijacked Electoral Commission, as it was, and their assessment, people who do not contribute to Scrutiny are not assisting in the running of government. It has to be said that the 3 politicians who were on that Electoral Commission, were certainly in my opinion and many others, 3 of the most ineffectual Members this Assembly has ever seen. Indeed, one of them is rarely ever here at all.

[15:30]

I did do Scrutiny and I do see value in it. But, as I said earlier, there is very little point in Scrutiny if things are disregarded just because it is a Deputy Southern who brings it, just because it is personality-based. That has got to be the precursor to any tweaking of the machinery of government. I think it was only our last session we saw the great example of what is wrong when Deputy Tadier, like many before him, made by far the most informed, passionate, appropriate speech for the position of Minister for External Relations and, of course, he almost guaranteed by that that he would lose and he did. That is why I certainly do welcome with this, what Deputy Vallois put forward, about excluding the Executive from having any say on who should be on Scrutiny because that does leave the possibility of just going for those who will give you an easy time. I am not saying it always happens but we certainly must say that it has happened in the past. Inclusivity, it has got to come from a change in the attitude of people like the Chief Minister because I certainly voted it for him on that measure and I say he has done exactly the opposite of everything he did say at the election. Scrutiny should be an essential check and balance to government. Why do people not do it? There were far less people contributed to Scrutiny last time, I know because I was of those few who kept going. There was not much made of this at the time but suddenly I think it is probably because it is a few progressives who are now not doing it, especially in the futility in it if it is a big issue. Scrutiny, if we want to proceed to what I know Deputy Vallois wants, it has got to have those teeth and it has got to inspire some passion in people. I think this idea of allowing people to go on to specific Scrutiny topics is a very good idea, as long as the resources are there because if the resources are not there then whatever we do will be a waste of time. The one real joy, if I can go that far, of doing Scrutiny was certainly working with the officers who were all absolutely excellent. They were very helpful and, generally, I felt very knowledgeable. But I know they got a bit disgruntled as well when they see projects, reports put to this Assembly and completely rubbished by Ministers. Let us not try and look at this as if it exists in a vacuum because it does not. I would like to suggest that ... no, I will not, it is not fair, other people have not spoken yet. I just think that this debate has now gone on so long and I do not know that any good is going to come out of it. The Jersey Evening Post have left, there we go, they make it up anyway, so we know that. I just want to see an Assembly that has appropriate checks and balances. I think that is what this suggestion is trying to do. It is certainly something I am willing to support, as opposed to the idea of the Non-Executive Members before. If even Deputy Southern saying he thinks it has got legs, it probably is worth it because, let us face it, Deputy Southern is one of those who has given an awful lot to Scrutiny and done some very good Scrutiny work. But I would just like to emphasise that the key to this is having the full resources and I know the Chairman of the Scrutiny Committee would agree. That does not just mean officers, it means

money because otherwise all you will get is 2 or 3, 3 or 4 people going off trying to do something which they feel is important and like Deputy Higgins has said in doing his own work and I know that from my own experience, bringing propositions. It is almost impossible to achieve the work to the standard that you want and to the standard that you know you are going to have to hit before you can convince people. I will just say it has got to be a complete package but I will be supporting this.

The Connétable of St. Clement (in the Chair):

Deputy of St. Mary, did you have something to add?

The Deputy of St. Mary:

Yes, Sir. Could we have clarification, surely a Non-Executive Member would be able to serve on Scrutiny panels because as long as the subject does not conflict with that of the Non-Executive Member's department to which they would be assigned.

The Connétable of St. Clement (in the Chair):

I believe that is a yes.

Deputy J.A.N. Le Fondré:

I confirm yes, Sir.

4.16 Senator I.J. Gorst:

I just want to very briefly because I think it is important that the Machinery of Government Review Sub-Committee get a good cross section of what Members think. I think this is a very good suggestion. I know that the President of the Chairmen's Committee has worked hard and it is largely stemmed from her work. I think it is a very good suggestion. I think that some of the concerns that other Members have said, with regard to Scrutiny, will be addressed by this proposal. The only issue that I think needs to be thought through a little more is with regard to recommendations 33 and 34 because if this is, a management committee that oversees Scrutiny, then I believe that that management committee should have the support of this Assembly, while it may not be that this Assembly votes for every person who sits on the Scrutiny, call them sub-committee or topic committee, will need to consider how that would work. But I think that that is something that support from this Assembly will be important for that in the same way that it is important for the Executive.

4.17 Deputy R.G. Le Hérisier:

Just a couple of points. I thought the Constable of St. Lawrence made some good points that had perhaps been forgotten. I do not think the case for topic versus Ministerial oversight groups is as clear as people are suggesting. I think it is possible to meld both because there are occasions when you need that continuity, you need to follow through what Ministers are saying and you need to build up expertise. I am not sure, although I think there are some terrific mismatches in this Assembly, I totally buy, on this occasion, what the Deputy of St. Martin is saying that you must be, in a sense, a subject specialist. Sometimes that makes you over-involved. Sometimes you bring vested interest to bear. Sometimes you have been unconsciously lobbied and maybe consciously lobbied to pursue a certain line. While there are certainly some people who would be very uncomfortable, for example, on being on Economic Development to the kind of beliefs that maybe imbue that approach and others would not particularly want to be, for example, on Social Security because they would see it just as some kind of Income Support promotion group, there are people who seem to have those very strong feelings at either end. I do not think there is anything wrong with Members operating as generalists. We make decisions all the time as generalists. Whether we have understood everything that we voted through, some of it is problematical but we are

constantly making decisions as generalists. We are here to represent the public interest, which means asking intelligent questions often from a low personal perspective. It means being able to grasp and, heaven knows, it is a work in progress for people like me but I remember at a very early election a woman in the audience, who is still a bastion of the Parish of St. Saviour, she asked every candidate: “Can you read a planning application?” In other words, can you understand it? And: “Can you read a set of accounts?” In other words, can you understand what is happening in these accounts, what message is being conveyed? I laughed at the time but I have to say I thought it was a very good question. I think Members should ask themselves that question when they get documents through.

Senator F. du H. Le Gresley:

Sir, can I just ask what the Deputy’s answer was? **[Laughter]**

Deputy R.G. Le Hérisier:

The Deputy’s answer was: “At this point I am struggling but I am prepared to learn.” Yes. I looked at hotel accounts, I looked at States accounts, *et cetera*. I think certainly when you are working with a group of people on Scrutiny you start to develop questioning techniques. You start to develop a feeling for a subject area and you start to develop where you are not being told *la verità*, as Alan Clark said, the truth. I think there is some merit and I would not discount these so-called standing committees as Deputy Higgins referred to them. It should be possible to strip out the bureaucracy because I do agree with him. There are certain bureaucratic tendencies in Scrutiny that need a knife taken to them in the nicest possible way and a certain culture has got established. I do agree but the 2 are not irreconcilable. I would support this thrust. I think it is excellent. But I think there is a bit too much pessimism about Scrutiny. There has been some fantastic work done. I would like, as I said earlier today, to see it have much more power and, if necessary, I would like the Scrutiny panel to move a vote of no confidence if it is very clear that a Minister is stonewalling, as we have seen from time to time in this Assembly or that their answers are consistently poor and so forth and so on. Why should not the Scrutiny panel move a vote of no confidence? **[Interruption]** I cannot make any reference to any particular Ministry but the naughty Chairman of the Privileges and Procedures Committee. On those notes, I think with proper reforms there is a great future ahead for Scrutiny.

The Connétable of St. Clement (in the Chair):

If no other Member wishes to speak I will ask Deputy Vallois to sum up.

4.18 Deputy T.A. Vallois:

Thank you, President. I think there are a few issues that have been mentioned within the discussion over Scrutiny and, to a certain extent, attempted to test me to how I see this working. Believe me, I have gone in and out of detail like you would not believe as to how it could work, how it could not work, the risks because with whatever system we have there is going to be risks and it depends on how embedded you are with a particular system and how you wish it to move forward. It is not perfect, it is not going to be the best thing since sliced bread but it is going to evolve and it is going to be required for people to want it to work to make it work effectively. It comes to the point that the Constable of St. Lawrence was talking about, the inclination of States Members to serve on these Scrutiny reviews. It goes back to the Constable of St. Mary asking me about ensuring robust engagement. How would we engage Members? My original vision for Scrutiny when setting this up after long discussions on the executive side, because there are a few issues between the Executive and Scrutiny working well which are still in discussion with the Chief Minister and myself at the moment. The vision that I had was that this Assembly appointed the Scrutiny Management Committee in order to manage Scrutiny so that it was effective and efficient for this States Assembly. They are, therefore, accountable to this States Assembly to ensure that it works

the way that we expect it to. The panel side of things, the individual panels, there is a likeness to that because there is an identity related to that because I am a Member of the Public Accounts Committee or I am a Member of the Corporate Services Scrutiny Panel and there is a relation to that, and it is also seen, right, you scrutinise the Minister for Treasury and Resources, you scrutinise the Chief Minister and you have kind of a place in the system. I can see that. The reason why I have put to the Machinery of Government Review Sub-Committee this way of Scrutiny working is because that does not necessarily stop. Why I say that is because what I am asking the States Assembly here is to create a flexible system. How I envisaged it, if you look at recommendation 24 for the Executive Members, you will see that there was a requirement for a 60 day period to produce a strategic plan. The way that I put it to the Machinery of Government Review Sub-Committee when I put this forward was that once your Scrutiny Management Committee are elected by this Assembly to do their job, during that 60 days they will have training, they will have meetings, they will see departments, they will meet Chief Officers. They will have a list of hopefully policies and legislations for each area so that they know the areas for Scrutiny going forward. At the end of that 60 days, that Scrutiny Management Committee should be able to delegate particular areas of that strategic plan to a person on that Scrutiny Management Committee that has oversight of that particular area. The work programme would be set against that Strategic Plan over that period of office. So there would be a review work programme based on the next 3 or 4 years, whatever it may be of office to the Ministers to deliver that Strategic Plan. So it would be all the policies and legislation related to that Strategic Plan. However, at the moment, what we have is panel set up work programmes, and that is all good and proper, and they produce good reviews and good reports, then a Member in this Assembly can stand up and say: "Right, I need Scrutiny to look at this" or: "I want Scrutiny to look at this. They have to look at this because for whatever reason they have not been able to, it has not fitted in within their work programme for whatever reason that may be."

[15:45]

In this new system what would happen is, say, for example, that non-executive was really concerned about a piece of legislation that was coming to the House, that had not been scrutinised because it was not part of the work programme, refers it to Scrutiny and then the Scrutiny Management Committee say: "Yes, okay, that is not a problem. How about you review it? You have concerns, you have raised issues in the States Assembly that are A, B, C and D. Look, there are your terms of reference." Okay, so there is already a package there. Somebody is already intrigued and concerned about a particular area. It is a case of getting 2 Members with them sitting on that review and concentrating on that particular piece of legislation to produce whether it is a full report or just comments to the States Assembly to state whether their concerns are valid or not or whether there is an actual bigger issue at hand there. So that is the way I see it working and the way I would put it would be it would engage Members by the very fact that it enables Members to - how can I put it - be party to the actual policy and the legislation. The way I would sell it to Members is that you have been elected and that is on a manifesto to the States Assembly to do a job. Now, you may not have become a Minister that you wanted to be or you may not have become an Assistant Minister that you wanted to be, but Scrutiny is an extremely important part of making sure that whatever comes forward from those decision-makers is balanced or has been risk-assessed properly, and all the evidence that purports to that decision-making process has been properly scrutinised. At the end of the day it is very much the Scrutiny Management Committee who will be seen to be trying to engage those Members as much as possible, but the reason why I feel like it would be a better system is because of the flexibility that has been put into there and it would not be seen as just individual people picking up particular areas that they particularly know about. "I know about this and therefore I am going to scrutinise this" but Mr. Bloggs that lives down the road has a really big concern about the international finance centre, for example. "Oh, it is now in our

work programme, we have already got a massive work programme going on, we have only got 3 or 4 people on our panel, we are going to have to set up a sub-panel.” That is a whole load of paper work and bureaucracy that goes with that too. So it is trying to cut down that and say: “Well, Deputy Power, you have an issue over this, right, come on board, have a look at this, you can do this review, you have 2 Members with you” and that is how my vision works. There is an extreme importance of the governance arrangements around this in terms of there is a framework that this has worked in to ensure that certain Members are not going too far. When I talk about governance arrangements, it is in terms of the actual Code of Practice and the way that it is going to work. That is not a problem; I can start working on that tomorrow if you wanted me to. I have no issue with that. So those are a few issues, I do not know whether I have covered everything. I know that the Constable of St. Mary did mention something about the Non-Executive Members?

The Connétable of St. Mary:

No, it is the opposite point to the point Deputy Tadier made about whether it was right that the Executive would not be involved in the election of the Scrutiny Management Committee if the *quid pro quo* was that the States Assembly would have the slate option on the Ministerial action. Could I just confirm my understanding of what the Deputy just said, that Scrutiny would be freed up to be a lot more responsive on a timely basis to *ad hoc* things that arose. It seemed to come through from her speech and I think that was a very important thing we had not really touched on.

Deputy T.A. Vallois:

On the particular recommendations that the Chief Minister mentioned, I might ask Deputy Tadier to just explain that a little bit further because I am not fully, 100 per cent, against or for that. I am very flexible on that. Deputy Tadier was one that suggested this on the Machinery of Government Review Sub-Committee so it may be worth him expanding a little bit further on that rather than me maybe taking words out of context for him.

4.19 Deputy M. Tadier:

I will do that very quickly now. This is something which was slightly contentious. We felt that on the balance it was correct that if we were giving the Council of Ministers the ability to ... giving the Chief Minister, albeit that he would be elected by the Assembly, the ability to appoint his slate. That is not certain yet, that is still something which many Members feel very strongly that it should remain with the Assembly and I thought that the right balance - and others also thought that - is that Scrutiny, in order to be perceived and to be fully independent, should choose Scrutiny’s Management Committee and the makeup of that from the potential Scrutiny side. I do not see why we would not want to do that because it stops the suggestion that if, for example, the Ministers presumably have an in-built majority within the Assembly if they are to hold the confidence of the Assembly, so we presume that the Chief Minister, at any one time, has a voting majority, a working majority, which is fluid, that is accepted. So we would have that same majority appointing a Scrutiny chairman potentially, and we think that in order for Scrutiny to be sufficiently independent ... why would you want the Executive being able to choose who goes on Scrutiny. I think that is the way I would put it. The case has been proven why the Executive would want to appoint Scrutiny memberships to scrutinise themselves.

The Connétable of St. Clement (in the Chair):

That will be a matter for the States when Standing Orders come back.

4.20 Senator I.J. Gorst:

Could the Deputy describe his rationale that he would think that the systems should mirror the system for election of the Executive which seems to be his main point? Therefore you would have

to have the equivalent of the post that Deputy Vallois fulfils being elected by the entire Assembly in the same way that the proposal is for the Chief Minister.

4.21 Deputy M. Tadier:

The issue I think is that we know that Scrutiny Members can only come from the non-executive. If we wanted to appoint the Scrutiny Members Committee before we elect Ministers, that might be an interesting idea. If we are told that Scrutiny is equally as important as the Ministership then why not - an analogism that I just made - elect them first and have all the Assembly electing them. But we already know who is eligible to be on the Scrutiny side of it. Why would we have non-Members, non-eligible voting for something that they cannot be on? That is the way I look at it. I do not see why it is so controversial, but clearly that is a debate for another day.

The Connétable of St. Clement (in the Chair):

Another day, not today.

4.22 Deputy T.A. Vallois:

There are just 2 areas I just want to quickly clear up as well. There are questions about quarterly hearings by both the Deputy of St. Martin and the Constable of St. Lawrence. There is nothing stopping those from happening. I go back to talk about the governance arrangements surrounding the Scrutiny Management Committee. What I would envisage happening would be if those are designated particular areas of the Strategic Plan, therefore creating and enhancement in the co-ordination. So I have been giving an example of the Mental Health Services. That covers a remit of education, health, home affairs, 3 different departments that are currently constituted in 3 different areas. So it enables a review to be taken up. But the quarterly hearings could be, for example, if the Strategic Plan said: "Health Reform" and in the work programme one of those particular areas that was Mental Health, because a piece of legislation was coming forward, then there is nothing stopping having the quarterly hearings every month by the person who has designated responsibility for that health area and hold those particular areas to account. But being, I suppose, for the States Assembly a fairly radical thinker in terms of the way that the future of the States Assembly could be, what we could envisage - and I am talking about the Executive side - is what if we were to appoint or elect a group of Ministers - and this is scary for some but this is something that came out of all this questioning, all these areas - how this and that could work. A lot of the contention over 5 years I have been in the States now, has been around this lack of co-ordination, this lack of co-operation between areas. There is too much silo-mentality. My thought at one point was well if we are going to give the power to the Chief Minister we are going to put responsibility on the Chief Minister under this and say: "Look, you are ultimately accountable for that Council of Ministers." Then why are we not saying: "Let us appoint a group of Ministers and then it is up to the Chief Minister to allocate those Minister's particular areas." That is pretty radical for this States unfortunately, but that is me thinking maybe in the future if you are going to give that power to the Chief Minister you give him the ability to turn around to a particular Minister and say: "Right, you can have Tourism, you can have this area" and it goes back on to the next area that I was particularly concerned with, the Assistant Ministers, and this question about whether Assistant Ministers could sit on Scrutiny. At this precise moment in time I am not for having Assistant Ministers on Scrutiny, and it is not because I do not like Assistant Ministers, it is not because I do not believe they can do a good job but because there a concern about what is the role of Assistant Minister. I have spoken to the Chief Minister and said that the Ministers need to come up with some kind of proper formal structure that identifies exactly what an Assistant Minister is going to do, or will be doing in the future. Do you really want Assistant Ministers? Why not have 15 Ministers instead who have particular responsibility for particular areas? That is just an idea. Throw it out there, give it a go and see what it looks like. But that was my kind of thinking

and that is where I came to the Scrutiny side of things and thought: “How could we do this better in terms of co-ordination and fighting through that big block of silo-mentality that has been going on for way too long?” We talk about reforming the public sector, well if we punched through that wall now with this then we can start the way that hopefully in the future might be considered for the Ministerial post. So I hope I have covered everyone’s areas.

The Connétable of St. Clement (in the Chair):

Thank you, Deputy. Finally, the paragraph marked as “Other.”

5. Other

Deputy M. Tadier:

I am going to let Deputy Young present this part before I conclude.

5.1 Deputy J.H. Young:

I will be very brief. There are a short number of items on here. I think the first item is simple, the fact that we think that there is this issue about the old Assembly that has been voted out of office should not stay in office any longer than necessary. The advice from the 2 former Chief Ministers and the current one is that we can reduce this. Number 2 is really picking up Deputy Bryans’ point, it is commonsense and other Members have spoken about it. We should make more efforts to find out about what Members’ areas of interest and talents are. Number 20, is pure housekeeping. Number 47, I think I will just spend a tad more on this, this is the Ombudsman because this is an important issue and if we are going to strengthen the powers of the Executive it is important that we put right the failure to put in place an independent body for investigation, maladministration and violation of citizen’s rights with the ability to make directions and compensation. That provision was advanced by Clothier and has not been done. Of course, an interesting thing for those Members that want to read further, a lovely article on Wikipedia which indicates that the practice of having an ombudsman goes back to China in 221 B.C. where an undercover secret official was appointed by the king to send to the local province to monitor the officials and, of course, that was also picked up in Roman times with the role of the Tribune and so on. The word is a Scandinavian word, it was brought in in 1809 in the more modern role, picked up by the U.K. in the 1960s and the U.S. (United States) in the 1960s. There are hundreds of countries listed with ombudsman service, each one of those countries numerous ombudsmen covering all sorts of service, the most arcane one I can find is in the U.K., there is a double-glazing ombudsman. There are lots of other interesting ones. It is apparently not limited to the public sector. A number of very novel private sector business concerns, not just financial services, have set themselves up with their ombudsman. Obviously double-glazing must have been a source of trouble. I am not suggesting we set up a double-glazing one in Jersey, or at least the Machinery of Government Review Sub-Committee is not. Do have a read of the Wikipedia article, it is jolly entertaining.

[16:00]

Paragraph 48, I think this is overwhelming because the report makes a point and other Members have spoken. Members get elected on personal mandates and we have a position where we preserve Members’ rights to bring forward proposals, yet frankly they are left absolutely on their own and there are various minimum resources to bring those. It is hard enough anyway but I think there is a case for this resource, we picked it up in our report, and I do think it goes hand-in-hand with such things as research students and all this sort of thing. There are lots of opportunities, not necessarily paid but opportunities for people to have internships and things like this, or some facility like that with some creative opportunities. Point 49 is housekeeping. We think there is already a Chief Officers’ declaration of interest, we are just saying that because of the importance

of civil servants and the fact they are drawn into the political area that they should also have the same declaration of interest. Those are the points in the final section of the report, which are all, I think, straightforward.

5.2 Deputy R.G. Bryans:

Just very briefly because I know everybody is getting a little bit tired. In relation to something the Constable of St. Lawrence said, just raising an issue I do not think has been covered or has been covered tangentially, and relates to what Deputy Le Hérisier was saying about reading the balance sheet or knowing about planning. In fact getting on the Planning Appeals Panel was a huge learning-curve and I have thoroughly enjoyed it, I have to say, it is fantastic. It also relates to Deputy Martin's point about an Assistant Minister bringing their skills to Scrutiny. Equally, just like her, I would like to be involved in Scrutiny and it is one of those situations if you want to get something done give a job to a busy person. What I would like to talk about is the consideration being given to training for politicians in areas they may be interested in. In the Public Sector Reform we are looking at the moment with the Civil Service taking on Lean and Six Sigma areas of creativity and innovative, which are close to my heart, and presentational skills. But where is the training for the politicians? How can we lead if we do not fully understand where we are leading people and appreciate what it takes for them to learn? When we first arrive, and I am sure the Constable of Grouville will find this over the next few weeks, there is a flurry activity and the Greffier does a great job to bring us up to speed of how to deal in politics but then it wanes and here we are 2 years later and still we need opportunities where we can walk alongside people. As someone was saying earlier, if we are going to break down some of these silos we have to be seen to be doing some of the same sort of training as the Civil Service. That is just the point I wanted to raise. Thank you.

5.3 Deputy T.M. Pitman:

Just a couple of points. I do strongly support the idea of an ombudsman, I think it is one of the best ideas that have come out of this. I would also just like to speak about what I feel is definitely a need for some kind of additional resource to help Back-Benchers research propositions. The former Deputy of St. Mary, Deputy Wimberley, made this case very well, long and hard, but never really got anywhere with it unfortunately. But it is a fact, is it not, that we all apparently stand on manifestos yet it is also a fact that the vast majority of elected Members do not ever try and bring propositions forward in support of what they told people they stood upon. I am pleased to say that I am one who brings propositions and I know there are others who have brought even more over many years. But trying to research something is a time consuming job. It is another issue which seems to underlie a lot of this in its mist. Sitting in here is not the only part of being in government. Sitting at Council of Ministers' meetings or Scrutiny meetings is not. It is the grassroots politics which, I think, gets completely overlooked in a lot of these reports, that is that people go and be a social worker for their constituents. They go and be an advocate. They end up being Jack of All Trades and it is, in many cases, areas which we know we should not have to do. So when we hear these comments that people are not contributing that needs to be considered because I know that the work just expands. The more time you have got and the more time you are willing to give, more and more people come to you. So when you are trying to balance that against trying to research propositions, and it is fine if many Members do not want to bring proposition. I think it is disappointing but there should be a resource there for those of us who do it regularly. Perhaps it is something that has just been touched on that it could be fulfilled by students who are keen to get in the political area. It would be nice to think we had money to provide someone with a degree of professionalism to do that. That would probably stretch the facility as well, not just people to help you. So I think that is a recommendation which really does deserve everybody's support, this resource point. I do not think it would even change if Deputy Vallois gets her way. There are

always going to be areas that someone feels they want to look at and is valid and there is going to be a problem because other people just do not want to go there for a variety of reasons. They may just not be interested and I will say it quite openly, they might be too intimidated to go there but that does not mean that those particular areas are areas which not be looked at and if you can have that resource available for Back-Benchers, then that work can be done and I believe that can only further help in holding to account that side of government. That said, as it is getting late, I think I shall sit down.

The Connétable of St. Clement (in the Chair):

I call upon the Constable of Grouville. **[Approbation]**

5.4 Connétable J.E. Le Maistre of Grouville:

I have refrained from taking part in the debate so far because it is all very new to me, of course, but I am interested in the idea of the ombudsman and, indeed, what it is likely to cost. It seems to me that there is already ample opportunity for members of the public to seek redress if they feel aggrieved. They can approach their elected States Members who can take up their case on their behalf or, indeed, there is the States Complaints Board, which is set up for that purpose as well. So before considering supporting the proposition of appointing an ombudsman, I would like to know if the Complaints Board is at the moment failing, how many complaints it is dealing with and what are the costs of running this Complaints Board and, indeed, what the costs of an ombudsman would be and whether it would replace the board. **[Approbation]**

5.5 Senator A. Breckon:

Far be it from me to disagree with Connétable of Grouville but could I just share an experience I had. Years ago, there were 2 running in tandem. I took one and former Deputy Le Claire took one about education. It was about the allocation of a school place and we finished up at a review board and it was really a sledgehammer to crack a nut. One of the problems was, as the Constable of Grouville has just touched on, the people who were reviewing it were the people who made the decision and that was really part of the problem. The Clothier Report did mention having an ombudsman. That was part of the transparency and the challenge to Executive government and for Deputy Young's information, there is also a funerals ombudsman and there is also one for removal men and women and it is seen by industry as a Kitemark. I do not know who complains about funerals, obviously not the customers but their families, but it is seen as a Kitemark and if you had an ombudsmen scheme, then it is a low or a no cost way of people questioning a system or a service. As Deputy Young mentioned, it was started in the public sector in Sweden over 200 years ago and I think the actual presence of an ombudsman may mean that some people may get their act together. If the ombudsman is aware of it, then sometimes things happen and there is evidence of that of what happens in the U.K. where those schemes are in place. The other thing I want to touch on is research resources for Members and I think it is opportune just to mention the support that we get from the Greffier and his staff if anybody is doing anything. I remember years ago if I was looking at something, I used to have shelves full of files and if I wanted to find something, I used to have to get them down and go through them. So as well as the mine of information that the Greffier and his staff have, they are able to supply us. We also have the technology now which goes back a certain way which means that research, believe you me, is a lot easier than it was not many years ago because that was not about the Greffier and his staff were there but the technology was not there to sort of look on the Assembly website and go back on propositions and find out who and where and, of course, we did not have Hansard either so if ... I notice Deputy Southern has just produced something today and he has used those resources and, as far as I know, he has probably done most of it himself. Now, as Members say, there is time attached to that but then if Members are passionate enough about a particular issue, then the research sometimes can be

worthwhile so there is some work involved and sometimes there are some rewards as well. So I would like to just put on record thanks for the support that we do get. But having said that, if there is more support, then it must be available to Members who want to use it. I remember when the Deputy of St. Mary mentioned it and I thought: “Well, if we do have a researcher, perhaps he would need one for himself” because he was producing lots of documents from all over the place. So the difficulty then is how would this be shared and how would an officer allocate their time because there might be a bit of a tug of war over that so that is something that needs to be thought through.

5.6 Deputy S. Pinel of St. Clement:

I shall be broad and very brief. Despite the fact that this discussion has extended beyond the expected time parameters, it has been extremely useful to be able to listen to strongly held and often opposing views, as it should be. On the subject of Assistant Ministers, as Assistant Minister for Social Security, the Minister and I work very closely with the officers as a team. Our excellent Scrutiny panel are involved in the very early stages with policy and continues engagement throughout the development of policy as pursued. It is a terrific combination and one for which I am very grateful and duly respectful. Assistant Ministers on Scrutiny is a good idea and one which should be explored. Under the broad job description of Non-Executive Members, surely this is the remit of an Assistant Minister. The sharing of information and delegation of duties from the Minister is, as I understand it, part of the job. Apart from the tick-box survey, I am not sure what the next steps of the panel will be. I sincerely hope it is not a referendum **[Laughter]** but having been one of the original 48 who have been interviewed, I would welcome the opportunity of a further submission to the panel based on the information gained from listening to other Members’ opinions expressed during this discussion. This would perhaps permit some more objective rather than subjective consideration. Whether Members agree with all, some or none of the recommendations in this report, the work involved in its production by the panel should be applauded.

Deputy M.R. Higgins:

I have decided to not pursue my question. I think time is getting on. I think we will come to a conclusion.

The Connétable of St. Clement (in the Chair):

Thank you.

5.7 Senator I.J. Gorst:

I think that under other matters, there are a number of good proposals which should be brought forward. I think the establishment of an ombudsman and the refreshing of the work that the States of Jersey Complaints Board does can only be a positive step forward. It also seems appropriate to use the Jersey Appointments Commission to support the recruitment of non-States members to the Public Accounts Committee and I cannot see any problem in principle why there should not be a public register of Chief Officers’ interests prepared on the same basis of disclosure that is required by politicians. I did just very briefly want to touch on what a number of Members have suggested that might be a panacea for all our problems and that is party politics. I think that there is a move by some Members, perhaps if we might describe things in the traditional way on the left and, I must say, on the right, to develop party politics and I would give a word of warning and ask those what I might call sensible Members in the middle to consider very, very carefully before they thought about joining party politics.

Deputy M. Tadier:

I do not normally like to use points of order but surely if one is saying “sensible Members in the middle”, it implies that those who are not in the middle are not sensible. It would be seen to be implying false motives to the extremists in the Assembly. [Aside] [Laughter]

Senator I.J. Gorst:

I did not use that word. Perhaps I could have chosen my words slightly more carefully but I think the point still stands and the reason I say that is that it is easy to think that with a party, what you get is what you see. I think experience elsewhere in the world shows that that is not the case.

[16:15]

Parties do not deliver on their manifesto promises sometimes in the same way that individual Members might find it difficult to deliver on their manifesto promises. Parties have processes and infrastructure in place that generally do not allow for individual members of the party to be involved in policymaking decisions as well, which each Member of this Assembly still has, is still able to bring forward an individual proposition, is still able to make informed and non-whip decisions about all policy matters and therefore I think we should think very carefully before we want to encourage and believe that parties are the panacea to all our issues. We have a system that I think we can be proud of but it does need to have some amendments and that is why it is important that we have had this debate today and it is important that the Machinery of Government Review Sub-Committee have sought to bring forward solutions which can improve the process that we currently have but I think we should have our eyes open before we think that parties are the solution to all our problems. They simply replace some problems with different problems into the future. I know that the Chairman of the Machinery of Government Review Sub-Committee is going to conclude after we have finished with these other matters but perhaps what I might offer is to work together with the Chairman of Privileges and Procedures Committees, the President of the Chairmen’s Committee and, if need be, with the Machinery of Government Review Sub-Committee to bring some of the discussions that we have had today and some of the recommendations in the report to a conclusion which will require legislative changes so that the Assembly can make a decision on them. I think there has been a very good steer about which are acceptable to the Assembly and which are not. The hard work is now before us in bringing Members to the decision point and I am more than happy to be involved in that process. In fact, I think I would say this, whoever was Chief Minister, I think, it would be very positive for the Chief Minister’s office to be involved in coming to that conclusion and decision point.

5.8 Deputy T.M. Pitman:

I really have to respond to that deranged tirade of abuse against anyone who believes in democracy. As we know, if Senator Gorst only understood it, one of the great things you get with parties, and they are not the answer to all ills, is that when people do not deliver, when they are utter failures as he has been as a Chief Minister, the public can turf them out because they can see that his party has not delivered, and it brings accountability. That is surely a good thing instead of this behind-closed-doors, jobs for the boys, never mind your ability. You will vote the right way and press the buttons like a laboratory rat. That is not the way politics should work. Why is someone in the middle the sensible people who do not believe in party politics? The world has party politics. Is Jersey the only place that has got it right, where we have covered up child abuse for decades after decades, where the Senator and his 2 bosses, the 2 Philips, have gone on and on about denigrating the victims of abuse. They have made a struggle for 5 years to get a Committee of Inquiry. How insulting that is and he gets away with it time and time again because most people just keep their heads down.

The Connétable of St. Clement (in the Chair):

I am sorry to interrupt you, Deputy, but the States are not quorate. Will you take a seat and I ask any Members in the precinct to return.

Deputy M.R. Higgins:

I suspect the only person was the Connétable of St. John who just left.

Deputy T.M. Pitman:

Well, does it not say it all? Well, that is fine, is it not, Sir. It is fine for the Chief Minister to lurch into these tirades of ill-informed comment about party politics but no one must reply and that is a big problem with this government, this government of the self-interested. It is time so many people who hold power should stop thinking about government as a means to what can be achieved for them and started thinking about what government can achieve for the people. That is all I really want to say. This Chief Minister has been an embarrassment and a disgrace and the sooner he goes, the better, which he would if he had a party behind him.

5.9 The Connétable of St. Mary:

I would just like to get back to what we are debating here. **[Approbation]** Appendix 4 is titled up: "Recommendations concerning other matters." I wonder if Deputy Young could address another matter which does not have a recommendation. I am looking at page 28, section 9, about the P.P.C. and the invitation for the Privileges and Procedures Committee and the States as a whole, which is presumably what we are doing today, to discuss the ownership to the amendments to the States of Jersey Law and are we discussing some kind of ring-fencing technique for attributing legislation to certain areas of the Assembly? There are no recommendations but the matter has been raised for discussion by the States.

5.10 The Connétable of St. John:

As I said when I came in and I do not know if it has been recorded on Hansard and I want it recorded, I left the Chamber because I did not like the tirade of abuse that was being given to the Chief Minister. I do not think that is very parliamentary. While I am on my feet, I will just mention one area which I would like the Machinery of Government Review Sub-Committee to look at. Historically under the previous system, we had access to committee minutes of B agendas and A agendas. Under the current system, we have access to a limited A agenda and the minutes are very sparse. We do not have access to the B agenda. Once things have happened, there is absolutely no reason why Members should not have access to those B agenda minutes and I hope the Privileges and Procedures Committee could look into that. When I mentioned it earlier in the Members' room, there was a gasp by several Ministers saying: "Oh, that would not be right," but historically Members could be pulled into line by the Bailiff or whoever at the time when you requested to see the minutes. If I can recall, and the Chair himself was President of I think it was Education, and he thought I was on a fishing trip so he asked the Bailiff to only allow me to see X, X, X, which was fine. That is what I wanted to look at. I did not want to go down the road of looking at loads of other background on that particular occasion. So there were checks and balances so consequently Members were a bit concerned when I raised it because I had not been around when that was quite common that we could get in to see the minutes of meetings. We are all elected so we should be able to see the historical documents when the decisions have been made and we could have access in a confidential way to these minutes.

5.11 Deputy M. Tadier:

Can I address the very narrow issue of States Members' training? Some Members might recall that in 2011, I did lodge something and then later withdrew it for a couple of different reasons, partly because it was already met in other ways and that was to request the then Privileges and Procedures Committee, I do not think I was on it at that particular point in 2011, to look at ongoing skills

training which would relate to, but not be limited to, speeches, general debating skills and any other area that was deemed of benefit to local parliamentarians that had not been covered. I know Deputy Bryans raised that. But we do already have an informal system so if you are on Scrutiny and we have had some very good training sessions partly from the Solicitor General which I thought was very useful and it opened us up to a bit of what goes on from an advocate's point of view but there have been some other very good ones and media training, *et cetera*. There has been a tendency, I think, in the past for States Members to be coy when it comes to resources that are given to them and I think it is quite right that we are always mindful about States spending and how much is spent on us. We have been away, some of us, many of us, to other jurisdictions, parliaments, and seen often the opulence and the excesses, it seems, that they get given. The House of Commons is perhaps the most notable where it is like being in a different world and they ... there is a French expression which I will not use because I might get pulled up on it but it essentially means that they think fairly highly of themselves. I do not know if anyone can guess what the expression is in French. We are miles away from that in Jersey so I would say that we do need to be mindful that we are professionals. It is not our usual job. In any other job with a certain amount of executive function, you would be expected to have ongoing training and it would be paid for by the employer so I just wanted to make those comments. It is important. And we were quite ... we had to remove the word "modest" because we put there should be a modest resource increase for those in the non-Executive. We took out the word "modest" after a bit of debate because we thought: "Let us not be so coy about this." So no one is advocating spending millions on States Members' training but there does need to be a proportionality and certain departments are getting an increase in their fees, whether it be for the communications unit, *et cetera*. There needs to some element of *quid pro quo* because at the end of the day, we are just short-changing the public if we are not sufficiently resourcing ourselves.

The Connétable of St. Clement (in the Chair):

Thank you. If no other Member wishes to speak, I call upon Deputy Young to respond to the statements.

5.12 Deputy J.H. Young:

I will be brief. I think I need to respond to 2 areas and obviously thank Members for their comments because I think they have been very, very helpful. The Constable of Grouville's question, an extremely good one, absolutely spot-on to what is the current situation and then I have had to certainly have a look up the reports to give him some information. I cannot give a definitive answer but I do know that the current situation in Jersey to grant appeals and challenges to decisions which affect citizens is fairly messy. Some laws give people the right to appeal to the Royal Court and, of course, they either use expensive lawyers or have to run as litigants in person. It is pretty difficult. I have certainly sat through one Royal Court of Appeal of a taxi driver against suspension of his licence in the Royal Court, a very brave man, in my view, to cope with legal processes. I do not think we should have that sort of thing. In some laws, it is even silent on the subject and judicial reviews are necessary. We had one the other day where it was accepted that there is not an appeal provision in the law. Judicial review is even more difficult for ordinary citizens to access. But some laws, fortunately, have a tribunal required to help people and in those cases, of course, those systems are effectively in place. As the Connétable said, absolutely there is the States of Jersey Complaints Board there and ordinary members to support but, of course, here one turns to Clothier and this is where the Machinery of Government Review Sub-Committee read Clothier and I think it is worth just reading here. It says: "Jersey complaints are considered by a Complaints Board composed of senior figures, some of whom have been prominent in government in early days. They cannot consider any complaint unless it has been first investigated and judged worthy of consideration by the Greffier on his or her sole discretion. The invested staff and powers

available for this purpose seem to us to be very limited which explains why the course of complaints is very slow indeed,” and they say it is unreasonable for the Greffier whose first task is to serve the States to undertake this task without a bit of additional staff and it points out there is no sanction which can be applied if the errant administrator or committee are obliged to make amends and they say: “We consider these arrangements to be quite unsatisfactory. We recommend the institution of a proper ombudsman to hear complaints by the administration,” and then they go on to say that there should be powers of sanction. What they do say in there though is that they do not see this as a heavy role. It should be possible to do it through a part-time role and that there should be ... there is the option of having those routes to the ombudsman going through a Member of the States as an option and they also highlight the possibility that it might be done jointly with Guernsey to ameliorate the cost. So I think there are all sorts of options. As far as I can see, the last time this was looked at was in 2004 with a consultation report by the then Privileges and Procedures Committee. It has not gone anywhere. I think what this is here is not on the details, it is a point of principle. Here is a point of principle we should have in place, a decent facility and accepting, of course, that all the costs and mechanics have to be worked out in detail at a later date.

[16:30]

So with that, I thank the Connétable of Grouville for his question. It is an excellent one and it has prompted me, and I am sure it prompted other Members, to do further work on that. Regarding the Connétable of St. Mary, I am not a great expert on this subject on page 28 but I think what the report was trying to do was to run through all the different committees we have got as well as the Executive and this question of what is the role of Privileges and Procedures Committee. I cannot recall, I may not have been party to this discussion, where it says that there was part of it that might be under review which is to keep in place the States legislature and bring forward amendments to the States. The paper here sought the views of the Assembly and I do not think we have had that. The views which were sought was whether or not that only the Privileges and Procedures Committee should continue to be the body and power to lodge amendments to the law, or whether or not there should be the facility for the Executive and I think that is a point of principle where there is not a recommendation. It is there for discussion and I do not think we have heard an opinion on it today and can I suggest that if the Connétable were to contact the Machinery of Government Review Sub-Committee afterwards and any other Member who perhaps has a view on that, that would be the right way to deal with that particular point. But unless my colleagues on the Machinery of Government Review Sub-Committee want to add anything on, I think that is it.

The Connétable of St. Clement (in the Chair):

Thank you, Deputy. Well, that concludes the makeup of the debate. As Chairman of the Machinery of Government Review Sub-Committee, Deputy Tadier, would you like to say a few concluding words?

6. Conclusions

6.1 Deputy M. Tadier:

I will and first of all, just to thank Members, I think, initially for what has been a long debate but I think it has been a constructive debate and the very nature of it perhaps is not necessarily as exciting as some debates but we will be producing a C.D. (compact disc) if anyone wants to take a copy so they can listen to it again, perhaps before going to sleep and I am sure that we will all sleep well tonight. Just to put this back in context to conclude, perhaps for the newer Members, is in 2011 but before the elections which was back in March and previously, there were at least 3 propositions which asked the States to look at a whole variety of issues. If I remember rightly, the Constable of St. John brought one, Deputy Baudains brought one and I brought one, various different chronologies, and it was to look at the various issues to do with mechanics of the States.

One of the issues, just to pick up on the Chief Minister, so it was something that was being discussed already at that stage which formed the basis for the 3 different working groups that went off and, of course, all that was running concurrently with the Electoral Commission as well so a big body of work there. One of the issues if I can go back to it, which was raised by Deputy Pinel, is that of the Assistant Ministers' question. We were asked to look at that. In fact, I lodged a proposition saying we should give consideration to whether or not Assistant Ministers should be able to serve on Scrutiny. The conclusion that we came to, after having looked at all the possibilities, was that we decided that because we wanted to make Assistant Ministers beef up the role rather than having the current system whereby some would say that they are neither fish nor fowl or to be more fair, as we have said, some are given more of a portfolio, others are given less, if we are agreeing that they should be substituted and deputising for Ministers when they are not around, therefore you essentially become much more empowered as an Assistant Minister. You take on the responsibility that goes with it and therefore you are essentially a Minister when the Minister is not around. So because we would not have Ministers serving on Scrutiny, we did not think that it is appropriate to have the new type of Assistant Ministers who deputise. So that was the logic and just to reassure Members that these things have been looked at but, it does not mean that they are not subject to amendment in the main debate. I think that for the initial Part 1 recommendations, there was tentative support. I think that there is concern adopted around the Assembly from giving up any power of the Assembly towards the Ministerial benches but there was also a recognition, I think, that we need to have effective policy being delivered and held to account and scrutinised and that is not something ... to use an expression that one of our Members used on the Machinery of Government Review Sub-Committee, a round hole and a square peg, I think that was it. So some of these things are not immediately always reconcilable but the judgment call will have to be made at some point and there may well be pros and cons to any decision that is made. With regard to the Non-Executive Members, I think it is fair to say that they were not particularly popular in the current format. I would hope, though, that nonetheless the points were made that the rationale behind having Non-Executive Member boards was to address the multitude of Ministerial advisory groups, boards that we have already, some of which we know about, others which we do not know about, but which are very numerous and which all seem to just be comprised of Ministers or Ministers and Chief Officers or the like and to shine the torch in there and say: "So what are these boards? What are they there to achieve? Are the people who are sitting on these boards the only ones who should be sitting on the boards? Are they the best people to be sitting on the boards?" If we already have instances where Non-Executive Members are being drafted in, quite rightly, and if they are being drafted in, for example, something close to my heart is the legal Jersey Access to Justice group which I understand at some point will involve States Members potentially and Back-Bench States Members who have got an interest. We are already doing that so the Non-Executive Members essentially seem to want to formalise that process so it can be more accountable and more transparent and that is something we need to address. But it is happening informally and I think it is good, certainly on occasions, to have the ability to draft in Non-Executive Members, whether it is to look at affordable housing strategies, *et cetera*. Whether it needs to be formal or not is another matter and it may well be that we do not need to go down the formal route but there is again a balance to be had with that one and I hope that is a fair summary perhaps of the Non-Executive Members section but I think there is a lot more work. A lot more attention needs to go into that area before it can have the backing of the Assembly. With the Scrutiny section, generally there was a significant amount of support, notwithstanding the concerns about the detail, what would happen to the panels, and will the Ministers be scrutinised on a quarterly basis, *et cetera*, as they currently are. If so, who will be doing that? Again, something which we did discuss at length on the panel. We are aware of it but I think on the balance, it is essential that Scrutiny is given the ability to react flexibly and quickly to changing portfolios and changing pressures and I think we all tend to agree with that and it may

well be that there is a way to keep the best of both those elements. And I think the last section hopefully was relatively uncontroversial, notwithstanding comments about the ombudsman but clearly, when this is brought back, the Constable of Grouville is quite right. The workings do need to be shown. The case always does need to be done and clearly Members need to be satisfied that that route is the best one to go down. So if Members are content with that summary, I will obviously let ... open up if anyone has got any questions or any further comments but that is the summary and once again just to thank you, Sir. I noted to myself that you have held the title of Deputy, Constable, Senator and now President **[Laughter]** and that has to be one of the great accolades, Sir, even though it is not your first time in the Chair. So, Sir, can I thank you for volunteering. Of course, we will come back with feedback. We will go through the transcripts and we will see what the next status is with the Privileges and Procedures Committee.

Deputy J.A.N. Le Fondré:

I propose the adjournment, Sir.

6.2 The Connétable of St. Mary:

I would just like to ask the rapporteur if he has worked backwards, the time scale for achieving change by the end of this Assembly's life, when will we expect something to be lodged for debate by?

Deputy M. Tadier:

I will try and answer that now but I do not have obviously a timeline. I would imagine it was desirable for it to be implemented before the next election, given that we are also looking at electoral reform as well which is going to be an even tighter process in many ways, I would say that it is possible. I am sure that some or all of these recommendations can be implemented but that is also a political decision. It depends where the urgency is deemed to be but certainly I do not know why we would not treat this urgently because this is why we were keen to have an in Committee debate now rather than delaying it any further. So we do certainly treat this with the urgency which I think the Constable of St. Mary does.

The Connétable of St. Mary:

I would just like to respond if I might. We are still in Committee. I presume I can still talk.

The Connétable of St. Clement (in the Chair):

Yes, well we were proposing with the Chairman's closing remarks ...

The Connétable of St. Mary:

Absolutely, Sir, but I think the Deputy just said there might be some urgency to do this. I think we have all demonstrated today the urgency is getting this in place before the start of the next Assembly so that we can move with the revised machinery of government and I would like to know when we can expect a debate to be had on this because there are certain Members who I am sure will bring their own proposition if it is not possible for that to come from the Privileges and Procedures Committee.

Deputy M. Tadier:

I can address that now.

The Connétable of St. Clement (in the Chair):

Yes. Has anybody else got any queries or questions before ... yes, please, Deputy.

6.3 Deputy M. Tadier:

The issue, Sir, is that some of these recommendations are conditional. For example, this has tentative support from the committee. There are certain recommendations in here which some of us really would not necessarily have instinctively gone for and I think that is the same in the Assembly and the point is that there are some bits of these recommendations which can stand alone. There are other parts which are conditional, for example, what I talked about Assistant Ministers. Unless we know what the role of an Assistant Minister is to be, we may find that there is a desire not to have Assistant Ministers at all and to go down the route of giving every person in the Executive an executive responsibility. If that happens, that will have knock-on effects if Assistant Ministers are not given executive responsibility and people like Deputy Martin may well want to lodge amendments to say that they can be on Scrutiny and, of course, we would probably have no objection to that.

6.4 Deputy J.M. Maçon:

I wonder if the Deputy would give way. If it is of any comfort to the Member, I can assure her that my committee is very much minded that if we were to bring in changes, they would need to be before the next election and therefore they will be of a high priority among the other commitments that we have in our workload and I think that is what the Member wanted reassurance about.

6.5 The Connétable of St. Mary:

Basically, I just want to know the last date that we could debate this before getting it in place. I will just speak to the Chairman.

The Chairman:

Very well. That then concludes the in Committee debate. The final item on the agenda is the Arrangement of Public Business and I look to the Chairman of the Privileges and Procedures Committee.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

7. Deputy J.M. Maçon:

Thank you, Mr. President. Can I advise Members that the following matter has been deferred from 22nd to 19th November, Sunstone Holdings Ltd. and De Lec Ltd., P.90. Also that from 5th November to 19th November, the Committee of Inquiry: costs for local businesses, P.82, has been deferred and that the following propositions, both are added to 19th November. The first one is The Lord Portsea Gift Fund: revised rules and conditions, P.126, and also that P.127, Dental Health Services: Improvements is also lodged for debate on 19th and can I advise the Assembly that our next sitting does seem to be quite a light agenda and advise that we would hope that we would not spend longer than 2 days on that for the next session.

The Connétable of St. Clement (in the Chair):

Thank you, Chairman. Senator Breckon?

7.1 Senator A. Breckon:

If I may, just to give an explanation for that. The Committee of Inquiry, I was in touch with the J.C.R.A. (Jersey Competition Regulatory Authority) earlier this week and they are doing 2 reports and they unfortunately have been delayed and they may have some effect on the proposition. The second one, Sunstone and De Lec, which was down for 22nd October, yesterday I was in touch through the Chief Minister with officers and they are in the process of putting in place somebody to investigate some of the matters associated with that. The name cannot be revealed at the moment but it is somebody prominent who is known in a regulatory environment in the U.K. who is known

in Jersey so if that takes place, obviously that needs to happen so that is the reason for the delay of 6 weeks to allow that to happen.

7.2 Deputy M.R. Higgins:

Could I just ask the last speaker. Besides the inquiry into the J.F.S.C. (Jersey Financial Services Commission) and its actions, will the terms of reference of that inquiry be brought back to the House first or what? Have they already been agreed?

Senator A. Breckon:

The terms of reference are in discussion with myself and the Chief Minister and others.

[16:45]

Deputy G.C.L. Baudains:

Could I just say how disappointed I have been this afternoon. We have had a very good debate but I have been counting all the time to make sure we are quorate and most of this afternoon we have been on 26 and I think the highest we have been is 29.

Deputy J.M. Maçon:

Again, just before we conclude, may I echo the words of Deputy Tadier and thank you, Sir, for presiding over us today. **[Approbation]**

The Connétable of St. Clement (in the Chair):

Thank you for those words, Chairman, and can I thank the Members for being extremely gentle with me and making the job a total pleasure. That concludes the business of the States. The States are adjourned until 22nd October.

ADJOURNMENT

[16:46]