

STATES OF JERSEY

OFFICIAL REPORT

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

PUBLIC BUSINESS – resumption

1. Sunstone Holdings Ltd. and De Lec Ltd. – *ex gratia* payments to investors (P.90/2013) - resumption

The Greffier of the States (in the Chair):

Debate resumes on the proposition of Senator Breckon concerning Sunstone Holdings Limited and De Lec Limited *ex gratia* payments, and Deputy Trevor Pitman is next to speak.

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

Senator Farnham has done himself out of a little snooze. He should have thought before he spoke.

Senator L.J. Farnham:

I came this morning very well-rested.

Deputy T.M. Pitman:

Where to start today? Senator Breckon did a very long speech, but he gave us an awful lot of information, which I think is useful because I have to say, I was quite appalled by the speech that followed from our Chief Minister. I thought it was an embarrassed speech, and as well it might be because I think what the Chief Minister had to say, whether he felt compelled to say it or that is his own views, I think those views were embarrassing. They were embarrassing because once again they show what Jersey really cares about, or a lot of people in Jersey, which is image, and it must not be questioned or challenged. But listening to some of the words that Senator Breckon told us about “recklessly misled.” He pointed out that concerns have existed about this for years and effectively, the reality is, nothing adequate was done. Is that the type of image Jersey wants to be associated with? I would say most definitely not. It is my belief that the strength of an institution, whether that is the Jersey Financial Services Commission or, I suggest, a Government, is only increased when those institutions, or those who control them, are big enough to stand up, put up their hands and say: “We are sorry. We played a part in getting this wrong.” Because the Jersey Financial Services Commission, whichever way you slice it, they have contributed to this. They have played a part in getting this wrong. They are not responsible for the dishonesty of individuals; callous, dishonest individuals. But they have a responsibility, nevertheless. I say that it is time that the Jersey Financial Services Commission put their hands up and set things right and improve their stature and their image in the eyes of people. But we know they are not, and I guess that brings us to why we are here today with Senator Breckon having to bring this proposition. We know the J.F.S.C. (Jersey Financial Services Commission) will not put their hands up and this is why it comes down to us to effectively make them put their hands up. We hear these, what I call “handwringing” speeches so often, it has to be said, from a certain side of the Assembly: “We would like to help but we really cannot and it is not the thing to do.” I do not think that is good enough. If I am here at the next election - and I have grave doubts I will be, but I will not go into that now - this is one of those propositions that I would want to be able to stand on people’s doorsteps, look them in the eye and say I supported. Because without trying to teach Members to suck eggs, the reality of this is it is not just about statistics, figures, and money. It is about people, the real people, and we probably all saw a few of the individuals outside yesterday when we came in. People who, through no fault of their own, apart from perhaps being naïve enough to be trusting and be swayed by some big names, pillars of society, perhaps linked to such deals, they trusted. What have they got as a result? People have been betrayed, they have seen family homes of perhaps 4 decades gone, just like that; they have seen relationships crushed. It is only when I spoke

to one gentleman yesterday - and I know he will not mind me mentioning this, because I asked him if I could - how does it feel, through no fault of your own to then find out you are going to be credit-blacklisted, and the actions of others are going to ruin your life for years ahead? Yet we hear the Chief Minister speaking against this proposition. How would I feel about it? I tell you, I would be furious, I would be angry, I would feel betrayed. **[Interruption]** I say the right thing to do is to support Senator Breckon, because at the end of the day, surely a Government has a duty of care to its people; surely a Government has the duty to do not just the right thing but the good thing. Once again, it has been rolled out, precedents set and all the rest of it, but I have to say, I believe it comes down to some in Jersey and in Government not being able to put their hands up and say when they are wrong. The Jersey Financial Services Commission have got more than £7 million there and I can remember bringing a proposition 2 or 3 years ago to try and save a comparatively few thousand pounds of funding to allow primary school children to have learning visits continue to Durrell Wildlife Park and the majority of Members did not support me and we lost that. Yet, in the same session, we had absolute horror when I suggested that we really should not be giving the Jersey Financial Services Commission, I think it was £440,000, to open an office in some part of the Middle East. There was horror on faces, and it really struck me that day how we get the world upside-down. People are what are important, and without the ordinary people of Jersey, people like this that have been betrayed, Jersey is nothing. People come before power; it is not the other way. I think we all realise that, or I hope we do. Now, by supporting all parts of Senator Breckon's proposition, which I certainly am going to do, we will be making an initial outlay from the States but then we will be claiming it back. I think that is entirely correct. It is what we should be doing. Senator Breckon's proposition cannot rectify the whole situation. Indeed, I think as he would probably admit himself, it is entirely inadequate in many ways. But he is, for these ordinary people who have been betrayed, the proprietor of the Last Chance Saloon.

[9:45]

If we do not support him, and through him those people and their chances of salvaging something have gone. Family homes already gone, relationships, trust, people credit-blacklisted; is that not exactly the sort of thing that Jersey, our Government, we ourselves, want to support correcting? I say it is. We can argue about the niceties and the minutiae and perhaps what Chief Minister Gorst says is correct in some ways, but it is not morally correct. A government without morals, in my view, is not a government at all. All I would say to Members, Senator Breckon, as I say, made a very long speech, a very detailed speech. I would ask people just to focus on what he said and the betrayal that was in there; a catalogue of, I would say, neglect. Not by these people but by people who should have known better, who should have acted on laws that have been in place since 1998. Let us all just put ourselves in the position of those people: homes gone, relationships split up, facing credit-blacklisting and not being able to rebuild your life for years. People have read letters from these people; let us put ourselves in that position and I think, I hope, that most Members would agree that when we put ourselves in the shoes of those ordinary people, we would say that if we were in those shoes, we would want our Government to support this proposition. I applaud Senator Breckon for once again bringing something which is about ordinary people and is about doing the right thing and taking the long-term picture and doing good things for Jersey's image rather than battenning down the hatches as we see so often, and never admitting we are wrong. I would implore Members, please do support Senator Breckon and support each and every one of those clauses within it.

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

I do not think there is any Member of this House that does not feel sympathy, empathise with the victims of what were criminal acts and the loss of such vast amounts of money. My focus has been hinted at by both Senator Breckon and Deputy Pitman. My concern lies with the J.F.S.C. and I

would say this because I am previously an I.F.A. (Independent Financial Adviser), previously a director of an insurance brokerage, and also previously a chairman of a personal finance society over here. So I have intimate knowledge of how the J.F.S.C. operates and what they do when they have their compliance visits, and we had a briefing the other day which amplified the way in which they had gone about their business. Rather than it mollifying my situation, I thought it gave me greater cause for concern. I will say a couple of things that I think are important first of all. I think it is right that the regulator does not regulate property holding companies and therefore has no recompense or no ability to look at or through Sunstone Holdings Limited. Equally, something I heard at the thing - and I could be wrong but I think it was the impression I gained - in relation to the Alternate funding, the payment that was made to them, the regulator said the reason for that payment being made was because of a "nexus," to use his word, which I took to be a connection, and the connection meant, in my head, was that they felt some responsibility that they had not perhaps done the job they were supposed to have done, and therefore there was a reason for that payment to be made. Putting those 2 things aside, what I want to do is just put in Members' minds the way in which the regulator operates and then draw your own conclusions. If you are subject to a compliance visit, which Goldridge Stone was, several times, and in fact there was a reference to them being an enhanced visit, which meant there was more forensic detail being considered on the initial early visits, it comprises of this: the regulator will say to you: "We are coming along to see you. It is in very short notice. We would like to lock-off your offices for about 3 days. We would like to open all of your files and examine all of your records in detail." I think they do a fantastic job doing this, do not get me wrong, and we need a regulator to do the very thing that they did, which is to find these guys. When they do that, when they take a file out, what they are looking for is, first of all, they will have a list of all the business that you have done since the last visit, or at least within the last year, so they have got something to focus on. Then they will come in and they will take out, at random, anywhere between 5 to 10 files related to particular individuals. So, in the case of Goldridge Stone, we had 3 individuals and 3 filing cabinets, or at least filing cabinets associated with the particular client. They would take out, at random, files. They would go into those files and they would look for evidence of what has happened to those clients during that period of time. So that means they are looking for what has happened, what advice has been given, notes on conversations, why one policy has been taken out as regard to another, why selection has been made, evidence of, in particular - and this is the important bit, to me - why a policy would be cancelled and where those monies went to. What the regulator said the other day was that they had no reason to suspect Sunstone Holdings Limited. I find that really hard to understand because it seems to me that, at any point in time, let us say that you were not that lucky to hit that many clients that have been subjected to what we now know was a criminal act. You would have at least understood that somewhere along the line these guys were closing down policies that had not reached their fruition and then subsequently were moving elsewhere. The question begs to be asked: "Where were they moving to?" What the regulator said was that he had boxed-off the notion of Goldridge Stone and Sunstone Holdings Limited being 2 completely separate companies and because Goldridge Stone was being regulated and Sunstone Holdings Limited was not, they could not make that quantum leap between them. What the regulator was suggesting was that they were reactive in that situation. Subsequently he went on to say that when they employed [*Name omitted from the transcript in accordance with Standing Order 109(7)*] to come in, to look forensically for information regarding Sunstone Holdings, they took a proactive stance. So, we have got reactive and proactive. What I find is also equally difficult, Jersey is a very small place, and where Goldridge Stone existed previously was in Britannia Place, and subsequently, in my mind, in my recollection, I could be wrong, they moved to New Street. What was suggested at the briefing was that Goldridge Stone stayed at Britannia Place and a new environment was created for Sunstone Holdings Limited at New Street and that they were 2 separate entities. Again, taking the circumstances that we have here in Jersey, if you have been looking at these 3 individuals in detail

and you know of them and you are suspicious of them, as they were, then for them to move and do what they did, you would be equally suspicious again. If you had taken a proactive stance at that point, you would have seen the evidence that they were looking for and subsequently found. So I have grave concerns that the regulator had that nexus and so what I am asking for at this point at time - because I cannot support this proposition in the way it is set up - but I do think there is a connection, I do think that the J.F.S.C. is at fault and I think what I would look for is an investigation of the investigators' investigation. I say that in the same way that the Chief Minister said it: it is uncomfortable to ask for this sort of thing because I think the regulator has done a fantastic job in bringing Jersey to where it is, globally and locally. But in this particular case, I think it is important that we see that this job is done, because if there is a connection found, then these people have laid claim, in the same way the Alternate situation was paid money and recompense could be made. So, I will not support this proposition, but I do think we need to look more closely at the regulator. Thank you.

The Greffier of the States (in the Chair):

During your speech, Deputy, you inadvertently referred by name to one of the investigating officers and I will direct that that name be removed from the Hansard record. Constable of St. John?

1.1.2 Connétable P.J. Rondel of St. John:

Having listened to Senator Breckon and Senator Gorst, I must say that it was like listening to a courtroom drama on television. The difference is, this is real-life pain for all those people caught up in this fraud, people like you and me, and those poor people up in the gallery today. What concerns me is, way back in 2007 and beyond, the scheming that was going on. I am sure others are involved, possibly former employees. I was given a name yesterday of one of those former employees who was not charged along with these fraudsters that have been named over the last couple of days, but he is now in prison for carrying out this type of crime. I have to ask, could he have been, when he left that particular firm of Goldridge Stone, part-and-parcel of this group of people who taught him how to go and get money and, whatever the phrase is that Senator Breckon used where they move one policy around and sell it on or move it into some other: churning. I believe that at this time, we, the States Members, do not have the know-how of how to put a rescue-package together for this group of people. I do not believe that any of us here can go forward with a debate like this with the small amount of evidence that we have, given the amount of the mountains of evidence in, I think it was an 18-day trial. An 8-week trial, so there are mountains of evidence. This needs to be reviewed and a report brought back so that we can understand it in a lot more detail. I had thought of the review being conducted by the Scrutiny Panel on a desk-top, but possibly it might need a committee set up specifically from within this Chamber and bringing an independent person in to investigate the J.F.S.C. and the whole package and give us some information so that we can absorb and make a decision. There are things that I need to know. I need to know, for instance, if the fraudsters have been declared bankrupt. If not, a claim can be made against these people when they come out of prison, because if somebody owes you money, you can go after them for up to 10 years, and I am sure the Attorney General can correct me if I am wrong. Therefore, if they have not been made bankrupt on these specific items ... but if they have been, then the people up in the balcony and the other people, if they have not put a claim in against them, they can still go to these people for the debt when they come out of prison. I would also like to know whether or not some of these people have been reimbursed in full, or otherwise, and I would also like to know whether the partners or spouses are living in luxury homes - I am talking about the criminals - and who was paying the mortgage up until they were arrested? Was that money coming out of the husbands' income or the partners' income to pay the mortgage on their homes? There are a lot of questions that need to be answered which we do not have the information to. Therefore, I think we have to go much further and have an inquiry before we can

really debate this properly, to give the justice that people require and put building-blocks in place so this type of thing cannot happen again. I am sure there will be ramifications of certain actions taken by this Assembly if we make rash decisions now. What happens here today may put in place... we might say: “Yes, we will pay these people in the gallery the figure that has been asked for, or a figure.” That becomes set in stone and becomes the norm for other fraudsters in the future when claims come in, and I think we need to not make decisions on the hoof; we need to look at the big picture and have a report that we all have confidence in. At the moment, as much as I want to help the people who have been defrauded, this Chamber should not be doing this until we have all the evidence, and the only way we can have it is through an inquiry. Thank you.

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

The speaker was looking at the Attorney General for much of that speech and I thought he was going to end it by saying: “I wonder if the Attorney General could elaborate upon the various schemes of compensation that were available, and why it appears they have not worked?” I wonder if this might be the point at which we get some background, if he is agreeable.

The Connétable of St. John:

I am very agreeable to that.

[10:00]

The Greffier of the States (in the Chair):

Are you able to help at this stage, Mr. Attorney?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

I will try and help at this stage, Sir, and if Members need further information, then I will try and provide it a little bit later. In the context of the criminal proceedings against the 4 individuals who were subject to those criminal proceedings, at the end of those proceedings when they were convicted the Crown, as it always does in these kind of circumstances, considers both the issue of confiscation of assets and compensation of the individuals defrauded. Given that there were real people who had lost money as a result of this, the Crown’s first interest was to move for a compensation order, and in that context considered in detail, on the back of a forensic report, the financial position of the convicted persons. It is fair to say that the Crown’s information was to the effect that 2 of those were, in effect, men of straw. The facts make it clear that the assets that they had acquired during the course of the conduct that they engaged in were now in a position of negative-equity and there really was nothing to get back from them. There had been foreclosures in the United States and 2 of those individuals were, as I say, men of straw. Of the other 2, an application was made for compensation, and in respect of one of them the sum of £25,000 was raised under a compensation scheme and that was divided on a pro-rata basis between the individuals who had lost money as a result of the offences for which that person was convicted. In some cases, people got as little as £900; in others, it was a few thousand, but it certainly was not a substantial sum. As to the fourth, that is a matter still before the Court of Appeal, and I am not in a position to give any further information about that to the Assembly at the present time. In the context of the criminal proceedings, it is perhaps important for the Assembly to understand that the Crown can only deal with compensation insofar as it relates to the offences for which the individuals were charged, and of course there were a number of people who lost significant amounts of money during the course of those activities where those losses did not result in a criminal prosecution or a criminal conviction. So, in a sense, there is a limited span to what the Crown can do. So much the context of the criminal proceedings: it is true that there is nothing in principle to stop individuals making a claim before the civil courts to seek, if they have a liquidated claim, a declaration of bankruptcy, or to make a civil claim for the losses arising. That is

potentially, of course, a significant process and it is not possible for me to give any indication as to how likely that is of success, but it is perhaps a truism that you only get from somebody if they have got money to pay it, and if - as my understanding is the case - they are men of straw, it is very difficult to see how claims might be vindicated through the process of a civil claim. I am not sure I can assist the Assembly further at this point.

The Connétable of St. John:

On the civil side, Attorney General, the fraudsters have been given 4 years in prison. When they come out there are still 6 years to run; they have responsibility up to 10 years if a bill is submitted to try and reclaim the money. Some of those people may have an inheritance that comes along, and therefore a claim can be put in up to the 10 years, am I correct?

The Attorney General:

I am afraid I have not analysed the nature of the claims that might be made, and therefore cannot advise definitively on the proscription or limitation period that would apply to such a claim. In some cases, a limitation period for a tortious claim is 3 years, in some cases it is 10 years, and, generally speaking, fraud is imprescriptible, but I would not wish to give the Assembly definitive advice as to the abilities under the civil law for any individual claimants in this case.

The Connétable of St. John:

Inheritance: would the victims be able to have a claim against them if they personally inherited?

The Attorney General:

If there was a claim against an individual and that claim was vindicated before the courts, then that individual's assets are available, whatever those assets may be, to meet that claim. So, I see no difficulty, if a claim can be made - and I use the word "if" advisedly - and there are subsequently acquired assets, those assets might not be available.

Deputy J.H. Young of St. Brelade:

I wonder, given the fact that one of the persons convicted was in fact a public employee, other public employee pension funds provide for pension rights to be seized. Could the Attorney General advise us whether that matter is being examined?

The Attorney General:

I am afraid I do not know the answer. It is not being examined from the Crown's perspective; that would not be a task that the Crown would be expected to do in the context of its criminal proceedings. I do not know what else has been looked at, I am afraid.

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

Thank you - for Deputy Young - that was one of the questions I was going to ask. The second question is, in circumstances such as these, if one cannot go into the specifics, what recourse is there to examine the assets held by immediate family?

The Attorney General:

When the court makes compensation claims in the context of criminal proceedings, it does not generally look outside of the assets. It does not treat family assets as available to address the wrongdoings of an individual; there is no assumption that if a husband is a fraudster that the wife is also a fraudster and must pay. That is not the assumption at all and it would not be right for it to be so. It would only be if it were capable of being established that in some way assets had been fraudulently transferred in order to avoid debt, that there might be some opening for making a

claim. But these are complicated areas of law and I would not advise the Assembly to proceed on any assumption, because each one has to be considered very much on its individual merits.

Deputy M. Tadier of St. Brelade:

My question relates to, really, part (b) of this proposition, and were the proposition to be adopted as it currently is worded, is there any power for the Minister for Treasury and Resources to compel Jersey Financial Services Commission to make this one-off payment, legally? Are they obliged to make that or could they simply turn around and say: "We do not feel that we need to make this payment; we are not responsible", *et cetera*?

The Greffier of the States (in the Chair):

Without answering on behalf of the Attorney General, who will give his answer, I would state that the proposition itself makes it clear, Deputy, that legislation would be required, primary legislation of this Assembly. I do not know if the Attorney wishes to add anything?

The Attorney General:

No, I do not really need to add to that, Sir. That was the point that I was going to make. It would, in my view, require an amendment to primary legislation, to make this proposition ...

Deputy M. Tadier:

If I could just follow that up? It has been mooted by Deputy Bryans that the Alternative position would be, following an investigation, if the J.F.S.C. were to be found lacking in their practice could they, under that circumstance, be compelled to make a payment on that basis?

The Attorney General:

I would be stretching here, I think, to offer any useful guidance to the Assembly. I suppose if it is the case that there has been an egregious failure, and I do not talk about the J.F.S.C. here in particular, in some kind of public functioning which gives rise to a claim in damages, then, in theory, that public body has a responsibility to meet that payment in damages. But I think that is simply a theoretical statement of the law than the reality of these circumstances. I cannot see circumstances in which an inquiry would give right to an automatic obligation on the part of the Jersey Financial Services Commission to make any payment.

Connétable M.P.S. Le Troquer of St. Martin:

You mentioned it a short time ago, that it seems there is a second pitfall for the victims because certain cases were not brought forward. So if there are no prosecutions, and there were only certain cases presented to the court, how do they claim, or are they facing a second challenge?

The Attorney General:

This is all very hypothetical because so much depends upon the availability of assets to make any claim worthwhile. But it is the case that if an individual is convicted of a criminal offence, then it is clearly much easier to establish a liability in a civil case. If various claimants have not had their matters already looked at by the criminal court, then in theory they would need to start afresh and make a fresh claim and establish liability against one or more of the individual defendants. It would be to that extent, as we stand here now, no different from any other form of civil litigation.

Deputy J.H. Young:

In the event of those who experienced loss bringing civil proceedings, is there any way in which those can be protected against costs being awarded against them or assisted in their costs, particularly in view that the Attorney General has said that the Crown are not yet currently pursuing

the question of recovery of pension funds. Is there any way that those who have experienced loss can be assisted to bring civil action, without risks?

The Attorney General:

The short position is that in my view, no. There are theoretical extreme examples where the courts will make pre-emptive costs orders, but these are not in circumstances such as these. These are civil claims, or would be civil claims, and civil claims would normally be subject to the ordinary costs regime, namely that the payment of costs is in the ultimate discretion of the court, at the end of the hearing, and, generally speaking, if one wins, one gets one's costs on a certain basis and if one loses, one either has to pay the other side's costs or certainly does not recover any of any of the costs of the unsuccessful party. So I think the answer to that is in my opinion that is highly unlikely.

The Greffier of the States (in the Chair):

Well, we must move on with the debate, but one last question from Deputy Le Hérissier. We can always come back to the Attorney General if further legal matters arise later.

Deputy R.G. Le Hérissier:

Yes, thank you, this has been most useful. I wonder if I could press the Attorney General on the point he made. As I understood it, the law as currently framed does not make the Jersey Financial Services Commission responsible in terms of paying damages. Am I correct in interpreting what he said in that way?

The Attorney General:

The law certainly does not make the Jersey Financial Services Commission responsible for the payment of damages in a case such as this. As I think has been explained in the various documentation, this was not a regulated activity and, even if it was, there is a world of difference between saying that there had been a failure in regulated activity and necessarily visiting that failure upon the Jersey Financial Services Commission. There are a lot of steps to think about in all that. I think that is a fair summary of the overall advice that I have given.

The Greffier of the States (in the Chair):

Well, I will now call Senator Ferguson to speak.

1.1.4 Senator S.C. Ferguson:

This is a very difficult subject because as a legislature we have a responsibility to everyone, those who pay us their taxes as well as the people on whose behalf Senator Breckon is appealing. We all have a great deal of sympathy, but we must think of both sides of the case. I am not sure whether in a case like this the old principle of *caveat emptor* would apply. Buying property in a foreign country is a very high-risk investment. You have foreign exchange movements. If it is too good to be true, it is. But on the other hand, we have, as Deputy Bryans said, questions for the Jersey Financial Services Commission. One must question. Personal investment is a very high-risk area. Have sufficient resources been put into it in order for them to supervise it, to regulate it? I was not able to get to the meeting or the briefing, but I am told that the professional indemnity insurance was only paid for one year. Well, that is a very simple thing to be checked. Has nobody checked it? The auditors could have checked it off when they do their audit. Again, as Deputy Bryans has been saying, there are these questions which still linger over this. It seems to me this is a classic sort of Ponzi scheme, like Madoff. This is something where I have spoken to the Attorney General about it and asked him for his thoughts. Have we pursued the funds from everybody involved with the same tenacity that the Madoff liquidators did?

[10:15]

I have seen no evidence that we have done that. There was £16 million in mortgages talked of. Were these sold? What has happened to everything? Did any of the investors who were lured into the scheme receive any income from the properties? Obviously, if the J.F.S.C. has failed in its duty, can you say that they are partially liable on this? As I say, this is a very difficult case. We have responsibilities to both sides and I will wait to hear from the rest of the debate.

1.1.5 Senator F. du H. Le Gresley:

I rise with some trepidation because what I am about to say is not going to be comfortable. I will put my marker down. I am a Member who has brought a compensation proposition to this Assembly - not this current Assembly but the previous one - for the owners of Reg's Skips to receive extra compensation over and above what the Council of Ministers at the time had proposed. I was successful in that proposition, so my track-record, I would suggest to Members, is one where I would be supportive of compensating people where they have been the victims of a significant failure by Government. That is my track record and what I am about to say will disappoint some people in the Assembly and in the gallery, but I do feel these things need to be said and we need to look at the other side of this argument. I am sure that, like many Members, we are not comfortable with this debate today. Having listened carefully to Senator Breckon's speech yesterday, there is absolutely no doubt that he sincerely believes that the investors in Sunstone Holdings Limited and De Lec Limited were, to use his words, ordinary people who were in some cases swindled out of their life-savings and are deserving of compensation and, again to use his words, something must be done. However, what the Senator is asking Members to do with this proposition is to act, as the Constable of St. John indicated, as a quasi-compensation board, for which I respectfully suggest the majority of us are not qualified. Certainly, I personally feel inadequately informed based on the paperwork provided to do. Let me be clear. There is no doubt that the 46 investors for whom the Senator seeks compensation totalling nearly £1.9 million deserve our sympathy, particularly those who invested during 2007 when it is clear from the sentencing by the Royal Court that they had been lied to by the principals of Sunstone Holdings Limited and De Lec Limited. However, if we accept what the Chief Minister said yesterday, and of course we have heard from Deputy Bryans and I absolutely respect what he has said about a possible independent investigation of the actions of the Jersey Financial Services Commission, but if we accept what the Chief Minister said yesterday - that the source of funding for the proposed compensation scheme cannot come from the reserves of the Jersey Financial Services Commission - then if we were to approve part (a) of the proposition the money would come from central reserves; in other words, from the taxpayers of Jersey. Senator Breckon told us yesterday that the 19 investors involved in the court case against the directors of Sunstone Holdings Limited and De Lec Limited provided personal impact statements, but these are not available to Members today. Nor do we have any information about the financial position of the other 27 investors for whom the Senator seeks compensation. It is a fact that we know very little about the current or historical financial-status of the investors apart from those who have emailed us directly. However, we do know that from the information supplied by the Financial Crimes Unit of the States of Jersey Police, which was circulated by Senator Breckon, of the 57 investors, 11 have been repaid and 8 have lost less than £48,000. Closer examination of these figures reveals that 15 invested less than £50,000; 13 more than £100,000; and one person more than £500,000. I would respectfully suggest that the latter investor certainly could not be considered the 'ordinary man and woman in the street' or immature investor as suggested by Senator Breckon in his report accompanying the proposition. Furthermore, just because somebody invested less than £50,000, this does not necessarily mean that the individual is an immature investor as this highly speculative investment may simply have been part of a portfolio of investments. In order to even contemplate compensation, we would need to know the degree of hardship incurred per investor, as happened with the investors in the Alternate Insurance Services

case. The Chief Minister has stated that investment in real estate abroad would not be covered by the U.K. (United Kingdom) Financial Services Compensation Scheme. This fact is worth repeating. If Members were to visit the website of the Financial Services Compensation Scheme, they will find the following definition of “investment”: “A financial product in which money can be invested to earn interest or profit, although the value of investments can go down as well as up.” Those are not my words but the words on the website. It also explains that the investments covered by the scheme include stocks and shares, unit trusts, futures and options, pension plans, and long-term investments such as mortgage endowments. Significantly, there is no mention of investment in real estate. A more detailed description of eligible investments can be found in Part 3, Articles 73 to 89 of the Financial Services and Markets Act of 2000 (Regulated Activities) Order 2001. Having checked the wording of these Articles, I can find no indication that a joint-venture agreement or loan agreement to acquire property in Florida or Colorado would be considered as an eligible investment under the Financial Services Compensation Scheme. The second fact worth repeating from the Chief Minister’s speech is that the Chief Executive of the Jersey Financial Services Commission has advised that the principals of Goldridge Stone acted independently and held the records of Sunstone Holdings Limited and De Lec Limited in separate offices. The sales of the U.S. (United States) properties were not done under the contractual terms of Goldridge Stone or documented under its terms of business. The first test for a valid claim to the U.K. Financial Services Compensation Scheme is that the investment must have been sold by an authorised firm. In this case, Goldridge Stone was the authorised firm but it was not present in the contractual relationship with the 57 investors; hence eligibility under the scheme would be destined to fail. It seems clear to me that if we had set up an investor compensation scheme following the Alternate Insurance case, we would most likely have modelled the scheme on the U.K. Financial Services Compensation Scheme and, therefore, the investors in Sunstone Holdings Limited and De Lec Limited would not, sadly, be eligible for compensation. On the basis of Article 27 of the Financial Services (Jersey) Law 1998, Senator Breckon is proposing that the Minister for Treasury and Resources makes *ex gratia* payments to the investors from central reserves limited to a maximum of £48,000 per investor, but any decision on whether the taxpayer should compensate the investors should depend on whether the circumstances of the case can be seen as sufficiently exceptional in terms of the hardship suffered to gain widespread public support for any such action. I am unfortunately not aware of widespread support from the public for this proposition. The only lobbying I have received is from some of the investors in Sunstone Holdings Limited. As the Chief Minister said yesterday, those who enter into a risky investment should not be insured by the taxpayer. We have been elected to be guardians of the public purse and as much as we may have great sympathy for the financial losses incurred by this group of investors, I believe we cannot create a precedent by paying them compensation for their failed investments. I therefore cannot vote for parts (a) and (b) of this proposition but consider part (c) is worthy of further support.

1.1.6 Senator L.J. Farnham:

Given the comments made by Senator Le Gresley and Deputy Bryans, which have raised a number of new issues making it highly unlikely for the States to be able to consider this properly, issues that Senator Breckon has not covered, I am minded to propose a reference back because it is clear that if we are to give this the correct consideration then Members are going to require more information and have further questions. I came minded to support this, but I could not given the new points raised.

The Greffier of the States (in the Chair):

I think the difficulty you face, Senator, is that the Standing Order would require the proposition to be referred not to, for example, a Minister for a report or to the Jersey Financial Services Commission but simply referred back to the proposer, who is Senator Breckon, who may or may

not be in a position to provide the Assembly with more information. In the past it has not been traditionally accepted that references back on private Members' propositions are ...

Senator L.J. Farnham:

I understand that but this is an exceptional circumstance, I believe.

The Greffier of the States (in the Chair):

There may be other procedural devices you may wish to consider if you wish to bring the debate to an end and require further information, but I do not think we could allow a reference back because I do not think it would be feasible in these circumstances. **[Approbation]**

Deputy J.A.N. Le Fondré:

Sir, can I just seek a slight clarification from yourself? I know in the past that the procedural device of moving on to the next item has been used for circumstances such as this. In other words, the Assembly do not vote on it. Now, if that were to happen, does that preclude the proposition coming back within 2 weeks or 4 weeks or whatever it is, and is it something that would give the Council of Ministers time to work out what their position is going to be?

The Greffier of the States (in the Chair):

Certainly, if the Assembly moves to the next item the proposition technically remains listed and could be debated at a later date. It does not in itself require anybody such as the Council of Ministers to do anything, but I am sure Ministers and others would hear a message from the Assembly if they felt that was the wish of Members.

Deputy M. Tadier:

May I ask clarification of Senator Farnham?

The Greffier of the States (in the Chair):

Yes.

Deputy M. Tadier:

Senator Farnham will also be aware that the Chief Minister has just come back into the Assembly. Would he be minded, if the Chief Minister were to indicate he was willing to instigate an investigation as outlined by Deputy Bryans, then there would be no need for the continuation of this debate at present? May that be the information that he would be looking for from the Chief Minister?

The Greffier of the States (in the Chair):

Are you able to assist the Assembly, Chief Minister?

Senator I.J. Gorst:

I have to say at this moment in time it is difficult for me to commit definitely to such a review, but I am consulting with interested parties and I would certainly do so with Senator Breckon. If Members were to make that proposition to move to the next item, I am sure that Senator Breckon and myself could sit down and find that way forward, although perhaps in the course of the next half an hour or so I might be able to give a more definitive comment. Of course, Members will be aware of the comments that I made in my speech with regard to the Jersey Financial Services Commission.

[10:30]

I have no doubt but to stand by those comments, but I also hear that a number of Members have concerns with regard to their role, which I personally think are unfounded but it might be that if an independent were to look at it Members might be more satisfied. But I am not quite in a position to be able to commit fully to that.

The Greffier of the States (in the Chair):

Do you wish to make any proposition, Senator Farnham?

Senator L.J. Farnham:

Well, I know the Chief Minister is trying to be helpful but I think it really needs more than half an hour. I think some serious conversations need to take place between Senator Breckon and the Chief Minister, so I am going to propose we move on to the next item.

The Greffier of the States (in the Chair):

Well, traditionally the proposition is allowed if a certain number of Members have spoken. We have not had a large number of Members but I do sense a mood that Members may wish to at least address this issue, so I am going to allow the proposition to be put because, as ever, it is a matter for Members to vote and not for the Chair to decide how the States of Jersey decides to proceed. So we will allow the vote on the proposition of Senator Farnham that the Assembly now moves to the next item, which is a matter that must be put without debate. Therefore, I assume you wish the appel, Senator Farnham?

Senator L.J. Farnham:

Appel, please.

The Greffier of the States (in the Chair):

If Members are in their designated seats, I will ask the Greffier to open the voting.

POUR: 19	CONTRE: 24	ABSTAIN: 0
Senator P.F. Routier	Senator A. Breckon	
Senator S.C. Ferguson	Connétable of St. Clement	
Senator A.J.H. Maclean	Connétable of St. Peter	
Senator B.I. Le Marquand	Connétable of St. Mary	
Senator F.du H. Le Gresley	Connétable of St. Martin	
Senator I.J. Gorst	Deputy R.C. Duhamel (S)	
Senator L.J. Farnham	Deputy R.G. Le Hérisssier (S)	
Senator P.M. Bailhache	Deputy J.A. Martin (H)	
Connétable of St. Helier	Deputy G.P. Southern (H)	
Connétable of St. Lawrence	Deputy of Grouville	
Connétable of St. John	Deputy J.A. Hilton (H)	
Connétable of St. Brelade	Deputy S.S.P.A. Power (B)	
Deputy J.A.N. Le Fondré (L)	Deputy S. Pitman (H)	
Deputy of Trinity	Deputy K.C. Lewis (S)	
Deputy A.K.F. Green (H)	Deputy M. Tadier (B)	
Deputy J.M. Maçon (S)	Deputy T.M. Pitman (H)	
Deputy G.C.L. Baudains (C)	Deputy E.J. Noel (L)	
Deputy S.J. Pinel (C)	Deputy T.A. Vallois (S)	
Deputy R.G. Bryans (H)	Deputy of St. John	
	Deputy J.H. Young (B)	
	Deputy of St. Mary	
	Deputy of St. Martin	
	Deputy of St. Peter	

Senator I.J. Gorst:

I appreciate that it looks extremely strange because Members have just decided not to move to the next item, but I am now in a position to **[Laughter]** say that if the Assembly ...

The Greffier of the States (in the Chair):

Well, I think the decision has been taken, Chief Minister. We must carry on with the debate. Deputy Le Fondré.

The Connétable of St. John:

Could we not hear what the Chief Minister had to say because it sounded quite important?

The Greffier of the States (in the Chair):

I could grant the Chief Minister leave, but he has already spoken and the Assembly has just decided to carry on with the debate but I will, in the interests of good order, briefly allow you, Chief Minister, just to say what you wish to say. I am not sure it is really going to help at all.

Senator I.J. Gorst:

I am quite happy not to speak if Members do not wish me to speak. I have spoken a lot, but what I wanted to say was that I would be content to go away and do such a review as Members have indicated. As I indicated, I believe that such a review **[Approbation]** will vindicate the position which I outlined yesterday and it would give Members confidence that an independent was able to do so.

1.1.7 Deputy J.A.N. Le Fondré:

We are not exactly covering ourselves in glory at the moment. We knew it was going to be a difficult debate today and I think the comments from Senator Le Gresley have been interesting. I shall pick up on a couple of those almost straight away. Comment 1. This proposition was lodged on 26th July. We are now at the end of September, and so for a member of the Council of Ministers to turn round and say various bits about information or perhaps we should have done a review or whatever - I cannot remember the exact expression - to me surely it should have been a debate held by the Council of Ministers some time ago after the sentencing came through to show leadership. Because the point here is that if at the end of the day we just reject this proposition on the basis of that we need more information and there is no mechanism to go away and seek that further information, we have completely failed. We are also getting down to the point where we are making a legalistic decision versus a political decision. I will come to that a bit later on and I am afraid it is a slightly longer speech than I was hoping because of where we have got to today. To start on the actual parts of the proposition, I am making an assumption that we are able to vote on the 3 separate sections, that it is a separate vote for (a), a separate vote for (b) and a separate vote for (c).

The Greffier of the States (in the Chair):

Well, I do not think you should make that assumption. It is a matter for the Senator. I understand he has not yet made that decision.

Deputy J.A.N. Le Fondré:

Thank you. I will lay my position on an assumption of that approach. If members of the public listening have not appreciated this, States Members were given the opportunity for a briefing from members of the J.F.S.C. (Jersey Financial Services Commission) and from the Chief Minister on

Monday. I have to say I obviously have the highest regard for the individuals that gave us that briefing, no question about it. To analyse the 3 parts of the proposition backwards, I am going to accept the advice about the investment compensation scheme or the potential one and the fact it would potentially at this stage put us in a competitive disadvantage to have it if other jurisdictions do not have it. If I am given the opportunity I would not vote for part (c). There is a *caveat* to that, as ever. In relation to part (b), in terms of taking the money from the J.F.S.C., I would support the J.F.S.C. on the principles of it if it would damage the independence of the J.F.S.C. then I accept that argument. Then that means I am going to focus on part (a) and in this aspect, at this point I am fully in support of Senator Breckon. Now, the decision I would have to make if it is an all vote, in other words (a), (b) and (c), is whether my support for part (a) outweighs my lack of support for (b) and (c). I think probably yes, but I have yet to make that decision. I was working on the assumption of 3 separate votes. In terms of precedent, the doors for compensation as a principle were opened by the Minister for Economic Development in 2009, I would argue, because up to that point that was when compensation first came in with the Alternate scheme. It may not have opened the door very much but it did open the door. To remind Members, the Minister stated it was always intended to deal with exceptional cases as and when they arose on a case-by-case basis. To me, this is definitely an exceptional case. Now, there will always be a risk of setting a precedent, but again there are extraordinary circumstances that attach to this matter, not least of which is the involvement of a judge in perpetrating a fraud. If the Council of Ministers is worried about the larger case at some point in the future, that will surely be dealt with on the circumstances of that case at that time. If that entity - the hypothetical one that might cause problems in the future which we talked about on Monday - were regulated, for example, then potentially with the basis of Alternate already in the background we already have a problem. I would really hope we will never see - let us call it - another one of our own involved in fraudulently promoting an investment scheme. We certainly heard that Sunstone Holdings Limited was not regulated, but Goldridge Stone was. I assume on that basis that what I will refer to as the principals, of Goldridge Stone were also regulated. To quote again the Minister for Economic Development, who is quoting the court about Alternate: "This recommendation is made because it is not acceptable that unsophisticated small investors in Jersey can be so badly advised. The advice given was dishonest." You might say in the context of today it was almost fraudulent: "It was misleading." While I could accept that the vehicle being used, Sunstone Holdings Limited, was not a regulated entity, it is clear that the principal persons of that vehicle were regulated under the auspices of Goldridge Stone and indeed, as we have heard, were under enhanced supervision when this all took place. I have no issues with regard to the regulator, but it is on the grounds I have just mentioned that, in my view, we start moving into a political decision rather than a strict legalistic decision. One last quote for Members to consider, again from the court, is in the reports. On page 13 of the proposition that we are debating: "One of the reasons these offences are so serious is because it is vital that those who invest with professionals [and this is the crucial bit] whether they are regulated or unregulated in their business must have confidence that they are being given accurate and honest advice." I repeat: "Whether regulated or unregulated." To me there, and that is speaking as a layman, the court is breaking down the very fine distinction between the regulated and unregulated entities here. Just to pick up on the words of Senator Le Gresley, if Members turn over the page on that quote, from the bottom of page 13 and going over to page 14: "These victims, these investors who lost their money, were ordinary people whose lives have been altered for the worst. These were not people who could afford to lose the money that they lost." One of the problems we do have in debates is that sometimes we pick on the extremes, the person investing half a million, to justify the totality of the argument. We are talking an extreme example there. Those words I have just quoted are from the court. One of my perceptions is that investors will have been persuaded by previously good experiences with Goldridge Stone. It seems very likely, from what we have heard, that the principal persons of Goldridge Stone were using their positions and their knowledge

obtained at that entity to influence investors to invest in the scheme. Goldridge Stone were, as I understand it, independent financial advisers. So I think the investors would probably be justified to say: "Well, we did take independent advice" because that was the role of Goldridge Stone if they were acting properly. The problem is it was not Goldridge Stone they were dealing with and at what point were they aware of that? I have covered, therefore, the point that we should not be assisting someone who recklessly invested £500,000. I think in a scheme without the proper advice that is an extreme argument and I think I have quoted the court sufficiently on that. But also if you stand back, since when is justice ... it is interesting, it was a lawyer who put this argument to me relatively recently. When is justice determined upon the wealth or lack of wealth of an individual? They either deserve justice or they do not. Certainly, Senator Breckon is not seeking compensation of £500,000 for that individual. He is seeking approximately £48,000 for that individual, so that individual has still lost a considerable amount of money. Let us go back to the remark made by the Chief Minister yesterday. Taxpayers should not be used to provide what he inferred - and I think we have repeated it today - was effectively an insurance policy that would lead investors to be less careful in the investment advice they sought. Now, I am sure that that person who apparently lost £500,000 will be so overwhelmed by getting less than 10 per cent of their money back from a fraudulent scheme that by having lost over 90 per cent of their funds they will be rushing out to find a risky scheme to invest in and to go through the whole tortuous process again. I somehow do not think so. People do not willingly throw their money away. To be clear, if this was just a risky investment that had gone down the tubes due to changes in the market, I would have no problem in rejecting the whole proposition. But to me there are at least 2 factors here. It was fraud and it was fraud perpetuated by individuals who in a different guise were regulated. They had been labelled as being fit and proper people and there was also the involvement ... and I have to say Mr. Christmas. I do not know if I can use that term, but it is in the public domain.

The Greffier of the States (in the Chair):

Former magistrate I think you are referring to.

Senator B.I. Le Marquand:

Could I point out he was never "the magistrate" and the term "the former magistrate" ... **[Laughter]**
He was the former assistant magistrate.

Deputy J.A.N. Le Fondré:

A former assistant magistrate then. Thank you for the clarification from a former magistrate. We laugh, but it is a pretty serious comment. That gentleman, for want of a better expression, was an agent of the state in a wide sense. He was meant to be a person of the highest standing and he abused that position. We heard on Monday, because I asked the question, that he prodigiously broke the judicial code. His position, and I will use the word, as a judge - I am sure Senator Le Marquand will correct me but as a layman he is a form of a judge - was used to promote a fraud. Such was the setting of that person's moral compass that it has been reported he continued to claim his judge's salary certainly from the date of arrest, possibly even to the first few days of when he was in prison. According to the BBC website when I Googled it to refresh my memory, this was to the tune of £500,000 over 4 years after he was arrested. There is a message in there which is not very palatable, I have to say. There is the issue about innocent until proven guilty, but there is another message in there you can apply. I am certainly curious as to the potential rumour - I do not know if it is fact - that that individual will still be entitled to claim his pension and whether or not it can be seized.

[10:45]

The issue therefore is, if the first point is true, the second point should definitely be true, but who does the seizure? I would think that a number of the investors would be very leery about taking any

private action to the courts again principally because of a report in the media of an individual I understand to be a lady, who brought a civil action against Mr. Christmas. I believe it was after he had been found guilty. She withdrew the civil process and I believe was sued by Mr. Christmas for his legal costs. For the purposes of this debate, it does not really matter if my last couple of comments are 100 per cent accurate. If they are, to me it just moves that behaviour beyond absolute abhorrence. In other words, the message will be it is okay to defraud people, including the terminally ill. You will go to jail for a period of time. You can continue to claim your salary. You can potentially have your pension when you come out and ultimately, if that is the case, that pension will have been paid by the taxpayer, i.e. you could argue that the taxpayer will be compensating the fraudster. If that is the case, i.e. that the taxpayer is happy to pay the fraudster but not to compensate his victims, then surely that cannot stack-up. We have asked the issue of whether they form part of the assets. It depends. Let us get back to the thrust of that point. This was a judge involved in conning local people and that is what to me makes this case most unusual and is why that tips me into the point of supporting part (a) of the proposition. I will declare, and when I say I declare an interest, I declare an experience. I had occasion to interview one of the fraudsters in a completely different capacity and when I look back at my notes, because it was in 2004, I could have had him as a tenant. In that capacity of a conversation, the conversation went along the lines at the end: "We are doing very interesting things in America with property and it is looking very good." Now, the point was I had had successful dealings with Goldridge Stone previously, so even though I would certainly never have had the cash that it would appear was required, my experience at that point was I had a good experience of Goldridge Stone. I did not remember the gentleman concerned and there was a little hook in the conversation at the end. We have heard conversations about how the fraudsters had got hold of their victims ultimately and I think that might have been a classic example. There is the issue there and that is why I say we have a legalistic position of Sunstone Holdings Limited not being regulated to what is a political decision which takes in a variety of factors. As to where the money should come from, is that not where our contingencies kick in? A couple of weeks ago we were given a brief rundown of how some of those monies have been spent. It ranged from £20,000 for uniforms for the Band of the Island of Jersey. We spent something like £30,000 in giving funds to the Iron Duke. I know we have been told that one department at some point has spent £50,000 or £60,000 on an additional P.R. (public relations) adviser - I do not know if that was out of contingency - over and above the advice they received from the Communications Department. So we spend money in all sorts of ways and I am pretty sure that the investors who were conned and defrauded would argue that their cause is somewhat more deserving than the need for extra spin-masters. I do not like that language but that is the way some people will look at it. I was reminded of a quote and we have included it in the Machinery of Government Report. It is about ethics and it comes from the Institute of Chartered Accountants for England and Wales. What it says is: "Ethics is about principles, values and beliefs [you can look it up on their website if you wish] which influence judgment and behaviour. It goes beyond obeying laws, rules and regulations. It is about doing the right thing in the circumstances." This is a continuation of the quote: "Sometimes it is easy to assume that compliance with legislation, regulations and policies and procedures equates to doing the right thing, but unfortunately that would not always be the case. By its nature, a compliance approach to decision-making cannot cover all types of situations and eventualities. Even when a specific circumstance is addressed by a rule, compliance is often with the letter of the rule, not its spirit." That comes back to the point about legalistic decision versus a political decision. It comes back to the point that Sunstone Holdings Limited was not regulated and, therefore, in the view of the Council of Ministers, there should not be compensation, yet the principal persons of Sunstone Holdings Limited were approved persons in a different guise. So legally they were not regulated; that is the letter of the rule. I am afraid I am looking at the spirit. If we are meant to be here to directly help people, is this not firmly an example of when we should be helping people? People

who are likely to have paid their taxes, not demanded anything from the States of Jersey probably, who will probably have contributed in all sorts of ways to this Island community. Are they not as equally deserving of our support, not just the mouthed words or the expressed words of sympathy, but our tangible support at the end of what would be an extremely damaging and stressful part of their lives. The point is what happens if this proposition is rejected? Do they just walk away in disgust where there is no other port of call? That is a political decision, not a legalistic decision. Approximately 3 years ago I voted against the increase of G.S.T. (Goods and Services Tax) from 3 per cent to 5 per cent. My rationale at the time was: How could I justify to my electorate, to the taxpayer, about taking more money from them when the promised savings were not, in my view, being delivered? In other words, we are not operating as efficiently as we should have been in terms of administration of services and all that stuff. I look at this today and say: How can I look at the people who have been defrauded as a result of this and look them in the eye and say: "I cannot help you today. Yes, you have nowhere else to go. Yes, you were influenced by persons who in another guise were regulated and who were regulated independent financial advisers [as I understand it; I might be wrong there] and/or you were influenced by the good name of a judge, a person who was held in the highest regard in this Island, who is employed in the broadest sense by the state, and yet I cannot help you."? I am afraid on that basis I cannot do that, so I will be supporting part (a) of the proposition. I would prefer not to support (b) and (c) and I would ask if Senator Breckon would consider taking it in 3 parts. If not, I may well end up supporting the whole proposition.

The Connétable of St. John:

Given the Chief Minister's comments a few moments ago, can I propose that we move on to the next item?

The Greffier of the States (in the Chair):

There is nothing that prevents anyone other than the proposer moving again the same proposition. I think circumstances may have changed to allow the proposition to be put in the sense the Chief Minister has spoken, so I will allow the proposition to be put.

Senator L.J. Farnham:

If the proposer could briefly say something it might be helpful.

The Greffier of the States (in the Chair):

No, no debate is allowed on this proposition under Standing Orders, so I will invite Members who may be in the ante-rooms not expecting the move to the next item to return to the Chamber. The vote is whether or not to move to the next item of business. I assume you wish for the appel, Constable?

The Connétable of St. John:

Yes.

The Greffier of the States (in the Chair):

If Members are in their seats, I will ask the Greffier to open the voting.

POUR: 30		CONTRE: 11		ABSTAIN: 1
Senator P.F. Routier		Deputy R.C. Duhamel (S)		Senator A. Breckon
Senator S.C. Ferguson		Deputy R.G. Le Hérisssier (S)		
Senator A.J.H. Maclean		Deputy J.A. Martin (H)		
Senator B.I. Le Marquand		Deputy G.P. Southern (H)		
Senator F. du H. Le Gresley		Deputy S. Pitman (H)		
Senator I.J. Gorst		Deputy T.M. Pitman (H)		

Senator L.J. Farnham		Deputy E.J. Noel (L)		
Senator P.M. Bailhache		Deputy of St. John		
Connétable of St. Helier		Deputy J.H. Young (B)		
Connétable of St. Clement		Deputy of St. Mary		
Connétable of St. Peter		Deputy of St. Martin		
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Brelade				
Connétable of St. Martin				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy S.J. Pinel (C)				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

Connétable D.W. Mezbourian of St. Lawrence:

Before we move on, I believe that Deputy Le Fondré may have inadvertently misled the House when he spoke because I believe I heard him say that the former assistant magistrate was employed by the States of Jersey. I believe that is incorrect.

Deputy J.A.N. Le Fondré:

Sorry, I had said in the widest sense of the state.

The Connétable of St. Lawrence:

That is not what I heard, but he was not employed by the States of Jersey.

Senator B.I. Le Marquand:

May I clarify that because I held ...

Deputy T.M. Pitman:

He is still a crook.

Senator B.I. Le Marquand:

... a similar office. He is a public office-holder.

The Greffier of the States (in the Chair):

Public office-holder, very well.

Senator B.I. Le Marquand:

Public office holder is the correct term.

2. Justice Policy and Resources: Responsibility (P.92/2013)

The Greffier of the States (in the Chair):

The Assembly having agreed to move to the next item, we come, therefore, to that item, which is Justice Policy and Resources: Responsibility, and I ask the Greffier to read the proposition.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion that, within the Executive branch of Government, the Chief Minister is responsible for justice policy and resources, as clarified in the accompanying report.

2.1 Senator I.J. Gorst (The Chief Minister):

Senator Farnham lodged a proposition last November which asked Members to decide whether they wished me to investigate the possibility of establishing appropriate Ministerial oversight of the justice system. That proposal was considered in February and Members decided unanimously in favour, asking that I report to the Assembly with a recommendation by the end of July. The proposition in front of Members today recommends that within the Executive branch of Government the office of Chief Minister should be confirmed as being responsible for justice policy and resources. I would remind Members that it is not me as an individual but it is the office. Looking back to 2005, it seems that during the discussions which preceded the change to Ministerial government there was an assumption that the Chief Minister would act as a link between Executive Government and the legal services departments. However, this was not fully implemented and these responsibilities were, therefore, absent from the first report to the Assembly regarding Ministerial responsibilities as presented in March 2006. Today, therefore, presents a new opportunity to ensure that these responsibilities are clarified. The Council of Ministers considered this matter, as I said, in early July and decided that it should be proposed that the Chief Minister be responsible for justice policy and resources as detailed in the report accompanying the proposition. It was felt that this proposal would have the advantage of placing justice policy at the heart of government while also delivering the most economical solution. It was also felt that it was desirable at present to propose an appropriate separation between the enforcement responsibilities of the Home Affairs Department and the wider oversight of the justice portfolio. Therefore, this proposal does not change the responsibility of the Minister for Home Affairs or his department. This proposal is also not intended to affect the existing framework within which relevant officers and arm's-length bodies perform their statutory functions. In addition, the proposal recognises the importance of upholding and defending the continued independence of the Judiciary, prosecutors and data protection authority. I hope that Members will decide in favour of this proposition and, if they do, there will need to be provided sufficient support to the Chief Minister and Council of Ministers to ensure that the public interest in the advancement of justice is not compromised. However, given the relatively modest level of resources required and the need to operate within the limits set within the Medium-Term Financial Plan, the Chief Minister's Department will seek to put in place the required resources from within existing limits. Therefore, I hope that Members will support this simple economic but important proposal as an appropriate means of clarifying Ministerial responsibility for justice matters.

The Greffier of the States (in the Chair):

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

2.1.1 Deputy J.H. Young:

I would like to raise one matter in respect of this proposition. That is paragraph 3(vi) of the report, which talks about the positions of accounting officers in the various legal departments. I have

raised this before. The various legal functions in this Island cost around £30 million a year. At the moment, accountability for these matters, they are treated as a non-Ministerial department, which I think in all practice means that it is difficult to get clear answers on the use of those funds. I think £30 million is a substantial amount and I would be much more comfortable if the Chief Minister's proposition was saying, while he is going to have accounting officers as officers, there is going to be this clear link to ensure that the resources our legal functions use - which is, after all, the way in which the Chief Minister is going to discharge this function - will be, managed and accountable through his department. I think the report on page 3 suggests to me that it will not, although there is a certain ambiguity about it, but I would like the Chief Minister to clear that up that he will be taking responsibility for those resources.

[11:00]

2.1.2 Deputy S. Pitman of St. Helier:

I strongly believe that the Machinery of Government Review with proposals to seize the dual role of the Bailiff should have been agreed upon before this proposal was brought to the Assembly for one reason alone. There is, unfortunately, much deference among politicians to those who hold the office of the Bailiff and the Deputy Bailiff within this Chamber. It is frighteningly so, with the consequence of the Judiciary not being held to account to any effect. This makes the Judiciary untouchable and very powerful. That deference is very evident in the Chief Minister, in my view. As I recall a few months ago, having met with him and his Assistant Minister regarding some failings with the Judiciary and the legal system, 3 weeks later I asked him for a written response as he had promised. His reply was that he could not go against the word of the Bailiff. I cannot see this deference being free from consecutive Chief Ministers and Assemblies because of States Members' traditional perception of how we should respect the Bailiff. I now have some questions for the Chief Minister. In his report he quotes: "The Council of Ministers considered this matter and decided that a clarification should be proposed to the States Assembly that within the Executive branch of government the Chief Minister is responsible for justice policy and resources." Firstly, I would like to know what expert advice was given to the Council of Ministers for them to reach this decision. The second question is, and I quote from the report again: "In the current fiscal and economic cycle, it was not felt to be an appropriate time to consider establishing a new department with the consequent resource implications." Given the seriousness of the issue of the delivery of justice and the public perception of it, and that an effective and fair Judiciary should go hand-in-hand with a healthy democracy, there is absolutely no justification for that reason, for financial reasons that a government department should not be created for this post. If this is not possible, there is no way again that this proposition should have been brought to this Assembly. It really does not demonstrate that the creation of this post has been given deep consideration of its implications. I would, therefore, like to know what expert advice was given to the Council of Ministers for them to reach this decision. The last question I have is: Once the Minister for Justice post is in place we will inevitably see questions and propositions put to the Minister for Justice and the Assembly. I would like to know how it will be human rights-compliant that the chief judge will be deciding on their validity.

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

A question from me. I am generally supportive, but what I would like to ask the Chief Minister is, in assuming this role I think there needs to be a change in that there needs to be better clarity or dissemination of information when judgments are given within the Island and various statements are made. For example, in our previous debate we were talking about a judgment that recommended a compensation scheme being set up in Jersey. When those types of judgments are made, I think when this is passed over to the Chief Minister can he explain whether he would be in agreement that there needs to be a better way of informing States Members about these judgments?

You can turn around and say: “Well, States Members should just sit down and read them” but we know we all have a lot of other pressures and a lot of other reading that we have to do. Is there not a way in that we could have a better mechanism when these judgments come forward, when the practitioners - which are the judges - come up with problems within the law, where they clash? We often hear that they tend to go into a vacuum when they are not dealt with. Ideally, yes, this is what this new role should be dealing with, but again how can that mechanism perhaps be brought into other States Members so that we do not have this type of vacuum when these judgments are made? I think there does need to be a better relationship between what happens at the end of a court judgment and how this Assembly reacts to that. I would just be interested to know whether the Chief Minister supports that and would be looking to facilitate something like that.

2.1.4 Deputy R.G. Le Hérisier:

I suspect this has not arisen because of talk of fine principles about the administration of justice but because the Chief Minister, faced with the Troy Rule, faced with the establishment - which we saw the culmination of yesterday - of a Minister for External Relations, has been faced with juggling positions within a very limited number of positions. Therefore, he has had to engage in an odd situation where he has had to continue to concentrate power within his office. We saw this happen recently when he took over responsibility for financial industry matters. Showing the remarkable superman that he is, by a sheer little motion he is now seeking to add justice policy. He is travelling the world, although he may minimise that now given he has a Minister for External Relations. He is travelling the world on our behalf, opening all sorts of shows and thinking big thoughts. I think all this is done in a way for the wrong reason in that it has had to be done, as I said, to deal with the Troy Rule and the fact that he may get a backlash there. What it does is not only concentrates power and gives him a remarkably broad portfolio, but it also concentrates power in the justice policy side because it could be argued that it is important that there be a Minister for Home Affairs. Although he has been labelled here as the implementation Minister, it could be argued he should serve as the foil in some respects. He may not serve as the foil, but he should. I know Senator Le Marquand has taken a deep interest in justice and criminal justice matters, for example. I just think it is wrong. I think we need people who can provide checks and balances within the Council of Ministers, who can lead the discussion, because as Deputy S. Pitman has mentioned, there is incomplete work. There is no doubt that the work started by the Royal Commissions on aspects of Jersey law in the 19th century, that work ... and I was listening with interest to the Falkland Islands speaker on Radio Jersey this morning talking about his possible dual role in a legislature of fewer people than ours. That work has yet to be completed and it is the work of separating the powers, as Deputy S. Pitman mentioned. I am afraid, much as we have a great love of the Bailiff and the way he performs his role, it has to be completed. It is the elephant in the room as far as I am concerned of this proposal that we will not face up to that and we will not bring it to completion. I am afraid this is, in my view, a proposition that has arisen from the most practical of reasons but one which has enormous implications that have not been worked out within the proposition. For that reason, I do not think, as it stands, it should go forward.

2.1.5 Deputy M. Tadier:

I think Deputy Le Hérisier has hit part of the nail on the head. Looking back on what we agreed with Senator Farnham’s proposition that was lodged at the end of last year, Senator Farnham asked for essentially the establishment of a new Ministerial office, the Minister for Justice in Jersey. He did not ask for the Chief Minister to take on extra powers to administer justice in Jersey, which presumably in some unspoken way he already does. This seems to be a formalising of that power, consolidating of the powers. I am just not sure if it is what was originally envisaged by the Senator who lodged the proposition, albeit that he did ask for the Chief Minister to investigate the possibility, but that is what one has to do as a Back-Bencher. You can never ask for something to

be established, otherwise it will not be won necessarily. I am just questioning. This is not what was asked for. We want a Minister for Justice specifically with a specific remit which would come out from the other competing pressures that the Chief Minister's Department has to deal with. Of course, this is going to mean extra resources for the Chief Minister's Department, an ever-growing area which is already a significant department. That is my first concern. The other reason for this is clearly, like myself, the Chief Minister wants to and has given a pledge to address the difficulties that ordinary people in Jersey have in facing access to justice at an affordable price, whether that be on legal aid, which we know is not necessarily affordable anyway because legal aid is not normally free it is contributory, and even if one is paying a quarter of the fees, that can still be exorbitant for the ordinary person. If the Chief Minister wants to tackle this, clearly, he needs to have a mandate to do that and so I suspect that is part of the other reason that the Chief Minister wants to be given the nod from the Assembly to say: "This is your area, you can now go off" because he is going to be dealing with significantly entrenched positions when it comes to taking on the legal community; very complex issues that he is going to have to deal with. On that, this is slightly off on a tangent, but I would like the Chief Minister to give a commitment that whatever we decide here today, if he is seriously setting up a Jersey Access to Justice group, as I believe he is, he needs to be bringing this back to the Assembly, because we cannot simply have him setting terms of reference, setting the membership of this group that is going to look at affordable access and other issues relating to legal access, without bringing it back to the Assembly. It cannot be a closed-shop - as I have in front of me - of simply the Chief Minister, the Law Officers, the Judicial Greffe, the Law Society, the Bâtonnier, with the addition of a Citizens Advice Bureau. We need at the very first instance to make sure that when addressing the very urgent issues of access to justice that we have stakeholders, interest groups and not simply a closed-shop who will be coming at it from a certain vested interest. So I will ask the Chief Minister, he must bring this back to the Assembly and, if not, I will ask that he does that in the form of a proposition. Deputy Pitman, as uncomfortable as her words may be for some of us - and I raised this the last time in Senator Farnham's speech - there clearly is an issue here with the dual role of the Bailiff. Now, I do not get too hung up on this, I think the writing is on the wall, I think that those in the Chief Minister's Department know in their heart of hearts, within the next 5 years something has to give. It is simply not sustainable when one is trying to present oneself as a modern jurisdiction trying to do business with the international community, that you have this very archaic, and at the very least bizarre, role especially when you are bringing justice more into political control or, rather, giving it official Ministerial control. But that does make me question whether that is the reason why we are not setting up a full office for the Ministry for Justice. Is that because it would create an obvious tension there? How can you have a Minister for Justice standing up being presided over by a judge and the judge is telling the Minister for Justice when he can and cannot speak, which propositions the Minister for Justice may bring that relate to justice administration in the Island? It could possibly work. It makes it very uncomfortable, and perhaps this is why we are easing this in with the Chief Minister's responsibility, just to set the principle that the Chief Minister's Department is the one that should have responsibility and, at some future date, will be creating a separate role for the Minister for Justice. It seems that is what we should be doing. If we are going to do it at all, why do we not just go straight to the position of creating a Minister for Justice? If the Troy Rule is the issue, as Deputy Le Hérissier here has suggested, why was there no consultation with the Chief Minister on the specifics when the Machinery of Government review was going on?

[11:15]

We were aware that the limitations of the Troy Rule would have an impact on the Council of Ministers numbers, we know that if you reduce down to 42 or 44, the limitation - especially if you are keeping Assistant Ministers in their current format - puts pressure on, especially when we have already decided to have a Minister for External Relations in its own right. I notice that was updated

very quickly on the website yesterday. I could not find the vote quite so quickly, but I certainly found the updated position, which is a credit to our Greffier staff.

The Greffier of the States (in the Chair):

It is there now, Deputy.

Deputy M. Tadier:

Thank you, Sir. I have got to find that one individual who was not there to vote for me, Sir, and give them some stick; it would have made all the difference. So the question that I think then has to be asked: what is the logic behind this? Are we wanting a full Minister for Justice? On the Machinery of Government review side of it, why were there no steps? Why were we not told: "This is the plan, we want a Ministry for Justice, we want to create a Ministry for External Relations, we want this ...". We could have sat round the table and said: "What you need to do ... how many Ministers do you need? Tell us what you need. Do you need your Minister for Children? Do you need your Minister for Disability? Do you need your Minister for Discrimination?" After that, let us decide how many posts we need. You may need to get rid of some of your Assistant Ministers, elect all of these posts directly and then you can have as many Ministers within the Troy Rule as we want. The trouble is we do not know where we are going with this. It means that if we are shoe-horning new Ministerial positions in and putting them in the Chief Minister's Department when they should be in a completely different department, it does not sound like we are doing it quite the right way. It sounds like a fudge to me. I have concerns, but I do not have concerns with the principle of it. We need to bring the justice remit, where it is quite relevant, into the political field and therefore I will certainly give support to the principle of that. I am just concerned that this proposition is not the right way to do it.

2.1.6 Deputy G.P. Southern:

I am incredibly relaxed about this actual measure because in my time in the States of Jersey I was, for my sins, on the Home Affairs Committee as it was, and the uncertainty and the absence of clear responsibility and communication lines was obvious in that particular Committee from day one. A move to clarify that situation and have responsibility clearly identified and routes for communication clearly identified in one particular place must surely be an improvement. I briefly join in with the comments of others that we should at the same time be examining the dual role of the Bailiff as a matter of some urgency. The previous speaker said within 5 years; I think it could be done and should be done more quickly than that.

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

I have not made up my mind about this one at the moment. I thought the Assembly's wish was that we would have a dedicated Minister to do this job but, on the other hand, it would have been more efficient to go along the lines of this proposition. I am not sure. One question I have for the Chief Minister is: "Now that he has elevated one of his Assistant Ministers, will he be appointing another one perhaps with responsibility for this area? Following on from the comments made by Deputy Le Hérisier, will the course of action proposed here require enlargement of the Chief Minister's Department because, if it does, then it is another example of moving work from politicians to civil servants and that is a consequence of moving away from the committee-form of government.

2.1.8 Senator L.J. Farnham:

I follow on from Deputy Tadier. My original proposition was suggesting the establishment of a Minister for Justice and an appropriate department, but it was amended to include the words: "A means of appropriate Ministerial oversight" and that is because I think the Chief Minister and his department were in a bit of a "damned if you do, damned if you don't" situation. I certainly spoke to a number of Members and there was clearly no appetite for taking on another Ministerial role

while we are in the middle of the reform process, although I am slightly disappointed that the Chief Minister is not proposing we find a Ministerial role for this position because I think it warrants one. It is indeed a very good start. We have to introduce some political accountability for the justice system but I would say - and I would ask the Chief Minister to give some words of support to this if he can exercise some foresight - that the position does need to evolve. A number of Members have alluded to the fact that this important area of policy requires Ministerial oversight and I would very much hope that, in the fullness of time, it will indeed turn to that. I would like to thank the Chief Minister and his department for the enormous amount of help they gave me when I was putting the proposition together, and I would urge Members to support this very important proposition to introduce at last some political accountability for justice.

2.1.9 Deputy C.F. Labey of Grouville:

Unlike other speakers, I have never understood the problem with the Bailiff's dual role, other than it has been repeated like a mantra that it is wrong and not like elsewhere so therefore we have to change. Going back to this proposition, I am intrigued with the reference to: "Within the Executive branch of Government." I would like a clear explanation of what or who this body is. If it is the Council of Ministers, then why does it not say so and if, however, it is made up of other Members, then who are this group, how are they chosen and how are they elected?

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

I am supporting this proposition, and that is purely because finally we will have political accountability in the States of Jersey in the form of a responsible Minister for Justice, Policy and Resources, but I would challenge the Chief Minister and ask for a list of what that justice policy and resources are. During my 5 years of Scrutiny and P.A.C. (Public Accounts Committee) I have come across many times the difficulties of identifying the exact policy, the exact legislation in which a department has to fulfil their public service required by this Assembly, and I would like to have it absolutely clear from the Chief Minister what his responsibilities for justice policy and resources are so that in order to hold him to account they are identifiable. My only concern with regards to this is under the financial and manpower implications on page 5. I would also challenge the Chief Minister as to whether he is being realistic to seek to put in place the required resources from within the existing limits and explain exactly how those resources are going to be applied, because too many times I have seen this explanation given under financial and manpower implications and you find a few years down the line that there was never really any capacity in that department to fulfil the obligations which we were placing upon them. Therefore, what we were expecting to happen never was fulfilled and we end up in a bit of a dilemma. So I just want some reassurance from the Chief Minister or some explanation as to how that is going to happen and what it is that he expects those people to do.

2.1.11 Deputy T.M. Pitman:

It is ironic, after allowing a lot of people to be betrayed yet again, as we did earlier, here we are talking about justice and yet it is all going to be done and dusted in about 10 minutes. The fact is, in my opinion and in a growing number of the victims of the Jersey justice system, there is zero accountability to those at the top of the justice system in Jersey. It is a very scary, frightening fact. I do not know if the Chief Minister kids himself, but he is not in control here. The political power in this Island lies with the law office; it is an absolute fact, certainly as far as enforcement of its will. As has been said, and I never used to believe this, but it is all too often a tool of oppression. It is a great example here today of how we could be saving money and how we do not need the Bailiff; the Greffier and his Assistant are proving that admirably. We do not need any individual in a red cloak. I will be quite honest, the reason I did not come to the special sitting last week, I find it highly offensive to see a judge, any judge - and this is not a personal thing - as our first citizen in

the 21st century. It is absolutely ludicrous. I supported Senator Farnham's idea for a Minister for Justice, but this is one of those watered-down fudges, and I think he is putting a brave face on and trying to be nice about perhaps convincing himself, wishing to convince himself that this is all going to move in a positive direction. I think he is mistaken in that. Senator Gorst, well, I told him yesterday I was not going to support this because I voted for him, as he knows, and I have been appalled that I did vote for him. He is, in my view - I have to say that or I will get into trouble - utterly too weak to ensure justice in this Island. If Members ask themselves when do you hear the Chief Minister talk about justice, speak out about it and upholding it? Practically never. You cannot go against the rule of the Bailiff. It is one of the most striking things when you come into this Assembly: the ridiculous and quite offensive deference that is given to someone just because he is a judge. Let us put it quite clearly: the Bailiff deserves no such deference, any Bailiff. He is just a judge, and yet he can interfere, he can block what elected representatives to this Assembly say and ask. As we saw yesterday in a quite embarrassing display, the justice system in this Island is so appalling that when the Bailiff fails appallingly, you can only go and take those failings to the Bailiff. It is a bit like *déjà vu* when I remember back years ago when Senator Syvret was forced out of the States for 6 months, in 1996 I think it was. Who could he ultimately appeal to about that? Probably the same man who many would say was instrumental in him being removed from that Assembly. This cannot be trusted to the Chief Minister's Department because the Chief Minister just does not appear to have the will, the determination and the courage to do the job. He is too weak. That might upset some people, but I have to speak the truth, that is what we are meant to do here, are we not? Where is the judicial accountability now? There is none whatsoever. We have a U.K. Minister for Justice who is meant to intervene when he should but he does nothing, and you cannot go through an appeal system. We heard a really brilliant example of how the Jersey justice system is dysfunctional when we had to hear the desperation ... if you do not get what you think you should have, you can go to the Privy Council or then to Strasbourg, like those poor victims up there today. It is a bit late by then because you cannot challenge failings properly. People have had their lives ruined by then. Is the Chief Minister going to put that right? No, because he is one of those who I believe strongly is absolutely frightened to death of the aura of the Bailiff and all that it suggests. The Bailiff has only got that deference from people because of the dual role. We talk about in this report from the Chief Minister that you have got to have that independence between Judiciary and politics.

[11:30]

Does he not ever look at the individual and what that represents sitting in that chair every session, the hypocrisy and absolute comical farce of what he is saying? I cannot remember who said it, it might have been Deputy Tadier, it might have been Deputy S. Pitman, but you would have a Minister still being controlled on issues of justice by an unelected judge. There is no place for this in the 21st century. I am sorry the Deputy of Grouville cannot see the problem with it; just about any other right-thinking person can see the problem with it: it is a person wearing 2 hats at one time, it is an unelected judge being involved where he has absolutely no right. It might have been okay in the 17th century when we were all meant to tug our forelock to our betters, but it is not okay now. Well, I could not tug my forelock, but there we go; I may doff my cap. I cannot afford a cap, but there we go. It makes me so frustrated to say we will happily sit here and discuss ourselves for weeks on end, we will discuss dog mess for hours or days, and justice ... hardly anyone speaks. Let us spell out the facts again: there are only about 5 of us in here who ever stand up for justice, and we are made out to be some kind of radicals, we are out to destroy known civilisation. No, for those of us who talk about justice, it is because we care about our Island. The rest, and I am sorry, that is 95 per cent of the States Assembly, fall into 2 categories: people who just keep their head down, they are too scared; to protect the *status quo* they will say nothing. Or, it has to be said, people who perhaps do not care about justice at all, which is even worse. Some of

those people who we were debating earlier said to me yesterday: "For too many people, it is only when an injustice happens to them that they realise what is going on in this Island." That is because in the mainstream media they do not report on the true facts. Again, they have got a huge responsibility, they have more power than we have but they do not talk about the real issues: "Let us just keep attacking the 4 or 5 loony lefties who keep going on about child abuse and the dual role." If I am to support this, Chief Minister, what are you going to do about all that? What are you going to do about all these issues? As we heard, the Chief Minister cannot go against the word of the Bailiff, so how is this being under his sway, how is his control going to differ? I was at that meeting the Deputy referred to; he acknowledged there were huge areas that needed to be changed, but would he do them? We have Jurats elected by lawyers; that is crazy, it does not even happen in Guernsey, and some people are always mocking Guernsey for what they do. How can you have lawyers choosing people they are then going to be pitching to win their case to later? It is absolutely bonkers. The Jurat Law; what stops you being a Jurat? If you have received assistance from the 1948 Poor Law, it does not matter if you are Jimmy Savile, you are in, you are a pillar of society. That is what it comes down to, in essence: no convictions against Mr. Savile so he probably would have been welcomed as a pillar of the community. Sorry if some of this is uncomfortable, but it is true. I have got so many cases now on justice, I admit - and I will use this to apologise to some people I have not even been able to get back to, because I am being overwhelmed and I know Deputy Higgins has got a huge number - they are diverse and they are shocking. What is being done about it? What have successive Chief Ministers done about the injustice in this Island? Nothing, absolutely nothing. Justice in Jersey is made up as we go ... a phenomenon which some people may not be aware of: judge-made law. It is a great example of what happens in Jersey: rulings, decisions given by judges that have absolutely no visible link to the laws that were passed by Assemblies such as ours. Who challenges it? Is the Chief Minister going to challenge it? No, because he is not strong enough, and I put my trust in him, and this is not a personal thing either. I put my trust in him when he was making his pitch to be Chief Minister and on the key issues, justice, like for the abuse victims, he has really done nothing. He expressed his satisfaction, his contentment with the case against former Senator Syvret. I do not agree with a lot of what Mr. Syvret has done, but I will stand with him on justice issues. Regularly, there is a gentleman who sits up there who can show you his many consistent statements made to the police about, as a child, being pinned down and having blood trickling down his legs after he had been abused. The person who he alleges, and more than a dozen others allege is an abuser, is still employed by the States of Jersey, has still got access to children. How is the Chief Minister and his legal team, who are meant to be doing redress, treating that man? Well, he is accused of never being at Haut de la Garenne. It is only other people who were at Haut de la Garenne who would remember him there. Has he had sympathy? Has he had compassion? No. I will tell you what has happened to him: he has been threatened by the legal team that if he did not drop his allegations, he would be prosecuted and could end up in prison. Justice in Jersey? Utter farce. Yet we are satisfied for the secret court case against Mr. Syvret. Of course, one of those people given such huge financial assistance is the very man that so many people have accused. That same case - if we are talking justice, Chief Minister - why is it that there is a letter in existence pitching for individuals to come in and put the case together and decide how they would get Mr. Syvret? Five people invited; one of them refused. Proxies; are those what they were? I happened to believe that some of them, certainly a couple, have got cases for what has been done to them. They may have cases to answer on the accusations against them. The best way to have done that would be before a court. As I have said before, then Mr. Syvret could have been taken to account if what he said was completely wrong and those people could have earned justice. But no, what do we do? Justice in Jersey, Chief Minister, we have secret court cases. I do hope he is going to do the decent thing and resign when we get the true figures about how much this has all cost, because the question is already in for next session. He wants to control justice. Why is it that data protection and this

access ... and it is all very well for him to chuckle over there, perhaps it is how he usually takes justice. Why is it that data protection ... this assistance is not available to all? One of the individuals who was given money - Members might not know - is the scourge of innocent people in this Island. He has been intercepted by the police threatening ex-partners; does not get charged. He sends out posters to decent, ordinary people about threats to women; does not get charged. He puts hate sites up on the internet which emails stolen from one of our own Members end up on. Does not get charged. When I went and made a complaint about him, the senior police officer went and looked and he was shocked at the amount of complaints against this individual, so he could see it was just not me. Put the case to the Attorney General's office; no case to answer. Perhaps that explains, for all his faults, why Mr. Syvret went down the route he did, because it all comes back down to this image, hardly anyone wants to risk challenging Jersey's fluffy image as a shining beacon of democracy, as I think former Senator Perchard said. The way you improve your image is by confronting the things that are wrong, and that is what me, and those few other Members who stand up and talk about justice, do. Of course, we get pilloried by the *Jersey Evening Post*, pilloried by other Members, former judges. There is a wonderful little clip if Members get bored: go and look at YouTube and they will see a wonderful little clip of a former chief judge in Jersey and he is giving a talk to, I assume, the Law Society or a collection of lawyers, and he laughs and he gets a huge, great ripple of applause: "When I was a judge and the law was silent, I did what everyone did, I made it up because that is what everyone else did"; is that justice? People laugh. A chief judge, or a former chief judge ... I must not get into trouble, I must go down the magistrate route of today, confusing individuals. It is funny, just on the news today the former assistant magistrate is out of prison already, laughing all the way to the bank, while those people we have sent away with their tails between their legs are going home. One of them is on to income support as a result, she was telling me. This makes me furious, these tick-box propositions that come back pretending to do something when the proof of the pudding is that this Chief Minister never stands up for justice ever, even when it is wrong. He is controlled by the law office, in my view. He does not have the courage to challenge things that are wrong. Why am I not going to support this? It is not because I do not support Senator Farnham's original idea, I do, though I ask the question, how many in this Assembly could do that job, 4 or 5, because most - and I mean that as no offence to any particular Member - have not got the courage and the conviction to stand up, as I do, so often. But this is just a fob, it is a fudge. It is another one of the Chief Minister's cop-outs. Why did we have a Minister for External Relations when we have not even got a Minister for Children? Far more important. Why have we not got a Minister for Justice? Far more important than giving someone a title to do a job that, let us be honest, Senator Ozouf has been doing a pretty good job before we even had this Assistant External Affairs Minister. I say to Members, do not support this, force the Chief Minister to come back with something that is fit for the 21st century. Make him come back with something which will provide justice for all. I think it was Deputy Le Fondré who today said when would justice purely relate to how much money people have got? Well, that happens all the time in Jersey. Many of us in St. Helier see constituents. If they cannot afford to pay for lawyers and they get legal aid, they really may as well give up, because you will get a lawyer who is generally completely not interested or they are so young and inexperienced, it will probably do more harm to your case. If you are in the middle, you are even worse. Some people would say the Jersey system is bent. I do not say it is bent, because if you imply that, then you think it could be put back into shape. The Jersey justice system needs a full Turks and Caicos style intervention by the U.K. We need the U.K. Minister for Justice to fulfil his mandate. We need the Lieutenant Governor to fulfil the powers that he has got - and I like this Lieutenant Governor, I have had some lengthy conversations with him - but if he does not step in when he should, then what are we paying a great deal of money for? We need a Minister for Justice, but I think it should be appointed from the U.K. because it is entrenched here, it is so entwined, political power with

judicial power, that it cannot be done safely otherwise. Now I think I will sit down and let our former Chief Judge attack me, as he does so often.

Deputy R.G. Le Hérisier:

I wonder if I can raise a point. Maybe it does not fit in with the broad sweep of the Deputy's comments, but I thought he implied earlier, Sir ...

The Greffier of the States (in the Chair):

What are you raising, Deputy? Do you want clarification?

Deputy R.G. Le Hérisier:

Could he clarify, is he suggesting that the Chief Minister should intervene in individual court cases? I thought I picked that up in an early point of his speech.

Deputy T.M. Pitman:

Not at all. I am happy to answer Deputy Le Hérisier, but what you expect someone of who is meant to be the leader of this Government is to have the courage, the conviction and the ability to stand up and say when something is wrong, but that is severely lacking in this Chief Minister. I am not suggesting for a minute that he should be playing judge, but when there are clearly things wrong in this Island and with the amount of cases I have got, it is a growing number of people ...

The Greffier of the States (in the Chair):

I think you have answered.

Deputy T.M. Pitman:

... there should be somewhere to go and there is not.

The Greffier of the States (in the Chair):

You have answered the point, Deputy. Does any Member wish to speak on the proposition? If not, I will call on the Chief Minister to reply.

2.1.12 Senator I.J. Gorst:

I would like to thank everyone who has spoken this morning on what I think is an important proposition.

[11:45]

If I pick up first on Senator Farnham, I think he is possibly right. I think over time this role may evolve. I think I have said what I wanted to say about the main proposition and therefore I will pick up on a few points that Members have made. Deputy Young started by asking whether the accounting officers within the particular non-Ministerial departments would remain in place and yes, they will, because that is absolutely right. Someone should be held accountable for the spend within this departments, but now there will of course be a link to the Chief Minister's Department and Members will be able to question the Chief Minister in that regard, so hopefully that will give clarity to this Assembly. A number of Members spoke about the dual role of the Bailiff and felt that that should be addressed by this proposition. That was not what was asked of the Chief Minister in doing his review in regard to this proposition. Interestingly, Members were not perfectly in agreement with regard to the dual role of the Bailiff, and as I understand it, that is something which is being considered by the P.P.C. (Privileges and Procedures Committee). I note the last Chairman set up a Sub-Committee to consider that issue, but it is an issue which has been considered in the past, most recently by Carswell, and of course with the advent of time, it is

appropriate that we do consider those types of issues from time to time. We should not simply change because others change, but equally we should make sure that our structures ...

The Greffier of the States (in the Chair):

I think Members are struggling to hear you. I do not know if you could speak up a bit, Chief Minister. You need to raise your voice slightly, Chief Minister.

Senator I.J. Gorst:

Perhaps the volume could be turned up, Sir. **[Laughter]**

Senator L.J. Farnham:

Can I just ask that the Deputy listens for once, Sir? That was aimed at the Deputy, not my good friend, the Deputy of Grouville, who is very attentive.

The Greffier of the States (in the Chair):

Let us try to hear the Chief Minister.

Senator I.J. Gorst:

Perhaps the Deputy would like to come and read my notes that I have been making, and then I am sure everyone will be able to hear. **[Laughter]** Where was I? Yes, the dual role of the Bailiff. We should not simply change because others change, nor should we simply say that because we have done it for hundreds of years we should carry on doing it. It is appropriate from time to time to review these issues to make sure they remain fit for purpose and we have a model that we can be satisfied with. Therefore I do not think it is connected with this proposition. A number of Members have suggested that politicians, Chief Ministers, Presidents of Policy and Resources Committees are too deferential to Bailiffs. Perhaps I should say of course we are respectful in public, but I am not sure that if the current Bailiff and previous Bailiffs were here in the Assembly, they would automatically agree with that assumption, because robust conversations take place around where responsibilities rightly lie and that is something which I think is appropriate. Therefore, while in public it is right that Members of this Assembly are respectful for the civic head of our community, in private, issues should be discussed in a robust manner, and I think that the previous Bailiff would agree that that is the way that other Chief Ministers have acted with regard to conversations with himself as well. Other Members have asked what expert advice did the Council of Ministers receive in coming to the conclusions that we have. We are fortunate - or I am fortunate - in my department to have extremely competent staff who are able to provide what I consider very useful and important advice and they consulted other jurisdictions, they looked at processes and structures that were in place in other parts of the world, and it was agreed that what is before us today is the most appropriate at this point in time for Jersey. I have no hesitation in recommending this change. Someone else ...

Deputy S. Pitman:

A point of clarification, sorry.

The Greffier of the States (in the Chair):

Is the Chief Minister giving way?

Deputy S. Pitman:

Could the Chief Minister just clarify if that expert advice came from people who have experience in the justice system, or was that merely officers doing a bit of research?

Senator I.J. Gorst:

Those officers obviously spoke to people in justice departments elsewhere. Another Member mentioned whether our process was human rights-compliant, that the Chief Minister could be responsible in the Executive for justice policy and budget and the Bailiff could then sit as President of this Assembly. That really ties in the dual role of the Bailiff, and eminent judges, more eminent than myself, have said that there is no issue with regard to human rights compliance in that regard. Deputy Maçon I think got to the heart of one of the issues which has concerned me for a while and that is, while legislators should remain completely separate from the Judiciary, I think over the last number of years, perhaps with a lack of lawyers being elected to this Assembly, there has been perhaps not the knowledge of the processes of the Judiciary, of judgments in our court system by this Assembly. I think that that has led to some of the confusions and frustrations that a number of speakers have spoken of this morning, and therefore I think that Deputy Maçon's proposal around briefing sessions, around understanding how J.L.I.B. (Jersey Legal Information Board) works and access to that, around what action is taken when judgments are made and perhaps the suggestion there is a need for clarification in legislation, then I think that is a very important piece of work which will be undertaken. Other Members quite clearly do not think that this role should sit with the Chief Minister, but there should be a separate Minister. That is not what I am proposing and I expect those Members will vote against this proposition. Perhaps if I could then speak to Deputy Tadier's comments. He spoke what will in actual fact, if Members accept this proposition today, be the first piece of work that my department will undertake, and it is more or less formed in its structure now, and that is an access to justice review. I know he has asked to meet with me about the terms of reference and the individuals on such a review. But there are other interested parties which I intend to invite to be on that review. He also asked me to consider whether I will bring it to this Assembly for approval. That is not, as he knows, my intention at this moment in time, but I will consider what he has said this morning and when we meet again in due course. I am going back to the dual role of the Bailiff because some have tried to indicate that they felt that the Chair interfered with the democratic processes of this Assembly. I do not feel that that is the case. The running of this Assembly is governed by Standing Orders and Members of this Assembly can come forward with amendments to Standing Orders. Yourself, Sir, in the role of the Greffe, and ultimately the President or Deputy President of the Assembly approve questions, approve propositions and they are approved when they are in line with Standing Orders and disallowed when they are not. If Members are dissatisfied with what they receive in that regard, then it is up to them to speak to P.P.C. and ask for amendments to Standing Orders to be brought forward. Deputy Vallois asked for a list of responsibilities and policies and I concur with her that that would be a very useful piece of work to do at the start of this process so that Members can be clear. However, as I have already said, my first piece of work will be setting up the access to justice review and everything it will entail, and that will indeed be a very important, if somewhat lengthy, piece of work. Perhaps I should respond, although it is quite difficult to respond, to Deputy Pitman's concerns. I think Deputy Le Hérissier was right to ask him to clarify whether he was expecting ... although he obviously did not feel, as I took it, perhaps I was reading between the lines, that I was quite the right person to do the job, but he did seem to me to be saying that whoever took this job on - and therefore he did not think I was suitable for it - should be involving themselves in individual decisions of the court. That is absolutely what should not take place. This proposition today should clarify the role of the legislators and the role of the Judiciary and there must be appropriate independence. Ministers should not be, in this Assembly, being asked questions about individual cases that are coming and are in consideration of the courts. That is absolutely wrong and if we were to be doing so, then we could rightly be accused of political interference, and that is wrong. It cannot be, it should not be and I will defend that separation and I will do so whether Members accept this proposition today or not. However, I do think, as I said earlier, that some of the frustrations that Members have aired this morning is around understanding what our role as legislators is and what it can be when perhaps we are dissatisfied with what is happening in another

place, and therefore I think there is a need for an education programme for Members to help to understand where our appropriate involvement is and where it most firmly and definitely should not be. Having said all that, I hope that Members do support this proposition. It is an important move, it is important that there is Executive oversight with regard to justice policy and budget and this proposition will do just that, but be in no doubt there is work to do along the lines that I have outlined, and as I have said in my opening remarks, that can be met from within existing budgets because we are within the envelope of the M.T.F.P. (Medium-Term Financial Plan). I maintain the proposition.

Deputy S. Pitman:

The Chief Minister has not answered a couple of my questions and I just want to clarify, the meeting that myself and Deputy Pitman had with the Chief Minister, yes, we talked about our case, but we asked him to get a review on the Judiciary and also the legal system and their costs. So there is no way that Deputy Pitman was asking for the Chief Minister to intervene in our case and I believe that that is what was implied and it has misled the House.

[12:00]

The Greffier of the States (in the Chair):

You said you had some questions that had not been answered.

Deputy S. Pitman:

I do, Sir. I asked the Chief Minister what expert advice was given to the Council of Ministers for them to reach the decision that the ... sorry, it was with regard to there was a comment made on resources, fiscal, in the report. It says: "In the current fiscal cycle, it was not felt to be an appropriate time to consider establishing a new department with the consequent resource implications." I did ask what expert advice was given to the Council of Ministers for them to reach that decision, and by expert, I mean again somebody with a judicial background. Also, he has not explained to us, he has given us no evidence as to the question that I asked, and that was once the Minister for Justice post is in place, we will be inevitably asking questions and presenting propositions ...

The Greffier of the States (in the Chair):

I do not think there will be a Minister for Justice, Deputy. That is the whole point, I think.

Deputy S. Pitman:

Sorry, I mean the position within the department, and once questions and propositions will be coming to that and being asked of that person, the Bailiff will have to approve them. Now, I would like some evidence as to why that is human rights-compliant.

The Greffier of the States (in the Chair):

Are you able to answer those 2 points raised by the Deputy in her speech? Are you able to add anything further, Chief Minister?

Senator I.J. Gorst:

Sorry, I thought I had answered them. With regard to the more detailed human rights issue, I will defer to the learned Attorney General, if he wishes to comment, but I think I have answered it previously anyway.

The Greffier of the States (in the Chair):

The expert advice on the fiscal and economic ...

Senator I.J. Gorst:

I quite clearly said that was advice which had come from officers and ultimately it is a political decision whether this Assembly wishes to spend more money on the creation of a department and a Minister or go with what is being proposed.

Deputy G.C.L. Baudains:

I did ask the Chief Minister and I did pose a couple of questions which he has not answered, but I notice he was multitasking during the debate, so perhaps he missed what I said. I did ask if he was going to appoint a new Assistant Minister, possibly with responsibility for this area, and I asked whether he intended expanding his department to accommodate this proposition.

Senator I.J. Gorst:

Yes, thank you. With regard to the Assistant Minister, I will have to consider what happens. Under the States of Jersey law, I think as we sit here, until I make the changes, Senator Bailhache would remain as Assistant Minister, but I need to give some thought to that, and it is very likely that I will be proposing changes over the coming weeks with regard to that. Of course Members will be aware that I am also now responsible for financial services, so I would need to consider how I deal with that particular issue as well. Could the Deputy just remind of the second?

Deputy G.C.L. Baudains:

Whether there would be any expansion of his department as a consequence of this proposition.

Senator I.J. Gorst:

I thought I had answered that when I answered Deputy Vallois' question with regard to the current M.T.F.P. and fitting within those resources. There may be a need to enhance those in due course, but if that were the case, it would be a bid would be made in the normal way with the next M.T.F.P.

Deputy S. Pitman:

Sorry, Sir, but I did not get the opportunity to ask the Attorney General on the human rights issue.

The Greffier of the States (in the Chair):

Are you able to add anything, Attorney General?

The Attorney General:

As I understand it, the question is: Are there any human rights issues attendant upon the fact that any proposition must be approved by the Bailiff when propositions are brought in connection with the justice portfolio. Am I right in thinking that is the question that is being asked?

The Greffier of the States (in the Chair):

Requesting a proposition.

The Attorney General:

The human rights issues that arise in any circumstances could only be those under Article 6, which is relating to the determination of civil rights by an independent tribunal. It seems to me that this is a parliamentary Assembly functioning within its Standing Orders. The Bailiff makes a decision in accordance with Standing Orders as to whether it is within or without. There is no individual civil right, the determination of it involved. It is a matter to be resolved entirely politically and human rights have no bearing on the matter at all.

Deputy S. Pitman:

Sorry, but it is absolutely ludicrous, this. We ...

The Greffier of the States (in the Chair):

You cannot make a speech, Deputy. Do you have a question for the Attorney or not?

Deputy M. Tadier:

I have a question relating to the answer.

Deputy S. Pitman:

We have a Bailiff who recuses himself from justice issues when we are debating them, but then he is going to be allowed to decide on propositions and questions. It really is a ludicrous position.

The Greffier of the States (in the Chair):

As the Chief Minister has said, Deputy, the Bailiff sits in the Assembly not by right, as referred to by Deputy Trevor Pitman, but by leave of Members, who are free to change the law, change the rules, change Standing Orders and he is obliged to comply with it. Deputy Tadier, do you have a question?

Deputy M. Tadier:

Yes, it just follows on from Deputy Pitman's question. It is clear that it would not come under the remit of a States Member asking the question or lodging a proposition, but from the perspective of a member of the public, if you were specifically asking a question on behalf of a member of the public or taking up a case and then it turned out that that question or proposition was ruled out of order by the Bailiff, then of course the appeal mechanism would also be to the Bailiff to get recourse. It would be the individual member of the public who would be feeling aggrieved rather than the States Member necessarily, and could that member of the public then ...

The Greffier of the States (in the Chair):

No member of the public can ask questions in the Assembly, Deputy. I do not quite understand your question.

Deputy M. Tadier:

No, clearly, but a member of the public could bring a case on human rights grounds that their recourse to their parliamentarian was not being met on that basis.

The Greffier of the States (in the Chair):

Is there anything you wish to add?

The Attorney General:

The only thing I would wish to add is that I do not understand that States Members ask questions on behalf of members of the public. They ask questions that they need the answers to within the course of the discharge of their political duties and in no other circumstances. It seems to me that that is entirely a matter for the parliamentary Assembly, and as I have said, human rights do not arise.

Deputy M. Tadier:

But clearly in the case where Senator Breckon very clearly brought a proposition directly on behalf of those members of the public who were affected, so there must be, to all intents and purposes, situations whereby ...

The Greffier of the States (in the Chair):

I think the Attorney has answered the question, Deputy. Do you wish the appel, Chief Minister? The appel is called for on the proposition of the Chief Minister. Members are in their designated seats? I will ask the Greffier to open the voting.

POUR: 39		CONTRE: 4		ABSTAIN: 0
Senator P.F. Routier		Deputy R.G. Le Hérisssier (S)		
Senator A. Breckon		Deputy J.A. Martin (H)		
Senator S.C. Ferguson		Deputy S. Pitman (H)		
Senator A.J.H. Maclean		Deputy T.M. Pitman (H)		
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

The Greffier of the States (in the Chair):

I am able to announce to Members that the Privileges and Procedures Committee has this morning lodged a proposition, Composition of the States Assembly Interim Reform for 2014 and Referendum on Further Reform, P.116, which I understand is in Members' pigeon holes.

[Approbation]

3. Draft Motor Vehicle Registration (Amendment No. 4) (Jersey) Law 201- (P.95/2013)

The Greffier of the States (in the Chair):

We come to the Motor Vehicle Registration (Amendment No. 4) (Jersey) Law and I will ask the Greffier to read the citation.

The Assistant Greffier of the States:

Draft Motor Vehicle Registration (Amendment No. 4) (Jersey) Law 201-. A Law to amend further the Motor Vehicle Registration (Jersey) Law 1993. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

3.1 Deputy K.C. Lewis of Saviour (The Minister for Transport and Technical Services):

The Motor Vehicle Registration (Jersey) Law 1993 requires motor vehicles used or kept on any public road in Jersey to be registered, the owner providing details of the vehicle and the owner's name and address, confirmation that the vehicle has been manufactured to required standards and the vehicle is insured for at least third-party risks. When first registered, each vehicle is assigned a unique registration mark, by which the vehicle can be readily identified by enforcement authorities in Jersey and abroad. Nowadays the register is a computerised system that holds details of each vehicle, its registered owner and the history of any change of owner, modifications to the vehicle or if the vehicle has been scrapped or exported, assuming of course owners have complied with the law and advised Driver and Vehicle Standards accordingly. It would seem that being able to display certain registration marks on their vehicles is something valued by a number of people. A registration mark is assigned to a vehicle in accordance with the law and supporting order. While any registered vehicle can be transferred between persons, under the law, registration marks remain the property of the State and can only be assigned or reassigned by the Inspector of Motor Traffic. Reassigning registration marks has provided a valuable income to the States of Jersey over the years. Between 1998 and 2005, the Home Affairs Committee held auctions of special registration marks, selling the right to display specially introduced JSY registration marks and other interesting marks that currently have not been assigned. These auctions raised around £600,000, which was held in a Community Safety Fund to be distributed to deserving cases that would improve community safety. In its review of public expenditure in 2010, the Comprehensive Spending Review identified the services which were essential or highly desirable, efficiencies in delivering these services and also services where user-pays principles could be applied. While user-pays principles already apply to matters surrounding vehicle registration, it was agreed to extend the principle and provide a means whereby those who are prepared to pay a sum for the right to display certain registration marks can do so. This proposed amendment to the Motor Vehicle Registration (Jersey) Law 1993, subject to States and Privy Council approval, will permit Transport and Technical Services, through Driver and Vehicle Standards, to sell to the motoring public by auction, tender or fixed sum, determined by the Minister for Transport and Technical Services, the right to have assigned to their vehicles certain cherished registration marks, as they are referred to. These registration marks are currently held unassigned in the vehicle registration system. This amendment will allow me, as Minister, to make provision by order to establish schemes for granting mark rights to those happy to pay to have a cherished registration mark assigned to their vehicle. I have provided Members with a preliminary draft of an order amendment that would put these measures into effect. It is expected that the sales generated will amount to around £100,000 per year, which will fill a similar gap in the Transport and Technical Services Department's annual revenue cash limits that have already been set for this year onwards as an ongoing Comprehensive Spending Review saving. The amendment to the law will also regularise a couple of matters that have been outstanding for some time, namely requiring registered owners to notify D.V.S. (Driver

and Vehicle Standards) of any change in the owner's name. Most people and companies already do this, but some do not, and removing reference to issuing trade-plates, as such trade-plates are not or ever have been issued by the department. As I have already mentioned, but it is worth repeating, implementing the C.S.R. (Comprehensive Spending Review) proposals has charged my department with finding an additional £100,000 of income. This is to be done by selling to willing members of the public the right to display certain unassigned registration marks. To allow these measures to go ahead, the Motor Vehicle Registration (Jersey) Law 1993 has to be amended in accordance with the proposition before you today. I make the proposition and ask Members to support the amendment.

The Greffier of the States (in the Chair):

Are these principles seconded? [**Seconded**] Deputy of St. Martin.

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

I would just like the Minister to clarify for me, if he could, the exact differences between as it stands at the moment and the amendments that are being proposed, because I am struggling to understand what or how the situation will be different in the future as to the situation that we have currently.

The Greffier of the States (in the Chair):

It is not question time. Senator Ferguson.

3.1.2 Senator S.C. Ferguson:

I thought I was going to be cut off at the knees like the Connétable of St. John. Why should the State own my registration mark? I wonder if the Attorney General could confirm that this has always been the case.

The Attorney General:

Yes, the ability of the State is to issue and allocate a registration mark and in certain circumstances to recall a registration mark. I do not believe it is owned at this point in law by anyone other than the State.

[12:15]

Senator S.C. Ferguson:

I am sorry, if I could just follow up. So that means that the State could take away my registration if it felt like it?

The Attorney General:

It is not entirely clear as to whether or not the use of a registration mark can be regarded as a possession within the terms of the human rights law and therefore subject to protocol of Article 1, and the State in any event would have to do what it did in a reasonable and proportionate manner. It could not be any arbitrary exercise and it would need to be governed by proper legal authority in order to do so. My understanding of the legislation under consideration at the moment is that it is nothing other than an enabling legislation to provide for the opportunity to bring subordinate legislation in the form of an order made by the Minister, which would have to provide for a properly human rights compliant environment.

Senator S.C. Ferguson:

But if it is not owned by the person who has the registration mark, then does that not cast doubt on the ability to sell the right to a registration mark if it can be taken away at the will of the State?

The Attorney General:

I think that my understanding of what is proposed in this legislation is the creation of a regime where rights would clearly pass from the State to the individual concerned. When the individual has acquired those rights, it seems to me that there are then legal remedies in force for the arbitrary removal of those rights. But all of this falls, to my mind, to be identified in the subordinate legislation as opposed to the general enabling provisions, which I understand this legislative change to be encompassing.

Senator S.C. Ferguson:

So it is like buying a lease rather than a buying a piece of property. The auction of number-plates that were mentioned by the Minister for Transport and Technical Services in the past has provided funds for road safety and similar purposes, but this amendment appears to allow T.T.S. (Transport and Technical Services) to keep the funds from selling the right to have a particular registration mark. It is just a means of not quite a stealth tax, but it is getting on for it, and this still raises the point that I suppose I am talking about my own particular case, but if you have a particular registration mark and you want to transfer it to a new car, what is the position then? Perhaps the Minister for Transport and Technical Services would like to elucidate.

3.1.3 Deputy G.C.L. Baudains:

I thought Senator Ferguson's questions have brought a whole new meaning to the term flying-freehold, but there you are. I have never been able to understand why people want specific numbers and are prepared to pay tens or even hundreds of thousands of pounds for them. I know when I was a young lad I always preferred registration numbers which were quite hard to remember. **[Laughter]** But at the present time, as a person with an interest in classic vehicles, should I want to register a new acquisition, obviously an old vehicle coming to Jersey for the first time, what I am looking for is not a specific number, but an appropriate number in an appropriate range. In other words, if you have got a 1949 vehicle and a registration number in the 100,000 or so does not look appropriate. So could I ask the Minister whether the situation has now changed, because previously if you went to the D.V.S. and said: "I am sorry, 99,000 is a bit high for this old vehicle. Could I have a lower one?" the answer was: "I am sorry, you have got to accept whatever number the computer comes up with." Has that now changed so that you could say: "I would like something below 50,000"? Not a specific number, but in an appropriate area. Can that now be done?

3.1.4 Senator A. Breckon:

I am a little bit concerned that T.T.S. intend keeping this money, and the reason I say that is many years ago I brought a proposition to this House that we fund smoke-detectors for senior citizens and at the time Members said: "Well, it is a good idea, but where do we get the money from?" and it came from the sale of Js then and we have now got JSY or JY or something, but it came from that fund. There might be a need, and the Minister having £600,000 in that fund - I do not know if it still there - but there may be a need to maybe revisit and look who has got smoke-detectors and maybe extend that scheme. So the fact that they are using it for their own revenue is of concern to me when there are perhaps matters in the community through the Parishes, through schemes and things like that where money, not great deals of it, could be required for that. For me, this would be one of those cases where it is a windfall where people are daft enough to pay money for a low J number. Of course their car will not go any faster or slower; I am not sure who it impresses - maybe themselves, but I am not sure who else - then maybe we should still be using it for the Community Safety Fund, because there are other areas through the Parishes where money could be given, for example, services for elderly through the community, through the Parishes where this money would go a long way, but perhaps with T.T.S. they might get 40 yards of tarmac out of it or something like that on St. John's main road for the Constable to drive over where the potholes are.

He might think that is a good use, but I would like some assurance from the Minister for Transport and Technical Services that the Community Safety Fund will not be extinguished because this source of funding has been taken away.

3.1.5 Deputy M. Tadier:

There are several points I am slightly unclear about. The first one is that we have been told this has already been done. We remember there were 500 JSY number-plates that got sold off for a certain amount of money because they were deemed to be prestigious and some people decided that they would look good on their Jeeps when they were driving back up the pavement to St. Mary or St. John and getting their doors scratched because the branchage had not been done, but at least the number-plate looked good. This has already been done, so why are we amending the law today in order to do something that has already been done in the past, and if that was different, how is it different, and if it was not different, how did we do it then? Was it illegal? That is the first set of questions to ask. What are the cherished number-plates? We have not been told here. Are they still going to be J-numbers? Are they going to be J001 or are they just going to be a complete departure from J-numbers, such as letters which you see elsewhere, because it seems to me if you are saying that there is going to be a certain amount of income generated, but it is generated via an auction, then how can you produce an accurate estimate, because an auction is completely different to fixed-price selling. You know that if you have got a J1, that is probably going to fetch a certain amount of revenue, because we know from the open market that trading already happens privately. If you created a completely different number plate, say KING and made that as a number plate, it is quite likely that would be a lot more prestigious, especially if you were the only one in the Island to have that registration mark. So there are a lot of questions that still need to be answered. If we are completely departing from J-reg system, how will we know that numbers are registered in Jersey? Presumably that is not the way forward. Why not though? I mean, if the Minister for Transport and Technical Services wants to make some bucks, just change the system completely and issue words. We are told about the financial implications, that we can expect £100,000 a year after the auctioneer's fee. How is T.T.S. running this scheme? We are told that Government are not very good at doing private enterprise. Are these going to be auctioned off at Glencoe? Is that seriously what we are saying: "There are a bunch of numbers for you. This week you have got J555. 666 will be auctioned to someone at Devil's Hole. Who wants to buy that?" and Mr. Drieu - we are not meant to mention names, but he is part of the Jersey folklore - but the auctioneer at Glencoe is going to say: "I will not do it", but there is a famous song, is there not, called 'The Auctioneer'. Is that seriously how T.T.S. is going to do it, there is going to be an auctioneer's fee? Is there going to be a buyer's fee, a seller's fee? Presumably you would expect it to be done via a website so there are not any administration fees at all, you just have people bidding in a month and then the highest person does it, there is no administration cost. This really does beggar belief, but the more serious point is why are we relying on this kind of income? It is a relatively small-fry. It could be a nice thing to do, but we live in a jurisdiction where we have got millions coming in every day, we know we have got a low-cost, low-spend economy. Is that the way we are having to raise money in our community to fund things? Is T.T.S. so strapped for cash that it cannot go to the Minister for Treasury and Resources, who controls the purse-strings, and say: "We need other more sensible mechanisms by which to raise money"? Are we going to ringfence this money for victims of R.T.A.s (road traffic accidents) who have only been hit by people with low number-plates? That would seem a completely sensible thing to do. There just seems to be some very strange questions, not to mention Senator Ferguson's quite right question about ownership. If on the one hand we are saying that: "Well, currently we know that these number-plates do get traded and sold" therefore the question of whether the State owns them is questionable already. But once we have sold these number-plates to people, you cannot have the Transport and Technical Services Department saying: "We need to reclaim that number plate" because it has already been sold. There seem to be far too

many questions here that remain unanswered. I wish the Minister for Transport and Technical Services luck in answering all of them to our satisfaction, but it just seems that, if anything, this is certainly something which would need to be called in for Scrutiny, but would Scrutiny really want to look at this? I think they have got much better things to do with their time. I am certainly not going to be volunteering to look at this.

3.1.6 Deputy S. Power of St. Brelade:

Some of my queries have already been asked, particularly by the Deputy of St. Martin and Deputy Tadier and Senator Ferguson. My question really is related to the amount that is being raised on this, which is supposedly a net income of £100,000 from the sale of these rights to display. Given that we have already done one auction between 1998 and 2005, JSY1 to JSY999, I think it was, not 500. I am not quite sure; perhaps the Minister could confirm that. Is it not possible - could I ask the Minister for Transport and Technical Services to confirm this and whether he has discussed it with his department - whether the Transport and Technical Services Department can in actual fact raise more money by auctioning 1JSY to 999JSY or valued figures, identification plates or marks to that extent, as to whether he has considered doing that?

3.1.7 The Connétable of St. John:

A new charge, yet another one. I have to ask, have our Law Drafting Officers got nothing better to do than take instructions from the Council of Ministers on this type of proposition, and all the work that is involved in pulling this lot together, with all the laws that we need updating, *et cetera*, this one should have been at the very bottom of the pile and stayed there. How much has this cost to produce, Minister? I hope you will be able to tell us when you sum up. What I need to know, is this going to be retrospective on all those number-plates which are already out that have not been sold - by your department of course, that is - and if so, how are you going to call those in or when will you call those in?

The Greffier of the States (in the Chair):

Through the Chair, please, Constable. You have been here a long time.

The Connétable of St. John:

Yes, too long today, Sir, too long today. I am minded to ask that we do not debate this any further and move on to the next item.

The Greffier of the States (in the Chair):

I am not prepared to allow that at this stage, Constable. Not many people have spoken and I think there were very particular circumstances in the last debate, so I am not prepared to allow it at this stage in the debate. Deputy Young.

3.1.8 Deputy J.H. Young:

I was going to speak, but of course both Members, other Members of the Environmental Scrutiny Panel have spoken, and Deputy Tadier has said he thinks that this thing is so problematic that Scrutiny should look at it, so I share the reservations of my colleagues on the Scrutiny Panel and those other Members who have spoken so far. When this came forward, I was really puzzled as to why we needed this. I could not see any clear reason why, if we have done this before, there was no problems, why do we need to do it now? The only point that I can see is previously it was done for a very worthwhile purpose, to raise money for charitable causes, and whatever they are, community safety or what, but that seems to be quite a good thing, it was well received by the community and there were no problems with it.

[12:30]

But now we in the region of scraping the barrel with money savings, and here we have got a saving, so we are told, of £100,000 a year on a very large budget of T.T.S., which I think is probably on a revenue budget around £26 million, £27 million or something. Are we really being told this is crucial to running our services? I am not sure. I share the concerns of the Constable of St. John about priorities, because we know on the Scrutiny Panel, because we have raised many times the desperate need to get resources to review the road traffic law and motor vehicle legislation generally. It is well overdue and well out of date and there are many things, tractors and drivers, questions of the penalty regimes for traffic offences. There is a huge amount of work there where we are told that the Transport and Technical Services Department has got resource problems. It is not clear here. We are being told this is £100,000 to sell something which people need to have as a statutory right and I wonder where this ends. Do you end up with having auctions of other types of licences that people have to get? I have got those reservations. I hope Members will not send this task of trying to make sense of the detail of this legislation to the Scrutiny Panel. The Minister for Transport and Technical Services kindly sent us a draft order to have a look at. I am afraid that I am none the wiser having looked through that draft order. It is almost as impenetrable as this law. I think spending time checking the fine detail of it is not the way to do it. I think Members should make their minds up on the principle of this; is this a good principle or is it not? Personally I have got major reservations about it and I shall, therefore, probably go with those Members that are not supporting this particular proposition.

3.1.9 The Connétable of St. Peter:

As many Members will know I was a past president of the Jersey Old Motor Club, a club with a lot of cars with a lot of cherished number-plates. It certainly raised some concern in my mind reading the report and also the notes that came out with it. Notes that were so confusing that I sent it on to some other learned members of the club including a couple of lawyers, one who said he thought he understood it and the other one said: "To me it is pure gobbledygook. I really cannot tell what the objective is." The thing that concerned me with this - just moving away from what we call the mark rights, which is a J-plate - is that the term 'mark rights' and 'mark right-holders' not 'owners', to a certain extent is the terminology used. The first part that I have a concern with is the very first paragraph. It is about the Comprehensive Spending Review, but that is what we should be doing. That is what the Transport and Technical Services Department should be doing. What they are not doing is identifying savings; they are identifying a cost income to compensate for savings they are not making. On that one part alone straightaway I have a reservation about this proposition that it is not meeting the objective of the Comprehensive Spending Review. When we come down to the mark rights themselves there is a lack of clarity that whether the Minister ... and I believe the Minister has the right now to withdraw a mark right from a current holder, that is a J plate from a current holder, and there is nothing in this legislation that prevents him from doing that in the future. At the moment we are talking about cherished number-plates, but any number from one to 100,000 could be cherished in somebody's mind. So he could withdraw any number-plate at any one time. One could say quite clearly: "He will undermine the market-place because somebody is going to lose their cherished number-plate. They are not going to pay anything for it in the first place." So at the end of the day it will produce no benefit at all to the Transport and Technical Services Department. Sitting within this proposition there are 2 very important parts which I do fully support and the part about the registered owners of vehicles must notify a change of name and place of residence. That is a very important part and that one part gives me a problem because I do not want to support the proposition but I do support that as very important in my role as Connétable that we need that information for road-safety purposes and also the issue of tidying up trade-plates. That is another one that needs to be done as well. So I am in a conflict for myself and I would really like to be saying to the Minister ... I would really like him to consider withdrawing this for the moment and clarifying it and coming back perhaps with a presentation statement so we

understand what he is really trying to achieve so we can come back and say: “Yes, we are all for that.” I want to support him. I do not like being negative but at the moment I am really in the devil and the deep blue, I want to support him but I feel constrained.

3.1.10 Senator L.J. Farnham:

That was quick. I have to declare an interest. I have a cherished plate. It is 5 numbers long and I have had it very many years and I rather like it. It is not for sale and I hope it will not be but I agreed a lot with previous speakers. I think when you are having these auctions and raising money for road-safety or other good causes, fine, with numbers that have been neglected and clearly have a value but there are other ways to make money. For example, I have been in contact with the Minister’s Department about this, for example, a shared registration scheme. There are many collectors of motor cars who have collections of cars worth tens of millions of pounds but they cannot drive them on Jersey roads because of the cherished plates of these cars which make up a big part of the value, and I am talking about cars from all over the world because they would have to come and put a J-plate on this very valuable motor car. So if the Minister for Transport and Technical Services wants to make some real money, look at a way to have a joint registration scheme and do something like that but I cannot support this.

3.1.11 Deputy J.A.N. Le Fondré:

I think we are slightly making mountains out of mole hills. I think point 1, dealing with my good friend Senator Farnham’s comments just now. We live in Jersey. That is a different jurisdiction to the rest of the world, funnily enough. It is a different jurisdiction to the U.K. It is a different jurisdiction to France and ...

Senator L.J. Farnham:

Can I thank the Deputy for pointing this out?

Deputy J.A.N. Le Fondré:

So if somebody - just in case he had not spotted that - brings a number-plate and I can recall years ago my parents bought a vehicle which had 911T as the registration and we could not keep it funnily enough. So how on earth do you go into all the legislative issues of ... somebody sees a car zipping past with a cherished number-plate from the U.S. on it and making sure it is in the ... and the police can track down who the owner is easily. Where is it going to be registered? Sorry today I am not going to give way. So I think we need to just focus on ... let us stick with J-plates for the moment. There is no intention to start introducing King as a registration-plate or anything along those lines. What we are trying to do ... and 2 things, firstly this was in the M.T.F.P. at some point or other as one of their savings. I take the point about savings versus revenue, absolutely, but surely we should also be looking to tap into resources from time to time. This is a resource which we can exploit and this is not a new charge, it is a voluntary set up. There is a pool of number-plates, there is something around 1,600 cherished registration marks, which is a terrible expression to use, it is quite long, that are not assigned. They are mainly JSY and 4 digits. In essence it is a resource that one can tap into. I think as a clarification in terms of the present law and where we are going, and I just want to read from a note that was sent to a previous Member, or a present Member: “The present law did not provide for reserving or retaining a registration-mark if a vehicle was sold but wanted to retain that registration-mark for the future [there is a time limit on it] and the proposed law amendment and subsequent order amendment will rectify the matters by covering the gap in the law.” Sorry, I skipped. When things were done previously at the auction in theory it then fell down, I believe, to the inspector to transfer the plate. It was still in the inspector’s power almost. Although it was done, the inspector, in theory, could have turned around and said: “Well, you bought the right, I am just going to assign it to someone else”, is my understanding because it was in the power of the inspector. The inspector may, if the inspector sees fit, assign or cause to be

assigned the registration-mark. What we are trying to do is cover a gap and a grey area in the law which means that essentially it is imposing a duty on the inspector to assign a registration-mark where a mark right has been granted. So there is a subtlety and so it is enabling, from that point of view, to give certainty in the auction process. I think it is one of those areas when we are going through legislation looking at the precise meaning of things that that issue came to light. The principle of the revenue has been agreed by this Assembly previously and was in the M.T.F.P and so the question there is, do people want to tap into a resource, yes, it is not big bucks in the overall scheme of States revenues, but it is a resource and is it one that we want to exploit. I fully take the point, and I am sure the Minister will address that, on the past uses of the fund and how that may or may not be looked at in the future. I shall stop there. I think we are making mountains out of mole hills on a relatively simple matter.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? I call on the Minister to reply. You can reply briefly, Minister. Do you wish to adjourn?

3.1.12 Deputy K.C. Lewis:

Yes, I will be brief but as my Assistant Minister has just stated, this is making a mountain out of a mole hill. No one is going to have their registration revoked or taken away. It is a matter of clarification because originally D.V.S. was with Home Affairs. It has subsequently passed to T.T.S. This is just formalising regulations, one of which was that the change of names, people did not notify before, sometimes people changed their names through marriage or through deed poll; they are now obliged to notify D.V.S of that. I believe Deputy Baudains mentioned classic vehicles before. I believe, is it 1976, you could have the old-fashioned plates, black with white letters; that still applies. You can ask for any number you wish. Basically the registration marks will belong to the State but the right to display that mark will belong to the individual who purchased it. It does not apply to any existing assigned registrations that are already out there. Regarding the Community Safety Fund; that passed to T.T.S. from Home Affairs with the D.V.S. When I was Assistant Minister I was in charge of the Community Safety Fund and there was not an awful lot left. That has now expired. In fact I purchased many of the smiling S.I.D.s (Speed Indication Display) around the Island, a few Community Safety Projects, closed-circuit TV in certain areas and many Parishes have supplemented those smiling S.I.D.s with their own, so that was an excellent cause. This has been agreed by the States of Jersey some time ago so we should raise more money and it is user pays. Anything else? No. The Constable of St. Peter, no. I will just clarify that. No numbers will be withdrawn whatsoever. I am just trying to think, anything I have missed. The smoke-detectors were paid for by the Community Safety Fund. No, this is just cherished numbers. If anybody wishes to register their car in a normal way it will be just the normal registration fee but if people want a cherished number then of course there may be an additional fee. The system has yet to be determined whether it will be auction or if it is a particular mark it could be by sealed tender. That is yet to be determined. I make the proposition.

The Connétable of St. John:

The Minister has not answered one of my questions. Apart from the whole proposition being woolly, I asked what the course was in law-drafting time of this particular...

The Greffier of the States (in the Chair):

I am not sure the Minister is likely to be able to answer to that question.

Deputy K.C. Lewis:

I would not have a clue regarding the law-drafting time.

The Greffier of the States (in the Chair):

Any other question that was not answered?

Deputy M. Tadier:

Yes. I asked him what happened previously when numbers were sold. Was there a separate piece of legislation that was passed or was that just done ad hoc?

Deputy K.C. Lewis:

That was with the Home Affairs at the time so this is just formalisation.

Deputy M. Tadier:

Can I ask, the Minister for Transport and Technical Services said that while the ownership would remain with the States of Jersey the individual has the right to display but surely it is not a right to display, any person with a number-plate has to have the number-plate displayed. In fact if they were not displaying the number-plate, which was in their ownership, they would be committing a criminal offence. So can the...

The Greffier of the States (in the Chair):

It sounds like a second speech, Deputy. I think it is fairly obvious it is a right to display the number you buy.

[12:45]

Deputy K.C. Lewis:

Yes. Once the number is assigned the individual would have the right to display that number. They also have the right to assign that to another vehicle. It is done this particular way so should somebody leave the Island for whatever reason, move to another country with that registration-mark, that mark can then be withdrawn by D.V.S. and reassigned to another vehicle on Island.

Senator L.J. Farnham:

Could I just ask the Minister...

The Greffier of the States (in the Chair):

Is it a question you asked that was not answered?

Senator L.J. Farnham:

Yes. It is a point of clarification because he has not been clear. Can a member of the public sell their number to somebody else if they have a low-digit cherished number?

Deputy K.C. Lewis:

Yes, I have already said that can be assigned to another person, yes.

The Greffier of the States (in the Chair):

Do you wish the appel on this?

Deputy K.C. Lewis:

Please, Sir.

The Greffier of the States (in the Chair):

The appel is called for on the principles to the draft law. Members are in their designated seats. The Greffier will open the voting.

POUR: 26		CONTRE: 11		ABSTAIN: 1
Senator P.F. Routier		Senator A. Breckon		Connétable of St. Peter
Senator S.C. Ferguson		Connétable of St. Helier		
Senator A.J.H. Maclean		Connétable of St. John		
Senator B.I. Le Marquand		Connétable of St. Martin		
Senator F.du H. Le Gresley		Deputy R.C. Duhamel (S)		
Senator I.J. Gorst		Deputy G.P. Southern (H)		
Senator L.J. Farnham		Deputy M. Tadier (B)		
Connétable of St. Clement		Deputy G.C.L. Baudains (C)		
Connétable of St. Mary		Deputy J.H. Young (B)		
Connétable of St. Ouen		Deputy of St. Martin		
Connétable of St. Brelade		Deputy R.G. Bryans (H)		
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

Yes, the adjournment is proposed.

Deputy G.P. Southern:

May I suggest that possibly there is not that much left and none of it is controversial ...

Deputy J.A.N. Le Fondré:

Can we at least finish this session?

The Greffier of the States (in the Chair):

The adjournment is proposed. Those in favour of adjourning kindly show.

The Connétable of St. John:

Members are aware there are 2 meetings at lunchtime.

The Greffier of the States (in the Chair):

Yes. Those who wish to continue kindly show. The Assembly will adjourn until 2.15 p.m.

[12:47]

LUNCHEON ADJOURNMENT

[14:16]

The Connétable of St. John:

Can I have the appel please?

The Greffier of the States (in the Chair):

The Assembly appeared to be inquorate. I ask that Members be summoned. Very well, the Assembly appears to be inquorate. I will ask the Greffier to call the roll which is now done by using the electronic system and therefore Members may push any button to show their presence and the Greffier will open the roll call. There are 25 Members present. Accordingly I have no option other than to adjourn the Assembly. I will adjourn the Assembly until 2.25 p.m. If the Assembly is not then quorate I will close the meeting.

ADJOURNMENT

[14:23]

The Greffier of the States (in the Chair):

The Assembly appears to be quorate. Perhaps I could thank those Members who were correctly here on time for the start of the Assembly and remind those Members who were not that there was disruption to the Assembly's business and that Members are convened for 2.15 p.m.

Deputy M. Tadier:

Could I ask for the call to be read out please?

The Greffier of the States (in the Chair):

Yes, you can, Deputy, if you wish.

The Assistant Greffier of the States:

Those who were present in the Chamber: Senator Breckon, Le Gresley and Gorst; the Constable of St. Clement and St. Peter, St. Mary, St. John, St. Ouen and St. Martin; Deputies Le Hérissier, Southern, Hilton, Le Fondré, Lewis, Tadier, Noel, Vallois, Green, Maçon, Baudains, Young, Pinel; the Deputy of St. Mary, the Deputy of St. Martin and the Deputy of St. Peter.

The Greffier of the States (in the Chair):

Minister, do you wish to propose the Articles of the law *en bloc* or how do you wish to proceed?

Deputy K.C. Lewis:

Yes, indeed.

The Greffier of the States (in the Chair):

Did you wish to make any remarks or simply propose them?

3.2 Deputy K.C. Lewis:

I think we will just propose.

The Greffier of the States (in the Chair):

Are the Articles 1 to 12 seconded? **[Seconded]** Does any Member wish to speak on any of the Articles?

3.2.1 Senator B.I. Le Marquand:

I want to make a small point in relation to practice within the department relating to the issue of names. It may be this problem has now been solved but certainly in the period when I was magistrate it caused significant difficulty that the department was registering vehicles under

business names. This, in my view, is clearly wrong in law. That was my view when I was a magistrate and indeed incorrect under the law. It caused awful problems because the whole system of parking vehicle charges presupposes that you can identify who is the person who probably illegally parked or committed some other offence by virtue of the registered owner. If instead of a named person you have a business name this causes problems and it was quite a common feature in my time as magistrate that people were being summoned to the court under the business name and I would have to throw these charges out because the business name was not a legal person. If someone had presented I got them to say who they were and we then amended the charges. So I do, please, on behalf of the criminal justice system, beg the Minister for Transport and Technical Services to ensure that this practice has ceased. I did take it up with the department a year or so ago but I am not sure what the result of that was.

The Greffier of the States (in the Chair):

I do apologise, I forgot to turn to the Chairman of the Scrutiny Panel but I think I know from his speech this morning what the answer would have been if I had asked if he wished to scrutinise it.

Deputy J.H. Young (Chairman, Environment Scrutiny Panel):

Thank you. If we may be excused from that.

The Greffier of the States (in the Chair):

Thank you. Does any Member wish to speak on the Articles? If not I will call on the Minister to reply.

3.2.2 Deputy K.C. Lewis:

In answer to Senator Le Marquand, Senator Le Marquand has confirmed in the past that a corporation has to be incorporated, i.e. registered as a limited liability company. This will mean there is a chairman, chief executive, that can be summonsed should a company vehicle be involved in any breach of legislation. However, a number of companies are not incorporated and it will then be difficult to track down a person responsible for a vehicle registered to that company in any court case. There is no amendment to the legislation. However, it is now the practice at D.V.S. to check the J.F.S.C. website and if a company is not incorporated anyone registering or transferring a vehicle to that company is required to state the name of the responsible person on the registration document.

Senator B.I. Le Marquand:

At the risk of making a second speech, this is not to do with companies; this has got to do with business names, which is a different point to that of corporate bodies. I accept that corporate bodies can quite properly be registered under the law but not a business name as such. That was my point.

Deputy K.C. Lewis:

It is a trading entity.

The Greffier of the States (in the Chair):

Very well, the Articles are proposed. All Members in favour of adopting the Articles kindly show, and against. They are adopted. Do you propose these Articles in Third Reading, Minister?

3.3 Deputy K.C. Lewis:

Please.

The Greffier of the States (in the Chair):

Is that seconded? [**Seconded**] Does any Member wish to speak in Third Reading? All those in favour of...

3.3.1 The Connétable of St. John:

I was too late to speak after what I heard the Minister say about incorporated companies and businesses but surely it is not beyond the wit of man that when you register a business somebody has to register the business name and that person should be responsible on any form that is applying for a register and therefore I would have thought it was quite easy for his department to get that name off the register of businesses. Further than that that is all I have to say.

The Greffier of the States (in the Chair):

Does any Member wish to speak?

Deputy K.C. Lewis:

Yes, as stated, it would be chairman or chief executive.\

The Greffier of the States (in the Chair):

I need to call Deputy Young first, Minister.

3.3.2 Deputy J.H. Young:

Just to say on there we are ... hopefully you are on the Third Reading. As Chairman of the Scrutiny Panel, I and other Members of the panel have great concerns over this not really on the legality because frankly it is so obtuse that it is difficult to get one's head around it. It is the point of principle whether we need to do this at all because we have done it before and the fact that we are losing the benefits of being able to put money into charity for saving what is a relatively small sum of money and Members have raised issues that are not really clear, so on that I feel I am going to continue to cast my vote against this on the Third Reading.

3.3.3 Deputy M. Tadier:

In a similar vein, even though this has not been called in for scrutiny, perhaps for obvious reasons, because the Scrutiny Panel have better things to do with their time and where do you start with a proposition like this. Clearly it does not have the support of the relevant Scrutiny Panel. That is something we should all be very concerned about in the Assembly when the whole of the panel express various and not unserious reservations. I think the other point to make, which was alluded to perhaps, is that this ... I have already said that this is a dog's-dinner and it is one of the most bizarre projets that I have seen come to the Assembly.

[14:30]

It is a direct consequence of the fact that the Minister for Transport and Technical Services has been put in a very awkward position because all these Ministers have signed up *en bloc* to C.S.R. cuts across the board which are unilateral whether they can make them or not. I accept there has been some additional funding for the Health and Social Services Department and other projects which are deemed to be urgent. When you cannot find the C.S.R. cuts because your department is working very efficiently all ready, quite possibly, and could possibly do with more money, the Minister is put in a position where he has to contrive new stealth-taxes, user-pays taxes, which could be the thin edge of the wedge of course. We are charging at the moment for cherished number-plates, who is to define what they are, auctioning them off, bizarre state of play for Government to be doing that. How long before, potentially, we end up charging everybody an additional amount for any kind of number-plate. These are the concerns that I have but the Minister has signed up to those C.S.R.s and we do need Ministers, potentially, to be able to fight in their corner and say: "No, I cannot find the C.S.R. cuts. I am not going to make them and I am not going to introduce these

ridiculous stealth-taxes.” These are part of the contradictions of what has been signed up to so I cannot support this proposition. I would urge Members in the third reading to reconsider whether or not they can support that.

3.3.4 The Deputy of St. Martin:

I would just like to support the Chairman of the Environment Scrutiny Panel. We were concerned about this when it first came to us some months ago and we did point out to the Minister our concerns. It is quite obvious that the Transport and Technical Services Department are looking to increase their charges and the amount of money they take in. I would just say to the Minister again, it has already been suggested this morning that his department looks at dual registration. I not sure that when he addressed it, when he summed up, whether he understood exactly what dual registration means but a certain number of Jersey residents have paid a lot of money in the past for very old vehicles which are registered in the United Kingdom, which are on their original registration-plates and those cars may have had those plates on them for 70 or 80 years and they bring them to Jersey and they are obliged to put them on to Jersey registration-plates and a dual registration is one that allows the vehicle to hold 2 registrations. I am sure the owners of those vehicles would be only too pleased to contribute to the T.T.S. coffers for that so I would just ask the Minister to relook at that issue.

3.3.5 Deputy J.A.N. Le Fondré:

Just briefly. I think just to shed some light on this or reiterate a point I was trying to make earlier. What one is trying to do under this legislation is to dot some I's and cross some T's. In essence, in the past, although licence-plates and registration-plates were put up for auction there were some grey areas involved. To read from an email I received earlier today: “While auctions taking place in the past and the A.G. (Attorney General) of the time accepted it, the advice that was given was that it was better to cover it in legislation.” So I think it was a case that relevant parts of that legislation were silent and also within what is being done here part of that was to clarify that position to give it a sound basis going forward. So it is clarifying a grey area.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

3.3.6 Deputy K.C. Lewis:

With regard to dual plates, as long as you have a Jersey registration on your car and it is registered with the D.V.S. that is what is required. Whether you hold on to or retain, for argument's sake, a U.K. registration I think that would be more a matter for the U.K. authorities not for us.

Deputy G.C.L. Baudains:

May I seek clarification from the Minister on that last comment?

The Greffier of the States (in the Chair):

Deputy, you cannot because you did not speak in the Third Reading. We cannot have new Members jumping up at this stage I am afraid.

Deputy G.C.L. Baudains:

I wanted clarification from what the Minister has just said.

The Greffier of the States (in the Chair):

Well, the ruling of the Bailiff always applies; you can only seek clarification if you have spoken during the debate. The Bill is proposed in Third Reading.

Deputy R.C. Duhamel of St. Saviour:

Can we have the appel please?

The Greffier of the States (in the Chair):

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

POUR: 29		CONTRE: 8		ABSTAIN: 1
Senator S.C. Ferguson		Senator A. Breckon		Connétable of St. Peter
Senator A.J.H. Maclean		Connétable of St. John		
Senator B.I. Le Marquand		Deputy S. Pitman (H)		
Senator F.du H. Le Gresley		Deputy M. Tadier (B)		
Senator I.J. Gorst		Deputy G.C.L. Baudains (C)		
Senator L.J. Farnham		Deputy J.H. Young (B)		
Senator P.M. Bailhache		Deputy of St. Martin		
Connétable of St. Clement		Deputy R.G. Bryans (H)		
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

4. Draft Security Interests (Amendment of Law) (No. 2) (Jersey) Regulations 201-(P.96/2013)

The Greffier of the States (in the Chair):

We come now to the draft Security Interests (Amendment of Law) (No. 2) (Jersey) Regulations. I will ask the Greffier to read the citation.

The Assistant Greffier of the States:

Security Interests (Amendment of Law) (No. 2) (Jersey) Regulations 201-. The States, in pursuance of Articles 93 and 95 of the Security Interests (Jersey) Law 2012, have made the following Regulations.

4.1 Senator I.J. Gorst (The Chief Minister):

Members will be aware the Security Interests (Jersey) Law 2012 replaces the existing law governing security interests in intangible moveable property. The law, as amended, is due to come into force in 2 stages, firstly on 1st October of this year and then on 2nd January next year. The

law introduces a new regime in Jersey to govern borrowing and lending in intangible moveable property. This activity underpins much of the daily work of the financial services industry. The regulations before us today amend our transitional provisions and clauses in relation to how further advances will operate under the law. During preparation for the law coming into force issues were raised concerning the operation of the transitional provisions for existing security interests made under the old Securities Interests (Jersey) Law 1983 and particularly the applicability of those provisions to after acquired property under a security agreement. That is property acquired by a lender after a security agreement has been entered into. This proposition will rectify those issues before the law comes into force on 1st October. At the same time as these issues were identified a further provision was also identified for amendment which deals with further advances under the law. These provisions are commonly used in security agreements to allow for further lending to occur over the same security that was initially subject to the lending. An amendment was proposed to this Article that clarifies the provisions in relation to further advances and removes any inference that a security interest agreement must contain particulars of the further advances secured by it which, of course, would not be possible. This allows for advances that were not contemplated at the time of the initial advance to be included within the definition of further advance. Therefore, I propose the principles of the proposition.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles? All those in favour of adopting the principles kindly show, those against. The principles are adopted. Now, I understand in accordance with the agreements arranged with the Chairmen’s Committee that although this is lodged by the Chief Minister it would fall within the remit of the Economic Affairs Scrutiny Panel. Chairman, do you wish to... No scrutiny. How do you wish to proceed, Chief Minister? Do you wish to propose regulations 1 to 6 together?

4.2 Senator I.J. Gorst:

If I could. As I said in my opening comments it is straightforward. There is clarification of continuing security interest under Article 2 and Article 3 deals with further advances over the same asset as it were. So I propose them *en bloc*.

The Greffier of the States (in the Chair):

Regulations 1 to 6 are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak on any of the Regulations? Those in favour of adopting the Regulations kindly show and against. They are adopted and you proposed the Regulations in Third Reading, Minister?

Senator I.J. Gorst:

If I may.

The Greffier of the States (in the Chair):

Is that seconded? **[Seconded]** Does any Member wish to speak? All those in favour of adopting the regulation please ...

The Connétable of St. John:

Can we have the appel please, Sir.

The Greffier of the States (in the Chair):

Yes, the appel is called for in Third Reading. Members are in their designated seats. I will ask the Greffier to open the voting.

POUR: 37		CONTRE: 0		ABSTAIN: 0
Senator A. Breckon				

Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

5. Zero-hours Contracts: Regulation (P.100/2013)

The Greffier of the States (in the Chair):

We come now to the proposition of Deputy Southern, Zero-hours contracts regulation. I will ask the Greffier to read the proposition.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion to request the Chief Minister to work with the Minister for Social Security to, (a) investigate the extent to which zero-hours contracts are used across the various sectors of the economy, (b) examine the impact of these contracts on employers and employees, (c) work with the Jersey Advisory and Conciliation Service, J.A.C.S., to create a regulatory system to control this employment practice, and (d) prepare and lodge such draft legislation as is necessary to implement part (c) above for approval by the States.

5.1 Deputy G.P. Southern:

I thought we might never get to this today but nonetheless here we are. I do not suppose, as I suggested earlier, it should take us very long to deal with this matter. Before I start I have to say that I will, with pleasure, be accepting the amendment lodged by the Minister for Social Security. How refreshing it is [**Approbation**] to see a Minister prepared to amend something rather than oppose it so thereby giving it a way forward and at the same time tighten up and more sharply focus what I intended. It is an excellent improvement to my humble proposition. That felt strange. [**Laughter**] Before we go any further, no matter what my position on zero-hours contracts is, I do not think it is the time to debate the pros and cons of zero-hours contracts at this particular meeting; that will come later. The fact is this says investigate the extent and if necessary do something about regulating it. It is a “what if”, except to just illustrate one problem that exists with zero-hours contracts and it has come to me from a constituent who reports that his son-in-law was given a zero-hours contract and was working for some months under the following conditions. He describes this contract and this way of working as: “A disgusting arrangement”. He goes on: “He would turn up for work at 8.00 a.m., wait often for the boss to ring him at 8.30 a.m. or 9.00 a.m. only to be told that there was no work that day or sometimes that week.” He illustrates the problem with this very sharply: “The biggest problem was, or is, that you cannot go back into Social Security every Friday and receive benefit to cover basic living costs as you have signed up to this ridiculous and inhumane way of surviving.” That is strong words, nonetheless certainly something that I have come across. Just to illustrate, I shall read to Members from one such zero-hours contract and Members might make up their own minds about the worthiness of going ahead and investigating this area of the employment market. It says, among some other things, but just briefly: “You will be informed each week of what duties are scheduled. You will be paid only for the hours worked. [That is fair enough.] There may be times when no work is available to you. You agree by signing this agreement that the company has no duty to provide you with any work at such time. You will devote your whole time, attention and abilities to those duties allocated to you during those hours you are required to work for this company. You may be required to work extra time when considered necessary which you will be paid at your standard rate.” That is a first, no overtime rate. It then goes on: “There is no holiday-pay entitlement. This company does not provide sickness-payment.” Then finally: “There is no company pension scheme or redundancy payment.” Now, redundancy payments: if you work consistently for a company it is probably applicable nonetheless they are trying to get out of that. One can hear the tone of this as a contract. As a contract it is really not worth having. As a contract and working getting variable pay, week in and week out, matched with income support does not work very well. That is the case that I wish to be investigated and that is why I would like to do something about it. There is appropriate and entirely justified use of zero-hours contracts in many areas. There is also, I believe, and increasingly, abuse of zero-hours contracts and we need to know the extent of that abuse and we need to do something about it in those terms. So I maintain the proposition.

The Greffier of the States (in the Chair):

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

5.2 Zero-hours Contracts: Regulation (P.100/2013) - amendment (P.100/2013 Amd.)

The Greffier of the States (in the Chair):

Now, there is, as the Deputy has said, an amendment in the name of the Minister which I will ask the Greffier to read.

The Assistant Greffier of the States:

Page 2, after the words: “To request”, delete the words: “The Chief Minister to work with”. For paragraphs (c) and (d) substitute the following paragraph: “(c) subject to the findings and conclusions of the investigations conducted in accordance with paragraphs (a) and (b) and subject

to the outcome of consultation with stakeholders to bring forward for approval such draft legislation as is deemed necessary to restrict and improve the misuse of zero-hours contracts.”

[14:45]

The Greffier of the States (in the Chair):

Do you wish to formally propose the amendment, Minister? It has been accepted.

5.2.1 Senator F. du H. Le Gresley (The Minister for Social Security):

I cannot pass the opportunity by to thank Deputy Southern for his praise of the actions of myself. **[Laughter]** It is such a rare occasion that it cannot pass without some comment from me. That apart, and in all seriousness, this is a matter that has been of concern to me and others and quite rightly we need to do more work to find out the extent of the problem in Jersey. Just to reassure some Members that we are not standing still working with the Statistics Office, or Statistics Unit, we will be using, next year, the survey of financial institutions which is run twice a year where a specific question will be asked about the number of staff employed on zero-hour contracts. We will also be using the index of average earnings, which is an annual return, which comes out in June of each year and published in August and also the Annual Social Survey which is prepared, released and circulated to a group of Islanders, that will be including questions about zero-hour contracts so we get the perspective from both employer and employee. Insofar as the Population Office, over which I have no control, but the Manpower Survey will also be asking questions about zero-hour contracts in December. So we have not stood still but we will be working to get the research done. Research is very important before we move to any legislation changes. This is an area that falls under my responsibility, the employment law, and once we have all the information and we have consulted with the relevant bodies we will see what needs to be done and that is the purpose of my amendment.

The Greffier of the States (in the Chair):

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

The Greffier of the States (in the Chair):

Does any Member wish to speak on the amendment?

5.2.2 Deputy J.H. Young:

I rise briefly to speak in favour of a massive support of Deputy Southern and the Minister. I think it is excellent that we have got a consensus on the way forward and I take note of Deputy Southern's comment that it is not the time for a full debate on the pluses and minuses because there is undoubtedly circumstances, as he says, where zero-hours contracts are beneficial for both either employers or employees but there is equally quite a number of circumstances where the reverse is the case. The point I would like to focus on now, is the part (b) of the proposition that talks about the impact...

The Greffier of the States (in the Chair):

Well we are not there yet, Deputy. We are on the amendment at the moment. We will come back to proposition.

Deputy J.H. Young:

Sorry, I wanted to speak generally. I think I want to talk about the economic effects because I do think there is an issue as well and as well as the effects on individuals, the economic effects because I believe at the widespread increasingly use of zero-hours contracts which is reported in much of the media, in the public sector media in the U.K. and in private sector sources, indicates that it does suggest there is some link between loss of confidence that people cannot plan for

spending commitments. This uncertainty created of people not knowing where they are in terms of their earnings commitments creates lack of confidence and this as an economic inhibitor to long-term growth in the economy that we desperately need. I would hope very much that that would be included within the scope of the work we are proposing.

The Greffier of the States (in the Chair):

If I could just mention in the interests of good order, unless Members particularly want to speak on the amendment it may be beneficial to vote on the amendment and then we could have the debate on the proposition as amended. Are there any Members who specifically want to speak on the amendment? Deputy Tadier, you wish to speak on the amendment?

5.2.3 Deputy M. Tadier:

Indeed. Again I think it is important to flag this up. It may not be an issue but it is just to make sure that we are all singing off the same hymn sheet. With the wording “proven misuse of zero-hour contracts”, the issue that I can envisage depending on what the outcome is, is how is something proven to be misuse. In the example that Deputy Southern gave, which certainly concerns me from an employer’s point of view, that is not a misuse of a zero-hour contract. That is what zero-hour contracts are for. You employ somebody for zero-hours a week if there is no work to be done then there is no work that they can be given. The fact that that individual is on income support has a very damaging consequence both for the individual and also it is something that should concern us. If that individual is not on income support and does not need the money it has very different consequences. I would ask that when the Minister comes back after the review has taken place we do not simply look at the proven misuse, we also look at the unintended consequences that it has for zero-hour use of contracts. I would hope that any concerns that are flagged up during the review process and any regulation that is flagged up would be addressed irrespective of whether it meets that very narrow and if one is to interpret it legalistically of proven misuse criteria.

The Greffier of the States (in the Chair):

Does anyone wish to speak on the amendment? Do you wish to reply, Minister?

5.2.4 Senator F. Du H. Le Gresley:

I think I should respond to Deputy Tadier because he has made a very good point. We will look at everything in the round, which is I think what he is asking us to do. We will consult, as the amendment suggests, with relevant parties, including with our Employment Forum quite possibly who have experience of working with and receiving information from employee and employer groups. It would all be looked at in the round and we would not be so restrictive as the Deputy perhaps thinks we might be. With that I maintain the amendment and ask for the appel.

The Greffier of the States (in the Chair):

Yes, the appel is called for on the amendment of the Minister. Members are in their seats. I will ask the Greffier to open the voting.

POUR: 36		CONTRE: 0		ABSTAIN: 0
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				

Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

5.3 Zero-hours Contracts: Regulation (P.100/2013) - as amended

The Greffier of the States (in the Chair):

Does any Member wish to speak on the proposition as amended? The Constable of St. John.

5.3.1 The Connétable of St. John:

Just a short bit, I hope when we are looking through the zero-hour contracts that some of these short-term contracts are also looked into because I am aware historically the States of Jersey were a large employer of people on short-term contracts. They may have been changed now to zero-hour contracts but I sincerely hope it encompasses the whole Island, all the work-forces whether it is States of Jersey or private sector.

5.3.2 Deputy G.C.L. Baudains:

I noticed when Deputy Southern first started out he was grateful to the Minister for Social Security for bringing the amendment. Of course that does not mean that the Minister for Social Security will vote with the principle, he probably will, but I would be interested to know if Deputy Southern overlooked that. He did use the word “disgusting” if I recall correctly or referred to the word “disgusting” and I am inclined to agree with that because again he did suggest that we do not go into the absolute details of zero-hour contracts. I am not going to do that, but I have noticed they have been substantially abused. Of course there are occasions when a zero-hour contract is appropriate. If I needed my drains cleared whenever there is a torrential downpour then obviously it would only be when that occasion occurs but we are seeing increasingly people working 8.00

a.m. to 5.00 p.m. on a weekly-basis, week after week, but they are on zero-hour contracts. What I do not like about them is it really takes us back to days of casual labour decades ago and that is outrageous. Apart from all the other disadvantages, I do not think a lot of people realise when there is no work it does not mean to say you can go fishing or go on holiday even if you could afford to because that would be in breach of contract because you are not available to work. There are serious problems here. I will be supporting the proposition.

5.3.3 Deputy J.M. Maçon:

Very briefly I just want to flag this. I have been following this debate on the U.K. news and one issue that does crop up is the issue of exclusivity which are applied to some of these contracts. The problem being if you are on a zero-hour contract you are struggling to get practically almost any work that you can, sometimes people may have multiple zero-hour contracts in order just to make ends meet. I think when the Social Security Department is looking at this they need to carefully evaluate the exclusivity-clauses in these contracts whether that is deemed to be an abuse of this process or not. I am happy to support this but I just felt it was right to raise that particular issue now.

5.3.4 Senator L.J. Farnham:

I am also pleased to support Deputy Southern in this but a thought has just struck me and it appears we may have inadvertently found a solution to States Members' remuneration by issuing us all with a zero-hours contract after the next election.

5.3.5 Senator S.C. Ferguson:

There is just one point, why do we suddenly have a lot of zero-hours contracts cropping up? As I trundle round I am getting the feeling that perhaps our employment law is getting so complicated and so full of red tape that it is one of the reasons because it is making it too expensive for people to employ people. I am all in favour of supporting employees but we have to have a balance and I am not sure that the balance is in the right place. If you look at the Jersey Employment Tribunal's site you will see the summary of completed cases this year. There are 10 cases on the website and the findings have been 9 for the employees and one for the employer. I cannot think that statistically this is valid. Something needs to be looked at here. The procedures seem to be biased towards the employee. That is fine, but at the same time the whole process has been made extremely expensive for the employer which might account for not more employer cases. Zero-hour contracts have extremely valid uses where you need flexibility or temporary employment at short notice and I am against the abuse of the system but I think we have probably legislated so much red-tape into existence that we have driven employers to use these. I would suggest that we need to review our employment law in total rather than deal with this one small part of it. I would only comment that there are very few zero-hour contracts in Guernsey. I think we should ask why and we also need to ask Jersey employers why they use so many of these contracts. I think yes, have an investigation into these contracts but let us look at it in the whole concept of perhaps reviewing our employment law.

5.3.6 Deputy M. Tadier:

I was not intending to speak but following on from Senator Ferguson, those immortal words: "How long do we have?" but surely that will all come out in the wash. That would be my response to Senator Ferguson because as we have seen under (b) this will give an opportunity for employers and employees to contribute on the issue of zero-hour contracts. If there has been a mushrooming in recent years of zero-hour contracts, as we believe there has with all the unintended consequences or maybe even intended consequences that come with it, the employers are not going to be shy to tell us exactly why they are starting to use zero-hour contracts. Far from that being a reason to vote against this, I think it should pull us in the same direction to looking at these things in the round. I

am very happy to give this support. I may as well add, while I am on my feet, I have also had similar experiences at the time when we had the fulfilment industry at its full strength and of course most Members praise the fulfilment industry, do they not, saying what a great industry it was forgetting that it exploited many local workers. I knew people who worked down at the Rue des Pres trading estate who would get the bus in from St. Brelade because they did not have a driving licence. Sometimes they would get a lift in from their parents only to be told that there was not any work or after 2 hours of work to be sent home because there were too many of them and it barely covered the bus fare and their lunch frankly. This is certainly something that needs to be looked into and something that I am happy to support.

5.3.7 Senator A.J.H. Maclean:

I will be very brief. I just wanted to congratulate Deputy Southern for the balanced way in which he introduced this proposition. I think it was important to make the point that there are valid uses for zero-hour contracts and he did make that point to be fair.

[15:00]

There is potential misuse and I think to understand the extent of that is important. Clearly from an economic point of view there are very valid reasons why zero-hour contracts are used. If nothing else in a difficult economic climate it is keeping the operating costs of a business down to assure that the alignment of employment and work meets that of the contracts that are needing to be fulfilled. All I would say, and I just wanted to emphasise the point, that when the Chief Minister is working with the Minister for Social Security that the work that is undertaken to review this includes wide consultation and ensures that all the business groups are necessarily properly consulted with so that a full and proper understanding of the genuine requirements of these contracts is understood and the likely impact on the economy of any changes that might necessarily be proposed.

The Greffier of the States (in the Chair):

If no other Member wishes to speak I will call on Deputy Southern to reply.

5.3.8 Deputy G.P. Southern:

I shall try and be brief and thank most of the contributors for their support for this investigation. To the Constable of St. John, he wanted us to include short-term contracts and had some concerns about those. A short-term contract is far better than a zero-hours contract in terms of making ends meet and being able to do any number of things like, for example, to borrow money. Deputy Baudains complained that this was about the casualisation of labour and we certainly do not want to go back to the times when people used to be ticks out of a line. Deputy Maçon talked about exclusivity which is one of the issues. Senator Farnham suggested that we go on zero-hours contracts ourselves and I look forward to earning 50 per cent more than he does. **[Laughter]** Senator Ferguson unsurprisingly pointed to the ratio of judgments in the Jersey Employment Tribunal and I would suggest that that 9:1 ratio was something to do with the fact that they are increasingly trying to train employers up as to what they have to do to follow the employment law. They have an outreach system now so they will come into your company and tell you what is what and what you need to do. I point out that we have probably one of the least complex and least protective employment laws in the Western world in Jersey. It is not an overburden even though obviously employers tend to complain about it. Deputy Tadier made mention of the fulfilment industry being one of those that uses zero-hours contracts extensively. Senator Maclean talked about wide consultation. One point I must make, and I hope I do not have to return to this subject ever again, is that I thank the Minister for Social Security in particular for refocusing on the financials and manpower implications. There is, despite my statement that there might not be, a financial implication and I do not want to be returning to this in 6 months' time and being told that

the money was not found and that the survey has not been done and the regulations have not been done. It happens that I thought I had won the Hoppa bus 9 months or so ago, 10 months ago, and it turned out the financials were not there for that at the time when push came to shove. Let us not have the financials pulled on this because somebody in the budget says we cannot afford to do it. I think we have fairly unanimous, with one exception I think, support for this investigation. Let us get on and do it and make sure that it is done and we know what we are talking about and we can protect the worst form of abuses in this particular area of employment. I thank Members and I call for the appel.

The Greffier of the States (in the Chair):

The appel is called for on the proposition as amended by the Minister for Social Security. Members are in their seats. I will ask the Greffier to open the voting.

POUR: 39		CONTRE: 0		ABSTAIN: 0
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Greffier of the States (in the Chair):

We come finally to the arrangement of future business for future meetings. Can I call on the Chairman of P.P.C.?

6. Deputy J.M. Maçon (Chairman, Privileges and Procedures Committee):

I can advise Members that P.51/2013 Chief Minister and the Chairman of Comité des Connétables: monthly meetings is to be withdrawn. P.115 Cold Weather Bonus: variation of conditions lodged by Deputy Southern is down for debate on 22nd October. P.82 Committee of Inquiry into the costs for local business by Senator Breckon which is down for debate on 22nd October is now to be moved to 5th November, Bonfire Night. Again to advise the Assembly that P.P.C.'s proposition P.116 Composition of the States Assembly will also be down for 5th November. I have not been notified of any other changes to the Order Paper.

6.1 Deputy R.C. Duhamel:

Sir, could I raise an issue? As mentioned in an earlier debate this week there is a court case with the Channel Islands Co-Operative Society Limited (Co-op) so that matter is *sub judice* and I had thought that Deputy Le Hérissier would have made the House aware of that and asked for his application to be debated on a different date.

The Greffier of the States (in the Chair):

Let us ask initially if the Deputy is willing to defer it. We may need to propose that deferral.

Deputy R.G. Le Hérissier:

Yes, I am willing.

The Greffier of the States (in the Chair):

You are happy to defer for a month or so.

6.2 Senator L.J. Farnham:

Just with reference to the proposition P.116 lodged today, there are 3 reform propositions with amendments due for debate on 22nd October and I am wondering if we should now give consideration to that because perhaps it would be sensible to address all of the reform proposals on one day.

The Greffier of the States (in the Chair):

Are you formally proposing that, Senator, P.93, P.94 and P.98 be deferred until 5th November?

Senator L.J. Farnham:

I was just getting to that. Yes please, I would like to propose that.

The Greffier of the States (in the Chair):

One of the proposers is absent today. Deputy Southern, you are one of the proposers.

6.2.1 Deputy G.P. Southern:

Yes, and I object to any deferment of that proposal. We were given assurance by the first people who proposed the first deferral that there would not be further deferral and I think we can safely debate those 4 propositions with the P.116 as backup to debate a fortnight later. I do not see any problem with doing that.

The Greffier of the States (in the Chair):

Deputy Trevor Pitman, do you have any views? One of them is your proposition.

6.2.2 Deputy T.M. Pitman:

I have deferred once. I think I will be like Deputy Southern and say it should go ahead.

The Greffier of the States (in the Chair):

Senator Farnham has formally proposed that these propositions be deferred from 22nd October to 5th November. All those in favour of that proposition? The appel is called for so if you wish to defer you vote pour. If you do not wish to defer you vote contre. This covers P.93, P.94 and P.98 currently listed for 22nd October. I will ask the proposers if they should be deferred. I will ask the Greffier to open the voting.

POUR: 27		CONTRE: 12		ABSTAIN: 0
Senator A. Breckon		Deputy R.C. Duhamel (S)		
Senator S.C. Ferguson		Deputy G.P. Southern (H)		
Senator A.J.H. Maclean		Deputy J.A. Hilton (H)		
Senator B.I. Le Marquand		Deputy S. Pitman (H)		
Senator F.du H. Le Gresley		Deputy K.C. Lewis (S)		
Senator I.J. Gorst		Deputy M. Tadier (B)		
Senator L.J. Farnham		Deputy T.M. Pitman (H)		
Senator P.M. Bailhache		Deputy T.A. Vallois (S)		
Connétable of St. Helier		Deputy A.K.F. Green (H)		
Connétable of St. Peter		Deputy J.M. Maçon (S)		
Connétable of St. Lawrence		Deputy J.H. Young (B)		
Connétable of St. Mary		Deputy of St. Peter		
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy of Grouville				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy E.J. Noel (L)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

6.3 Senator A. Breckon:

Can I ask that P.90/2013 Sunstone Holdings Limited and De Lec Limited is put on the agenda for 8th October, just 2 weeks yesterday.

The Greffier of the States (in the Chair):

Do you wish to relist your proposition concerning Sunstone Holdings Limited?

Senator A. Breckon:

Yes.

The Greffier of the States (in the Chair):

Is there time for the necessary review to be undertaken?

Senator A. Breckon:

As far as I am concerned, yes. I have some information which I can share with Members in the next couple of days.

The Greffier of the States (in the Chair):

Do you wish to make any comment, Chief Minister?

6.3.1 Senator I.J. Gorst:

It is difficult for me to say that that will be sufficient time. I received the impression that Members wanted an independent type approach to doing the review and understanding the timescale of the J.F.S.C. (Jersey Financial Services Commission). **[Approbation]** I cannot see that such an approach could be completed within a fortnight.

The Greffier of the States (in the Chair):

Do you wish to maintain your request, Senator? You can put it to the vote if you wish.

6.3.2 Senator A. Breckon:

The Jersey Financial Services Commission have their own staff and I do not know what the Chief Minister means by independent. If we have to start searching around for somebody then I do not think it is fair for the people involved whatever the result is to delay that unnecessarily. I would not be prepared to go too far but I would ask that it is listed for the 22nd because without a date it can just wander around for ever.

The Greffier of the States (in the Chair):

Are Members content at this stage to relist the proposition of Senator Breckon to 22nd October? There appears to be general consensus. Did you wish, Chairman of P.P.C., just to mention that your request which I think Members are effectively agreeing to that you wish to have an in-committee discussion at the next meeting on the Machinery of Government review?

6.4 Deputy J.M. Maçon:

Yes, P.P.C. will of course be advising Members about how we wish to proceed with that debate. The thinking at the moment is that perhaps it should be better structured to do with the various sections of the report to allow Members to discuss the various elements within that which we will advise Members in time. Do I need to formally ask Members to accept to hold the in-committee debate?

The Greffier of the States (in the Chair):

If Members are agreeing the future business they will be agreeing it as a part of that. Are there any other comments on the future business? Are Members happy to agree the business as listed?

Deputy R.G. Le Hérissier:

Will the in-House meeting be time limited on the Machinery of Government?

Deputy J.M. Maçon:

Yes, although we have not ironed out exactly what the time allocations will be.

The Greffier of the States (in the Chair):

Very well, if there are no further matters on the arrangement of future business the meeting is closed. The Assembly will reconvene on 8th October.

ADJOURNMENT

[15:11]