

# STATES OF JERSEY

## OFFICIAL REPORT

**MONDAY, 8th SEPTEMBER 2008**

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

## **QUESTIONS**

### **1. Written Questions**

#### **1.1. SENATOR B.E. SHENTON OF THE CHAIRMAN OF COMITE DES CONNÉTABLES REGARDING ALTERNATIVE COMPOSTING SITES.**

##### **Question**

With the possibility of the green waste facility at La Collette being closed (P.133/2008 - Composting site, La Collette, St. Helier - cessation of operation) will the Chairman outline the arrangements, if any, that have been, or will be, put in place by the 12 Parishes to cope with the disposal of green waste should the La Collette facility be closed with no alternative facility provided by the Transport and Technical Services Department?

##### **Answer**

Responsibility for the disposal of green waste rests with the Transport and Technical Services department and the parishes have no plans to deal with green waste should the La Collette facility be closed. It has never been the responsibility of the parishes to collect or to dispose of green waste. No alternative sites have been identified and the parishes generally have no facilities or resources available.

The Connétables have discussed with the Minister for Transport and Technical Services the possible need for an alternative site, or sites, to La Collette and will continue to assist in considering the suitability of sites within their parishes identified by the Minister so that the department may be able to provide an alternative facility.

#### **1.2 DEPUTY S.S.P.A. POWER OF ST. BRELADE TO THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING THE AMPHIBIOUS VEHICLES TO ELIZABETH CASTLE**

##### **Question**

- 1) Would the Minister provide the detailed accumulated costs incurred to date, including parts, labour, invoiced bills and any other costs to do with ongoing repairs and maintenance of the Charming Betty and Charming Nancy to the end of July 2008?
- 2) Would the Minister provide a list of the days in 2008 that one or other of the two amphibious vehicles was absent from the West-Park to Elizabeth Castle service and will he inform members whether the Harbour Office or the Marine Coastguard Agency Jersey were notified of the absence of one or other machine?
- 3) Can the Minister give details of the incident that occurred on the afternoon of 11th August 2008 involving the Charming Betty, while afloat and in transit between West Park and Elizabeth Castle, and would he state whether it was the experience of a former driver from the previous operator of the service who went to the assistance of the above machine that averted a potential major incident?

##### **Answer**

As advised in a reply to a similar question on 15 July, my Department is not responsible for operational matters within the Jersey Heritage Trust (JHT). Education, Sport and Culture has responsibility for funding the JHT and for maintaining proper governance arrangements but the Trust is an independent body. These questions, which relate to operational matters, should properly be put to the JHT which has undertaken that full accounts of the operation will be made available following the conclusion of the season. In respect of the other issues raised the relevant authority is Jersey Harbours. Jersey Harbours has confirmed that the JHT are operating in accordance with their safety management system. JHT has confirmed that all incident reports are lodged with Jersey Harbours.

### **1.3 DEPUTY S.S.P.A. POWER OF ST. BRELADE TO THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE AMPHIBIOUS VEHICLES TO ELIZABETH CASTLE**

#### **Question**

Would the Minister confirm whether his Department has been notified at all times by the Jersey Heritage Trust on the occasions when either the Charming Betty or Charming Nancy has been absent for repairs from West-Park and can he inform members whether the safety regulations allow the service to operate afloat when only one of the 2 amphibious craft is available and, if so, whether this was permitted for the previous operator of the amphibious service?

#### **Answer**

I can confirm that Jersey Coastguard is advised of the daily commencement and completion of services by the Castle Ferries. The department would only be advised of any breakdown or other withdrawal of service in the event of a 'reportable' incident as defined in the Shipping (Jersey) Law 2002. This is standard procedure for all passenger ferry services.

There is nothing in the safety regulations to prohibit single vessel operations provided contingency plans are in place for breakdowns or emergency incidents as part of the vessel's Safety Management System.

Both Jersey Harbours and the UK Maritime and Coastguard Agency (MCA) are fully satisfied with the Safety Management System in place for both the previous and the current operator.

### **1.4 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING ROAD RESURFACING AND THE PROVISION OF PAVEMENTS**

#### **Question**

Would the Minister undertake to establish a higher specification regarding main road resurfacing in order to prevent the ripple effect found at recent resurfacings in St Clement and Victoria Avenue, and would he explain why this new condition occurs when it was not present with previous road resurfacings?

#### **Answer**

The "ripple effect" that the Deputy describes was first highlighted at La Route de la Haule and again at La Route de la Cote in St Clement. La Route de la Haule was due to the specified method



of laying the asphalt material and La Route de la Cote was due to poor workmanship by the contractor. La Route de La Cote has now been rectified at the contractor's expense.

With regard to Victoria Avenue, TTS has received no reports of a ripple effect and consider the ride quality to be of a high standard in the recently resurfaced section.

The Department has however investigated the ripple effect observed along La Route de la Haule and the cause has been established. TTS has now introduced a revised specification on all future resurfacing projects.

The traditional resurfacing specification for States of Jersey main roads consisted of a 25mm deep surface course and 15mm deep regulating course. In 2006 this specification was reviewed in order to provide a safe and durable surface in accordance with UK standards. This consisted of 40mm deep single layer surface course specification and was successfully laid in several main road locations. However, a reduction in ride quality was evident in isolated areas due to the absence of a regulating layer.

TTS has now further improved the specification by the introduction of a regulating layer in isolated areas where the planed surface is irregular to the degree that its shape would be reflected on the finished surface. This improved specification has produced a safe and durable surface with a high level of ride quality on Victoria Avenue, and remains the most cost effective way to resurface or main roads.

### **Question**

Would the Minister advise whether he maintains a list of main roads that would benefit from pavement provision (as previously maintained by the former Public Services Department) and, if so, whether it is referred to when the Department comments on planning applications?

Would the Minister further advise whether he will be producing plans to alleviate the danger caused by insufficient pavement opposite St. Clement's Parish Church for consideration by the parish authorities and, if not, why not?

### **Answer**

Transport and Technical Services does maintain a list of main roads where, if a planning application is submitted, the department will request the Planning and Environment Department to require the developer to provide a roadside pavement if none currently exists. TTS also maintains information on areas where further road improvements are desirable, not necessarily just the provision of pavements, and the Island Plan incorporates road improvement lines for consideration should a planning application be made.

TTS has undertaken investigation into the pedestrian facilities close to St Clement's Church and much has been done recently to improve facilities in Jambart Lane. The specific area opposite St Clement's Church has no easy solution given that it is bordered by the church wall on one side and an old property on the other. The only feasible solution would be to reduce the road to a single carriageway but this would require signalisation, given the lack of visibility due to the bend of the road, and is not considered appropriate at this location. Should any property in that vicinity request planning permission for works, TTS will take the opportunity to request improved pavement facilities.

## **1.5 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING FUEL USED IN THE ENERGY FROM WASTE PLANTS**

### **Question**

Would the Minister advise whether -

- a) the present Bellozanne incinerator requires the use of supplementary fuel (such as gas or oil) and, if so, would he specify the type and quantity of fuel used annually;
- b) the proposed new La Collette incinerator will require supplementary fuel and, if so, the type and quantity estimated to be needed.

### **Answer**

- a) The present Bellozanne Energy from Waste plant does not use supplementary fuel. The incinerator is an old design, it does not conform to the WID (Waste Incineration Directive) and does not have the facility to warm up on gas or oil.
- b) The proposed new Energy from Waste plant will be WID compliant and will have to maintain a minimum furnace temperature at all times when waste is present. For the vast majority of the time this temperature is sustained by the inherent energy content of the waste being processed. It is only when the plant is starting from cold, shutting down or when an extraordinarily low calorific value waste enters the furnace that additional fuel in the form of gas oil will be required. The amount of auxiliary fuel will be dependent on the operational regime of the boilers thus it is not possible to give a definite quantity of fuel that will be consumed. Approximations have been made based on similar plants and for design purposes a maximum fuel consumption of 370 tonnes per year has been estimated to be required when the plant is operating at full design capacity of 105,000 tonnes of municipal waste.

### **Question**

Would the Minister advise members of the estimated completion date for the proposed in-vessel composting facility and explain why it has taken so long to achieve?

### **Answer**

The Solid Waste Strategy (P72/2005) committed the Department to developing an enclosed composting facility with the preferred site being La Collette. An investigation into the future of composting was undertaken by Deputy Le Claire and the Environment Scrutiny Panel. As a result of his report being issued, a comprehensive site evaluation process, considering over 30 private and public sites all over the Island, was carried out which subsequently re-confirmed that La Collette was the preferred location for the composting operation. This was approved by Ministerial Decision in December 2007 (MD-T-2007-0113).

On 28th February 2008 the Department for Health and Social Services agreed to put in abeyance the odour abatement notice issued to the Minister for Transport and Technical Services as no useful purpose could be achieved through the Department demonstrating in Court what the Department for

Health and Social Services had already acknowledged, that is the site is operated in accordance with good practice.

The Department understands that the Minister for Health and Social Services plans to bring to the States a report and proposition to amend the law on Statutory Nuisance in the autumn session to overcome this discrepancy. This together with confirmation from the Public Health Department that Waste Management Licensing will be the primary means of regulating odour, dust, noise and other environmental impacts now allows the Department to progress consideration of an appropriate enclosed composting facility at the La Collette site.

Once the most appropriate solution is defined, full environmental and health impact assessments will be conducted to ensure that the current odour problem, together with many other improvements in management are achieved.

It is proposed that a planning application be submitted at the earliest possible opportunity with construction commencing in 2009 and an improved facility operational during 2010.

## **1.6 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT TO THE CHIEF MINISTER REGARDING THE DEVELOPMENT OF THE ESPLANADE QUARTER**

### **Question**

1. With regard to the preferred developer for the Esplanade Quarter, and specifically the undertaking given by the Chief Minister on 17th June 2008 that *“there will also be a full review made of the legal cases both in Dublin and Nevada by an independent lawyer also made available to States Members and the public”*, would the Chief Minister advise members –
  - a) whether the reviews have been completed and, if so, whether they were indeed a ‘full review’; and
  - b) when they will be made publicly available.

### **Answer**

I am able to inform Members that the Waterfront Enterprise Board Limited (WEB) has commissioned a review of the cases against Harcourt. A draft report was prepared for WEB by Carey Olsen in July 2008 and WEB has been kept updated of any changes since the date of the report. Carey Olsen has been asked to produce an interim report which will be disclosed to me as Chief Minister. I will ensure that it is made available to States Members once I have received it.

I am sure that most States members will be aware that the Court in Nevada has ordered that five of the seven causes of action of the Plaintiffs' against Harcourt be dismissed. The two remaining causes of action relate to an amount of approximately \$2.1 million.

### **Question**

2. With regard to the undertaking made by the Chief Minister in a written answer on 17th June 2008 that *“I will ensure that States members will be kept informed of the results of the due diligence”* will the Chief Minister advise members when the results of the due diligence will be circulated?

## **Answer**

WEB has commissioned PwC to undertake an updated review on the financial capacity of Harcourt Developments Limited in terms of the Company's financial ability to undertake the Esplanade Quarter development. This review is underway at the moment with a draft report due to be presented to WEB during the week commencing 8th September 2008.

This report will contain commercially sensitive and confidential information on Harcourt and WEB has had to sign a non-disclosure/confidentiality agreement. PwC has been asked by WEB to prepare a summary report with a view to this document being made available to States Members.

## **Question**

3. On 10th June 2008 the Deputy Chief Minister undertook to provide a report on the financial standing and the nature and security of the independent financial guarantees to all States members before any legally binding agreement in respect of the development of the Esplanade Quarter was signed. Will the Chief Minister indicate when that report will be circulated and, should the Chief Minister consider it favourable, how long a period will elapse between its publication and signature?

## **Answer**

The Minister for Treasury and Resources' review is expected to be completed in September 2008. The findings will be published immediately after completion of the report and prior to the Minister for Treasury and Resources approving the proposed deal between WEB and the preferred developer. The precise timing of the publication of the report and the date of the Minister's approval of the deal are not fixed at this time. Members are assured they will be given time to review the findings prior to the final deal being approved by the Minister.

## **1.7 DEPUTY S. PITMAN OF ST. HELIER TO THE MINISTER FOR TREASURY AND RESOURCES REGARDING TAX PAID BY 1(1)(k) RESIDENTS**

### **Question**

How many 1(1)(k) residents are currently living and liable for income tax in the Island; what is the declared income of each of these residents and how much income tax do they pay individually and collectively?

### **Answer**

- The number of 1(1)(k) residents who were liable to Jersey income tax for the year of assessment 2006, which is the most up to date information available as the 2007 tax assessments have not yet been finalised, is 135.
- The amount of Jersey income tax payable for the year of assessment 2006, both personally and through any companies, trusts or settlements in which they have a connection, is approximately £8 million
- The Royal Court oath of office taken by the Comptroller of Income Tax prevents him from providing specific details, such as income and the tax liability, of an individuals income tax affairs. That oath applies to 1(1)k's in the same manner as to any other taxpayer.

## **2. Oral Questions**

## **2.1 Deputy K.C. Lewis of St. Saviour of the Minister for Home Affairs regarding the delay in implementing the Jersey Sex Offenders register:**

Can the Minister inform Members why there is a delay in implementing the Jersey Sex Offenders' Register?

### **Senator W. Kinnard (The Minister for Home Affairs):**

The Deputy's question crossed with an email message I sent to all States Members on 2nd September in which I explained the reasons for a delay in lodging the draft law. To repeat the advice I gave in that message; I had intended to lodge the Draft Sex Offenders' Law in time to enable a debate on 21st October. However, the Minister for Health and Social Services requested a month's delay to ensure a thorough response from his department. There are also some further human rights compliance issues upon which I am awaiting further advice. I make no apology for trying to achieve the original timetable. This is an important piece of new legislation which should be brought forward for debate at the earliest opportunity. Equally, it is important that Members of this House and other key stakeholders should have their views taken fully into account. Therefore, Sir, whereas I am still aiming to lodge the draft legislation during this session, the net effect will be that it will fall to the new States to debate it in the early part of next year.

### **2.1.1 Deputy D.W. Mezbourian of St. Lawrence:**

Will the Minister advise the House the timetable for her to bring forward the proposed Vetting and Barring Legislation which I believe will be working in conjunction with the Sexual Offenders Law?

### **Senator W. Kinnard:**

In fact the Vetting and Barring provisions are not going to be brought into force until, I think, 2010, but what I will be bringing to the House at the very earliest opportunity is a report that I had promised in the last session to bring forward in this session on the issue with rehabilitation of offenders, which will take into account some of those matters. So that will be before the House in very early course.

## **2.2 Deputy G.P. Southern of St. Helier of the Minister for Social Security regarding the effectiveness of Income Support in lifting couples with children out of relative poverty:**

Will the Minister state how effective income support has been in lifting couples with children out of relative poverty and will he illustrate his answer by giving comparisons between the amounts received by families with one, 2 and 3 children (in £5,000 annual income bands from zero to £25,000) under the former family allowance system, and those receiving child components under I.S. (Income Support)?

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

This question refers to relative poverty and I am pleased to take this opportunity to announce that the Statistics Unit has agreed to undertake an income distribution survey in 2009. This survey will provide valuable information on income and relative poverty levels in Jersey and it is hoped that it will be repeated on a regular basis. Until we have a new income distribution survey it will not be possible to calculate relative poverty levels in Jersey. However, a detailed report analysing the impact of income support was circulated to Members on 4th June this year. This report includes a section on couples with children on pages 12 and 13. The question requests a comparison between family allowance and income support. It probably should be said that this is not a useful comparison as income support provides assistance not just with the cost of bringing up children but also with living costs for adults, with housing costs and medical costs. It is also unusual to request this level of numeric information in an oral question. My department officers and I have been working over the weekend to provide some figures but as there are 45 different numbers required to answer this question I would suggest that the Deputy submits a written question.

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

I thank the Minister for his wholehearted co-operation in answering my question and suggest that surely it must be possible to set a relative poverty level, all we have to do is update the figures from the last income distribution survey, and is he prepared to do that?

**Senator P.F. Routier:**

The information we have been given is that updating the old income distribution survey is not appropriate because people's buying patterns and their styles of living has changed since the last one. It is appropriate, I believe, to wait for the Statistics Unit to give a very valid and full new income distribution survey which we can work on with certainty.

**2.2.2 Deputy G.P. Southern:**

Is it not the case that the report of the Scrutiny Panel into income support suggested there would be no or very little impact upon families, couples with children?

**Senator P.F. Routier:**

I honestly cannot recall what was in the report, Sir.

**2.3 Deputy F.J. Hill of St. Martin of the Minister for Treasury and Resources regarding the future plans for Haut de la Garenne:**

Will the Minister inform Members the future plans for Haut de la Garenne?

**Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

Could I ask the Assistant Minister with the responsibility for property to deal with that question?

**Deputy J.A.N. Le Fondré of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur)**

I will just give a quick update as to where we are with Haut de la Garenne. It was given back to Property Holdings in July and since then we have had to do quite a lot of urgent health and safety works which have been undertaken to ensure the building is not hazardous now, for both visitors and those who are still working on the site. Also there are obviously additional security measures that are in place to deter access to those who want to get in but should not be going in. In terms of the future, at the moment ... well, the present situation is that the Council of Ministers, and myself and a few other individuals, met with the Haut de la Garenne trustees and the chief executive of the Youth Hostel Association last Thursday, hopefully, which was 4th September, to consider how to move everything forward. The conclusion that was arrived at, at that meeting, is that in view of the extreme sensitivity of the subject and the continuing uncertainty regarding legal proceedings, the Council of Ministers considers it is not appropriate for any decision to be taken at this stage. The Council of Ministers has directed that an officer working group is set up to consider the various options and to advise on cost benefits and any other implications that might arise. But at the moment it is a wait and see approach.

**2.3.1 The Deputy of St. Martin:**

I know what the Assistant Minister is saying, but could we have some form of timetable? I do understand it is very sensitive, and certainly that goes without question, but I think one is concerned about the nature of the property itself, it is quite possible that there will be vandalism, while I know a security company is there, but I think people in the area, and certain people in the Island, would like to know what the future is and at least are you working with the Minister, working to some timetable so the public can be fully informed?

**Deputy J.A.N. Le Fondré:**

It is very difficult to put a timetable on it at the moment, Sir. Certainly, speaking personally, I agree entirely with the Deputy in terms of dealing with the fabric of the building. But obviously there are wider issues associated with it. Just to clarify, there is somebody on site, the building is

not empty. Obviously, as you say, there is a security company as well. The idea effectively is one does have to make judgments according to how circumstances change or become clear, and I think in the meantime we do need to let the officer group as well get together and report back. The intention I think would be for them to report back to the Council of Ministers relatively swiftly.

### **2.3.2 Senator S. Syvret:**

Could the Assistant Minister explain exactly what he means by a cost benefit analysis in this particular context? It does not seem to me to be at all an appropriate methodology for deciding the future of this site. Will he give the Assembly an undertaking that the primary consideration will be the views of the survivors?

### **Deputy J.A.N. Le Fondré:**

I think we are veering into the grounds of legal matters, and I am not going to even go there, Sir. In terms of the remit of the working officer group, they have to start somewhere and one has to have a look at the costs of repairing the building, the potential benefit in light of the circumstances, but I think one would have to be naïve to assume that that would be the only circumstances that would be taken into account by the working group, Sir.

### **2.4 Deputy P.V.F. Le Claire of St. Helier of the Minister for Transport and Technical Services regarding the progress made in preparing legislation introducing rear seat belt laws for passengers and children:**

What progress, if any, has been made in preparing legislation introducing rear seat belt laws for passengers and children please?

### **Deputy G.W.J. de Faye of St. Helier (The Minister for Transport and Technical Services):**

Instructions for drafting the necessary amendments to the relevant orders have been forwarded to the law draftsman who is in the process of preparing the amendments for my approval. Subject to ensuring the draft orders meet the requirements of the States, that all persons travelling in cars and other relevant vehicles wear appropriate restraints, I would hope to make these orders in the next month or 2. I would expect the wearing of seatbelts in the rear of vehicles to become compulsory within a couple of weeks of the relevant orders being made. However, there is one element of delay, and that is I have asked that there is a period of grace included in the relevant draft order before it becomes compulsory for children between 3 and 12 to use a correct restraint for their age and weight. This is so that parents and suppliers have sufficient opportunity to confirm that either the current restraint system used by their children complies with modern standards or they are able to obtain a correct restraint system.

### **Deputy P.V.F. Le Claire:**

I thank the Minister for his response.

### **2.5 Deputy J.A. Martin of St. Helier of the Minister for Social Security regarding payments within the Income Support system for dental treatment:**

Given that the Minister recently advised in a response to a written question that special payments were available within the income support system for dental treatment to relieve pain or to deal with essential remedial work, will the Minister ensure that pensioners and families with children on income support are encouraged and the monies made available for all to attend 6 month check-ups as recommended to keep teeth in good condition?

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

Existing schemes already provide support for regular dental costs for pensioners and children. The over-65 health scheme covers the majority of the cost of the annual dental check-ups for pensioners together with the costs of further treatment. This scheme is available to households that do not pay income tax, so that would be people with income support and with savings below £20,000 for a

single person and £30,000 for a couple. Pensioners applying for income support are strongly encouraged to join this scheme which also provides assistance with optical and chiropody costs and I would urge any Member who is aware of any pensioner who does have a need for dental check-ups to ask them to apply for the over-65 scheme. For all primary school age children, the school dental service provides check-ups and treatment free of charge. This includes visits to every primary school to check children's teeth. Once children move to secondary school they can join the Jersey Dental Fitness Scheme. Those eligible are between the ages of 11 and 18, or if they are in fulltime education, up to 21.

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

I asked the question; was income support going to encourage people on low incomes, pensioners and children to go to the dentist regularly, every 6 months. He has told me about all other schemes, this does not encourage people on the low income support to go. They all cost money, some are upfront and while he is answering, can he, later today, inform me how many people over 65 are taking up the dental scheme?

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

I have the figures for the dental scheme here because the ... I am very aware of how valuable people do feel that that scheme is to them. The current numbers in the scheme at March of this year are 2,796 members and with regard to the comment that there is an upfront payment, we have arranged with people who are in that scheme, and with Westfield, that income support can get over that problem that used to exist with having the upfront payment. So I believe that anybody who is in income support, they are pointed in the direction and assisted to ensure that they do have regular check-ups. The Deputy specifically asked about 6 months as being the recommended time for people to have check-ups. That does vary according to various organisations and dentists. Some say, depending on the person's clinical health, that it would be 6 months or even 3 months or even a year or 2 years. It really depends on the person's own dental health that that needs to be dealt with on those circumstances. So I do believe that the systems that we have in place do provide the appropriate amount of support to people to enable them to have their dental check-ups and good dental health, and I would encourage any Member to point any member of the public to the Westfield scheme or to the other services for the children in secondary school.

#### **2.5.2 Deputy C.J. Scott Warren of St. Saviour:**

Could the Minister confirm that a special payment or loan would usually be given to those people who are not retired who are under the required maximum income band to help meet their dental payments, and would he look across the department to see that there is a ... if the answer is yes that this is happening?

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

Yes, I can confirm that we already do help people with dental costs. In fact, that is one of the largest costs within the existing special payments which are made, and we are doing that on a fairly regular basis. I can assure Members that the department is fully aware that anybody coming with exceptional dental costs which are not cosmetic but are needed dental work the funds will be found to support them to have that work.

#### **2.5.3 Deputy R.G. Le Hérissier of St. Saviour:**

Would the Minister not accept that the root of the problem is the general high cost of dental care on this Island and to crown it all [**Members: Oh!**] by giving away prescription money £2, which involves a £30 visit to the doctor to get a free prescription. He has totally misapplied his sense of priority.

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



The Deputy is trying to extract an answer out of me. **[Laughter]** Certainly, the mechanism of helping to support people with dental costs does need to be looked at and obviously under New Directions, when that comes forward we will be looking at ways of trying to help people to deal with all their medical needs and dental costs and chiropody are areas which hopefully will come into the play with regard to coming forward with New Directions and for use of the health fund as described.

**2.5.4 Deputy G.P. Southern:**

Is the Minister aware of any occasions on which requests for help with dental bills have been turned down and if not, will he investigate this particular situation?

**Senator P.F. Routier:**

I am aware of requests being turned down for dental costs when somebody has been to the dentist without prior knowledge of the department. People have just gone and had cosmetic work carried out without any recourse to the department to see if it would be possible for support, and also there has been people who have gone to the dentist without, as I say, prior knowledge, and so in those circumstances they have been refused support. I would urge any member of the public who does require dental work to contact the department and if they are within the income support system that they speak to the department first before they speak to the dentist, and the dentist will advise us, and we have a good relationship with the dentists and we can help to support people with those costs.

**2.5.5 Deputy G.P. Southern:**

Will the Minister agree to publish details and circumstances in which these cases were turned down, without breaking anonymity?

**Senator P.F. Routier:**

I think that would be quite difficult to do because there are very few cases and it would be very obvious that those people, it would be them that would be talked about because there are so very, very few cases. So I would decline to publish those. **[Approbation]**

**Deputy G.P. Southern:**

Surely, only those who already know about the circumstances would be those who could identify an individual. I do not believe it is impossible to produce the circumstances without identifying the individual. I do not believe it is not possible to do that without identifying the individual.

**2.5.6 Deputy C.J. Scott Warren:**

Could the Minister clarify that it always has to be prior request to Social Security if payment ... because obviously someone does not normally know necessarily the amount of the cost of a dental bill, that he would always have to get prior ... the okay prior to treatment from your department and how does this compare with the old system where Connétables would have helped out somebody with a loan or maybe helped with the cost before income support?

**Senator P.F. Routier:**

My understanding is under the welfare system that the Connétables always used to require an estimate and, in certain circumstances ... before the work was carried out, and that is a similar procedure which we are continuing with. Because dentists do need to ... there is a general view that dental charges are expensive and they are. So we have to be as careful with States public money as the public are with their own about choosing which dentist to go to and what treatment they have. I would hope that you would endorse that process.

**2.5.7 Deputy J.A. Martin:**

Yes, that is really why I started asking these questions. My concern is we are missing children between 11 and 16. They have to be medically dental fit to go on the scheme and the question, the Minister has already said, they do not extend special payments to costs already incurred. Now, 6 monthly check-ups which obviously now the Minister for Social Security thinks is not probably right for some people, but even as far back when I was a child I was told, and given, every dentist I have been to, 6 months but, as I say, obviously the Minister for Social Security may know better. Now, my question is, for these children to go for a check-up it is round about - to make them dentally fit - the check-up plus an x-ray or 2, you do not get much change out of about £60, £70. Now people are out there and they are not taking the children between 11 and 16 and they are not going to the scheme, and will the Minister stop fluffing about and decide to do something under the new income support scheme and not just follow what the Constables did before?

**Senator P.F. Routier:**

The comments about whether it was me just having a view on whether 6 months was an appropriate length of time for check-ups; I just quote from the National Institute of Health and Clinical Excellence. The question is: "When should my next dental check-up be?" It says on their website: "The time to your next check-up could be as short as 3 months or as long as 2 years, or up to a year if you are under 18. Generally speaking, the lower your risk of dental problems the longer the gap before your next check-up. This may vary at times of life depending on the conditions of your teeth and gums." So it is not something which I have just dreamt up about 6 months not being an appropriate time. The issue with regard to children moving from the free dental service to the dental scheme; when children are leaving the free dental service which is available to them in primary school, the dental service at the hospital will provide and ensure the hygiene is an appropriate level to go into the scheme. Parents can ensure that when they leave the free dental service, that their children's teeth are suitable to join the dental scheme. That is the way it works, and I will ensure that anybody who is moving from the free service into the dental scheme that they do get their children's teeth checked before they leave the free service so they are able to move into the scheme. If there is a child who has additional costs to get their teeth into a satisfactory situation with regard to getting on to the dental scheme, the income support system will accept an application for funds to cover that cost, to get them to be dentally fit. I hope that answers the question.

**2.5.8 Deputy P.V.F. Le Claire:**

Would the Minister explain the rationale behind a free dental scheme for primary schoolchildren and a qualifying scheme for children passing from primary to secondary school, and what the cost of the free scheme is and what, if he knows or if he could inform us at a future time, would be the cost of continuing that scheme through into secondary education?

**Senator P.F. Routier:**

I think that question would be better answered by the Minister for Health and Social Services who provides that scheme. I really do not have the information with regard to that.

**2.6 Connétable D.J. Murphy of Grouville of the Minister for Planning and Environment regarding lifting restrictions on the replacement of windows in older properties:**

In the interest of the conservation of energy, will the Minister consider easing the restrictions and strictures on the replacement of windows in older properties?

**Senator F.E. Cohen (The Minister for Planning and Environment):**

The Connétable of Grouville's question is a timely coincidence as for many months I have been looking at ways of relaxing controls and replacing windows on older non-listed properties constructed before the 1920s, as these required planning consent. Finally, last week I signed off a significant revision to the regulations. This allows the windows on non-listed pre-1920s buildings to be replaced with new timber frame windows without making a planning application. This allows

the owners of older properties to fit double-glazed window units and thus improve energy conservation.

### **2.6.1 The Connétable of Grouville:**

I welcome the Minister's initiative here, Sir, but I am talking about basically listed buildings and additions to listed buildings which are not listed, if you follow me there. The listed buildings are, in fact, said to include recent additions which are not new. Now, I would also like him, while he is in the mood for this, to please ask his department if they would have a root and branch clearout of the petty regulations which achieve nothing except to annoy the population?

### **Senator F.E. Cohen:**

I have done a great deal to remove petty regulations and, in fact, last week again I signed a new general development order that significantly revises the list of alterations to properties requiring planning consent and removes many areas that would previously have been considered red tape. The issue of listed buildings is a complex matter. You cannot simply allow the alteration of windows and replacement of windows in listed buildings without some control. Indeed, I feel it is appropriate that control of the replacement of windows in listed buildings is retained. However, the view I have taken is that if the control over windows is warranted then the building should be listed and that is why I have removed the previous restriction on controlling windows in pre-1920s buildings.

### **2.6.2 Deputy R.G. Le Hérisier:**

Would the Minister accept that technology with, for example, U.P.V.C. (Unplasticised Poly Vinyl Chloride) windows has now moved so much that in fact the disadvantages they had in regard to wooden windows has now disappeared and therefore he is in a better position to approve them?

### **Senator F.E. Cohen:**

No, Sir, I most certainly would not. The environmental consequences of the production and manufacture and disposal of U.P.V.C. windows puts them at a significant disadvantage from an overall environmental perspective to other solutions. Personally, I also feel that U.P.V.C. windows often do not have an appropriate aesthetic impact on certainly older properties, and I seek to encourage timber framed windows wherever possible.

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

Does the Minister not agree that once again we are presented with a conflict between his role as Minister for Environment and his role as Minister for Planning.

### **Senator F.E. Cohen:**

No, not at all. In this case this is quite the opposite. This is where I have taken on board the obligations with regard to the natural environment and the obligations with regard to the built environment and come out with a clear conclusion that in this case benefits both. So, no, I disagree with Deputy Southern.

### **2.6.4 Deputy R.G. Le Hérisier:**

Would the Minister therefore accept given the apparent and possible environmental advantages of wooden over U.P.V.C. would it now be his policy to ensure that in all new building applications wooden windows are installed?

### **Senator F.E. Cohen:**

No, Sir, not in all. There are cases where, for example, steel crittle windows are more appropriate, particularly in the case of a 1930s inspired design and there are cases when dealing with modernist and post-modernist designs that powder coated aluminium frames are more appropriate but I cannot think of any architectural genre that benefits from U.P.V.C. windows.

### **2.6.5 The Connétable of Grouville:**

Firstly, Sir, I would like to thank the Minister for his reply. Would he not agree with me that U.P.V.C. windows are more heat efficient than wooden ones?

#### **Senator F.E. Cohen:**

No, Sir, I most certainly would not. In fact well designed timber windows, as many Members will have seen in their travels around Europe, can be exceptionally thermally efficient and combine exceptional thermal efficiency with the highest environmental credentials.

### **2.6.6 The Deputy of St. Martin:**

Yes, Sir, it is very close again to what Deputy Le Hérissier was asking. Does the Minister think it appropriate - indeed fair - to insist on people building new properties to put wooden windows when quite clearly their preference would be plastic?

#### **Senator F.E. Cohen:**

Yes, Sir, I most certainly do. It is my job to ensure that we leave a legacy of an improved built environment. That is what I have sought to do over the last 2 and a half years and my view is very firmly that other than in very exceptional cases U.P.V.C. windows are not the best aesthetic solution and in environmental terms they also most certainly are not the best solution. However, that does not mean that we are prescriptive over-requiring solely timber windows. As I said there are cases for steel frame windows and cases for aluminium powder coated windows as well.

### **2.6.7 Deputy J.J. Huet of St. Helier:**

Would the Minister agree, Sir, it is still that U.P.V.C. windows are a lot cheaper than wooden windows so if you happen to be renovating an older property and you are not rich it is going to cost you a lot more money?

#### **Senator F.E. Cohen:**

No, Sir, that information is not correct. In fact timber framed windows and aluminium windows can be significantly less expensive than U.P.V.C. windows. It depends where you source them. If the Deputy would like I can give her specific information in relation to that afterwards because I have done some work in that area.

### **2.6.8 Deputy S.C. Ferguson of St. Brelade:**

Has the Minister not noticed that the new U.P.V.C. windows can very often not be distinguished from the wooden windows and is he not aware of the recycling work that is being done with U.P.V.C. windows, particularly in Germany where new windows are in fact made from the old window?

#### **Senator F.E. Cohen:**

My eyesight may not be quite what it once was but I can spot a U.P.V.C. window at 50 yards. As far as the environmental credentials of U.P.V.C. windows are concerned, even with recycling - and I am aware of a number of recycling efforts but they are not available of course in the Channel Islands - that even taking that into account there are other materials that are in the round more environmentally sound. I propose for the moment to continue on my current path.

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

Will the Minister accept my congratulations on mastering yet another area of expertise under his brief to add to his mastery of door handles?

#### **Senator F.E. Cohen:**

As usual the Deputy is flippant and rather rude. I prefer not to answer the question.

**2.7 Deputy P.V.F. Le Claire of the Chief Minister regarding the victims of historical abuse committed whilst in the States' care:**

Will the Chief Minister apologise unreservedly to the victims of historical abuse committed while in the States care and reaffirm his commitment to support the police wholeheartedly in their pursuit of bringing the guilty to justice as soon as possible?

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

I have from the outset of the child abuse inquiry expressed my deepest sympathy and support for victims of child abuse and I do so again today. However, I understand that possible claims for compensation are being pursued and I am advised that in the public interest no further comment can be made at this stage. I can positively reaffirm my commitment and that of the Council of Ministers to support the police wholeheartedly in their pursuit of bringing those guilty to justice as soon as possible.

**2.7.1 Senator S. Syvret:**

The Chief Minister said he had received legal advice about this. Could he explain where that legal advice has come from?

**Senator F.H. Walker:**

I think that is very simple. The legal advice has come from the States legal advisers.

**2.7.2 Senator S. Syvret:**

To be clear that is the Law Officers' Department, is it?

**Senator F.H. Walker:**

Indeed so, Sir.

**2.7.3 Senator S. Syvret:**

So the prosecution service is advising the Chief Minister and the Council of Ministers on how best to avoid possible compensation claims?

**Senator F.H. Walker:**

No, Sir, that is not the case. I have been advised by the law officers that no further comment can be made at this stage but the Council of Ministers will shortly be engaging their own legal advisers outside the States Law Officers' Department to advise us on how best to deal with any possible compensation claims.

**2.7.4 Deputy G.P. Southern:**

Does the Minister not accept that there has been a conflict of interest with the dual roles of the Law Officers' Department in this matter thus far?

**Senator F.H. Walker:**

No, Sir, I do not.

**2.7.5 Deputy R.G. Le Hérisier:**

Can the Chief Minister confirm, Sir, that the offering of an apology is totally separate from the issue of compensation? The 2 issues are not linked.

**Senator F.H. Walker:**

No, Sir, I wish that were the case but indeed it is not necessarily the case, and I have to take the advice I have been given.

## **2.8 Deputy G.P. Southern of the Minister for Treasury and Resources regarding Income Tax revenues from 1(1)(k) residents:**

Will the Minister explain to Members whether income tax revenues from 1(1)(k) residents have decreased in recent years and what measures, if any, he proposes to take to improve the returns made from this source?

### **Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

Yes, Sir, I am pleased to confirm that the total tax take from 1(1)(k) for the 2006 year of assessment was approximately £8 million which is an increase of some £1 million on the tax take from those people for the 2005 year of assessment which was £7 million. The figures for 2007 are not yet finalised but I will be considering measures to improve the tax take from new 1(1)(k)s in the next few months recognising that this is a competitive marketplace and that there are other territories offering far better deals than Jersey can do in terms of pure tax per contributor.

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

A supplementary, Sir. Is it not the case that within recent years the figure was in fact £10.7 million given to me in 2004 I believe?

### **Senator T.A. Le Sueur:**

The Deputy is quite correct. The figure was higher in times past but this figure is now the up-to-date figure and it is still a relatively useful contribution to overall States finances. Without the benefit of the 1(1)(k) contributors our tax revenues would be considerably lower. Furthermore, those people also contribute in terms of the purchasing power that they provide in other sections of the community.

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

Is it not the case that the benchmark for taxation of these particular individuals is that they should pay 20 per cent on their first million declared for Jersey income tax, 1 per cent on the next million and 0.5 per cent on the subsequent million giving an average figure of around between £200,000 and £250,000 for each 1(1)(k) whereas in fact the average currently is £60,000?

### **Senator T.A. Le Sueur:**

It is not a benchmark. It is a legal requirement that the new 1(1)(k) taxpayers pay according to the law but we have at the present time a mixture of existing 1(1)(k) people, many of whom have been here for many years and in the nature of averages some pay a lot more and some pay a lot less. Existing arrangements with existing longstanding 1(1)(k)s cannot be changed, Sir, and that accounts for the fact that the average, as the Deputy says, is rather lower than the current target.

### **2.8.3 Deputy R.G. Le Hérissier:**

Apropos what the Minister has just said, would the Minister therefore confirm what percentage of 1(1)(k)s are on sums which were frozen on the day of their arrival and which cannot now be changed?

### **Senator T.A. Le Sueur:**

No, Sir, I would need notice of that question.

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

In the light of the refusal to publish any further details about these 135 cases which were known in 2006, will the Minister agree to publishing a banded set of results from nought tax paid to £250,000 in bands of £50,000 for these 135 1(1)(k) taxpayers such that we can know the numbers paying how much in particular bands without identifying these particular cases?

### **Senator T.A. Le Sueur:**

I will discuss with the Comptroller of Income Tax the extent to which that information can be given without breaching the income tax law, but I do question the relevance of that information when our objective must surely be to encourage people of high net worth to reside in the Island and pay under the new law an appropriate, significant level of taxation.

**2.8.5 Deputy G.P. Southern:**

Could the Minister outline for the House the particular circumstances which mean it is impossible to charge the oldest 1(1)(k)s more?

**Senator T.A. Le Sueur:**

I do not think that is an appropriate verbal question, Sir. The arrangements for existing longstanding 1(1)(k)s were done on an individual basis with those taxpayers concerned. They are a matter of privacy between that taxpayer and the Comptroller of Income Tax and it is not appropriate to be discussed in this Chamber.

**2.9 Deputy K.C. Lewis of the Minister for Home Affairs regarding increasing the penalties to anyone knowingly supplying alcohol and cigarettes to people under the age of 18:**

What action, if any, is the Minister taking in consultation with the Minister for Economic Development to increase the penalties to anyone knowingly supplying alcohol and cigarettes to people under the age of 18?

**Senator W. Kinnard (The Minister for Home Affairs):**

The specific level of penalties is a matter that is considered by the Attorney General once the draft piece of legislation has been completed to ensure it is reasonable, proportionate and in line with other legislation. Both my department and the Economic Development Department have been working closely together to ensure that the issue of control of alcohol is addressed within a new licensing law. The Green Paper has been developed and it includes among other measures for discussion test purchasing to reduce underage consumption, raising the age to 21 for sales of off sales, ensuring that those selling alcohol are themselves over age and reviewing penalties for underage drinkers and for persons obtaining alcohol for underage young people. I can assure the Deputy that his concerns are shared and will be addressed as this consultation process develops through the Green and White Papers. Meanwhile, there has been continued rigorous enforcement of current legislation and active promotion of proof of age schemes. In addition, legislation has been implemented to permit police officers to confiscate alcohol from young people. I am not currently in discussion with the Minister for Economic Development over similar issues in relation to cigarettes. Cost is known to be a prohibitive factor to underage sales. Customs and Excise have ensured that the price of tobacco continues to increase by increasing duty on an annual basis. The offence of underage sales is dealt with in Jersey by the Police Licensing Unit. In the U.K. (United Kingdom) it is the Trading Standards that have the enforcement role. I believe, Sir, that all retailers who sell tobacco could be licensed in the same manner as for alcohol. This would provide additional enforcement powers. However, Sir, I am aware of a range of measures as part of the Tobacco Strategy which comes under Health and Social Services and that this should probably form part of that strategy.

**2.9.1 Deputy K.C. Lewis:**

I welcome the Minister's response, Sir. Is the Minister aware that it was only last year we increased the age to 18 to buy cigarettes but children appear to have free access to alcohol and cigarettes? A walk around town on a Friday or a Saturday evening proves this. Is the Minister also aware that children are now getting their older siblings and indeed locals and E.U. (European Union) citizens who are older to buy drink and cigarettes on their behalf? Does the Minister agree this is a wholly unacceptable situation?

**Senator W. Kinnard:**

As I mentioned in my answer, we share the concerns that the Deputy has expressed and indeed there are a range of measures which are coming out in the Green Paper to really do the research and to find out whether indeed the impression that we have of what is going on is going on. We do know, Sir, that there have been some improvements through the *Health Related Behaviour Questionnaire* showing that, for instance, smoking rates are declining overall but definitely, Sir, we know that the prevalence of smoking doubles between the children in years 8 and 10. That clearly does show that children are still getting access to tobacco which is a concern. Again with the *Health Related Behaviour Questionnaire* in relation to alcohol we know that young people generally are drinking less but there are still some of them engaging in very heavy drinking. There are a minority of young people who do this and this is indeed a great concern. So I would welcome very much the Deputy's input in response to the Green Paper when it is issued we hope in the very near future.

#### **2.9.2 Senator J.L. Perchard:**

On that subject, Sir, does the Minister agree that if the Deputy really wants to make a meaningful and worthwhile contribution to this debate that he contributes to the consultation process and makes a written contribution to the consultation rather than just ask populous questions in the States?

#### **Senator W. Kinnard:**

I think that is slightly unfair if I may so; if I may defend my colleague across the Chamber. **[Approbation]** I would say that Deputy Kevin Lewis of St. Saviour asks very sensible questions of the Minister for Home Affairs and I am always very pleased to answer them.

#### **2.9.3 Deputy P.V.F. Le Claire:**

That is rather unfortunate. Would the Minister also confirm that earlier in the last 2 years the Deputy and I have attended with the police on a number of occasions to parks and gardens in St. Helier to look at these issues? It is not only on the floor of the House that he puts effort into these matters.

#### **Senator W. Kinnard:**

I am more than happy to confirm that he does put effort into these matters on other occasions.

#### **2.9.4 Deputy R.G. Le Hérissier:**

Would the Minister confirm that Deputy Lewis' questions are more constructive than running populous referenda? **[Laughter]**

#### **Senator W. Kinnard:**

May I pass on that one, Sir?

### **3. Questions to Ministers Without Notice - The Minister for Treasury and Resources**

#### **The Greffier of the States (in the Chair):**

That is a convenient time to bring the oral question period to a conclusion. We come now to Questions Without Notice and the first Minister available for questioning is the Minister for Treasury and Resources and I would like questions.

#### **3.1 Deputy R.C. Duhamel of St. Saviour:**

Despite repeated assurances to this House and Members of the imminent re-tendering of the Jersey College for Girls, we now hear through the local media that the Minister might not in fact be able to honour those assurances as he is looking to keep the building within the States property portfolio. Will the Minister explain to the House the reasons for this change of mind and the extent to which this House can rely on any assurances given in the future by Ministers?

#### **Senator T.A. Le Sueur (The Minister for Treasury and Resources):**



I gave the assurance to the House some time ago now in relation to concerns about the value of the property. Since then and with the employment of a new Chief Officer of Property Holdings we have taken a wider look at States property requirements and included within that remit the possible use of the Jersey College for Girls site. On that basis, Sir, it was not appropriate at the present time for the site to be re-tendered when that might be a totally meaningless and pointless waste of money. Matters for the site remain ongoing and when they come to fruition, Sir, I will be able to advise the Deputy and Members of the House.

### **3.2 Deputy S. Power of St. Brelade:**

Could the Minister for Treasury and Resources indicate to the Assembly whether or not he was supportive of the proposed food exemption u-turn on G.S.T. (Goods and Services Tax) at the last Council meeting?

#### **Senator T.A. Le Sueur:**

The short answer is, yes, I am, Sir. With these issues they are never a simple matter of black and white, and given the current situation in respect of food prices my views have been modified to the extent that I appreciate the significant increase in food costs in recent times and the need to do something about it.

#### **3.2.1 Deputy S. Power:**

Can I just seek clarification from the Minister for Treasury and Resources? Did the Minister for Treasury and Resources propose the u-turn on G.S.T. on food?

#### **Senator T.A. Le Sueur:**

No, Sir, it is not a matter of proposing anything. It is a matter of discussion by the Council of Ministers of a subject and the subject being that of dealing with the increased cost of food in the most appropriate way. The Council of Ministers as always has a robust round table discussion and no one proposed anything. It is a matter of discussing and reaching a consensus conclusion.

### **3.3 Deputy S.C. Ferguson:**

Can the Minister for Treasury and Resources tell us if the Council of Ministers were aware of the contents of the *Fiscal Policy Panel Report* before they discussed the increases in the Business Plan and the G.S.T. on food. I have a supplementary, Sir.

#### **Senator T.A. Le Sueur:**

Neither the Council of Ministers nor the Minister for Treasury and Resources himself was aware of the content of the *Fiscal Policy Panel Report* prior to last Thursday when all Members received a copy.

#### **3.3.1 Deputy S.C. Ferguson:**

Would the Minister for Treasury and Resources not perhaps do another u-turn considering the contents of that report and the briefing which was given to States Members - which I was sorry to see only 11 people attended - last week?

#### **Senator T.A. Le Sueur:**

As I said to those who were there, the report of the Fiscal Policy Panel is to me a very significant and important piece of economic advice which we should all read very carefully. As with all matters though, economic advice is one aspect of political decision-making and we have to weigh up that advice against other considerations. In those circumstances I hope that States Members in debating the Business Plan next week will take a note of the Fiscal Policy Panel advice which should certainly be one matter influencing their decision.

### **3.4 Deputy C.J. Scott Warren:**

Will the Minister tell Members whether he has given any further consideration to putting the collection of taxes for I.T.I.S. (Income Tax Instalment Scheme) on a this year basis rather than most people still being paying I.T.I.S. on last year's income and some people on this year's?

**Senator T.A. Le Sueur:**

Yes, Sir, that is an ongoing situation which I am in discussion with the Comptroller of Income Tax but no final decision has been reached at this stage. It is quite a complex transitional process. Admittedly if it is ever done it will become better in the future but getting from where we are now to where we might need to be is not a simple matter.

**3.5 Senator L. Norman:**

Having made the decision to remove G.S.T. from some food items, could the Minister please say why he is delaying the implementation of this until spring of next year and does he regard the U.K. V.A.T. (Value Added Tax) model of zero rating of certain foods to be an example of best practice in this area or does he agree with the comments of the Council of Ministers that the U.K. system is complex and administratively expensive and regarded as the worst implementation of V.A.T. in the world?

**Senator T.A. Le Sueur:**

We seem to be having a preliminary run through the debate on G.S.T. at this stage but so be it, Sir. The reason for a delay is quite simple, although there are a number of contributory matters. Firstly, once the extent of any changes to the current G.S.T. law have been agreed by the States that requires instruction to the law draftsmen to amend the law or amend the regulations. Those instructions will require drafting, agreement by myself as Minister with the department concerned for operationability, and then lodging for 6 weeks in this House. I suspect that the earliest I could lodge those amendments would be in the budget in the beginning of December. Assuming that that law was passed there is then a question of arranging for businesses, just as they did when G.S.T. was introduced, to have time to implement new schemes because it will mean a significant change to their accounting arrangements. This will require educational activity by the department and by businesses concerned. If we are to avoid getting into the confusion which could easily happen with an uncertainty, one has to allow a certain amount of time for that to be brought in. Furthermore, finally, Sir, the collection of G.S.T. from most businesses is done on a quarterly basis and it would make sense to bring it in at an appropriate anniversary date. So while I accept that there would be an urgency to bring in any changes agreed as soon as possible, the practical reality is that this has to be done in an orderly way and, hence, the delay.

**3.5.1 Senator L. Norman:**

The second part of my question was does he regard the U.K. model of zero rating of certain foods to be an example of best practice or does he agree with the Council of Ministers' comments that it is complex and administratively expensive and regarded as the worst implementation of V.A.T. in the world?

**Senator T.A. Le Sueur:**

The U.K. system is not one which is particularly desirable but it does have the merit of being one which is in existence and gives a basis of legal precedent. If we are to change to a different system from that it would require far more complex law drafting and would require even further delay. As with all matters, Sir, it is a question of compromise and balance.

**3.6 Deputy G.P. Southern:**

Given that the R.P.I. (Retail Price Index) is running at 5.6 per cent and R.P.I.Y. (Retail Price Index excluding Mortgage Interest Payments and Indirect Taxes) even is running at 3.8 per cent and given that provision for States pay increases in 2009 in the Annual Business Plan is set at 2 per cent, what measures does the Minister propose in order to ensure that he does not exceed his 2 per cent limit?

In particular, should he have to exceed it, does he regret having blown all the consolidated fund on a large chimney and E.f.W. (Energy from Waste) plant all in one go?

**Senator T.A. Le Sueur:**

I think it behoves all States Members to act responsibly in terms of wage negotiations. Those will be carried out by officers on behalf of the States Employment Board. The Council of Ministers put into the Business Plan what was at the time an appropriate provision for increases in pay for States employees. Should the settlement finally exceed that number it will need to come back to this House for the House's approval because the Business Plan itself has set out a certain sum of money and any increase above that would require a supplementary vote. So that matter ultimately will be a matter not for the Minister for Treasury and Resources or even for the Council of Ministers. It will be a matter for this House to decide.

**3.6.1 Deputy G.P. Southern:**

A supplementary if I may? Given that the target of 2 per cent is based on the R.P.I.Y. and the R.P.I.Y. is already 3.8 per cent, does the Minister not accept that he has a problem looming?

**Senator T.A. Le Sueur:**

I do not have a problem looming. If we give wage rises which simply absorb all the additional costs then the Island itself and those employees will be the poorer in years to come. It is not a matter simply for the Minister for Treasury and Resources. It is a matter for us as States.

**3.7 Deputy J.A. Hilton of St. Helier:**

Given the strong argument put forward by the Minister for Treasury and Resources during the debate on G.S.T. for exemptions not to be granted, i.e. keeping the rate low at 3 per cent, is the Minister for Treasury and Resources able to assure Members that he intends to maintain the 3 per cent rate for G.S.T. for the next 3 years?

**Senator T.A. Le Sueur:**

Again, Sir, that is a matter which is in the law. The States passed this law and unless someone amends the law, the law remains in force and the rate of G.S.T. will be 3 per cent for at least 3 years.

**3.8 Connétable S.A. Yates of St. Martin:**

I would like to ask the Minister why has he shown such a lack of leadership by this u-turn pirouette? [**Approbation**] I would also like to ask him why has he approached the protection of the vulnerable in such a half-hearted way? We were promised that the vulnerable will be protected and while I agree that income support has been raised by 3 per cent, we have not had any definitive offers or solutions for the non taxpayers, the non income support people who in fact are caught in between 2 schools. They are vulnerable. They neither gain by the raised personal allowances for income tax and the derisory, paltry, tight-fisted offer of £75 per household is absolutely disgraceful. I would like the answer to that please.

**Senator T.A. Le Sueur:**

I take issue with the suggestion that these proposals fail to protect the vulnerable. Not only are all the arrangements which were previously in place to protect those people on lower incomes from the impact of G.S.T. on food going to remain in place should G.S.T. on food be withdrawn but these proposals affect not just the vulnerable and those who might be covered by income support or by in between arrangements but they will affect and benefit all members of the community whatever their status. I believe, Sir, far from failing to protect the vulnerable we are now protecting a wider range of the community and still protecting and enhancing the support available to those vulnerable people.

### **3.9 Deputy P.N. Troy of St. Brelade:**

I have been predicting since 2005 that G.S.T. would raise more than £45 million and I think I once said I would eat my hat if it did not. I have not had to do that. Maybe, Sir, the Minister for Treasury and Resources should eat his hat because with the revelation that G.S.T. is going to raise between £5 million to £10 million more I would like to ask him does he have a more accurate figure than that and does he perhaps accept that the methods of financial forecasting need to be reviewed to provide greater accuracy in the figures that we see coming forward because not just in G.S.T. have the figures been wrong but also in tax revenue as we have seen surpluses as well? Could he look to review his system to get greater accuracy in his forecasting?

### **Senator T.A. Le Sueur:**

Taking the last point, Sir, had the Deputy been at the presentation of the Fiscal Policy Panel last week he would have heard from those experts in the matter how difficult it is in the Jersey situation to forecast with any great degree of accuracy. Going back to the question about the amount raised from G.S.T., the figure of £40 million to £45 million which was proposed in the fiscal policy of about 3 or 4 years ago was based on data at that time. Given the rise in inflation, given the rise in the strength of the economy, it is not surprising that the level of the yield from G.S.T. has increased beyond that which was predicted. It has not risen significantly above that which was predicted but on the basis of one quarter's returns - which is perhaps not the best way of looking for a long term future prediction - the indications are that an annual yield of something between £49 million and £51 million a year could be expected. That is as accurate as I can get for the moment, Sir, and I suggest that that is quite adequate for our needs at this time.

### **Deputy P.N. Troy:**

Can I just add that I was not at the presentation last week because I was in Tokyo taking my daughter to university. I cannot be in 2 places at once, Sir.

## **4. Questions to Ministers Without Notice - The Minister for Economic Development**

### **4.1 Deputy C.H. Egré of St. Peter:**

Would the Minister advise Assembly and, thus, advise those living in the area affected by the P.F.O.S. (Perfluorooctyl sulphonate) pollution resulting from contamination from the airport fire ground when they may get a conclusion on their valid claim for compensation for pollution of their borehole supplies? This has now been going on for in excess of 2 years.

### **Senator P.F.C. Ozouf (The Minister for Economic Development):**

The answer is that this is dealt with by my Assistant Minister. I know that he has had discussions with residents and people in the vicinity. I am not immediately familiar with the timetable. I know that efforts have been made to resolve this matter. I fully accept that. I am happy to give the Deputy after question time - it is matter with the law officers I am advised - exactly what the timetable is. I share the view that it needs to be resolved.

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

As a Minister with a remit for tourism, can he inform the House on the future of Y.H.A. (Youth Hostel Association) in Jersey who have been running a successful hostel at Haut de la Garenne for many years?

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

The Deputy is absolutely right. The Y.H.A. has been an incredibly useful addition to the bed stock of the Island. We met with the Youth Hostel Association on Friday in order to discuss what we can do. I can advise the Assembly that I also discussed the matter with the Tourism Development Fund and we want to help the Y.H.A. find an alternative site for the duration of any consideration. I am making no comment about Haut de la Garenne but we want certainly the Y.H.A. to be in operation for as long as there is a discussion about the future of Haut de la Garenne. Discussions are

happening at Tourism with officials. We intend to give the Y.H.A. every single support possible and to find them an alternative site for a period of time. We want their business. We value their business.

#### **4.3 Deputy K.C. Lewis:**

Further to recent news regarding H.D. Ferries stopping their service for this year, will the Minister and his Assistant be actively seeking further operators on this route?

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

My Assistant Minister and I have had very substantial discussions with our respective officials in Harbours and the E.D. (Economic Development) Regulatory Services about this issue. I have to say, Sir, that we are extremely disappointed with the performance of H.D. Ferries. We made absolute maximum effort to assist them and we welcome competition on the route. I have also had discussions with Condor - that is new operators and new owners - and I have to say that our preference certainly as far as the southern route is concerned is that competition works well for consumers. I cannot find those new operators. What I can say to the Assembly is competition is our preferred option for the southern route and if we do not have competition then I will instruct the J.C.R.A. (Jersey Competition Regulatory Authority) with us to put in place some sort of price regulation. The proxy for competition is regulation and regulation will follow if there is a single operator.

#### **4.4 Deputy P.V.F. Le Claire:**

We have recently seen some dramatic incidences in the mortgage markets in America and the U.K. Fannie Mae and Freddie Mac have just been taken over by the Federal Government to preserve the economy and also similarly in the United Kingdom we had Northern Rock taken over by the regulators. I do not think that Jersey is going to succumb to those pressures given our unique desirability in terms of property but does the Minister not agree that it is now time perhaps to investigate the mortgage market in Jersey and to undertake a commitment to make sure that all that is possible can be done for people seeking mortgages?

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

A very relevant question. The mortgage market in Jersey is worth about £6 billion a year. We have seen increasing competition in the Jersey mortgage market in recent years with traditional lenders being added by the likes of Jersey Home Loans. The Deputy is right to say that we are not isolated from changes in the international community. Jersey Home Loans because of the credit crunch announced their withdrawal of the market. I contacted most of the leading lenders and I can say that there is money available to lend in the Jersey market but I want to continue to ensure that the market is working well in the interests of consumers. I can say to Members that I am in final discussions with the Economics Unit to carry out a review, probably going to be carried out by O.X.E.R.A. (Oxford Economic Research Associates) of the local market reviewing lenders, looking at the comparisons of terms available for Jersey borrowers, looking also at the regulatory arrangements. The mortgages are regulated in the U.K. They are not in Jersey. There could be a case for doing that. There also is a case perhaps for having a separate statute for building societies to allow building societies to operate. A very difficult issue with the Financial Services Commission. There is confidence in the Jersey market. I want to ensure that that continues. We need to understand the mortgage market is working well and that is why I am going to be doing the review.

#### **4.5 Deputy C.J. Scott Warren:**

Does the Minister have any concern about the very obvious increase in the population of Jersey, albeit the economy has obviously benefited from current immigration?

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

I think that the Bible analogy is that in years of plenty you put your barns full of food in order to take you through the leaner times. Jersey is different from our near neighbours. Jersey is different from Guernsey and the United Kingdom. In years of plenty we have run the economy well and we have significant resources available. We have expanded the capacity of the industry in extending its geographic reach. That is going to take us through. That careful stewardship of the economy is going to take us through more turbulent economic times. Yes, we have grown. We are not going to see that growth continue at those rates but we will be investing in the economy to ensure that those people that have work, locally qualified people in work continue to perform in a confident economy which we have.

#### **4.6 Deputy A. Breckon of St. Saviour:**

Could I ask the Minister to comment on how effective he believes that the service level agreement is with H.D. and Condor Ferries?

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

I think the service level agreement which expires on the 9th April next year is effectively dead in water. I am afraid to say that H.D. Ferries signed a service level agreement. With the support of this Assembly we changed the regulations. Those service level agreements now have teeth. Effectively the service level agreement I think is now going to be withdrawn. The permit is going to be withdrawn and we are going to be in discussions with H.D. Ferries over exactly what to do. But certainly there is a corresponding issue with Condor which we need to happen. We cannot have one operator having to go through the whole of the year with one operator just cherry picking.

#### **4.7 Deputy J.A. Hilton:**

The Minister will be well aware of the demand for construction workers here in Jersey from his role in the granting of temporary licenses under the Regulations and Undertakings Law. Does the Minister believe the States are doing enough to provide training opportunities for young people in the construction industry at Highlands College?

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

I think that we have done a lot more than previously. Now as the Deputy will be aware in her work at the Population Office at Housing, we have effectively taken all of the large construction businesses into Regulations of Undertaking Population Office and had discussions with them. We are very tough on employers to ensure that they are taking locally qualified people. While Deputy Southern shakes his head, if he looks at the numbers there is a significant, overwhelming proportion of locally qualified people that work in construction. We want to have an economy which has job opportunities for young people. Every single time there is an application for a construction worker, an application for a new project, we ring up Highlands to find out whether or not there are people at Highlands willing to work and able to work and we have been doing a great deal more. The new skill centre is going to be open a week Monday. We are investing in putting skills at the heart of social security and education in terms of our policy. We have done a lot but, yes, of course we can do more and particularly perhaps in leaner economic times we are going to have to make sure that those job opportunities are available for our local people.

#### **The Greffier of the States (in the Chair):**

There are a lot of people waiting, Minister. If you can keep your answers snappy.

#### **4.8 Deputy S. Power:**

I will be as snappy as I can with my question. Does the Minister consider that the £35,000 grant from the Tourism Development Fund this year to the lessees and the operators of the Les Ormes Adventure Centre was a good decision? Is he aware of the visitor statistics relating to that adventure centre for the first 6 months of its operation?

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

I am not aware of the number of visitors but I maintain the fact that that visitor centre which I have visited on 2 occasions is an absolutely wonderful addition to the visitor economy and for local people. I am aware that there are some discussions going on with the owners of Les Ormes about that issue. I am fully briefed on the matter. I continue to think that that is a very useful addition to our visitor economy and for Islanders; team building, great experience for tourism.

**4.9 Deputy C.F. Labey of Grouville:**

Could the Minister tell us what his thoughts were of the 2008 Battle of Flowers? Is the event in his opinion secure for the future?

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

I think we have had the turning point for the Battle of Flowers. 2008 was a spectacular success on a number of issues. We did not have the financial issues and concerns but we support it. We clearly have also commercial sponsorship in place. Battle is here and here to stay. There is going to be a constructive meeting with all parties in the next couple of weeks about how we can build on this year's success. It continues to have the support of Economic Development but there are changes and improvements that can be made. I think that I would say that it is still the most important cultural event for thousands of Islanders and providing fresh facilities for children, options for people to go and do things in the summer. All round a great Island event that is here to stay.

**4.10 Deputy G.P. Southern:**

In the Annual Performance Revue 2007 it states that the target for job growth over the most recent 5 years is being met and is 0.7 per cent. Does the Minister accept the figures reveal that the true figure is 1.1 per cent so he has already broken the 1 per cent job growth target he set himself in order to have sustainable controlled growth?

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

I think the Deputy should go back to maths school. I made a comment to the Council of Ministers Business Plan. My comment is going to be available to Members later today. The facts are done by the independent statistics unit that job growth has been 0.7 per cent over 5 years. If you take the economic cycle it is less than that. If the Deputy is saying that we should not have allowed the economy to grow on a rising tide and giving people opportunity and business the opportunity to deliver economic growth then I do not know what he expected to do. Is that going to now slow? Yes, it is. Is that a good thing? Yes, that is fine. We have made hay when the sun shines and that is the thing we should do.

**Deputy G.P. Southern:**

Supplementary if I may, Sir?

**The Greffier of the States (in the Chair):**

I am sorry, I have other people waiting.

**4.11 Deputy D.W. Mezbourian:**

The Minister has been successful in his policy of increasing passenger arrivals to the Island through the airport and the harbours. Does he have any concerns about the impact that the increase has had on the delivery of their services by Customs and Immigration officers? If he has concerns, is he addressing them at all with the Minister for Home Affairs?

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

We have been, I am pleased to say, spectacularly successful in boosting passenger arrivals in the Island; year to date figures up by 6.6 per cent, in 2 years up by over 10 per cent. New aircraft, et

cetera. Of course I am afraid there is a consequence to Customs and Immigration. My Assistant Minister has been holding some discussions with Immigration on these issues. I have to say that is mainly in the sea figures. They are down. There are some discussions with Customs and Immigration and I am hopeful that we can have some constructive engaging discussions with Customs and Immigration to resolve the issues.

**4.12 Deputy I.J. Gorst of St. Clement:**

I am delighted to hear the Minister's announcement of a review into the mortgage market and mortgage providers. In my view it is absolutely long overdue. However, I hope he will confirm to us that he does not believe that we should return to an era of 100 per cent, 110 per cent mortgages. It is the likes of Fannie Mae and Freddie Mac that have encouraged irresponsible lending and produced the problem that the world economy finds itself in now. Can he confirm that within this review he will be looking to regulation and governance which would limit the amount that mortgage providers can provide and not return us to the problems that have occurred?

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

Absolutely. The Deputy is right to say that 100 per cent mortgages and shoddy lending practices have wreaked havoc across the worldwide economies in sub prime. That is one of the reasons why I am ensuring that in this review all of those issue and particularly looking at regulations as a part of that.

**4.13 Deputy R.G. Le Hérisier:**

Given the Minister's recent comment on what he regarded as the poor standards from the secondary sector of numeracy and literacy, what will he be doing to address these issues with his fellow Ministerial colleagues?

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

I think those comments were unfortunately made at the end of a very constructive Scrutiny Panel hearing. There is now a collegiate approach in relation to social security and education. We all want secondary schools which are lifting people's basic reading and writing skills to their best potential. Highlands do have a challenge in dealing with some of those issues. But I am in some constructive discussions as chairman of the Skills Executive with my colleagues, the Minister for Education and the Minister for Social Security, and where we can improve things we will of course do so. But we do understand the challenges that face Highlands College funding. I have to say that I think the new chief officer and the Minister is doing a great job in reforming Highlands.

**4.13.1 Deputy R.G. Le Hérisier:**

Can I just have a quick supplementary? Is the fault with Highlands or with the secondary schools? What was the implication of what he said earlier?

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

I wish to point no fingers. It is just great we want a society in which all secondary school pupils arrive at 16 and 17 with good basic literacy and numeracy skills. We have to make our young people rounded in order that they can be productive members of society.

**4.14 Connétable M.K. Jackson of St. Brelade:**

The Minister alluded earlier on to a 6 per cent increase in arrivals at the airport. Would he confirm that, in his view, passenger arrivals and stay periods are comparable during July and August with previous years?

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

They are and they are up. I am happy to share with the Constable the full figures and circulate them to all Members.



#### **4.15 The Deputy of St. Martin:**

Yes, I wanted to follow on after the Deputy of Grouville and ask the Minister if he is sitting next year in the V.I.P. stand will he give an undertaking to remain in the V.I.P. until all the floats have gone past?

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

A cheap shot, Sir. A cheap shot I am afraid, Deputy. Unfortunately St. Martin had a difficulty. I was not the only Member in the V.I.P. stand enjoying the Battle of Flowers that did not realise that St. Martin had yet to do. That is a choreographing issue with Battle of Flowers. It was unfortunate. I think St. Martin was well celebrated in having a prime spot in the evening parade where everybody enjoyed their excellent work. **[Approbation]** I would appreciate if you would not give a cheap shot to indicate that I had somehow sloped off as that is not the case. **[Laughter]**

#### **4.15.1 The Deputy of St. Martin:**

It is unfortunate the Connétable of St. Peter and Deputy Mezbourian are not in the Chamber because they would join in with me. Unfortunately the V.I.P. stand was also empty by the time they got round. It was just one of those things. I hope it will not be repeated.

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

It was not, Sir, and the organisers of Battle have said that of course improvements can be made. There was a problem in relation to the running order which was not the point of any of the visitors, any of the people sitting in any of the stands. It was unfortunate but nothing should take away from the spectacular success of the 2008 Battle of Flowers including the parish of St. Martin. **[Approbation]**

#### **The Greffier of the States (in the Chair):**

Very well. That concludes the time for Questions Without Notice. There are no matters under J or K so the Assembly moves to Public Business. The first item is the Draft Sea Fisheries (Inshore Trawling, Netting and Dredging) (Amendment) (Jersey) Regulations 200-

### **PUBLIC BUSINESS**

#### **5. Draft Sea Fisheries (Inshore Trawling, Netting and Dredging) (Amendment) (Jersey) Regulations 200- (P.36/2008)**

#### **The Greffier of the States (in the Chair):**

Now the principles of these regulations were adopted back in April, therefore, in accordance with Standing Order 74.2 it falls to me to invite the Minister to propose the regulations.

#### **5.1 Senator P.F.C. Ozouf (The Minister for Economic Development):**

Members will recall that we have already had this debate. I certainly do not want to trouble Members in going through all of the original. I am reminded that there were an overwhelming number of Members who voted in favour of the first vote so we are now dealing with the regulations themselves. I will just remind Members that the purpose of the regulation is to set nets on beach on low water where it is a traditional activity. We are putting in place an arrangement to protect other beach users from potential danger and inconvenience of nets. Introduction of minimum mesh sizes was specifically to prevent the destruction of smaller fish. Nets are worked by experience fishermen, generally cause a few problems. During 2007 a Fisheries Officer observed an increase ...

#### **The Greffier of the States (in the Chair):**

I will stop you there, Minister, as the Assembly is inquorate. I will ask the usher to summon Members. We need at least 3 more Members to return. Very well. Minister, please continue.

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

Maybe it is just a function of the fact that we have already done this one before and as I said there were 39 votes in favour of it, 3 against, and then we were called into Scrutiny, so perhaps Members are with the proposition and perhaps we do not need to make a big meal of it because effectively it has already been discussed. I will just say that since the calling in to Scrutiny, the Members I am sure will have read the report which has effectively 8 observations. I have to say that I think that in summary the panel and I are broadly in agreement. Where the panel, I think, are wanting to make some constructive remarks is in relation to what this regulation does not do. In my comment to the report by the Scrutiny Panel I said that I think the solution to many of the concerns of the panel are in this Assembly agreeing the Integrated Zone Coastal Management Strategy. Many of those issues can be dealt with there. The panel have observed a number of comments. Their first observation that legislation must be supported with the necessary finance and manpower to enforce it. I would remind Members that our Fisheries Officers have responsibilities for covering some 800 square miles of sea. They have to go about their duties in a risk-based approach. They need to concentrate on the most important issues. Last year there were approximately 8 incidents in relation to the practice of allowing nets to be neaped. One of those 8 incidents was where this issue came to light. The second panel observation was that there was insufficient consideration to the Ramsar area so I was responsible for extending the Ramsar area to some of these areas that are going to be affected by this. Again the solution is to fortify the strategy by this Assembly approving the I.C.Z.M.S. (Integrated Coastal Zone Management Strategy). The third observation was that this was a minor change and we should be doing more towards sustainable fisheries. We agree, and there are other regulations coming forward particularly in relation to bag limits, but this is simply about nets. The fourth observation was that this legislation is designed to change the behaviour only of an extremely small percentage of the fishing fraternity and this is a stopgap. Again frankly there are bigger measures required but that is going to be done in the I.C.Z.M.S. The fifth observation was that it does not adequately deal with the larger issues. Again we agree. We think that enforcement will be improved by the arrangements and this Assembly approving the I.C.Z.M.S. The sixth observation, licensing of setting of neaps would be acceptable by most sections of the fishing fraternity. We are pleased about that. Panel observations 7 and 8 I think are agreed. These observations made by Scrutiny, by users of the marine environment confirm that I think there is a real desire to see that there is a protected and managed fisheries environment and it is managed in a sensible manner. That level of interest and concern can occur between the environment division and in the context of the implementation of the Integrated Coastal Zone Management Strategy. That is the appropriate time to deal with some of these bigger issues. Sir, I think the regulations are self-explanatory and I move the regulations.

**The Greffier of the States (in the Chair):**

Are the regulations seconded [**Seconded**]. Does any Member wish to speak on any of regulations 1 to 4?

**5.1.1 Deputy R.C. Duhamel:**

I think the Minister in summing up on the comments from the Environment Scrutiny Panel was in general agreement that it had been a worthwhile procedure and that, if nothing else had been achieved [**Laughter**] [**Interruption**] ... if indeed nothing else had been achieved there had been a re-establishment or an establishment of contact with those members within the fishing industry to whom the policy is relevant. On the legislation side, Sir, I still do have some reservations and although some Members might think they are minor I think I am duty bound to relay them to the House. Under 6A(3) we do have the normal legal premise that a person is innocent until proved guilty and yet within the restrictions on the setting of beach set nets we do have clause 3 which says that if a beach set net is moved to another location, and it is moved to another location if every part of that set net has been moved to a different place to where it was previously located, then indeed that might be able to be put forward as a submission of innocence of any offence that might be being committed or allegedly committed under the regulations. It is this particular clause that

worries me, Sir, because we do not have any mechanism for determining under the regulations where the net was set in the first place. It does strike me, Sir, as a little bit remiss of the legislation in that although it says that one can plead a particular way, there is no way for the department who are understandably in difficulties in policing the whole of the 800 square miles of area that come under their remit to have the tools of the trade to do the job properly. Likewise the second clause which formed the bulk of the regulations was the one on the 96 hours as being the time period after which time a properly set beach net could be moved to another location. The evidence that was given by a number of members within the fishing profession indicated that any professional proper fisherman would not indeed be wanting to wait that length of time before they moved their net because indeed the whole point of the setting of nets was to catch fish and certainly to remove those fish and other marine organisms from the net before they have been ravished by crabs or seagulls or indeed anybody else who might be after a cheap and easy meal for an unattended net. So the 96 hours, although it is still there as a recommendation for the allowance of a net to be set, I think the overall opinion is that it still from a professional fisherman's point of view a period that is too long. A final point, Sir, was it was indicated by the professional fisherman and, indeed, the officers of the department that certainly this was a stopgap situation. We have heard reference from the Minister this morning that indeed he does agree with those sentiments expressed that there is a wider body of work which will take into account the proper designation of areas that have been set out as Ramsar areas, and indeed there will be a fuller picture that deals with bag limits and how many fish you can take from a net rather than just talking about the difficulties of a net which fishes in a bad way. Sir, this I think is probably the biggest reason why I do not feel that I can support the regulations as set out because indeed, Sir, it only does take a small look at the bigger picture which will be looked at in the fullness of time. The other niggling point, Sir, is that although we do have - we have to have due to standing orders - a statement as to whether or not there are any financial and manpower implications, it was clear, Sir, from the review that certainly there would be financial and manpower regulations if, indeed, the Fisheries Officers were in a position to be carrying out the checking of the setting of these nets in a fashion that was real time and not after the event, so to speak. As I say, Sir, I do not think that the law, as framed, is fit for the purpose. I do not think there is any mad rush or requirement to put these regulations into force, bearing in mind that the Integrated Coastal Zone Management Rules and Regulations and body of work is about to come to this House towards the end of the year and I think it will probably be in a better picture to flesh out the fishing issues in a way that services the interests of the fishing public and the professional fishermen and, indeed, the public at large in a substantially better way. With those comments, Sir, one final point is that I still, on behalf of the panel, submit that there should be a comment from the Minister for Planning and Environment and we do not pick up on that point. Environmental issues do come under the remit of the Minister for Planning and Environment, although the economic aspects of Fisheries have, indeed, been passed across from the Environment Department to the Economic Development Department. I think, Sir, that this is a defect in the way we run our affairs and perhaps there may be insubstantial consideration of the environmental issues if, indeed, the Minister for Economic Development is the only Minister who is expected to make any comment as far as Fisheries Regulations go. If this law does go ahead, Sir, I would like an assurance from the Minister for Planning and Environment that, indeed, in future situations where Fisheries Regulations are coming to the House, there will not be a tacit reliance or over-reliance on the officers from the Environment Department but, indeed, Sir, there will be some comment as to the sense of the legislation in respect of environmental issues from the Minister for Planning and Environment.

### **5.1.2 Deputy G.C.L. Baudains of St. Clement:**

While this amendment seems like a good idea, Sir, I remain unconvinced that it will achieve the ends to which it aims. I would like the Minister to explain to me in his summing-up concisely how exactly the amendment is going to prevent the problem which is perceived or is it merely going to be a mopping up exercise after the event?

### 5.1.3 The Connétable of St. Brelade:

I found the comment from the chairman of the Scrutiny Panel somewhat exasperating. I am on the Fisheries Panel which has worked for some considerable time on this matter. It is a simple matter requiring a simple change in legislation and there is no bureaucracy involved which the chairman of the Scrutiny Panel seems to be leading to. The issue is that we have a neaping net situation. We have a ghost fishing net situation. We have dead fish on the beach. We have nets breaking adrift and causing safety issues and it is a simple change of legislation to cure this small problem and I think, Sir, we really do not need to make a big thing of it. I would just urge Members to support it and get it out of the way.

### 5.1.4 Senator P.F.C. Ozouf:

I am grateful for the comments of the Constable of St. Brelade, Sir, wise words from the Constables' benches. Sir, I was not going to use the word "exasperating". I was going to try and find a different word but it is exasperating, Sir. The chairman of the Environment Panel seems to be criticising the fact that we have environmental considerations at the heart of another ministry's objectives. Environmental considerations are at the heart of many individual ministries. The fact that it is not the Minister for Planning and Environment coming forward with this does not mean that it is any less environmental. I have to discharge the duties and responsibilities for the fishing industry. There are economic considerations but environmental considerations are the most important and I think it is simply a throwback to a silo mentality that these comments are being made. It is exasperating. The preamble was effectively approved 39 votes to 3. Deputy Baudains, I think, was one of those against. He does not agree. The Constable of St. Brelade has effectively explained, in far better ways than I could, that this is a prevention system and it will work. It is a simple mechanism that could have happened a long time ago if this Assembly had not been stopped from approving it as was its will a number of months ago. We have had a report. Yes, we have had a constructive dialogue, but I wish these regulations had been in force. I am not going to say any more. I think the House is in broad agreement with this. They have already indicated their support. I move the regulation, Sir.

### The Bailiff:

I ask any Member in the precinct who wishes to vote on this matter to return to his or her seat and I ask the Greffier to open the voting which is for or against the articles of the regulations. If all Members who wish to vote have done so, I shall ask the Greffier to close the voting and I can announce that the regulations have been adopted in Second Reading; 33 votes were cast in favour, 2 votes against.

<b>POUR: 33</b>	<b>CONTRE: 2</b>	<b>ABSTAIN: 0</b>
Senator W. Kinnard	Deputy R.C. Duhamel (S)	
Senator T.A. Le Sueur	Deputy G.C.L. Baudains (C)	
Senator P.F. Routier		
Senator M.E. Vibert		
Senator P.F.C. Ozouf		
Senator T.J. Le Main		
Senator B.E. Shenton		
Senator F.E. Cohen		
Connétable of St. Mary		
Connétable of St. Clement		
Connétable of St. Helier		
Connétable of Trinity		
Connétable of St. Lawrence		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. John		

Deputy A. Breckon (S)		
Deputy J.J. Huet (H)		
Deputy of St. Martin		
Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérissier (S)		
Deputy J.B. Fox (H)		
Deputy of St. Ouen		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy D.W. Mezbourian (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy A.J.D. Maclean (H)		
Deputy K.C. Lewis (S)		
Deputy I.J. Gorst (C)		
Deputy of St. Mary		

**The Bailiff:**

Do you move the regulations in Third Reading? Are they seconded? **[Seconded]** Does any Member wish to speak on the regulations in Third Reading? I put the regulations in Third Reading. Those Members in favour of adopting them, kindly show? Those against? They are adopted in Third Reading.

**6. Flu Pandemic Funding (P.67/2008)**

**The Bailiff:**

We come next to Projet 67, Flu Pandemic Funding, in the name of the Minister for Treasury and Resources. I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion: (a) in accordance with Article 11(8) of the Public Finances (Jersey) Law 2005 to amend the expenditure approval for 2008 approved by the States on 18th September 2007 in respect of the Health and Social Services Department head of expenditure to permit the withdrawal of up to an additional £1,230,000 from the consolidated fund for its net revenue expenditure in order to fund preparations for pandemic flu; (b) to agree in principle that they will approve an additional allocation of £590,000 to the Health and Social Services Department in the event of an outbreak of pandemic flu.

**6.1 Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

Members may be aware that we now agree all our expenditure at one time in the year at the time of the Annual Business Plan. Nonetheless, there will be occasional exceptions when some unforeseen expenditure has occurred which does need to be met and, in such instances, it is the duty of the Minister for Treasury and Resources to bring forward to the House such a proposal. Those, I am pleased to say, are relatively few and far between but there has been one in respect of pandemic flu, and that was first brought to the States last year and a preliminary payment was made which we agreed as an increase on the 2007 Heads of Expenditure. I am now proposing a sum reflecting the balance of the money needed to prepare for a pandemic flu outbreak about which the Minister for Health and Social Services can speak in more detail but certainly his advisers say it is a question of when and not if and we are perhaps fortunate that the “when” has not occurred yet because we would not, at this stage, be adequately prepared. By approving this expenditure, we will become fully prepared. The proposal is in 2 parts. Firstly, a basic sum of £1.23 million in order to provide the basic requirements and then, if needs be, a further sum of up to £590,000 should pandemic flu break out. I shall leave the Minister for Health and Social Services to add any further comments he

may wish to make in respect of this but, as I said, this is the balance of funding previously proposed and agreed and I propose this addition to the 2008 spending.

**The Bailiff:**

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

**6.1.1 Deputy A. Breckon:**

I would just like to add that there are some comments attached from the Health, Social Security and Housing Scrutiny Panel. We did question officers and Members may remember that some of them attended a presentation in March of this year and there were a number of slides. I have kept them and it outlines some of the detail because questions were, Sir: "Is the funding necessary?" and "Is this a possibility, and if it is an insurance policy, then what is the likelihood?" We also held a public hearing, Sir, on 9th June this year when officers, including the Emergency Planning Officer, came to give evidence and answer questions. The conclusion from this, Sir, is that the panel were satisfied that the Health and Social Services Department and its consultants have taken a proactive stance and it is to be commended. Heaven forbid anything like this should happen but the precautionary approach is there and when questioned, Sir, it was not a case of "if" it will happen. The professional opinion was "when" it will happen. We did question that, Sir, because the historic evidence was that in 1918 in the Spanish flu, between 40 and 50 million deaths occurred there. The one following that was in 1957 when it was Asian flu when there were 1 million deaths and the most recent one in 1968 was the Hong Kong flu when there were 1 million deaths. The question is do we need to fund this, do we need this insurance policy, and the conclusion that we came to, Sir, listening to the professionals, is, yes, indeed, we do. We did also find, Sir, that there was some thoroughness in their investigations and, indeed, the preparation for the worst case scenario, without being alarmist about it, and I think at the time, Sir, some of that information was reported in the local media. In short, Sir, while no one could say that they were fully prepared, the preparations that were being made would give some protection for the local population and we did commend this cautious approach, Sir, and it was not alarmist at all but it was an insurance policy and it did require funding. Therefore, the view of the panel, which I hope Members will be mindful of, is that we would support this and we did investigate the circumstances and I believe it is an example, Sir, of where Scrutiny can inform the process and perhaps be a critical friend. Although the papers that Members have before them today are fairly short, there has been - and I am sure the Minister will say - a great deal of research and professional analysis being done behind the scenes, Sir. With those comments, Sir, I hope Members will support this.

**6.1.2 Deputy C.J. Scott Warren:**

This proposition, Sir, comes before us today as we receive news only over the last few days that scientists now believe that there could be a breakthrough vaccine within the next 5 years which will be effective against all variations of the flu virus. Sir, this is obviously excellent news and obviously we must hope this does come to fruition. We nonetheless need these sums to be set aside now and so, Sir, this proposition has my full support.

**6.1.3 Senator B.E. Shenton:**

As Members will be aware, I did have concerns last year about the spending of this money on pandemic flu vaccines and we have consulted quite widely on this and I think all the medical advice that we have been given, without exception, has very much been that this will be money wisely spent. I would like to thank Deputy Breckon and the Scrutiny Panel for doing a very thorough analysis of the work we have done at Health and Social Services. Obviously, I am delighted that his report came out so positively with regard to the department. It is not just about buying the vaccine but it is also about making sure that you have the resources and the infrastructure available to distribute the vaccine in the case of a flu pandemic. We have had plenty of meetings to make sure that this will be the case and we have tried to make sure that no stone has been left unturned

and that we have covered every single detail. As well as agreeing to the funding, the States is also agreeing to take on a small amount of liability, so I think it is only fair to draw their attention to that. With vaccines that are prepared specifically for an outbreak of a disease, there has not been the opportunity for the pharmaceutical companies to undergo the rigorous testing that vaccines have to go through before they are made available to the public. Indeed, there was a case in the U.S. (United States) of a swine flu vaccine which did cause side effects to a very small minority number of the population and the U.S. Government was left picking up the liability for that. It is not something that we can insure against but the chances of that happening on any scale, given the size of the population that we are looking to inoculate, is quite small and I believe it is a liability that we have to take. I think it is only fair as Minister to draw your attention to this. Similarly, the part of the funding that we are looking for is very much on the basis of if a pandemic does break out so it is money that we need to put aside, almost like a facility that we can draw down on, to buy the pandemic's specific vaccine should it ever be required. We have given presentations to States Members to try and make sure they are as fully informed as possible. Obviously, if you have any questions - I can only speak once in this debate because of the way that States is structured - if you have any other questions, I will try and get a note down to Senator Le Sueur so that he can answer them or I will answer them separately or my department will answer them if they are of a more complex matter, but I would ask Members to please support this proposition.

#### **6.1.4 Deputy S.C. Ferguson:**

While I would normally say: "No, you cannot spend it", I would agree with this because it is insurance. However, in view of the fact that the World Health Organisation only has Avian flu on a low yellow alert, I am hopeful that such an outbreak is less likely. There were more deaths last year from diseases such as Ebola and other tropical diseases than there were from Avian flu. Like Deputy Scott Warren, I would hope that the Health Committee keeps a weather eye on the recent development of the anti-flu vaccine, as you would expect. I would be hopeful that it would enable the States to cut back on the expenditure, at the same time giving proper protection to the population.

#### **6.1.5 Deputy J.B. Fox of St. Helier:**

I went to the presentation, which was an excellent presentation, and unlike most other presentations, we were told and are dealing with something that is not only a possibility but will happen, but I think one of the main things about this is, of course, that you cannot buy these preventative measures until you identify what the problem is and therefore instant decisions or calculated instant decisions will have to be made and that is why there is a necessity for this preventative measure. I am all in favour of preventative measures and, yes, indeed, the new flu vaccine that could be available within the next 5 years is fantastic news. It is not here at the moment and therefore this is a proposition that has to go through. Indeed, it is not just a health thing. This is also something that we heard that the Civil Emergency Officer and all his support from the various departments, ministries and organisations are involved in as well, and we must play our part and that is by accepting this proposition to enable the protection of our people and the Island as a whole.

#### **6.1.6 Deputy J.G. Reed of St. Ouen:**

Very briefly, I was heartened by the words of the Minister for Health and Social Services and the fact that we are ensuring that we protect our population from this pandemic flu outbreak. I would just like to ask the Minister for Treasury and Resources 2 questions, I suppose. Following on from the comments that the Minister for Health and Social Services said, is that what assurances can the Minister for Treasury and Resources give to this Assembly that, in fact, the funds allocated for the funding of the flu pandemic will, indeed, be only used for that purpose? Also, in light of the fact that we are coming to the end of 2008, I would like him to explain part B of the proposition which is that we are agreeing in principle to an additional allocation of funds, but obviously it is only

linked to when or in the event that there is an outbreak. So, I would like to know when exactly are we going to see the £590,000 deducted or removed from or added to the Health Department's budget.

**6.1.7 Deputy R.C. Duhamel:**

I would like the Minister for Treasury and Resources, advised by the Minister for Health and Social Services perhaps, to answer one of my queries here. At the moment, we are being told that some vaccine has been bought, in fact, sufficient to vaccinate the whole population. In previous discussions, Sir, when we were looking at this proposition or the first part of it, it was stated that there were question marks as to the longevity of the vaccine and having purchased it and kept in the cupboard, so to speak, you could only keep it in the cupboard for a particular length of time before it was deemed to be ineffective. Could the Minister for Treasury and Resources outline to the House the amount of monies that have been spent on the purchase of any vaccines at the moment and, indeed, whether or not the suggestion that should a pandemic break out, the additional £590,000 would be the total cost of the replacement vaccine to the vaccine that is already kept in the cupboard, so to speak, but might well be out of date by the time we come to use it. It does seem to me, Sir, with a cynical hat on, that we appear to have got ourselves into a position whereby we have committed to pay monies up front for a particular health programme and this proposition is a way of saving face, up to a point, to get something out of perhaps a mistaken direction that we took previously.

**6.1.8 Deputy D.W. Mezbourian:**

I am grateful to the Minister for Health and Social Services for raising the issue of the indemnity and insurance because I am sure, like other Members when they read the executive summary in P.67, they were concerned about the quote that says the States insurers' quote for indemnity cover was not cost effective and, indeed, the Minister has just confirmed that, and we know from reading further on that we will ourselves need to carry the indemnity if anything is found to be wrong with this vaccine. I have a general question for the Minister for Treasury and Resources. We are told that the States insurers' quote for the indemnity cover was not cost effective. Will he advise the House whether the States went to other insurers to find out whether we would be able to get insurance that would preclude us, as a House, from having to cover the indemnity ourselves?

**6.1.9 Senator T.A. Le Sueur:**

Firstly, I should apologise to the members of the Health and Social Services Scrutiny Panel for failing to commend the comments that they have made which I think we all agree are very helpful and, certainly, even though there may be a new vaccine in the next 5 years, what we have before us is an immediate issue which requires an immediate solution. I think as far as the questions from the Deputy of St. Ouen are concerned, he wishes to be assured that the funds that we are voting here will only be used for this purpose and not go into the general Health and Social Services coffers. That is certainly clear from the financial directions which the accounting officer of Health has to comply with. The funds are only drawn down on the basis of validated invoices and other expenditure incurred. It is not just given to the department to spend willy-nilly so any expenditure on this has to be justified and any expenditure which is not incurred can stay within the consolidated funds. As to part B, when would this be added to the Health and Social Services budget? It is a question really, I think, there of when the outbreak of flu occurs and I do not know if that will be in 2008, 2009, 2010 or whenever. Until such stage as the flu-specific vaccine is required, those funds can stay within the consolidated funds but they have to be earmarked as being available should they be required so they cannot be spent for any other purpose, either by Health and Social Services or by the States generally. I think that probably leads me on to the question from Deputy Duhamel about the longevity of the vaccine and how much we have spent so far on the programme itself. That is an issue on which the Minister for Health and Social Services clearly has more experience than I have. As far as I am aware, the basic vaccine has a longevity of about 5



years. It needs replacing and updating on a 5-year basis. What we have here is, I think, a 2-part situation where there is a general vaccine applicable to all flu in general and then when the specific type is identified at the time of an outbreak, a further flu-specific vaccine is required and that is the purpose of part B of this proposition. That flu-specific vaccine would only be purchased as and when the pandemic occurred, but the general vaccine is required on an ongoing basis and there will be ongoing recurring revenue expenditure costs which will have to be met from the Health and Social Services budget. This is a one-off because of the nature of this particular activity but the future has to be funded because it is now a known expense out of Health's budget. Are we committed to a particular programme? The programme, I think, is not a particular one. It is one where there is a general vaccine available and the ability to acquire the flu-specific one, should the pandemic arise, when it arises. Finally, as far as the question of insurance is concerned, the States does not have an insurance company. The States uses a firm of insurance brokers who will shop around to see what quotes could be available for this sort of activity. Insurance companies tend to set premiums on the basis of their likely expectation of risk and if they have no particular background experience to work on, they will think of a figure and generally double it or make it a bit more to be on the safe side. All I would say is that while insurance could have been acquired, it would have been at a significant and, in my view, unrealistic cost in relation to, as the Minister for Health and Social Services says, a relatively low likelihood of that occurring. Should the situation change in the future as more experience becomes available, it may well be that liability insurance could be obtained in the future but at the current time, it is not appropriate. I think those comments deal with everyone's questions. I certainly hope so and, on that basis, Sir, I maintain the proposition.

**The Bailiff:**

Well, I put the proposition. Those Members in favour of adopting it, kindly show? Those against? The proposition is adopted.

**7. Draft European Communities Legislation (Bluetongue) (Jersey) Regulations 200-(P.71/2008)**

**The Bailiff:**

We come next to Projet 71, the Draft European Communities Legislation (Bluetongue) (Jersey) Regulations 200-, and I ask the Greffier to read the citation of the draft.

**The Deputy Greffier of the States:**

Draft European Communities Legislation (Bluetongue) (Jersey) Regulations 200-: the States, in pursuance of Article 2(1) to (3) of the European Communities Legislation Implementation (Jersey) Law 1996, have made the following regulations.

**7.1 The Deputy of Trinity (Assistant Minister for Planning and Environment - rapporteur):**

The European Communities Legislation (Bluetongue) (Jersey) Regulations 200- will enable me to ensure all current measures to control this disease can be taken in Jersey. They add to the provision of Diseases of Animals (Bluetongue) (Jersey) Order 2006. This disease, Bluetongue, has caused devastation in cattle herds and sheep flocks in Northern Europe since introduction in 2006 from an unknown source. It is present in neighbouring France. These regulations are necessary to fulfil Jersey's obligation to comply with E.U. Animal Health Legislation. The regulations give me power to declare protection or surveillance zones. Such declarations will be based on veterinary advice. A declaration only affects movement within the Island if an animal shows clinical signs of disease. When a declaration is in force, it will be an offence to export livestock unless specific conditions are fulfilled. This year to date, 513 cattle have been exported from the Island and I believe it essential to maintain Jersey's good standing in the international community. Compliance with international agreed measures and legislation supports our international reputation. The only species at risk in the Island are sheep, cattle and goats. The disease is spread between animals by a

biting midge and the midge to the animal. It is not spread from animal to animal. There are no risks to humans and no risk to animal products. Control measures are very different to notifiable diseases previously experienced in Northern Europe, for example, the classical Swine Fever and Foot and Mouth Disease. Under current legislation, Disease of Animals (Jersey) Law 1956, we cannot declare and enforce restrictions on animal movements which is essential when we consider the disease and its method of spread. The necessary powers were not embedded in this legislation at that time which was made when diseases such as Bluetongue were confined to the African continent. While the proposed legislation provides power to require compulsory vaccination, there are no plans to introduce this at present. Introduction of the power to make vaccination compulsory is entirely in keeping with the aims of ensuring a full suite of powers to control the disease and, if necessary, will be done with full co-operation with the farming industry. This disease is caused by a virus with 24 distinct stereotypical types. The chief concern and threat to the Island livestock is currently Stereotype 8. Unfortunately, an additional Stereotype 1 is also present in France and with an eye on this future threat, it is important that we are fully equipped to control this disease. My department has been in contact with the industry and a veterinary officer has liaised and written to all keepers and veterinary surgeons and all information is available on the States website. Also keepers have received a leaflet on Bluetongue on how to spot the disease. An important part of disease control is demonstrating freedom from disease. These regulations provide power to the veterinary officer to establish evidence to internationally recognised standards. This power also includes animals as sentinels to indicate absence of disease as taking, testing samples and gathering records. The long-term aim obviously is the eradication of the disease from Northern Europe, hence such powers are necessary. Regulations also provide powers of entry to the veterinary officer and inspectors to allow them to carry out functions imposed. There are also provisions for offences and penalties in keeping with the Convention but I also add that the industry are fully co-operating with all this and are fully behind these regulations. I commend the regulations to the Assembly.

**The Bailiff:**

Are the principles of the draft seconded? **[Seconded]** Does any Member wish to speak on the principles of the draft regulations? I put the principles. Those Members in favour of adopting them, kindly show? Those against? They are adopted. Deputy Duhamel, does the Scrutiny Panel wish to scrutinise these regulations?

**Deputy R.C. Duhamel (Chairman, Environment Scrutiny Panel):**

No, Sir.

**The Bailiff:**

Thank you very much. Assistant Minister, do you wish to propose the articles of the regulations *en bloc*, therefore, or do you want to take ...

**7.2 The Deputy of Trinity:**

Yes, Sir, I can propose them *en bloc*. Regulations 1 to 2 are Interpretation. These provide interpretation to States additional to existing legislation. Regulations 3 and 5 give powers to the Minister to declare a zone for disease control and state the effects of such declaration. It also gives veterinary officers powers to follow declaration and to make disease control measures, including demonstration of disease freedom. Regulations 6 and 7, Vaccination. It lays down the control on vaccinations. Regulations 8 to 10, Compliance and Operation. It makes non-compliance an offence and provides powers of entry to veterinary officers to undertake duties. Regulations 11 to 15, Offences and Penalties. Standard provision to make non-compliance an offence. Allows defence of due diligence and enables the court to impose penalties. Regulation 16 amends the 2006 Order which mirrors the powers of entry given in Regulation 10. Regulation 17, Powers to Amend

Regulation by Order. This gives the Minister power to implement directive amendments by order and Regulation 18, Citation and Commencement, Sir. I maintain the regulations.

**The Bailiff:**

The regulations are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of the regulations? I put the regulations in Second Reading. Those Members in favour of adopting them, kindly show? Those against? They are adopted and do you move the regulations in Third Reading, Assistant Minister? **[Seconded]** Does any Member wish to speak on the regulations in Third Reading? I put the regulations. Those Members in favour of adopting them, kindly show? Those against? The regulations are adopted in Third Reading.

**8. Draft Supply of Goods and Services (Jersey) Law 200- (P.77/2008)**

**The Bailiff:**

We come now to Projet 77, the Draft Supply of Goods and Services (Jersey) Law 200- and I ask the Greffier to read the citation of the draft.

**The Deputy Greffier of the States:**

Draft Supply of Goods and Services (Jersey) Law 200-: a law to set out formalities and rights in relation to the supply of goods and services and for related purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

**8.1 Senator P.F.C. Ozouf (The Minister for Economic Development):**

I think, Sir, that I am the only Member of the former Industries Committee which started the process of improving consumer protection in Jersey. In 2001, a report entitled *Review of Consumer Protection in Jersey* was published by the then Industries Committee and made a number of recommendations. Three of those recommendations related to new laws and this proposition, if Members approve it, will be the final piece of legislation introduced to meet all of those recommendations. The Supply of Goods and Services Law may well be, in fact, the most important advancement in consumer protection in Jersey for many years. For the first time, consumer statutory rights similar to those enjoyed by U.K. consumers will be introduced. The Jersey Customary Law of Contract is different in certain fundamental respects from the common law of England and Wales. These issues, Sir, are perhaps quite obscure to the average consumer but they are vitally important. The intention behind the draft law, as well as achieving policy objectives to clarify the respective rights of buyers and sellers in a way that is consistent with the underlying concepts of Jersey law, is to improve the lot of consumers in Jersey. This draft law has been the culmination of a substantial and extensive piece of work. The department has drawn and law officers have drawn on the expertise within the local legal profession. In fact, it was a local lawyer who assisted in drafting the comprehensive drafting instructions which led to the draft law. There was a lengthy consultation carried out in 2007 and although, perhaps unsurprisingly, we had a relatively small amount of responses, those that were were incredibly useful and not surprisingly from, in the main, members of the local legal profession and they focused very much on the detail and wording. Specialist advice has also been taken and, of course, engagement with the law officers has been, as usual, helpful in bringing us to where we are today. Inevitably, in seeking to clarify contractual rights and responsibilities in statutory form, attention has had to be given to the Sale of Goods legislation in force in the United Kingdom although it sometimes differs in Scotland. I say that because the vast majority of imported goods originate from the United Kingdom supply chain. Many High Street retail outlets in Jersey are branches of United Kingdom stores which follow trading practice, which are based on the Sale of Goods laws in England and Wales. In Scotland, there is a slightly different issue. Statutory rights are somewhat different in Scotland but, in general, we have taken the England and Wales model. In reality, while the consumer in Jersey does enjoy a number of rights already at customary law, he or she still does not have statutory rights in the strict sense in which the consumer now does in England and Wales. This law, if

passed by the States, will set out the full extent of such statutory rights. Moreover, it will provide a clear framework for the benefit of both consumers but, importantly, retailers too. In producing the draft law, attention has been drawn specifically to a number of Acts of the U.K. Parliament. This new law will apply to all the contracts for the sale of goods and services as defined in the law which include, for example, also business to business contracts. The law will provide extra protection in circumstances where clearly one party to the contract is a trader and the other is a consumer. Numerous transactions take place in the Island on a daily basis between traders and consumers. Where nothing goes wrong, there is no issue but on occasions where inevitably dispute arises, this law will make it much easier for buyers as well as sellers to identify their basic contractual rights and to seek remedies. This law, Sir, is, by necessity, somewhat lengthy and complex in its terms. I hope the report to the proposition has assisted Members because it sets out very clearly in layman's terms how the law will apply to everyday contracts. I hope Members have found that useful. The draft deals only with civil contractual rights and remedies. It does not create any criminal offences and there are no enforcement powers or duties to be undertaken by any particular body. However, in the event of a contractual dispute arising and unable to be resolved through negotiation, redress will be sought through the action of our excellent court service in Jersey. The court will then base its decisions on the facts presented which will, of course, be unique in every case. The Trading Standards Service has provided a free confidential and consumer advice service for many years, not only assisting consumers but also traders in resolving many minor disputes which could arise over the sale of goods and services. They are going to be greatly assisted effectively by the codification and putting the sale of goods on a statutory basis. I should also say that the Citizens' Advice Bureau also provides a welcome amount of consumer advice and, indeed, regularly there are exchanges of information between Trading Standards and Citizens' Advice. If the Assembly approves the law today, it is intended that Trading Standards will publish guidance booklets to ensure that consumers can be confident that they know their rights in a layman's terminology and that they are also aware of their responsibilities in terms of goods and services and particularly for traders, that they are aware of their responsibilities when carrying out sales in the Island. Sir, this is a massively important law for consumers. It was the last piece, as I said in my opening remarks, of a 6-year project for improvement of consumer protection. It is supported, I am pleased to say, I think very strongly, by the Consumer Council but also by the Chamber of Commerce and also the Fair Trade section team at the *Jersey Evening Post*. I do not think that they believed that we would bring this law finally to the States. It has been a long time coming. It is here and I commend the preamble to the Assembly.

#### **The Bailiff:**

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

#### **8.1.1 Deputy C.J. Scott Warren:**

I very much welcome this law, which is long overdue and is certainly very necessary. The Trading Standards Service and the Citizens' Advice Bureau are rightly highlighted in the report and have just been mentioned by the Minister. To that list - and I am sure the Minister would agree with me here - Deputy Alan Breckon, the Chairman of the Consumer Council, should also receive our thanks. I know that he has often given dissatisfied customers extremely useful advice, myself included, so, Sir, I very much welcome this piece of overdue but very good legislation.

#### **8.1.2 Deputy A. Breckon:**

Just to make a few comments on the preamble. Being older than the Minister, I can go back further than this to the late eighties and the early nineties when I think at the time it was the then Senator Reg Jeune who had some concerns about the rules and regulations that we did or did not have in place. He invited to the Island Lady Judith Wilcox, who was then, as is mentioned in the report, Chairman of the National Consumer Council. Flowing from the findings there ... and I would like

to quote what she said in her report: “What Jersey wants and needs is a law that ensures that consumers do not have to put up with business practices that were ruled out of court decades ago in the United Kingdom and Europe. The Islanders deserve, and its tourists expect, no less.” The reason I say that, Sir, is the then Public Services Committee - or they might have been Public Works at the time - brought in principle to the House that there should be a fair trading law. I think that was February 1992 or 1993, I am not sure. I hope the Minister will keep his finger on the pulse here because he said there are 3 pieces of work. This piece of work is indeed very important because it puts down some benchmarks. I heard what Deputy Scott Warren has said, Sir, but sometimes I get fed up with having to apologise for a system where people have no easy access to remedy. It is a case sometimes of using publicity and brute force and whatever else to try to get people remedy and I do recognise that where we do have links with U.K., with multi-nationals, be they banks or shops or whatever they are, then they do indeed adopt the same practice but indeed they do not have to. The Minister mentioned the other pieces of work, one of which was consumer safety and this came from instances, Members may remember where, I think it was children’s nightclothes, filling in furniture which was flammable, and there were one or 2 issues and the safety law encompassed this into a sensible piece of legislation rather than having just the odd ad hoc bits. The other thing was distance selling which is of more benefit for people outside the Island than people in it because if people outside ... when the fulfilment industry was growing I think the Industries Committee at the time thought it was right to put in a safeguard which was comparable with other places where if things go wrong with the distance selling then people again had something on the statute that gave them remedy. I think it is probably right to say that people have a discomfort with customary law because I remember a case once where we were heading for the Royal Court with a dispute over an item of clothing and it did get resolved, but that was the measure that was required to get remedy at that time. I think, Sir, people do have a frustration. For example, if they have been sold a pension or a mortgage product based on insurance with things like bank charges where remedy is available elsewhere and is seen to be happening, then that frustration is there. In conclusion, Sir, I would like to say to the Minister, I hope this is part of an ongoing process, because there is need for protection in areas like advertising and consumer credit. I know we are working with the Financial Services Commission and others on some of these issues but it is indeed relevant to people’s everyday lives and things that happen to them rather than things that we might make up and think that people need. I hope the Minister will listen to this and put in place something that flows from this because it is long overdue and it is part of a process but there are also other things, Sir, that I believe should flow from it, not for my benefit, but for the community benefit.

### **8.1.3 The Deputy of St. Martin:**

I very much want to follow in the track of both previous speakers because, again, I welcome this and I certainly will not apportion any blame to the Minister because I know he has done his best to bring this through, but the concern is how long it has taken to come through and I think, again, compliments to the Minister for asking to bring it forward. I think many of us, as States Members, have had calls from people in the constituents who have been concerned about the lack, or I should say the “rubber teeth”, that we have in place at present so what we will now have is a statutory piece of legislation here with teeth. I did hear the Minister say that there will be guidance notes but the sooner they are also published telling people what their rights are and also reminding them of their responsibilities that even so that we now have something with actual teeth and, again, I will give it my support and I suggest other Members do so as well.

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

I was, as some Members know, on Radio Jersey yesterday with the Economic Affairs Scrutiny Chairman characterising some, me and others, as “free marketeers”. Well, the free market operates only with rules and rules were well overdue in a number of different areas. Distance selling regulations, as Deputy Breckon has championed, consumer safety, competition laws, regulatory

arrangements where there are monopoly providers. This Assembly has done a great deal to improve the voice of consumers in the last few years. Deputy Breckon is to be congratulated for his dogged persistence in ensuring that these things happen and I am happy to continue that agenda for him. He is right to say that this is not necessarily the end of the road. We do need clear layman's terminology of what the rights of consumers are and also what the responsibilities for traders are. I think the report that is associated with the proposition has that layman's guide which we will no doubt cut and paste and use in raising awareness for consumers and we need to use every single possible vehicle to get those layman's terms of exactly what those rights are to the general public. Sir, I have nothing more to say. I think that this has been a welcome necessary overdue piece of legislation. We have worked very hard to do it and I am pleased that it has been done in the final days of this Assembly.

**The Bailiff:**

I put the principles of the Bill. Those Members in favour of adopting them, kindly show? Those against? The principles are adopted. Scrutiny Panel Vice-Chairman in the absence of the Chairman?

**Deputy A. Breckon (Vice Chairman, Economic Affairs Scrutiny Panel):**

No, Sir, this has been in the public domain for a long time and virtually in 2007, the whole year was for consultation and I think anybody who needed the opportunity has had it, Sir.

**The Bailiff:**

Thank you very much. Do you wish to take the Bill in parts, Minister?

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

I appreciate the Members are broadly supportive of the Bill. I do think by necessity I should simply perhaps make some very brief remarks part by part. I will be as brief as I can but certainly we can take it through part by part and answer any questions, Sir. Part 1, Articles 1 to 10, these set out the normal definitions contained in the Bill. Article 2 defines who is and who is not a consumer in contractual dealings. Article 4 is important as it describes what may be considered as a reasonable standard of quality for goods supplied to a consumer in any transactions. These definitions closely follow those in the U.K. Sale of Goods Act and, where necessary, local courts will be able to take guidance from decided cases. The only other one I would point out is Article 10, which clarifies that the law applies to the Crown and any public administration so I propose Articles 1 to 10.

**The Bailiff:**

Articles 1 to 10 are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? I put the Articles. Those Members in favour of adopting them, kindly show? Those against? They are adopted.

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

Part 2 Formation of Contracts for Sale of Goods. This section deals with certain fundamentals of contracts for the sale of goods. Article 11 defines the contract of sale for goods and further defines some of its parameters. Article 12 ensures that Jersey customary law relating to capacity to enter contracts still operates and it also deals with contracts made with minors. Article 13 makes it clear that a contract of sale of goods may come into being by writing, speech or even conduct. Article 17 allows for the price of goods to be determined in a number of ways but where a price is not fixed in contractual dealings, the buyer shall pay a reasonable price, dependent on the circumstances of each case. Article 19 makes it clear that time is not usually of the essence in contracts for sale of goods. I propose Articles 11 to 19.

**The Bailiff:**

Articles 11 to 19 are proposed and seconded? **[Seconded]** Does any Member wish to speak on the any of those Articles? I put those Articles. Those Members in favour of adopting them, kindly show? Those against? They are adopted. Part 3.

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

Part 3 Warranties and the Sale of Goods, Articles 20 to 25. This part, I would say to Members, is probably the most important from a consumer protection point of view. It sets out a number of statutory warranties in the sale of goods and mirrors the implied terms found in the U.K. Sale of Goods Act. It should be understood by Members that the term “warranty” has nothing to do with the warranty supplied by a manufacturer of some classes of goods. For example, a motor car warranty is the Jersey term for implied terms. They have been the cornerstone of consumer statutory rights for many years in the United Kingdom and provide a measure of protection for consumers in dealing with traders. I propose Articles 20 to 25.

#### **The Bailiff:**

Articles 20 to 25 are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those Articles? I put the Articles. Those Members in favour of adopting them, kindly show? Those against? They are adopted. Part 4.

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

Part 4 deals with the Supply of Services. This part deals with a number of statutory warranties where a contract is for the supply of services. Article 26 defines such contract and Article 27 introduces a permissive power for the States to make regulations exempting such provisions, should the need arise. Articles 28 to 30 provide that where a service is supplied in the course of a business, it must be carried out with reasonable skill and care within a reasonable time and for a reasonable charge. That concept of reasonableness, I hope Members are clear that there has been a lot of discussion about that particular issue. You cannot make a statutory provision for every single case and it is the interpretation of “reasonableness” that is critical. Sir, I propose Articles 26 to 30.

#### **The Bailiff:**

They are proposed and seconded? **[Seconded]** Does any Member wish to speak?

##### **8.5.1 Deputy A. Breckon:**

Just a comment. The Minister probably does not realise what a landmark this is because the amount of people who might have, let us say, a frustration with perhaps a builder with what is reasonable in the circumstances. Is it reasonable for him to go over to Australia for a month and leave your fireplace unfinished or something like that? Although what is reasonable is open to interpretation, the fact that it is now there written down means that somebody who has a dispute, let us say, about how long this should take and eventually how much it should cost, this is a real, as I say, landmark, because it means that when the guidance note comes out instead of saying to somebody: “Well, all you can do is go back and talk to whoever it is”, it means you can bring them perhaps to more effective remedy when this is there behind it and I think that is the mark of any good legislation. It is there as a backstop when relationships fail and people are not talking to each other any more. I think it does bring them to the right point and I think it is very welcome, Sir, as are other parts of this.

##### **8.5.2 Deputy R.G. Le Hérisier:**

Could the Minister clarify whether a service here would be the purchase of a transport service? So if, for example, an airline were to go bankrupt or a ferry operator?

##### **8.5.3 The Connétable of St. Brelade:**

Would the Minister confirm whether the eventual arbiter of the definition of “reasonableness” will be the Royal Court?

**The Bailiff:**

I call upon the Minister to reply.

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

I think I do understand the huge importance of this codification of the concept of “reasonableness” and it is absolutely the cornerstone. It is the hypothetical situation of where a service is carried out, the consumer has a right to expect that it is carried out with the ordinary skill of an ordinary competent person exercising that particular profession or trade. Effectively, if the standard of work falls below that expected by a reasonable person, taking into account the nature of the work and any specific instructions given, then if it has not been carried out with reasonable care, the consumer can seek redress. That is the key part of it. I am looking over to the benches of the Solicitor General. I think that I can say yes to Deputy Le Hérissier in relation to air transport matters but, of course, the critical thing there is where the contract has been carried out. I think I answered all the other questions that were asked.

**The Bailiff:**

Constable of St. Brelade you did not deal with.

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

I think my answer was yes but I cannot remember what the question was, I am sorry. **[Laughter]**

**The Connétable of St. Brelade:**

It was just to ask the Minister who the eventual arbiter would be.

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

Sorry. I do apologise. Yes, it is the Jersey Courts that will determine that.

**Deputy R.G. Le Hérissier:**

Just a point of clarification. The Minister mentioned where the contract is carried out. Does that therefore mean the journey has to start or indeed finish in Jersey?

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

I plead the 5th amendment and ask the Solicitor General who would do a better job than me at explaining that.

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

I am afraid to say, Sir, that I have not considered the story specifically against the backdrop of transportation contracts. It seems to me that there is nothing wrong in principle with saying that the law extends to services by way of transportation services, but clearly this is a law which cannot extend outside the territorial jurisdiction of the Royal Court of Jersey of this Assembly. I cannot give any greater clarity at this time as to the kind of contracts that this law will touch upon because, as the Minister has pointed out, it would require a consideration of the place in which the contract is taking place and it is not simply a rule as to where the journey goes from or where the journey comes to. I suspect that other factors such as the place where the ticket is sold, the circumstance in which it sold, will also have a bearing on the answer to the question. I am afraid I cannot offer more clarity than that.

**The Bailiff:**

I put part 4, Articles 26 to 30. Those Members in favour of adopting them, kindly show. Those against? They are adopted. Part 5.

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



Part 5 deals with warranties and hire purchase. Articles 31 to 35 deal specifically with goods supplied under hire purchase agreements. The seller warrants that the goods are of satisfactory quality, also that the seller will have the right to sell the goods at an appropriate time and that the goods correspond with their description where this is appropriate. There is no general warranty as to the quality or fitness of hire purchase but a warranty may arise in certain cases. Bulk purchase is warranted to correspond with its sample. The concept of “reasonable person”, the reasonable man or reasonable persons - we have already discussed the concept of “reasonable” - is often used, I would say to Members, in legal terms. Its origin is, as I understand it, in the development of common law. The reasonable person is a hypothetical individual who is intended to represent a sort of average citizen. The ability of this hypothetical individual to understand matters is consulted in the process of making decisions of law. The question how would a reasonable person act under the same or similar circumstances performs a critical role in legal reasoning and areas such as negligence and contract law. Sir, I move Articles 31 to 35.

**The Bailiff:**

Proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those articles? I put those articles. Those Members in favour of adopting them, kindly show. Those against? They are adopted. Part 6.

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

Part 6. Articles 36 to 51. Part 6 deals with the passing of property and goods that are sold with the legal consequences of a purported sale of goods by a person who does not have the right to sell the goods. Property and goods cannot pass to a buyer until the goods are ascertained. It passes according to the intention of the parties to the contract. I move Articles 36 to 51.

**The Bailiff:**

Proposed and seconded? **[Seconded]** Does any Member wish to speak on any of those articles? I put the articles. Those Members in favour of adopting them, kindly show. Those against? They are adopted. Part 7.

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

Effects of certain contracts relating to motor vehicles, a very important area for Consumer Council avoiding problems in the future. This part sets out special rules where motor vehicles are sold on hire purchase or under conditional sale hire purchase agreements and are wrongfully sold. It provides a measure of protection for the first time to buyers who purchase such vehicles in good faith and without knowledge of such pre-existing arrangements. I propose Articles 52 to 54.

**The Bailiff:**

They are proposed and seconded? **[Seconded]** Does any Member wish to speak on any of these articles? Deputy Breckon.

**8.8.1 Deputy A. Breckon:**

Just to say again, Sir, again this is very welcome because if I had £10 for every hour I have spent on defective vehicles which people cannot see they are defective when they buy them. It is only maybe 2 days later. Although there is some recourse, it is difficult because the seller usually claims it has had one careful particular owner when, in fact, that might not be the case, and again with descriptions, the actual thing itself, and it is something that if it is shining and it looks as if it is okay but it might well not be. So again, Sir, this is welcome, and I think with the proper guidance notes it will give assistance to where there is a degree of dispute, and although organisations like the Motor Traders Federation would claim some jurisdiction here, there are traders who are not members and there is still some unscrupulous practice, but again, Sir, it is a welcome addition and something that we do not have.

**The Bailiff:**

Reply, Minister? I am sorry, Deputy Scott Warren?

**8.8.2 Deputy C.J. Scott Warren:**

Leading on from the previous speaker of this, I wonder if we could have a bit of clarification when it is a private sale, not done by a garage, to an individual, on how that will work because I understood there is much more of a safety area within this law when you are talking about as regards a business selling to an individual selling. If there could be clarification on that in relation to cars. Thank you.

**The Bailiff:**

I call upon the Minister to reply.

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

I understand the Solicitor General wishes to ...

**The Solicitor General:**

I wonder if I can offer some assistance on this point. This particular part of the draft statute deals with motor vehicles in a specific way. The way that it deals with them is to ensure that anyone who purchases a motor vehicle in good faith, without notice of any prior interest from any other party, provided they are a private person, gets good title to the motor vehicle. That protection does not extend to people who purchase vehicles who are doing so in the course of their ordinary business. They do not get that private protection, but the essence of these particular statutory provisions are to ensure good title to innocent purchases and you only get good title if there is a sequence of transactions, provided you derive that title from a purchase by an innocent person. If a person in the trade acquires a vehicle which is subject to a hire purchase agreement or a conditional sale agreement, then they do not get any better title than the person who wrongfully sold it to them, but that is the thrust of these particular statutory provisions.

**The Bailiff:**

Do you wish to add anything, Minister?

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

I do not think so, Sir.

**The Bailiff:**

Well, I put Articles 52 to 54. Those Members in favour of adopting them, kindly show. Those against? They are adopted. Part 8.

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

Deals with the performance of contract of the sales of goods. It sets out delivery, acceptance and payments are essential acts as described in Article 56, and while Article 57 states this, unless otherwise agreed, delivery and payment must be concurrent. Article 58 sets out the detailed rules about delivery. Article 59 deals with the consequences of the delivery of either too many or too few of the goods concerned. Article 60: the delivery in instalments is possible but only by agreement. Article 61: delivery to a carrier may amount to delivery to a buyer, and the article also deals with certain duties of the seller when carriage is involved. Article 62 deals with risk sharing in certain cases where a seller delivers to a place different from the place where goods are sold. Article 63 describes the right for a buyer to examine goods where the seller tenders delivery of certain goods. Article 64 sets out rules for determining what constitutes acceptance of goods when it occurs. When a buyer deals as a consumer, he or she is given extra rights concerning the examination of delivered goods. Article 65 allows for partial rejection of goods in certain circumstances. Article 66 states that a buyer is not normally bound to return rejected goods of the

buyer and the right to reject them. Article 67 provides for a buyer to be liable for a seller's losses that result from a buyer's wrongful refusal to take delivery of the goods. I propose Articles 55 to 67.

**The Bailiff:**

They are proposed and seconded? **[Seconded]**. Does any Member wish to speak on any of these articles? I put the articles. Those Members in favour of adopting them, kindly show. Those against? They are adopted. We come to part 9.

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

Part 9 sets out the details of what an unpaid seller of goods can do and in what circumstances. Article 68 defines an unpaid seller. He or she may retain goods on the basis of provisions laid out in the articles. An unpaid seller may also, if it is possible, stop goods in transit. Article 76 provides the right to retain goods or stop them in transit. It is not affected by a buyer reselling the goods unless they buyer has done that with the approval of the seller. Article 77 deals with circumstances concerning an unpaid seller's rights to resell goods. I propose Articles 68 to 77.

**The Bailiff:**

Those articles are proposed and seconded? **[Seconded]**. Does any Member wish to speak on any of these articles? I put the articles. Those Members in favour of adopting them, kindly show. Those against? The articles are adopted. Part 10.

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

Deals with the rights of a buyer or consumers in consumer cases. Part 10 is important from a consumer protection point of view as it focuses on the business to consumer contracts. Article 78 provides that goods do not conform to a contract of sale of goods if they have been in relation to the goods and a breach of an express term of the contract or a breach in warranty under articles in the law. Article 79 sets out some flexible remedies that a buyer of goods who is a consumer may invoke if the goods do not conform to the contract. Article 80 provides the circumstances under which a consumer has a right of repair or replacement of goods. Article 81 includes the right for consumers to require a reduction in the purchase price of the goods or to rescind the contract. Article 82 provides, once the consumer has opted for repair or replacement of goods he cannot then reject them unless the seller has a reasonable time to carry out repairs and replacement. Article 83 enables the court to make orders with regard to the remedies under this part of the law. I propose Articles 78 to 83.

**The Bailiff:**

They are seconded? **[Seconded]**. Deputy Breckon?

**8.11.1 Deputy A. Breckon:**

Yes, Sir, again there is a gem in here, and that is Article 80 about the repair or replacement of goods. Forgive me, Sir, I cannot remember what it is, but there was a judgment in the Royal Court - I think it was Wholesale Electrics - when somebody purchased a number of radiators, probably about 40 years ago, and the judgment was whether the contract was with the retailer or with the manufacturer. I think the judgment clearly found that it was in fact with the retailer. Perhaps the Solicitor General will correct me if I have got that wrong, but I think it was Wood, a chap called Wood, against Wholesale Electrics. The reason I say that is because somebody might buy something like a television and after 2 months there is a fault with it and whoever sold it says: "Send it back to the manufacturers" but of course you cannot put it in a jiffy bag and post it. There is a great deal of dispute in this area, and I think under Article 80 it gives some substance to what people's rights may be in this area. Again it is welcome, Sir, and it does put this down as regulation as a last resort when all else has failed and negotiations have failed. Then somebody can say to somebody else: "Well, under these regulations, that is what you must do." So I think again,

Sir, this is very welcome. My apologies if I have got it wrong but I think it was Wood against Wholesale Electrics. I cannot remember the year; 1968 perhaps. The essence of the judgment was the person had bought some electrical equipment and the company had said: "It is not us. It is the manufacturer" and I think the court had found that it was not, that it was the retailer where the contract had taken place. So this does give some substance, I think, perhaps, to that judgment.

**The Bailiff:**

I call upon the Minister to reply.

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

I very much agree with Deputy Breckon. Members are probably looking at Article 80 and looking at 6 different paragraphs and wanting to sort of have perhaps a plain English explanation for it. It is absolutely vital for one of the most important provisions for consumers. Basically, where goods do not conform to the contract, faulty or defective, the consumer has the right to request a repair or replacement. Whichever remedy is requested, it must be carried out within a reasonable time and without causing a significant inconvenience to consumers. The seller must bear any costs involved and particularly in relation to parts and labour; absolutely at the heart of putting consumers' rights very clearly. I hope that explanation assists Members, Sir. I move Articles 78 to 83.

**The Bailiff:**

I put those articles. Those Members in favour of adopting them, kindly show. Those against? They are adopted. Do you move part 11?

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

If I may, Sir. Part 11 sets out the various actions for breach of any contract. Article 84 provides that the action may be brought to recover the price from the buyer where he has possession but has neglected or refused to pay for the goods. Article 85 allows a claim for damages against the buyer in certain circumstances and 86 allows a claim for damages by the buyer against the seller for non-delivery of goods. Article 87 provides that an order of specific performance must be sought in any action for breach of contract for the sale of goods. Article 88 sets out the remedies where the seller is in breach of a term of a contract or in breach of a warranty as prescribed in the law. The measures of damages for a seller's breach of a contract of sale of goods or a hire purchase agreement are set out in Article 89. Nothing in 11 affects the recovery of special interest or special damages that are dealt in Article 90. Sir, I move Articles 84 to 90.

**The Bailiff:**

They are proposed, and seconded? **[Seconded]**. Does any Member wish to speak? I put those articles. Those Members in favour of adopting them, kindly show. Those against? The articles are adopted. Part 12.

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

The miscellaneous provisions. Article 91 makes it clear that the provisions of law as to rights, duties and liabilities under contract may be overridden by the express agreement of parties involved, although an express term does not negate a warranty unless it is consistent with it. Article 92 sets out some basic rules about auction sales. Article 93 makes it clear that reasonableness under the law is to be treated as a question of fact. Article 94 enables the States to make regulations on various aspects of contracts, for example, unfair terms in consumer contracts, something that is going to be dealt with in future. Article 95 preserves the operation of certain other rules of customary and statutory law and 96 sets out the name of the law and provides for its commencement. Sir, I move Articles 91 to 96.

**The Bailiff:**

They are proposed and seconded? [**Seconded**]. Does any Member wish to speak? Deputy Le Hérisssier.

**8.13.1 Deputy R.G. Le Hérisssier:**

In terms of 92(3), retraction of an auction bid, we all know that at auctions, bidding and accepting of bids can be a fast and furious process. What redress does a person have if the auctioneer denies that he or she has seen the retraction of the bid?

**8.13.2 Deputy A. Breckon:**

If I may just make another comment about exclusion and restriction of civil liability. Sometimes in a car park - and the Minister for Transport and Technical Services is not here but perhaps we do it ourselves - the owners do not accept any liability if you slip on the stairs. Now, that is, in consumer terms, an unfair term of contract because if somebody has just washed them and they are wet and you slip, then there is a liability and who should do it? That is the sort of thing. I think, hopefully, without getting too complex in this area, that will be picked up later and it is covered under 94, the various parts of that, but that is really, I think, what life is about, but it is important because of the fact that somebody puts up a notice, they have perhaps a feeling and indeed intent that they are avoiding any claims when in fact they do have a liability to the public on health and safety issues on the premises that they have got responsibility. It is easy to think that they dampen that by putting the sign up, but I think that would catch that if something flows from that.

**8.13.3 The Connétable of St. Brelade:**

Earlier on, it was confirmed that the eventual arbiter would be the Royal Court. Would the Minister confirm that in view of the fact that Royal Court actions do not come cheap, that maybe there is room for an alternate body to resolve difficulties which may become acrimonious at an earlier stage, perhaps by a separate arbiter or an ombudsman of some sort? Thank you, Sir.

**The Bailiff:**

I call on the Minister to reply.

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

In relation to Deputy Le Hérisssier's question, I think I have understood it. If an auction is being conducted and somebody is making a bid, under Article 92(3), until the sale is complete, any bidder may retract his or her bid. The contract is completed when the auctioneer announces the completion of the bid and the hammer goes down. In the event of a dispute, a court would ultimately, I think, act as the arbiter based upon the facts of the case. Clearly, auctioneers are experienced in ... I do not quite know how they do it, but when they are looking out of the left and the right field - sometimes questions without notice, that is quite useful - but clearly it will be a question of fact. I do not know whether the Solicitor General would add anything on that if he wishes.

**The Solicitor General:**

No, I do not think I have anything in particular to add. Quite clearly the court is there to resolve precisely those kinds of things. I think, from a cautionary point of view, it is for someone bidding to be clear if they intend to retract their bid, to do so unequivocally. Otherwise, they run the risk of not having done so effectively, but provided they are quite clear and unequivocal, the court will be there to support that retraction.

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

In relation to the Constable of St. Brelade's questions, of course court remedies are regarded as being effective. The point here is that we have made significant progress of getting our court service to be accessible to people. Litigants in person are certainly supported, litigants in person dealing with planning applications. It is while all of the provisions of the law are in the Royal

Court that the Royal Court, as I understand it, makes rules that can provide for lesser transactions to be dealt with in lower courts and indeed arrangements can be made to that. I have not, I must say, had any particular discussions with the court service in relation to making sure that there is an accessible arrangement for remedy, but I am happy to do that and I am confident that with all of the arrangements that this Assembly passes for redressing of things that the court service has shown itself to be flexible and indeed very receptive to individuals having cheap solutions to resolving their difficulties, and I am happy to do that and then to communicate to Members exactly what we are doing. What I would say to the Constable is the alternative is setting up great big expensive duplicate parallel bureaucracies. We have had a lot of discussions about tribunals. They come with a cost and frankly it is better to work with our court system that works well, that just sometimes we need to have court rules that deal with individual circumstances. I know that the law officers are very keen on the supplying goods and services being put on a statutory basis. It was warmly welcomed by lots of people and I am sure that we will find ways of accessible clear information, clear documents, understanding people, making people understand their rights as critical, and you do not want to have a situation where things are resolved in court. The Training Standards Department provides an excellent service in redressing things. You do need that statutory basis. We have a lot of assistance. In a small island, people tend to know things about the paper, the J.E.P. (*Jersey Evening Post*) and the excellent fair play section. They help in raising awareness. You want to avoid a situation where there is a problem. I would also finally say that the court system does of course have a mediation system available also which will be made available to that. Sir, I think those conclude the remarks on the Articles 91 to 96.

**The Greffier of the States (in the Chair):**

I put Articles 91 to 96. Those Members in favour of adopting, kindly show. Any against? The articles are adopted. The law is adopted in Second Reading. Propose it in Third Reading, Minister?

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

I do, Sir, and in doing so, can I just repeat my very grateful thanks to all those people that have been involved in drafting the law. There is a great deal of work that has been done by the law draftsmen sitting in the officer's room at the back, also by my own Trading Standards team and also the very helpful, real engagement of a number of very interested lawyers in Jersey that have looked into this and of course the support by Deputy Breckon of Consumer Council. So a very, very important day for consumers in Jersey. I move the bill in the Third Reading.

**The Greffier of the States (in the Chair):**

Is that seconded? [**Seconded**]. Does any Member wish to speak in the Third Reading? I put the draft bill in Third Reading. Those Members in favour of adopting it, kindly show. Any against? The law is adopted in the Third Reading. Now, the next item on the Order Paper is the proposition of the Deputy of St. Martin. I see you have a lectern, Deputy. Do you intend to speak at length on this matter?

**The Deputy of St. Martin:**

Very perceptive, Sir. I had already put a ring around a number of others that maybe could have gone before me. In fact, I did also have a kind offer from Senator Shenton who is quite happy to have his put before mine, but if indeed there is sufficient time, I know Senator Shenton would be happy to go before me, but otherwise I would prefer to start after lunch.

**9. Draft Mental Health (Amendment No. 2) (Jersey) Law 200- (P.83/2008)**

**The Greffier of the States (in the Chair):**

Are Members content that we take next the Mental Health (Amendment No. 2) (Jersey) Law P.83 and come back to the Deputy of St. Martin after lunch? Very well. I will ask the Greffier to read the citation of that draft law.

**The Deputy Greffier of the States:**

Draft Mental Health (Amendment No. 2) (Jersey) Law: a law to amend further the Mental Health (Jersey) Law 1969. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

**9.1 Senator B.E. Shenton (The Minister for Health and Social Services):**

Seeing that I have got 10 minutes, I will do a little bit of background [Laughter] on mental health tribunals because Jersey Focus has spent a great deal of time working with my department to influence the improved delivery of mental health tribunals. Probably one of the most important bits of progress that has been achieved is the time taken for an appeal to be heard has been reduced down to between 4 and 6 weeks. Also, most importantly, patients who have applied to the tribunal, including those that have been unsuccessful, have found the review process to be respectful and useful. Detained patients have valued the opportunity to challenge medical opinions, to have their views listened to and to express their concerns. Patients who have not been released from their articles nevertheless claim a sense of empowerment from having a review. While they may not agree to what the panel decision is, they are respectful of the decision made. Therefore, the review process, from the patients' perspective is by no means a waste of time or toothless. Patients value having the right to be heard by a panel as it restores their sense of dignity and, from the very start of the appeal process, removes the terrible sense of helplessness that they may experience. The reason for the amendment is an amendment is required under Article 2 under the existing mental health law so as to provide for future increases in the rate of remuneration paid to the members of the Mental Health Review Tribunal to be set by administrative decision. This amendment is consistent with those recently adopted by the States to enable the rates of remuneration for ordinary judges of the Court of Appeal and commissioners of the lower court to be set by administrative decision rather than prescribed by order. It is purely, in other words, a housekeeping exercise to make the department more efficient and to allow the States Assembly more time perhaps to debate more pressing matters. On this basis, I would like to put forward the proposition.

**The Greffier of the States (in the Chair):**

The principles are proposed and seconded? [Seconded]. Does any Member wish to speak on the principles of the draft law? Deputy Baudains.

**9.1.1 Deputy G.C.L. Baudains:**

If I understand this proposition correctly, I am not quite sure that I can support it, Sir, because it does seem to me that an order is not debated but it does appear on the Order Paper. At least we know what is going on, whereas an administrative decision, I am not quite sure whether I would be alerted to any changes that I would have been, had it appeared on the Order Paper. I really do not see what difference it makes, apart from the fact it seems to increase secrecy in this age where we are looking for greater transparency.

**9.1.2 Deputy S.C. Ferguson:**

I wonder, Sir, if perhaps on the wider issues and following on from Deputy Baudains, we perhaps ought to be looking at the rates of remuneration for all tribunals and so on, and perhaps establishing a standard scale. I would refer this, perhaps, to the Minister for Treasury and Resources or possibly even the Chief Minister's Office to review this.

**9.1.3. Deputy I.J. Gorst:**

I just pick up on a point raised by my colleague to my left. Perhaps the Minister could confirm that in actual fact the Ministerial Decision will be public and will not be exempt, so you maybe are aware that others have call for possible reordering of Ministerial Decisions on the website, and that is another issue that may be addressed so that my colleague here would easily be able to see when a Ministerial Decision has been made and what that decision is. Thank you.

#### **9.1.4 The Deputy of St. Martin:**

I am not going to give the Minister a hard time, but just a couple of things that struck me was really how much are the people going to be paid and where is the funding coming from, and again, picking up a bit on what Deputy Ferguson had to say, I recently went to an appeal where the people before me were getting paid and there are a number where they are not. There just seems to be this inconsistency and I think, really, if we are going to start looking to pay people on tribunals, we should have a look for consistency across the board to ensure that in future, if we are going to have tribunals, everyone is going to get paid. We will then look to see what it is going to cost, but it does seem to be a bit of an inconsistency at the moment where some people are getting paid for sitting on tribunals and others are not. Maybe the Minister could give some thought to that when he sums up. How much is this going to cost and where is the funding going to come from?

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

I support this proposition and I welcome it to come into the House to ensure that those people who carry out the job on a tribunal are appropriately rewarded. The point I would like to make is that people who are held under the Mental Health Act do have other avenues to question them being held, and one of them is an appeal to the Minister which I am aware of that because in the time of indisposition of a previous Minister for Health and Social Services, I was asked along with other Ministers to sit and review a particular case and to decide whether it was appropriate for that patient to be released. The outcome of that was that I decided that it was appropriate for the patient to be released. I felt, at that stage, that it was not an appropriate decision for a politician to be making. **[Approbation]** That is the current law, and I know that patients should have an ability to question and to challenge the medical profession when they are being held, but for that process to involve a politician is inappropriate and I would ask that the Minister does do everything in his power to change that process.

#### **Deputy G.C.L. Baudains:**

A matter of interest, Sir. Can I ask what the last speech had to do with the proposition?

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

I hope I do not incur the wrath of Deputy Baudains, but it is in a similar vein. I think it is because it was entered into by the speech of the Minister who says that the board, whatever they are paid, and this is what we are discussing under the order that the Minister can review the pay, is what teeth do the Mental Health Review Tribunal really have? Could he give me a figure on how many people have gone to this tribunal and have been released since it has been set up, because other than what Senator Routier has said, it is not ideal, politicians against the health, but I do not think these people are health people? I have never known one yet that has gone against the recommendations of the psychiatrist. So is it really something that is working? Thank you, Sir. Under whatever pay they get.

#### **The Greffier of the States (in the Chair):**

I call on the Minister to reply.

#### **9.1.7 Senator B.E. Shenton:**

Turning first to Deputy Baudains, the reason for the order is just to ease the administration burden, but we certainly are not going to hide the figures. I mean, the Ministerial Decision will have the figures on it and also, I mean, obviously if you ask the department, they will tell you what the figures are. Deputy Ferguson asked about rates for all tribunals. I am not aware of what other tribunals pay. I mean, currently the fees for Members for a sitting of up to 3 and a half hours - and we do not tend to have any sittings beyond 3 and a half hours - is a chairman who is normally a legal member, £240, then the tribunal also consists of a medical member who is paid £205 and a lay member £75. The average number of sittings over the past 3 years is 6 which partly answers Deputy Martin's question as to how often they meet. Again, this, I believe, answers Deputy Hill's



question when he was asking how much. He was also asking where the money comes from. It comes out of the Health and Social Services budget. So it is within our budget figures which are obviously set in the business plan. With regard to the appeal to Minister, the Article 6 appeals of which I have heard a number myself, including one where I did agree that the person should be released, similar to Senator Routier where he did the same, like Senator Routier, I find it ludicrous that I have to go up there and sit through these appeals, and we have taken legal advice because there are concerns that this process may not even be in accordance with the European Convention on Human Rights. I mean, it is almost sort of backwater stuff, and the department is working on legislation that will be coming forward and it will probably move the onus back on to the medical tribunal as opposed to the individual. Again with Deputy Martin, I do not know how many people the tribunal have gone against, but it does work extremely well. The clients, they have an advocate that speaks on their behalf who does a very, very good job. The whole thing is quite informal. Everyone is sort of at ease and it does work well. My opinion is, certainly speaking to the bodies involved in this area, that it does work well and we certainly have no complaints. It is very much a bright area within the department, with the exception of the Article 6 appeals process which have to be heard by a politician, unfortunately. With that, I put forward the proposition.

**The Greffier of the States (in the Chair):**

I put the principles. Yes, the appel is called for. The vote is for or against the principles of the Draft Mental Health (Amendment No. 2) Law. I will ask the Greffier to open the voting. All Members who wish to do so have cast their votes? The Greffier will close the voting. The principles have been adopted: 38 votes were cast in favour, 2 votes against.

<b>POUR: 38</b>	<b>CONTRE: 2</b>	<b>ABSTAIN: 0</b>
Senator F.H. Walker	Deputy G.C.L. Baudains (C)	
Senator W. Kinnard	Deputy R.G. Le Hérisssier (S)	
Senator T.A. Le Sueur		
Senator P.F. Routier		
Senator P.F.C. Ozouf		
Senator B.E. Shenton		
Senator J.L. Perchard		
Connétable of St. Mary		
Connétable of St. Peter		
Connétable of St. Clement		
Connétable of Trinity		
Connétable of St. Lawrence		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy R.C. Duhamel (S)		
Deputy A. Breckon (S)		
Deputy J.J. Huet (H)		
Deputy of St. Martin		
Deputy P.N. Troy (B)		
Deputy C.J. Scott Warren (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy S.C. Ferguson (B)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		

Deputy G.W.J. de Faye (H)		
Deputy P.V.F. Le Claire (H)		
Deputy D.W. Mezbourian (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy I.J. Gorst (C)		
Deputy of St. Mary		

**The Greffier of the States (in the Chair):**

Deputy Breckon, does your Scrutiny Panel wish to ... very well. I will ask you formally to propose Articles 1 and 2, Minister.

**Senator B.E. Shenton:**

Yes, please.

**The Greffier of the States (in the Chair):**

Is that seconded? [**Seconded**] Does any Member wish to speak on either Article 1 or 2? I put the articles. Those Members in favour of adopting them, kindly show. Any against? The articles are adopted. Do you propose the bill in the Third Reading, Minister?

**Senator B.E. Shenton:**

Yes, please.

**The Greffier of the States (in the Chair):**

Seconded? [**Seconded**] Does any Member wish to speak? I put the bill in the Third Reading. Those Members in favour of adopting it, kindly show. Any against? The bill is adopted in the Third Reading.

**LUNCHEON ADJOURNMENT PROPOSED**

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

Before the adjournment, could I just remind Members that there is a briefing on a very important issue about foundations at lunchtime at the Pomme D'Or? Not many Members have agreed to come, but there is a briefing at 1.00 p.m. We will hold back if Members want to have lunch, until about 1.20 p.m., but it is one of the most important pieces of financial services legislation. I move the adjournment, Sir.

**LUNCHEON ADJOURNMENT  
PUBLIC BUSINESS (continued)**

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

Could I raise the défaut on the Constable of St. Ouen, please, Sir?

**The Bailiff:**

Yes, propose the défaut on the Connétable of St. Ouen be raised. Those in favour? Those against? The défaut is raised.

**10. Human Rights Committee and Statements of Compatibility (P.78/2008)**

**The Bailiff:**

We come next on the Order Paper to P.78, the Human Rights Committee and Statements of Compatibility proposition in the name of the Deputy of St. Martin. Can I ask the Greffier to read the proposition?

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

The States are asked to decide whether of opinion (a) to agree that a committee to be called a committee on human rights should be established, consisting of Members of the States and persons who are not, with the committee having responsibility for the oversight of human rights and equality issues; (b) to request the Privilege and Procedures Committee to bring forward for approval (i) the necessary amendments to the standing orders of the States to give effect to the proposals; and (ii) funding proposals in the annual business plan to cover the costs of operation of a committee; (c) to agree that Article 16 of the Human Rights (Jersey) Law 2000 should be amended to require Ministers to state what articles of the European Convention on Human Rights, if any, have been considered in relation to the legislation being brought forward and the grounds on which the Minister considers that the proposed legislation is or is not compatible with the convention rights; (d) to request the Chief Minister to bring forward the necessary amendment to Article 16 to give effect to the proposal.

### **10.1 The Deputy of St. Martin:**

I would like to begin by making it clear that I have been working on my proposition for the past 12 months and the fact we are debating it while inquiries are being conducted which could relate to human rights violations is purely coincidental. Sir, on the 8th of February 2000, the States adopted the Human Rights (Jersey) Law 2000 which, in all intents and purposes, incorporated the European Convention on Human Rights into Jersey law. Our law was also intended to be in parallel with the U.K. law. The purpose for the law is to act as a lever to improve public services and although it created no new rights, it enabled residents of the Island to have their grievance addressed through our courts. While it was intended to allow 2 years for the necessary order to be carried out on our existing laws, our law did not take effect until 10th December 2006. Now, on page 9 of the report accompanying the proposition in 1999 as P.197, which was approved in February 2000, is stated, Sir, and I will quote: "However, it has been recognised the law will have an impact on the way government in the Island is conducted. There is bound to be an extra demand on resources of public authorities in coming to terms with the new concepts of the convention. Extra burdens are likely to be placed on the courts due to the number of convention points being taken, at least at the early stages on the law officers giving advice and scrutinising legislation and, not least, on several States departments which dispense public services such as the social security, education and healthcare and on the prison and police services. There are bound to be manpower and financial implications but it is not possible to predict them with any degree of certainty." Now, that was what was said in the report. I shall return to the statement later because it is patently clear that the States has failed to address all the issues identified way back in 1999. Now, another consequence of the Jersey Human Rights law is that Article 16 now places a requirement on Ministers when lodging au Greffe a Projet de Loi. Before the Second Reading of a Projet, Ministers must make a statement to the effect that in their view the provisions of the Projet are compatible with human rights - that is known as the Statement of Compatibility - or make a statement to the effect that although he or she is unable to make a Statement of Compatibility, he or she nevertheless wishes the States to proceed with the Projet. The statement must be in writing and be published in such a manner as the Minister making it considers appropriate. The statement is usually found in the proposition. Now, a number of interesting points arise from the provisions of Article 16. (1) There is no provision for the Minister to explain what convention rights are affected. (2) There is no provision for Ministers to explain why the proposed law is convention-compliant. Thirdly, there is no requirement for Statements of Compatibility when Ministers lodge regulations, orders or rules. This is the point which I will return to later. The fourth and also very important point is that at present there is no provision for any States body to have dedicated oversight of our human rights law or to scrutinise the Minister's statements of possible violations of the human rights law or other related issues. In the United Kingdom in 1998 when the government of the day approved its Human Rights Act, it announced the establishment of a joint committee on human rights to conduct inquiries into general human rights issues, scrutinise remedial orders, examine draft legislation

where there is a doubt about its compatibility and examine whether there is a need for a human rights commission to monitor the operation of the Human Rights Act. Now, contrary to the information given by the Council of Ministers, there is a human rights commission for Scotland. There are also commissions for Northern Ireland and Southern Ireland too, and they undertake to investigate and monitor human rights matters, including compliance requirements on very active bases. Following the merging of the 3 anti-discrimination bodies in the U.K., that is race, sex and disability, into one Equality and Human Rights Commission, separate commissions were also established for England, Scotland and Wales, and these have extensive powers and duties to monitor, educate and initiate prosecutions, but they are in addition - I repeat - they are in addition to other Scottish and Northern Irish bodies. Wales does not have a Human Rights Commission specifically to look after its compliance matters because the Welsh Assembly does not enact primary legislation as Welsh law. It is largely the same as English law and therefore is examined for compliance largely through the Westminster-based procedures. However, Members must also realise that, in all the territories referred to, there are many active groups of lawyers and lobby groups and universities and such like who investigate new or proposed legislation and so contribute a great deal to human rights compliance process. Unfortunately in Jersey, there is very little such lobbying. Our community of lawyers is largely concerned with other matters. So the need for our government to accept responsibility and monitor legislation for compatibility and to research and publish information for government and general public purposes is much greater. Now, the rationale for the establishment of the U.K. committee was the need to assist parliament in providing independent scrutiny of executive policies and legislation which impact upon human rights. The U.K. Parliament recognised the dominant role of the executive in parliament and it was envisaged that a human rights select committee, in particular a joint committee of both Houses, would strengthen the independence of the legislator in performing its allotted functions under the human rights law. There is now a joint committee on human rights which is appointed by the House of Lords and the House of Commons. The joint committee has considerable powers against the select committees and our Scrutiny Panels. It scrutinised government activity across the board and is evident that human right matters are an integral part of Scrutiny. However, as I have mentioned, Jersey has no dedicated party or body with oversight for human right matters whether it is from the Executive or Scrutiny. It is apparent that when the Jersey human rights law was approved in 2000 and the introduction of Ministerial governance and Scrutiny Panels in 2005, little if any consideration was given to the oversight of the scrutiny of human right matters. As mentioned earlier, the accompanying report in 1999 made it clear that there would be financial and manpower implications, but it was not possible to predict them with any degree of certainty. Now that we have our own human rights law and Ministerial government, I believe we have an obligation to ensure there is some mechanism to scrutinise our legislation. I also believe that should concerns be raised regarding possible convention violations occurring within the public sector, then there should be a body with sufficient expertise to address them. In Jersey, it is especially difficult for individuals, whether States Members or otherwise, apart from government departments, to monitor all legislation because human rights is a very specialised area of law. Not only does it require a dedicated department or committee with specialist skills to monitor and publish information for government purpose on human rights, but it is also essential that such monitoring is holistic and takes account of international obligations for all other departments. Furthermore, it is no longer acceptable, as Ministers seek to suggest, that human rights can be considered in isolation of social, economic, financial or environmental consideration because now in 2008 they are all integral components of a joined up way of thinking. Failure to consider human rights compliance issues at the outset where any new legislation or policies are concerned would inevitably lead to problems in the future if the commission or committee is not established in Jersey very soon. Therefore, I believe there are 2 main issues: (1) the issue of the oversight of human rights matters should be addressed and secondly Article 16 of the human rights law should be amended so that Ministers elaborate on why they are of the view that a law is compliant and also what articles are affected. Now, in addressing the first issue, I will seek to justify why there is a need for a dedicated body for

oversight of the human rights law. Prior to lodging this proposition, I carried out considerable research including visiting Westminster and discussing the work of their Joint Committee on Human Rights with its Chairman, Mr. Andrew Dismore M.P., and the Commons Clerk, Dr. Mark Egan. I also submitted 2 papers to the Privilege and Procedures Committee, the Chairmen's Scrutiny Committee and the Council of Ministers. I subsequently had meetings with each of the committees prior to and after my visit to Westminster. I had hoped to discuss my proposals with the Council of Ministers, however, it was considered to be more appropriate to meet them after I had lodged my proposition. However, I am sorry to report that although the Council of Ministers has published its comments, it chose not to meet me. It is also apparent that its single-page report on comments is a carbon copy of the P.P.C.'s (Privilege and Procedures Committee's) comments. Now, the main points arising from my meetings and research are as follows. (1) When the States approved the human rights law in 2000, it was recognised that there was bound to be some manpower and financial implications. (2) None or very little consideration was given to the oversight of the human rights law. This assertion has been confirmed by the Chairmen's Committee. (3) There is no dedicated executive or scrutiny body with responsibility for the oversight of the Jersey Human Rights law. (4) While the Chairmen's Committee has stated the standing orders (paragraph 136 at paragraph 2) provides for Scrutiny Panels to scrutinise draft laws and support enactments. However, there has been little or no evidence to indicate human rights issues have been considered by any of the 5 current Scrutiny Committees. (5) There is no independent audit of any Minister's Statements of Compatibility. (6) There is no explanation as to why Statements of Compatibility are compatible. (7) We have to ask the question do all international human rights treaties ratified in the U.K. apply to Jersey. (8) Is Jersey party to all relevant treaties and conventions? For example, why is Jersey not part of the convention on the rights of the child, thus protecting the rights of the child which was ratified in 1991 but not ratified in Jersey? (9) Although there was 6-year period between approving a Jersey human rights law and the Appointed Day Act, not all laws were subjected to a convention audit. (10) If allegations are made about human rights violation occurring within our public bodies, there is no dedicated mechanism to address them. (11) It has become apparent that a number of Ministerial Decisions have been made without any consideration given to compliance with human rights. (12) There is no provision for Ministers to make statements of compatibility when seeking approval for regulations, orders or rules. (13) I believe more and more human rights issues will arise during States business and in debates. Clearly there is no one within the current Scrutiny Committee with the expertise on human rights law. This again has been acknowledged by the Chairmen's Committee in its comments. (14) I do not believe that the present Scrutiny Panels have officers or members with sufficient let alone a thorough understanding of human rights law. Therefore, unless my proposals are adopted, it will be incumbent on the existing panels to train all its members and officers to carry out the task. (15) It is apparent that the Chairmen's Committee has not carried out adequate research on the requirement for officer support because in its comments, paragraph 9(b), it says that it is highly unlikely to attract a suitable qualified person to the post of support officer for human rights compliance committee. Now, as part of my research and before the Chairman's comments were lodged, I discussed the issue of recruitment with the director of the States Human Resources and he does not share the Chairman's view. Sir, I will not quote his email, but I can assure Members I have his reply. Sir, in the U.K., there is a Human Rights Minister within the Ministry of Justice. One of his important tasks is to promote human rights and ensure there is adequate training for those involved in the public sector. Now, my proposition is not to advance that issue, but I believe should be advanced by the Council of Ministers and the Chairmen's Committee. However, in respect of the many points I have raised, I believe there should be a body for oversight of the human rights law. Clearly, our present Scrutiny Panels have devoted very little time to scrutinising human rights issues. The reason, I believe, is quite clearly it does not have the expertise to do so. Sir, Jersey is now an international finance centre with an international presence. As such, we are parties of a number of international laws and agreements which have implications for our finance industry and also our social structure. Sir, it is absurd to expect our international

finance businesses to be able to operate without being fully informed of the human rights implications of any legislation that arises in the Island or as a result of pressures from outside. Only a properly financed and resourced human rights committee can offer the sort of monitoring service that is required. For some Members, human rights is just seen as another outside interference in Jersey's affairs, but the reality is that common international standards are an essential part of everyday life. Sir, if Jersey wants to stand shoulder to shoulder with other communities, it cannot opt out of its human rights responsibilities. Now, to address these concerns I have raised, I believe there are only 2 options which are worthy of consideration. The first option is for the human rights issue to come under or come within the remit of each of the existing 5 Scrutiny Panels. This appears to be the favoured option of the Chairmen's Committee, the P.P.C. and the Council of Ministers. However, this is not happening now. In its report, the Chairmen's Committee says it is not equipped to undertake the task. While option 1 may well be seen as the least costly and expedient way, I believe that it will be seen that Jersey is paying lip service to its obligations. The human rights law is a complex piece of legislation which cuts across a number of departmental boundaries. This could pose difficulties in identifying which panel would be most appropriate to deal with inquiries or conduct reviews. That is another reason, I believe, why current Scrutiny Panels do not address human rights issues. Therefore, as a degree of expertise is required, this would best be contained within a dedicated committee. This is evident because the Chairmen's Committee has recognised expertise and I quote from his comments which are on page 5: "Officers undertaking sifting or review work will need to have a thorough understanding of the human rights law, related issues and substantial legal understanding." To the best of my knowledge, I do not believe that any of the current Scrutiny members or officers have undergone any specific training or had any substantial understanding of the human rights law but, no doubt, Sir, Deputy Ferguson, the president of the Chairmen's Committee will correct me if I am wrong. Given the existing workload, any additional responsibility for the existing Scrutiny Panels to address human rights violations can become burdensome and because of the law's complexity, human rights would be put lower down the pecking order. Again, this has become self-evident because no panel, apart from my former Education Home Affairs Scrutiny Panel, has conducted any in-depth review of human rights issues or human rights related issues. As my former panel members will concur, we stumbled into human rights issues almost by accident and the outcome was far from satisfactory. Finally, and very importantly, it should be noted that the U.K. did not choose option one. So let us look at option 2 which is to establish a standalone dedicated human rights compliance committee. During my discussion with Mr. Dismore at Westminster, it became apparent why the U.K. decided to establish a standalone Joint Committee on Human Rights. This was mainly because of the problems I have identified in option one. The Westminster model involves Members from both Houses and all political parties. It functions well and many of the initial teething problems have been ironed out. I think it is worth noting that, in the U.K., although there is a Joint Committee on Human Rights, select committees have a free hand to carry out reviews on any topic within their remit. They can ignore human rights issues, take it onboard themselves - with or without assistance from anyone from the joint committee or contact the joint committee formally or informally to say that they have identified relevant human rights issues which they may want the joint committee to look at. In practice, committees tend to acknowledge human rights issues when they find them but not address them in any depth. Invariably, approaches are made to the joint committee with a view to tackling the issue. If a standalone committee was established in Jersey, I would anticipate the existing Scrutiny Panels to carry out that similar practice. Clearly, if option 2 was approved, there would be financial and manpower implications. However, if a job is worth doing, it is worth doing well. Also, given the concerns recently raised regarding human rights violations, I believe that doing nothing is not an option. Opting for option one will be seen as an easy option and a quick fix but we know that Scrutiny Panels do not address human rights issues. However, by proposing a dedicated committee, I believe we would be sending out a positive message that we are fully prepared to accept our human rights obligations irrespective of cost. In the very first line of the report accompanying the Human Rights (Jersey) (Appointed Day) Act - and that was in 2006 - it

says: "The Human Rights (Jersey) Law is likely to turn out to be the most significant piece of legislation for everybody in Jersey" or are they empty, hollow sentiments? In your liberation speech, you said: "I do not believe that Jersey is an uncaring society. On the contrary. There is a strong political will to protect the poor and vulnerable in the community and correct any mistakes of the past." Those sentiments were also similarly expressed by the Chief Minister in his liberation address. Again, I ask, are they hollow, empty sentiments? If they are not to be, then we should demonstrate that political will by establishing a formal dedicated body. Therefore, I would expect Members to support my proposition. As previously mentioned, there will be manpower requirements. I believe we can use the U.K. model as a template but our joint committee need not comprise of more than 3 States Members and possibly the same number of members of the public. Such a joint arrangement currently exists with the Public Accounts Committee. That committee has a mixture of States Members and members of the public with an interest in that field. P.P.C. (Privileges and Procedures Committee) questions whether States Members and members of the public have sufficient interest in human rights. I am confident that there will be no difficulty in recruiting a panel. There are a number of Jersey residents with an interest in human rights and this would be an ideal opportunity for them to be considered and there is no need for a proposed committee being as large as P.A.C. (Public Accounts Committee) or, indeed, the U.K. Joint Committee. In 2006, when the Health and Social Security and Housing Scrutiny Panel was established, the financial and manpower implications amounted to £188,348. Staff costs were around £98,000 for 2 members with a further running cost of £90,000. Two years on, the costs will have increased by the cost of living. Now, to assist in providing manpower and finance implications, the scrutiny manager has helpfully provided an estimate of the costs for the new committee and panel and 3 options were provided. The cost will depend on the balance of having in-house legal advice or buying it in. I am grateful for the information which can be found in the report but can I just say, again, it is a guide - purely a guide - which could cost somewhere between £260,000 and £330,000. In my view, the guide is very much a Rolls Royce system and certainly not in line with my proposals. As one can see, it is rightly envisaged that office space will be required. The scrutiny manager has identified a room which is currently used for occasional meetings. There are other rooms in Morier House which are used also for occasional meetings. Therefore, if Scrutiny wants a room for occasional meetings, it could use one of those. Therefore, office space should not be seen as an obstacle. Getting back to the financial implications again, contrary to the scrutiny manager's view, I do not believe that 2 full-time scale 10 officers are required. Neither do I believe it is necessary to incur between £90,000 and £180,000 in legal costs. I do not know where the figures come from. At present, the Scrutiny Department is managed by a scrutiny manager on a scale 12. Each of the 5 Scrutiny Panels has 2 scrutiny officers on scale 10 and there an additional 2 administration officers. As can be seen, the scrutiny manager is suggesting that the proposed human rights panel should have 2 officers at the scale of 10, 12 or 14, which is even more than what the scrutiny manager is receiving. Again, I do not agree with those figures. The role of the present scrutiny officers is challenging and I believe they are performing very well. However, I do not believe that my proposed panel would need to have 2 full-time scrutiny officers. I believe the work could be undertaken by one scale 10 - which is the view of the Human Resources Director - and an administrative assistant to assist with research. Much of the work will be reading legislation and addressing matters arising. I would also hope that we could provide an opportunity for law students from the Economic Development Department's Undergraduate Internship Scheme to be employed part-time for research and support when the need arises. If there is support for my proposition, I submit that the staff costs would be in the region of £90,000 and not the suggested £150,000 to £191,000. It should be borne in mind that the Public Accounts Committee is not serviced by a full-time officer. If one looks at the annual costs of the 5 Scrutiny Panels and the Public Accounts Committee, one will see that the total budget for all 6 is £525,000. Now, this figure does not include manpower of course. Of the £525,000, less than half that total was spent last year. In fact, only £230,000 was spent. The under spend was almost £295,000. Therefore, if States approval is given, there will be no need for additional funding as the

present under spend can be found for these human rights panels. In addition to officer support, if the committee is to be independent, it must have its own legal advice. Given the number of laws lodged each year, the committee will have to adopt a sifting process and, as previously mentioned, this is a practice which each of the existing Scrutiny Panels undertake because we all know it is impossible to scrutinise everything as within the remit of the Scrutiny Panels. Inevitably, while some laws will be uncontroversial and will not require undue attention, others will require close observation and may require legal opinions and reviews. It is then that the costs will be involved, but that is inevitable and I would remind Members that was envisaged in 1999 when the States approved the human rights law. Now, let us look at the legal advice. I do not believe it will be necessary to appoint a full-time legal adviser as legal advice can be sought when required and the cost will fluctuate when the work requires it. One should also note that the suggested costs of legal advice is suggested to be somewhere between £90,000 and £180,000. Again, I consider this figure to be completely over the top. In 2007, the total cost of advisers and consultants for Scrutiny and P.A.C. totalled £128,000. Of that figure, only £6,000 was spent on legal advice. I submit that it is not necessary to employ full-time advice. Legal advice can be purchased when deemed necessary. I am surprised to read P.P.C. and the Chairmen's Committee comments on legal advice. Surely there will be occasions when the advice from an independent legal adviser will differ from that given by the Law Officers' Department. The purpose of Scrutiny is to question and produce evidence which will either support or differ from the advice given by our States legal advisers. Scrutiny is not about rubberstamping Ministers' decisions. It should question decisions and, if necessary, obtain legal advice which may differ from our law officer's advice, but so be it. That is the nature of Scrutiny. Unfortunately, human rights legislation at present is not scrutinised and I believe we are unlikely to be doing so unless my proposition is supported. I now turn to the second part of my proposition. Irrespective of whether there is a desire to establish a body for the oversight of human rights, I believe that, to assist all States Members in the interest of good government, there is a need to amend Article 16 of the Human Rights (Jersey) Law. As previously mentioned, Article 16 of the law places a requirement on Ministers to make statements of compatibility. However, there is no requirement for Ministers to explain what convention articles are affected and also why there is no risk to the convention rights being violated. Again, to the best of my knowledge, no Minister has ever provided a written explanation regarding compatibility. I submit the reason for that is quite clear. The law does not require them to do so. I believe the absence of an explanation is unsatisfactory and a more detailed analysis should be provided. I am amazed that the Chairmen's Committee, which should be championing and supporting my proposition, no longer shares that view. The provision of more details should enable Members to be better informed and more aware of the human rights implications of the legislation being proposed. I also fail to understand P.P.C.'s reasons for refusing to support my proposal to amend Article 16. It points that out in Article 16, as drafted, in quite broad terms but it fails to understand that, as presently drafted, that it does not require Members or the Minister to do so, and they are unlikely to do so. If approved, I would expect statements of compatibility to be something like the following. All the H.R. (Human Rights) articles were considered. However, only Article 6 and 18 were relevant. The Minister will then explain why he was of the view that the particular law he was proposing was compatible. P.P.C., I believe, must be living in cuckoo land if it believes Ministers will elaborate on Article 16 again unless it is required to do so. I also fail to understand the logic behind the Chairmen's Committee's amendment. It should be in Scrutiny's interest to know why a law is compliant. Therefore, it should vote for my proposition. I do not know the reason for the Chairmen's Committee's u-turn. It was my understanding that, while it may have had reservations about a standalone human rights panel, it was supportive of amending Article 16. This support is shown in its committee and it is dated 25th April following a second meeting with me and I quote: "The committee agreed the best way forward would be to amend Article 16 of the States of Jersey Law so that Ministers were obliged to give a full explanation of the reasons behind the acceptance or otherwise of the human rights compliancy." In fact, there was a mistake there. It should be "Article 16 of the Human Rights (Jersey) Law" and not the "States of Jersey Law."



However, the sentiment was right. The committee minutes can also be found on the top of page 4 and if one looks at the chairman's report, it says exactly what I have just been saying: "Following discussion with the Deputy of St. Martin, the Chairmen's Committee at its meeting on 25th April 2008 agreed that the best way forward ..." et cetera. So why the u-turn? I certainly do not know why the Chairmen's Committee should pass the buck asking P.P.C. to consider whether the law should be amended. No reason is given for why it is of that opinion, nor is any reason given for the committee's u-turn. As the chairman's comments and minutes both record a support for my amendment, why on earth has it lodged an amendment to request P.P.C. to consider whether Article 16 should be amended? If the chairmen of the Scrutiny Panels cannot make up their minds, all I can ask is what are they doing in Scrutiny? My proposition is asking Members to support to amend Article 16 and to request the Chief Minister to bring forward the necessary amendment to give effect to my proposal. The reason why the Chief Minister is being requested is because the human rights law comes within his department's remit. Had it been within P.P.C.'s remit, I would have requested that committee to bring forward the necessary amendment. Therefore, I just question whether the chairman's amendment is valid and wonder why it was approved in the first place. Also, the Chairmen's Committee must be aware that P.P.C. does not support the law, so it is pointless proceeding with this amendment. As a side issue, but relevant to my proposition, recently we have seen the Minister for Home Affairs attempting to extend the length of detention by an Order. We have had a similar situation when the Minister for Transport and Technical Services has attempted to allow a developer to go through other people's property without their consent to lay drains and only this weekend we witnessed P.P.C. withdrawing its proposition on elections and donations regulations. I may add that the Scrutiny Panels raised no concern. I think it is important for Members to note that Article 16 only places a requirement for Ministers to provide statements of compatibility for a *Projet de Loi*. However, there is no requirement for statements of compatibility when regulations, orders or rules are lodged. I should also point out that, on page 23 of the *Guidance for Staff* - which is this publication I have here - and also on page 26 of the same guidance which is shown on the States website, on both those publications it is stated that statements of compatibility are required for regulations, orders and rules. If that is the case, I ask why have Ministers not supplied them in the past? I believe, Sir, that there should be clarity in the law and if Members approve my proposition today, hopefully, that clarity will arise or be rectified. Almost there. I believe both parts of my proposition should be supported. I have shown how the Scrutiny Panels have failed to address human rights issues and are not equipped to do so. I have also shown why Article 16 should be amended. The provision of a more detailed analysis should not impose too great a burden on Ministers because they are already obligated to make use of the information, so this should not involve a great deal of extra work and certainly no manpower or financial implications. There is nothing to fear; there is nothing to hide. My proposition is simple. In the interests of good, open government, I ask Members to support my proposition in its entirety. I therefore propose my proposition and would be grateful if someone would second it. Thank you, Sir.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] There is an amendment to the proposition of the Deputy of St. Martin in the name of the Chairmen's Committee and I ask the Greffier to read that amendment.

**The Greffier of the States:**

At page 2 in paragraph (c) of the proposition, for the words "to agree that", substitute the words "to request the Privileges and Procedures Committee to consider whether" and delete paragraph (d).

**10.2 Deputy S.C. Ferguson (Chairman, Chairmen's Committee):**

I am not going to deal with the various comments made by the Deputy at this point. I will answer them when we have dealt with the amendment. This amendment is purely concerned with the

statement on human rights compliance on all new laws brought to the States. It was the opinion of the Chairmen's Committee that some expansion of the statement required under Article 16 might well be considered but the chairman considered this could be reviewed with international comparisons, if necessary, but it should not be imposed on the States as in part C of the proposition without further research. It is a fairly complicated issue with fairly tortuous legal complexities and we think that it should be considered more carefully. It is not, however, within the remit of the Chairmen's Committee to bring such an amendment to the Assembly and this is why we would refer it to the Privileges and Procedures Committee. The case made by the Chairmen's Committee is set out in the report. We do not agree with parts A and B of the proposition and I will speak on this at the appropriate moment.

**The Bailiff:**

Is the amendment of the Chairmen's Committee seconded? **[Seconded]** The amendment is open to debate. Deputy Le Hérissier.

**10.2.1 Deputy R.G. Le Hérissier:**

Like Deputy Ferguson, I will leave my main points to the main debate and, in fact, I might well contradict what I am about to say. **[Laughter]** One of the reasons it is being put to the P.P.C. Committee, Sir, is that they have the remit for reform or proposals for reform of the overall government structure and, as the chairman has said, Sir, there might well be a case, for example - and it is only for example - where we might look to a legislation committee to deal with the matter. That may be one of the paths which they might wish to investigate. It was done for that reason. So it was not done, Sir, for the reason that the Deputy of St. Martin has imputed, namely that we wanted to go straight to the Chief Minister because he has responsibility. It is because there could have been other alternatives put forward to achieve the ends that he is seeking.

**10.2.2 The Deputy of St. Martin:**

I really was expecting a lot of support from the chairmen. There are 8 of them and I would have expected a lot of support for the amendment and I am rather disappointed. Again, I cross swords with my good friend Deputy Le Hérissier. If my proposition was being supported and they had put a rider saying: "We would support the proposition. However, we would ask P.P.C. to consider the legal complexities of it", I could understand, but what we are being asked to do today is to turn mine down and say: "No" and then put it over to P.P.C. again which, no doubt - with the greatest respect to P.P.C. - they have a lot on their plate. We are looking also to possibly many, many months ahead of the time when I think the case has been made, not only by the Chairmen's Committee but also when I saw P.P.C. on the first time on 20th February. In its committee minutes, it also said: "The committee was of the opinion that it might be preferable to extend the requirements under Article 16 of the Human Rights Order in order that statements may include more information." The reason why they were saying that was because it felt they had difficulty in supporting my standalone proposition, which I can reasonably understand. They say there are 2 issues. One is a standalone and the second one is the issue we are debating now. What I am asking for is clarity. It will give an allowance then for Ministers in the future to say what articles are affected, why they are of that opinion and why that law is compatible. I have given 3 illustrations today to show that pieces of legislation are slipping through and when they had been challenged, they had been withdrawn. So how many other pieces of legislation have gone through without anyone checking? Again, I have to remind the president of the Chairmen's Committee where was Scrutiny? Not one Scrutiny Panel raised it. It was left to individuals, the media, myself and also Senator Shenton. He was the one who drew people's attention about Transport and Technical Services. I think I have made a case as to why the law should be amended and I think all we are doing is passing the buck over to P.P.C. who have already done a u-turn. One moment they said they supported it and the next thing, they said they are not. So all we are doing is procrastinating. I would ask Members to reject the amendment.

**The Bailiff:**

I call upon the Chairman of the Chairmen's Committee to reply.

**10.2.3 Deputy S.C. Ferguson:**

I do not think that the Deputy of St. Martin has brought up any new arguments. I would perhaps remind the Deputy that the first time he raised the human rights issue when he was on Scrutiny, the small item that was considered was amended very quickly and very easily. I was involved with Senator Shenton on his little escapade with human rights, so I do have some idea. I ask Members to support the amendment because I do not think that we can drop anything like this on the States without proper research.

**The Bailiff:**

I put the appel. I ask any Member in the precinct who wishes to vote to return to his or her seat and I ask the Greffier to open the voting which is for or against the amendment of the Chairmen's Committee. All Members who wish to vote have done so and I will ask the Greffier to close the voting and announce that the amendment has been carried 29 votes in favour and 8 votes against.

<b>POUR: 29</b>	<b>CONTRE: 8</b>	<b>ABSTAIN: 0</b>
Senator L. Norman	Connétable of St. Ouen	
Senator W. Kinnard	Connétable of St. Helier	
Senator T.A. Le Sueur	Connétable of St. Martin	
Senator P.F. Routier	Deputy R.C. Duhamel (S)	
Senator M.E. Vibert	Deputy of St. Martin	
Senator T.J. Le Main	Deputy G.C.L. Baudains (C)	
Senator B.E. Shenton	Deputy J.A. Martin (H)	
Senator J.L. Perchard	Deputy S. Pitman (H)	
Connétable of St. Mary		
Connétable of St. Clement		
Connétable of Trinity		
Connétable of St. Brelade		
Connétable of St. John		
Connétable of St. Saviour		
Deputy A. Breckon (S)		
Deputy P.N. Troy (B)		
Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérisier (S)		
Deputy S.C. Ferguson (B)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy G.W.J. de Faye (H)		
Deputy D.W. Mezbourian (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy K.C. Lewis (S)		
Deputy I.J. Gorst (C)		
Deputy of St. Mary		

**he Bailiff:**

The debate now returns to the proposition of the Deputy of St. Martin amended. Does any Member wish to speak? Senator Kinnard.

**10.3 Senator W. Kinnard:**

I thought I would rise early just to put in its place the gross claim that had been put against me. Just to be absolutely clear, Sir, there was absolutely no intention to deny prisoners their rights and the Attorney General confirmed in his statement of 17th June of this year that neither was this the effect of the Order to which the Deputy referred to in his speech. I have a copy here in fact of the statement made by the Attorney General which I might helpfully send around to the Deputy so he can peruse it at his leisure. As such, Sir, I do not feel that the particular scenario that the Deputy drew attention to in his speech really gave any support to his case. In terms of the proposition that is being put forward, at first I thought it had some interest for me and it might have carried some merit because, Sir, it was in fact in the mid 1990s when I was chair of the Working Party on Race Relations that we delivered 2 reports to the States. Within one of those reports was an appendix at the back which in fact gave a small diagram of the possible setting up of a Human Rights Commission and the idea behind this was that a Human Rights Commission might be needed at some point way down the road when all aspects of the discrimination legislation had been perhaps passed by this House and there was the requirement for some form of co-ordinating body or co-ordinating role. Even at that point, Sir, there was not necessarily a convincing argument that such a body would be necessary but, in fact, I did raise it there as a possibility. The more I read of the Deputy's proposition, the more I became very concerned about what in fact he was suggesting for the role of his human rights body. In particular, I had concerns about the idea that we might be setting up an entirely separate body giving separate legal advice. It seems to me that that is a recipe for absolute confusion and disaster. I cannot think of a worse situation where this House is put in a position where it is required to try and make some decision about the rights and wrongs of 2 competing arguments. There are not many lawyers in this House - and I am not sure if there are any left in this House - but we ourselves do not have the necessary legal expertise. To be faced with 2 competing legal opinions of perhaps equal expertise, again, I feel is not really conducive to appropriate and sensible debate and certainly I do not think will move us on in terms of making appropriate decisions at the end of that debate. So I have grave concerns about that. I also have concerns about the costs and I have concerns about the costs because, fairly soon, I myself will be bringing an amendment to the Business Plan to reinstate the funding for the discrimination law and in fact I am going to be asking for an amount of £250,000. That is a body and a piece of legislation which is going to determine people's rights and is going to achieve for individuals a real degree of redress but what we are being presented with here in the Deputy's proposition is a set of proposals which, in reality, will cost somewhere in the range of between £260,000 to £330,000. It is merely for a panel to consider human rights matters rather in the abstract and it seems to me that, although I am a great supporter of promoting people's rights and, as a just society, I think many people here will know that. Having said that, I would much prefer to see the money spent dealing with real life cases and determining people's rights in the real world rather than being spent on the Deputy's proposals which, as I say, Sir, are rather more abstract in reality and also, Sir, I think contain certain provisions which will cause more problems than he seeks to sort out with them. So, as I say, Sir, I came to this with some hope but having looked at what the proposals entail, I am afraid I will not be able to support the proposition.

### **10.3.1 Deputy S.C. Ferguson:**

I suppose, personally, I consider that most human rights are common sense probably because I have always lived in jurisdictions under English law and Deputy Le Hérisier may well correct me on this. If you are under English law, then we have things like Magna Carta and the 1689 Bill of Rights and I think I am correct in saying that these safeguards which have been produced under these documents were not available to those people living under Napoleonic and other continental laws. I also feel that one of the big problems with human rights is that there is no balancing doctrine of human responsibilities. In his speech, the Deputy has said that human rights should be included as part of a whole. Absolutely, but that means it should be an integral part of Scrutiny and part of the Scrutiny process with expert advice, where necessary, so it is just part of the normal work of a Scrutiny Panel. We may not be experts on the finer points of human rights but I think we

have enough common sense to see where human rights might be affected. I am sure the Deputy on my right is very good on that, with great respect, for a change. **[Laughter]** I disagree with the Deputy of St. Martin that human rights should be in isolation. He talks glibly of getting hold of officers with the relevant experience. Yes, I am sure we can but at a price well outside our budget because it is a fairly specialised branch of the law. I cannot quite see the relevance of H.R. to the finance industry but perhaps I am missing something there. Later on, the Deputy again assumes that human rights issues were never enshrined in English law and I refer back to Magna Carta and the Bill of Rights and *habeas corpus* I think is another vital part.

**The Bailiff:**

Magna Carta is part of Jersey Law as well.

**Deputy S.C. Ferguson:**

Yes, absolutely, Sir. Sorry, I thank you for the correction. **[Laughter]** I am not a lawyer but I appreciate expert advice. The various human rights issues the Deputy has raised, as I have said, were minor and very easily corrected. I do not believe that we have had any real significant infractions of human rights in Jersey. There are some discriminations but these are being dealt with. I must stand up for our scrutiny manager who is absolutely exemplary. She made realistic estimates of the cost and time required and spent a great deal of time ensuring that these were accurate and reasonable. I feel, to cast aspersions on her calculations, is really quite unfair. The Deputy also refers to the costs of the Public Accounts Committee. Well, it does not meet as often as Scrutiny; it meets once a month. We have some reports produced by the Comptroller and Auditor General, sometimes by the officer and very often by the vice-chairman and myself. Now, my market value, or the opportunity cost perhaps, is significantly higher than a grade 10 and, likewise, my vice-chairman, so you are getting incredibly good value from the P.A.C.; great value for money. I really feel that this is overkill for a small jurisdiction such as Jersey. I agree with Senator Kinnard. It is really too much and we have given detailed reasons in our comments to the proposition, but I really do feel it is a sledgehammer to crack a nut and I ask Members to vote contre to this proposition.

**10.3.2 Deputy C.J. Scott Warren:**

I believe, Sir, that the issue of the statement of compatibility of human rights is important to (a) get right and (b) to know that we are getting this right. I believe that, rightly or wrongly, most States Members or, if not, all of us, have believed that the statements of compatibility are correct. I ask Members, have we been complacent? Possibly yes, although obviously legal opinion has been sought, I imagine in most of the legislation. I also feel, Sir, that one set of legal advice should be sufficient in most circumstances. I would say that it is not necessarily apparent to the lay person or States Members who are not legal experts to always notice human rights issues, especially when we are dealing with complex pieces of legislation. I will give as one example the issue of the access to an appeals mechanism for people. That is just one example. I believe that human rights and the compliance of our legislation is an important matter and it seems, Sir, that if we are reluctant today - because we are a small jurisdiction - to support the Deputy of St. Martin's amendment, then we should at least ask Privileges and Procedures to widen their remit that we have just given them under an amendment and ask them to examine all the issue within this proposition. In fact, Sir, I would ask the Deputy of St. Martin whether he would consider taking this option now, but I would conclude, Sir, by saying that I do believe, whatever this House decides, this matter is of significant importance. Thank you.

**10.3.3 Deputy G.P. Southern:**

The Deputy of St. Martin of course is to be thanked for bringing this issue to the House. It is, as the previous speaker has said, a very significant and important one. When he first started to discuss the possibility of bringing this issue in a serious way to the House, I found myself totally in favour.

However, having seen the result of his commutations, I have to agree with the chairman of the Chairmen's Committee that what we have here is a very large implement with which to crack what is a relatively small nut. It is all very well to compare Jersey with the U.K. but whenever one does, one has to bear in mind that we are a population of 90,400 and going up but, nonetheless, we are nowhere near the 58 million that are in the U.K. and we are unlikely to catch them up. Although some Ministers might harbour secret ambitions to stick 58 million people on the rock, I do not think we will get there. Therefore, comparisons are largely invalid. Whereas it is appropriate to setup such a mechanism in the U.K., I do not believe it is anywhere near realistic to suggest that for Jersey. I was also disappointed to hear him say that Scrutiny is not paying attention to human rights issues as it goes through its work on a daily basis. The fact is that, on many occasions, panels on which I have served have picked up human rights or other legal implications. For example, on shadow Scrutiny way back, 4 or 5 years ago, when looking at the migration issue, we pointed out that there was a clash between what was proposed in the migration policy and employment law which affected human rights in the sense of the right to enjoy one's property, and the employment law was suggesting that one could not make someone redundant and then employ somebody else to do the same job and, hence, the category of law had to be changed. It is quite significant. Similarly, in working on the fulfilment industry and the suggestions around there, we spent some time discussing the powers under R.U.D.L. (Regulation of Undertakings Development Law) to restrict again people's right to enjoy their possessions. In this case, it was to operate a company in the Island. On the population register, again, data protection and privacy issues have been raised with the appropriate body and amended and the proposals have been adjusted. Again, serious work. Every time we come to this House with legislation, we have to be aware that it has in many, many cases, human rights implications. Those human rights implications are a matter of balance. It is a balance between the rights of the government to govern and the rights of the individual to be protected from some government actions and to have their human rights maintained. The balance between the government's right to do something, whether it restricts your human rights or not, is merely a matter of proportionality. Is it proportionate that the government should take this action to restrict your freedoms in order to run a civilised society? Now, what we do when we talk about that is we ask for a legal opinion and the legal opinion is just that. It is an opinion. Is this action taken by the Government - us - on behalf of its population but which restricts the rights of that population proportionate to good government? Now, the opinion time and time that we get is that it is. In the opinion of the law officers, it is proportionate and not disproportionate in terms of human rights but it is only opinion. The only way to test if this House has taken an action which does unfairly restrict someone's human rights is through the courts and, so far, despite the fact that we have had a human rights law up and running in Jersey which can be actioned through the Royal Court, no one so far has done that. That is when the acid test is made through the courts. Now, we have a serious issue here. I believe, for example, that on income support in some of their actions, the Minister for Social Security is acting unlawfully and I shall be helping someone take a case to test whether that is the case in the near future. I believe that in some of our employment laws recently passed, we are seriously in danger of having restrictive human rights unfairly disproportionate and, again, we do not know until someone takes that through the courts, but that sort of issue will happen. In the past, we, as a Government, were rarely or never challenged because the process was so inordinately long to take it through the European courts that people were completely put off issuing those challenges. However, now that we have human rights law here, I believe, sooner or later, we will see those challenges start to happen and we must pay attention to the fine detail of whether we are infringing people's human rights. Having said that, this, I do not believe, is the way to do it. As I say, on panels of which I have sat, we have paid careful attention to legal and human rights issues wherever we spotted that there might be a risk and that, I believe, for the moment, is how we should continue. We should make sure that each Scrutiny Panel is aware of the issue and does address it wherever it sees that there may be such an issue arising and that, in the meantime, we should allow P.P.C. to examine how a way forward might be in order to better deal with this issue but I will not be voting for this

amendment. I believe it is too top heavy and I urge Members to vote against the amendment as well.

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

I completely disagree with the last speaker. I did not support the amendment because, as far as I am concerned, when the amendment was supported, we might as well have just gone on to the next item of business because that is basically what we have. Deputy Southern made a very good case and I was quite surprised when I read the Chairman's Panel Report, why the chairs of Scrutiny who sit on that panel think we do not need a similar sort of body to go through human rights because, as Deputy Southern says, he has worked in fact on 2 of those propositions he is talking about; one in shadow and one in full Scrutiny and both sets of legal opinion on human rights did not come from inside this Chamber. That was when it was brought to our attention that we could well be outside human rights compatibility, so we made it known and, all right, we did not make the changes but the changes were made. Now, if that is going to be embarrassing, so be it, because we are in a position on Scrutiny where we are not privy to what goes on with legal advice. We are just told it is compatible. We are told from the chairman that 52 pieces of legislation of human rights compatibility statements were brought in 2007. In the last 3 years, I have worked on a lot of Scrutiny Panels and one of the things we do look at is human rights compatibility with the timescale and with the funding and with everything else we have and I would say it is quite sidelined. We cannot test a one-line statement at the bottom of a proposition to say this proposition is - and some of them are hundreds of pages long - human rights compliant and it is going through the net. I am surprised, Sir, with the Scrutiny Panel and the Chairmen's Committee. I think that, suddenly, they have got a little bit precious that they think they can do this work. When I sat on the Chairmen's Panel with 4 different chairs, we know that we have not spent our budget and we need to be looking at human rights and doing some legislation and scrutiny. We have not been doing it. I have an issue, as I say, with Senator Kinnard who says: "What a terrible position we would be in if we had to compete with sets of different legal advice." Again, we are in that state because we are there. One side of the House is not being told the majority of what legal advice is and has just been told to trust us, go away and do your job and scrutinise the rest of it. As I say, from our experience, it is not working and I will tell you why, as I said at the beginning, Sir, I would not support the amendment. If you read what Privileges and Procedures put at the last paragraph, we have now put it back to Privileges and Procedures not to agree but to consider ways of bringing this forward. The Privileges and Procedures Committee would point out that Article 16 is currently drafted in quite broad terms and even if there was any move to review the present style of statements made by Ministers, there may not be a need to be any formal amendment to Article 16. I thank the Deputy of St. Martin for all the hard work he has put on. I will be supporting this and I hope we will get some support. We do need to keep Scrutiny with Scrutiny. We need extra support. Our budget will be taken away if we do not spend it. The other side of the House, Sir, is I think looking for a new Minister for Environment, a Minister for Children and I cannot remember but I think there is another Ministerial job coming up. We, on this side of the House under Scrutiny - I am sorry if I say "side of the House" but it is just the way we all seem to be sitting - will have to contend with it. It cannot be done, it is not being done and, again, I absolutely am amazed by the last statement Deputy Southern said. He already knows of 2 or 3 cases under different laws that he is quite happy to see go to our courts under human rights because he thinks the legislation was wrong but he cannot support this. I am very surprised. It has my full support. Thank you, Sir.

#### **10.3.5 Deputy G.W.J. de Faye:**

This House has already supported legislation intended to reduce levels of bureaucracy and, on that count alone, we need to think very carefully about a proposition like this which introduces high levels of bureaucracy. Clearly, the subject matter is an important one. Human rights are particularly important if you live in a repressive regime in a part of the world if you are, say, a journalist in Russia or you are suffering under an authoritarian regime in China. There is no doubt

that in some areas of even local life, human rights issues may be at stake but, like anything, this has to be put into context. Is this proposition a must-do, a nice to have or really something that we could probably do without? I was slightly taken aback to hear Transport and Technical Services mentioned and I am happy to give way to the Deputy if he cares to clarify the position. I had not realised I was myself a known abuser of human rights and while there may be some of Transport and Technical Services personnel who wear orange overalls, I am certainly not running a Guantanamo style camp regime anywhere within the department. So I assume that the Deputy of St. Martin was referring to the issue we discussed in reference to the drainage law when some people felt their rights were being trampled on or, perhaps more accurately, dug up. I think it is important, Sir, to really draw a level of distinction here between what really are human rights and what are other sorts of rights. In that case, one of the key rights was effectively proprietary rights relating to ownership of properties established over many, many years in common law and nothing to do with more modern human rights legislation. It is very easy to confuse these issues. I remember as a young student, one of the popular issues at the time was the so-called Right to Work campaign. At the end of the day, those people who suffered at that particular level of society realised that the right to unemployment benefit was a significantly better deal than the right to work. I rather dread what the outcome for any state saddled with the concept of some human right - being the right to work - that given your known economic and business setup, what on earth would you then provide for the people who needed the extra work. So rights I think have to be put into their appropriate context. Interestingly, I think, the drainage issue rather underlines why we do not need to go down the path that has been put forward. Now, here was broadly a case where a development was taking place on a housing estate that was positioned next to a road which had mains drains on it. All of the owners of properties who lived alongside the main road had taken advantage of the situation and had connected themselves to mains drains. The remaining number of houses on that estate were still relying on old septic tanks and soakaway systems and it was quite clear that they would have been better off on mains drains. That was effectively the situation that I provoked when I did not instigate or use my powers but I said I would consider using the powers awarded to the Minister by this Assembly to consider matters where property owners prevent other property owners from connecting to mains drains. I do not think anyone is in any doubt of what the best solution is in environmental terms, it is much better to be connected to mains drains than to continue to pollute the local land mass. Nevertheless here was effectively a clash of rights. I would be most interested to know how the Human Rights Committee would have sorted the matter out because it may well have been considered rather more important for the human rights of the people who were being deprived from accessing mains drains to override the proprietary rights of those people who - not unnaturally - were saying, if you want to run your pipe under my lawn, I expect a cash payment of a reasonable sum. Those were the proprietary rights. Now Members in their wisdom sought to lean probably more towards the old common law solutions which are the proprietary rights rather than my own perhaps pseudo liberal inclinations of what I saw were the human rights of those poor people who were not able to connect up to the mains drains. Here is really, I think the key to this issue, whether I was infringing people's human rights or not, the matter was sorted out here in the States by States Members with an appropriate debate. We did not need a Human Rights Committee to decide the issue in great depth, there was no extra layer of bureaucracy to go for, basically we already have in place quite sufficient mechanisms to sort out that type of abuse, or not, as the case may be. So let us assume this is nice to have, what is the cost? Looking at the report I see that having a Human Rights Committee overview does not come in at a price really of much less than £250,000 a year. I do need to advise Members that we have an awful lot of spending pressures on us. Do we really want to commit ourselves to yet another £250,000 a year on something that I think we do not need and that we have in fact, in the case of the activities of the Department of Transport and Technical Services, already have mechanisms to deal with any issues of this type; and they are, as we know, finally resolved here in this Chamber. They are, I suspect, very rare and far between events when they arise. I think that this is well-intentioned but will commit us to entirely unnecessary expenditure, entirely unnecessary extra



bureaucracy and I would urge Members to, until we are in more luxuriant times of plenty with cash to spare and time to spare, say no to this proposition.

### **10.3.6 Senator S. Syvret:**

Listening to the debate while working downstairs I was very interested to hear Senator Kinnard's speech and in that speech the Senator said that she did not think we needed 2 different sets of advice, 2 different sets of opinion as to human rights compatibility. While that remark would not have surprised me coming from perhaps most Members of this Assembly, coming from Senator Kinnard it has to be regarded as something almost quite astonishing. It is plain that there is a complete absence of effective checks and balances in Jersey, recent events have shown us that, we need not rehearse those now. The fact is that if there was only ever a need for one legal opinion then we would not need lawyers and we would not need courts. The argument that one legal opinion is sufficient to guide us or Ministers in making their decisions is just palpably complete nonsense. As was well pointed out by Deputy Martin the Scrutiny Panels do not have access to the legal advice given to the Ministers. They too can approach the Law Officers' Department and seek legal advice in their own right but they cannot see the legal advice that was given to the Ministers by the Law Officers' Department. Heaven knows how much argument and delay there has been over that matter alone. I would like to just quote to Members - and this little tale illustrates well, I think, why the Deputy of St. Martin is quite right in his proposition - I am going to quote you what used to be Article 51 of the 2005 States of Jersey Law and it said this: "Rights to a fair trial and hearing. Any Member or person subject to any disciplinary action in respect of this law or standing order shall have the right to a fair trial or hearing as defined in Article 6 of the European Convention on Human Rights in paragraph 2. Paragraph 1 shall not prevent the person presiding at a meeting of the States from exercising such authority as may be prescribed and necessary for the immediate restoration of good order during the meeting." That amendment brought by me to the then Draft States of Jersey Law was accepted. However, subsequently it was repealed by the Privileges and Procedures Committee of the day, or rather it was repealed by the Assembly but the P.P.C. of the day brought the repeal motion to this House. The Chairman of the Privileges and Procedures Committee then was one Deputy Roy Le Hérisier. Accompanying that repeal motion was this statement of human rights compatibility, and I quote: "The President of the Privileges and Procedures Committee has made the following statement: 'In view of the Privileges and Procedures Committee the provision of the Draft States of Jersey (Amendment No. 2) Law 200-' this is in repeal' are compatible with convention rights.'" Here we had a document coming before the States Assembly the sole singular and specific purpose of which was to deprive elected Members of this Assembly, and by extension their voters, of their human rights. It came with a statement of compatibility with the convention. Manifestly absurd. Absolutely absurd. I am familiar with the arguments as to why it was felt that it was necessary to repeal the original amendment to the States of Jersey Law and some Members have already referred to the 17th century Bill of Rights, the parliamentary Bill of Rights which conferred, for example, such concepts as parliamentary privilege on the Houses of Parliament. The original reason for those provisions - in fact the original reason why it was felt necessary for such motions as parliamentary privilege to exist - was so that the elected and otherwise Members of the Parliament of the day could be protected and free, free and protected from molestations or oppressions of one kind or another. That was the original purpose of it. Yet in the chain of events I have just described we have seen this Assembly in fact proactively take steps to move away from that protection of the rights of individual Members on the entirely spurious and perverse grounds of citing parliamentary privilege as a reason for doing so. That is just one example that is germane to this Assembly. The overall principle of the Deputy of St. Martin's proposition is clearly a good concept. The notion that, as Deputy Southern would have it, if there is any doubt as to compatibility with the convention rights, well, the person concerned can just take their case to the court. I am afraid that just is not good enough. As an Assembly we ought to be trying to get things as close to correct as we can in the first place. I do not think adopting just a slap dash ill-informed semi-informed approach to drafting legislation and saying:

“Well, if we have it wrong the courts can sort it out.” I just do not think that is good enough. Naturally there is always going to be a role for the courts to play in determining and refining these things, but we still have a duty to try as best we can to get these things right in the first place. I will just conclude by referring to a matter that happened this morning to illustrate how important human rights issues are and why, contrary to Senator Kinnard’s opinion, we do in fact need more than one opinion. If one legal opinion was sufficient, as I said, we would never need lawyers and we would never need courts. The Chief Minister answered a question this morning put by Deputy Le Claire concerning the merits or otherwise of an apology to victims of the historic child abuse. Under questioning the Chief Minister said that no, he would not, he would not and could not give such an apology because he had been legally advised by the Law Officers’ Department that to do so might lay the States open to higher, broader levels of compensation claims. On the one hand you have the Chief Minister, the Council of Ministers getting that kind of advice from the Law Officers’ Department, the self same Law Officers’ Department that is deciding whether X or Y accused should be prosecuted. It is ridiculous. This Assembly generally has no grasp of the real nature and magnitude of human rights issues. What is proposed by the Deputy of St. Martin will take us a long way down the path towards addressing that problem.

### **10.3.7 Deputy R.G. Le Hérisier:**

The point I would like to make, I do agree with some of what Deputy of St. Martin has put forward. I think it has to be acknowledged he has been a tireless campaigner on behalf of human rights. At times he has annoyed us intensely. The point is he has been a tireless campaigner. To a point I do diverge from the view of the Chairmen’s Committee in terms of the panel. Where I think there is confusion; is the panel here just to keep a watching brief on the development of human rights? Is it, and I do not think it is, to bring about a resolution of issues where there is a conflict between 2 people or 2 parties, each asserting their rights? I do not think it is meant to do that. Another point I would make is if indeed the panel is to have technical expertise it strikes me that expertise, other than expertise that will derive from experience, will have to come from lawyers. That is why when the scrutiny manager, I think wrote her paper on staffing implications she indicated that the cost of staffing such a panel would be a lot higher than it would that of a so-called ordinary Scrutiny Panel. The other point I would make, and I would agree with Senator Syvret and Deputy Scott Warren for example, Scrutiny is moving towards legislative scrutiny. It has been a fairly slow path but the Chairmen’s Committee is looking at legislative scrutiny. It remains within the discretion of individual committees to do that. What they lack at the moment is a central driving force that will help bring that about. It could either be by the Chairmen’s Committee in its current constitution, so to speak, or it could be one of these joint committees, or indeed as I intimated earlier in some respects, for example, to do with the so-called thematic inquiries which Deputy Hill identifies on page 4, it could be the Legislation Committee. I thought Senator Kinnard was going to allude to this, of old the Legislation Committee did in fact instigate the human rights law and did the early pushing for it. There could well be a case for that committee to come back on board and to get much more involved in looking, in particular, at the thematic side of human rights. Although as Deputy de Faye and Deputy Ferguson have said, quite rightly we have an aversion to adding more bureaucracy. I am afraid there will be a greater emphasis upon human rights, there will be greater conflicts, and there will have to be resolution of these. I do not think we can continue to bury our head in the sand. Perhaps people do not want it to become what is sometimes called the human rights industry, which you see in places like Britain and America, but the point is it is a very undeveloped area on the Island. It is an area we are going to have to turn our attention to, be it as individual Scrutiny Panels who will, every time they are faced with a piece of legislation, have to systematically ask a set of questions as that legislation is under review, or to do it through a joint committee. I am afraid even though some Members will see this as overkill, there has to be a resolution to this issue because I think it is not going to go away.

### **10.3.8 The Deputy of St. Ouen:**

It seems as though like most other Members that have spoken today, obviously individuals are concerned about the human rights issue, but equally all the concerns seem to revolve around one main question. That is, basically can we rely on the statements made by Ministers identifying whether proposed legislation is indeed compatible with human rights and the effect that that might have? The concerns obviously have been extremely well-voiced by Deputy Hill and others. The following question is, whether the present system used is sufficiently robust enough to be able to give not only ourselves as States Members but the public confidence in the process? No one presently has explained how we determine whether our legislation is human rights compliant. We are well aware of individuals being involved, including the law officers and others and department officials, but I certainly, with my hand on my heart, would not be able to explain or am aware of the process that is followed. I think that that is the main issue that whatever the outcome of this debate is, those involved in this particular area must make it clear and perhaps even review the system to ensure and describe and demonstrate that we can have confidence that our legislation and our method of considering these issues is properly dealt with. I think if we do that we go a long way to addressing all the concerns that have been voiced here without necessarily the need to follow the path as promoted by the Deputy of St. Martin.

#### **10.3.9 Senator B. E. Shenton:**

It was mentioned about the drainage law and I think there is a weakness on human rights issues when it comes to Ministerial Decisions. I must admit sometimes I do get the impression that propositions are rubber stamped with the compatibility statement without anyone really looking into the great detail of the ramifications of the policies that we are passing. With regard to the drainage law, I was fortunate enough to call upon some colleagues in the legal profession to have a look at the documentation, some fairly senior lawyers, and I say fortunate enough that they were colleagues because I certainly could not afford to pay for the advice, and they said that the Ministerial Decision probably was not compatible with human rights legislation. There does not appear to be any checks and balances with regard to Ministerial Decisions. I think this is a gap that needs to be closed fairly urgently because it is my belief that during the 3 years I have been in the Assembly I have seen many things, and some of which I think puts great pressure on the individual. We have a court structure available to the man in the street, who can also always go to the Royal Court but that is far too expensive for your average person in Jersey, in which case the court process is not available to them. When we pass legislation we should be absolutely 100 per cent certain, and indeed when we pass Ministerial Decisions we should be absolutely 100 per cent certain that it is compatible with human rights and that we are representing the public in the way they would expect to be represented. I supported the amendment because I thought the amendment made sense but I will also be supporting the proposition.

#### **10.3.10 The Deputy of St. Martin:**

As always I thank those who contributed. One could almost start out before one began and say, right I think so and so will speak against it, that one will speak against it, that is pretty well true to form really. I say that disappointingly for Senator Kinnard, because Senator Kinnard has given a lot of her time to championing human rights and discrimination and these things, and it is rather sad to see her this afternoon not really being consistent with her concerns. I would have expected support from Senator Kinnard. Really she took upon almost as a criticism me mentioning about the issue about the order, it was a fact. It was a fact. If indeed the Minister would have had the courage of her convictions she should have allowed the detention order to remain. She could have waited for a challenge, however, I think to be complimented, she took the wise move, it was sensible to withdraw, if in doubt, leave it out. The same could be said - he is missing again - of Deputy de Faye. But Deputy de Faye took the correction option, if in doubt, leave it out. I am sorry, the Connétable of St. Clement, chairman of the P.P.C., is also missing, but again if in doubt, withdraw. We have had that again, where we have a problem leave it out. I think it was Senator Syvret who was quite right in drawing people's attention, we should not allow these things to be

given a run and let them pass and wait for someone to challenge them in court. That is not the role of good government. The role of good government is making sure all the checks and balances are in place before we pass that legislation. In fact we do not have those checks and balances where we are today. That is why I believe Members should be supporting what I am proposing. At least we will have an official body with an expertise to follow that through. I would never accept from Senator Kinnard that what I am proposing is a recipe for disaster. I find that totally unacceptable, and yet the Minister is expecting us to support the discrimination law. There is a contradiction in terms. You can accept one, you should accept both. Deputy Ferguson, again almost true to form, I would not have expected to have supported me, which is rather disappointing really because I would have thought the Deputy as being the president of the Chairmen's Committee would have been supporting a principle of greater accountability and here we could have had it by supporting what I am doing. Again she mentions about human rights. It has been part of the Scrutiny process, but again it is not working. People are not doing it. We have heard from Deputy Southern saying: "Yes, I look at it every time." What he had to say was countered by Deputy Martin who soon put him right. The system is not working. Again we had Deputy Ferguson saying this is an overkill, we do not need it in small jurisdictions. Again, I would almost say that what we have here is contrary to Article 14 of human rights because we are discriminating against Jersey people. We are saying: "Okay, go to England, you can have your rights protected, but you are living in Jersey, your rights are not protected." That was the implications for what Deputy Ferguson was saying. I hear Deputy Scott Warren. I think she is concerned - like I would be, and others are as well - we are going to walk away today voting against something at a very time when people should be saying: "Are there doubts about human rights compatibility in this Island?" That is for you, Members, to make your decision. Deputy Martin again, I mentioned earlier, another common sense approach. One thing you will get from Deputy Martin, she sees both sides and lets us have it as she sees it. She says the present system is not working and we have had clear evidence the present system is not working. That has been made quite clear by the president of the Scrutiny Chairmen's Panel. Deputy de Faye spent most of his time trying to defend his decision to go across other people's property, quite a flippant way of approaching other people's rights. If I owned a garden I would expect someone at least to have the courtesy to come and ask me whether I can go through my garden, I would more than likely have said yes.

**Deputy G.W.J. de Faye:**

If the Deputy would give way, that is exactly what we did do.

**The Deputy of St. Martin:**

Deputy de Faye, let me finish please. The fact is common sense would have agreed, as we are back again, human rights should be about common sense. Here we had the Deputy assuming that he had the right to go through other people's properties. Again if he had the courage of his convictions he would have stood by the order he had made and wait until he got challenged in court. I know the reason he did not stand by, because simply he would have lost. Senator Syvret rightly spoke about the failure of Members having access to Ministers' legal advice and yet Scrutiny is taking it lying down. What I am proposing is not asking Ministers to tell us the advice they got, what I am asking the Ministers to say is why they think their particular law is compatible with human rights. That is all. I am not asking what advice is given. Deputy Le Hérissier, I do not know why the hymn came to mind about, through the night of doubt and sorrow, because I felt he was troubled, because I think deep down he knows that I am speaking a lot of sense. However, he has a misguided loyalty to his president as a member of the Chairmen's Panel. It is rather sad. I would hope he will have a re-think because he is quite right, he says: "Great emphasis will have to be placed on human rights in the future. We cannot bury our head in the sand." He is dead right again. He says: "This is an undeveloped area." Dead right again, Deputy Le Hérissier. He says: "The issue is not going away." Vote against my proposition and it will go away for a time, but it will come back. The Deputy of St. Ouen said: "Can we rely on a Minister's statements of compatibility?" We have

heard Senator Shenton saying he feels a bit guilty at times, he feels we are just rubber stamping a decision made for him. It does not necessarily mean he has to question whether it is compatible. I suspect that his thoughts are much akin to other Ministers. If they do not dig too deep in it, they take for granted the information they are given. What I am saying is if you are making that statement at least have the courage of your convictions, say why you think it is compatible and what articles are affected. In conclusion, we have Senator Shenton, who I am glad to say is supporting my proposition, could I just say in conclusion from my notes here, I have to say that human rights for those people who may think ... and I think sometimes Deputy de Faye is that way. Human rights is not to defend the guilty, it is to protect the innocent. Can I say that human rights issues are not being addressed today by the Scrutiny Panels. That has been acknowledged by the Chairmen's Committee. Scrutiny should not be about rubber stamping decisions or Minister's statements of compatibility. I do look forward to hearing how the Chairmen's Committee are going to address human rights issues within their remit. With it I would just like to draw Members attention to something Deputy Ferguson said and that was about passing aspersions on the scrutiny manager. I think that is a little unkind. What I was saying was although I accept what the scrutiny manager said, I disagree with him, and I showed the reasons why. So we will have to agree to disagree. I was showing that we do not need to spend that amount of money on a Scrutiny Panel which the scrutiny manager thinks: "I think we can reduce that by a lot, we should not be casting aspersions." I am not casting aspersions at all. I would just like to quote the email I did have from the Director of Human Resources. He said: "My view on the level of persons who might need it again depend upon what you might be wanting them to do. Our current scrutiny officers are paid grade 10, currently £41-£45,000 and we have no difficulty in attracting good, well-qualified and interested candidates at that level who all do good jobs in support of the panels the like of which you envisage. Such officers would not be expected to express legal opinion themselves, but would be as expected, and do, advise where such opinions may need to be sought." I can see that Deputy Ferguson, who knows far more than the Director of Human Resources, but of course she would because she is the president of the Chairmen's Scrutiny. Lastly I am glad the Minister and the Chief Minister are back in the House, they have missed the whole of the debate, quite consciously they have not heard any opposition to my report and proposition so no doubt they will be supporting it. If indeed my proposition is not going to be supported today I would expect every Minister in future to have greater explanations given to the statements of compatibility and of course, what Articles reflect it. In conclusion, I thank everyone for their attendance, and listening, and ask for the appel.

**Senator T.J. Le Sueur:**

I would point out, I have been in the Assembly for most of the day, but maybe I am too short for the Deputy to see.

**The Bailiff:**

The appel has been called for. If Members who need to regain their seats could do so. The vote is therefore for or against the proposition of the Deputy of St. Martin as amended and the Greffier will open the voting. All Members who wish to do so have cast their votes. I will ask the Greffier to close the voting. I can announce the proposition as amended has been rejected 16 votes were cast in favour, 32 votes against.

<b>POUR: 16</b>	<b>CONTRE: 32</b>	<b>ABSTAIN: 0</b>
Senator S. Syvret	Senator L. Norman	
Senator B.E. Shenton	Senator F.H. Walker	
Connétable of St. Mary	Senator W. Kinnard	
Connétable of St. Helier	Senator T.A. Le Sueur	
Connétable of St. Martin	Senator P.F. Routier	
Deputy R.C. Duhamel (S)	Senator M.E. Vibert	
Deputy of St. Martin	Senator P.F.C. Ozouf	

Deputy P.N. Troy (B)	Senator T.J. Le Main	
Deputy C.J. Scott Warren (S)	Senator F.E. Cohen	
Deputy R.G. Le Hérisier (S)	Senator J.L. Perchard	
Deputy J.A. Martin (H)	Connétable of St. Ouen	
Deputy G.P. Southern (H)	Connétable of Trinity	
Deputy P.V.F. Le Claire (H)	Connétable of St. Lawrence	
Deputy D.W. Mezbourian (L)	Connétable of Grouville	
Deputy S. Pitman (H)	Connétable of St. Brelade	
Deputy K.C. Lewis (S)	Connétable of St. John	
	Connétable of St. Saviour	
	Deputy A. Breckon (S)	
	Deputy J.J. Huet (H)	
	Deputy G.C.L. Baudains (C)	
	Deputy J.B. Fox (H)	
	Deputy S.C. Ferguson (B)	
	Deputy of St. Ouen	
	Deputy of St. Peter	
	Deputy J.A. Hilton (H)	
	Deputy G.W.J. de Faye (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy of St. John	
	Deputy I.J. Gorst (C)	
	Deputy of St. Mary	

**The Bailiff:**

Very well. Just before we take the next item I can announce to Members that Deputy Baudains has lodged a proposition which I understand is in Members pigeon holes outside, P.141 Machinery of Government Modifications and also noted by Members, there are 2 comments on Business Plan amendments, one on the 8th amendment which has been circulated and also Public Accounts Committee comments on Amendment No. 4, that is the amendment in the name of the Council of Ministers, the comments of the P.O.C. (Proceeds of Crime) have been presented and circulated to Members.

**11. Historic Child Abuse Inquiry: Funding (P.91/2008)**

**The Bailiff:**

The next item of business is the Historic Child Abuse Inquiry: Funding in the name of the Minister for Treasury and Resources. Minister, you have lodged an amendment to your own proposition. Do you wish to seek the agreement of the House to take the proposition as amended?

**Senator T.A. Le Sueur:**

Yes, please, Sir.

**The Bailiff:**

Are Members content that the Minister proposes the proposition as amended? Very well I will ask the Assistant Greffier therefore to read the proposition as amended.

**The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion (a) in accordance with Article 11(8) of the Public Finances (Jersey) Law 2005 to amend the expenditure approval for 2008 approved by the States on 18th September 2007 in respect of the Treasury and Resources Department to permit the withdrawal of up to an additional £7.5 million from the consolidated funds to be reallocated for the net revenue expenditure of a number of departments in order to fund the Historical Child Abuse

Inquiry; (b) that funding (up to a maximum of £7.5 million) should only be made available to departments from the allocation to the Treasury and Resources Department by public Ministerial Decision of the Minister for Treasury and Resources based on adequately documented evidence of actual additional costs incurred or to be incurred as a result of the Historic Child Abuse Inquiry.

### **11.1 Senator T.A. Le Sueur (The Minister for Treasury and Resources):**

This proposition has its origins in a statement made in this House on 26th February by the Chief Minister at the outset of the investigations at Haut de la Garenne. A statement included the words: “Yesterday the Council of Ministers met and confirmed our fullest support, the Home Affairs Minister, the Police and the Criminal Justice Authorities. We also confirmed that all necessary resources would be made available to ensure the most comprehensive inquiry possible and to support any prosecutions that lead from it.” Those were important and necessary words which are still as valid today as they were then. Certainly expenditure has been and continues to be incurred in respect of the Historical Child Abuse Inquiry; expenditure which, in the main, has not been able to be funded from within existing departmental resources. I said this morning that it is principally unusual for the Minister for Treasury and Resources to come to the House for a supplementary vote and before doing so it is my duty to inquire of Ministers whether the expenditure can be met from within their existing budgets. If Members refer to the proposition they will see that some £451,000 of expenditure has been met from within existing budgets. Nonetheless it is clear there is other expenditure that has been incurred and will be incurred over and above the resources of the departments concerned. As a result my obligation as Minister for Treasury and Resources was to ensure that that expenditure was properly, rightly incurred and accounted for. We issued a direction to all departments, which again is contained on page 4 of the report to Projet 91, which says in summary: “Accounting officers will be held accountable for the necessity of all expenditure and for the achievement of value for money. The Finance Law and all financial directions will still apply to all historic child abuse inquiries related to expenditure. Public Accounts Committee, internal audit and the Comptroller and Auditor General may at some time in the future investigate such expenditure and report accordingly. They may express questions requiring justification of the amounts spent.” That, Sir, is the background to the proposals which are before us today which come in respect of expenditure incurred by 7 departments or committees. In order to ensure that that money is properly spent and accounted for and in order to make the proposition workable the proposals are that the money should initially be made available to the Minister for Treasury and Resources and the Treasury and Resources Department to hold in a pot and monies would only be released from that pot to the departments on presentation of justification of the expenditure having been incurred. Any expenditure which has not been incurred remains within the Treasury and Resources Department and can only be used for the purposes of the Historic Child Abuse Inquiry and if not required will be returned to the consolidated funds. That, Sir, is the background to this proposal. The original sum of £6 million has been increased, as Members will have observed from my amendment, to a total of up to £7.5 million primarily as a result of increased activity in the police activities and the delay in withdrawing from Haut de la Garenne and the need to excavate a second site. Sir, as with other propositions of this nature, I act primarily as rapporteur and collector of the information from the spokesman on behalf of various departments. One of those departments is in fact my own in respect of Property Holdings where there is expenditure incurred in 2 directions. Firstly from the loss of rental because we have not been able to obtain rental from the Youth Hostel Association while the premises cannot be used for that purpose. There will be further expenditure in reinstatement of the property in due course. That is accounted for in the Treasury and Resources figures. I can leave other departments speak for their own particular requirements, Sir, but in general I do not think we need look at each department in too much detail. The point is we are here fulfilling an undertaking we gave to the public at the start of the year, that any costs of the Historic Child Abuse Inquiry would be met by the States, whatever those costs would be. Sir, I make the proposition.

**The Greffier of the States (in the Chair):**

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

**11.1.1 Deputy P.V.F. Le Claire:**

I am sure all Members will be supporting this and showing their commitment to the services that are employed in undertaking this work. This morning the Chief Minister in response to a question put by myself indicated that the Council of Ministers themselves would be seeking independent legal advice. I do not know in what context that would be sought or who will be engaged for what purpose, but I wonder if I could inquire at this stage if that has been drawn up? If there is any understanding of what that will entail? How broad those responsibilities and consultations will be? Whether or not those are parts of this expenditure or parts of the expenditure that have been outlined in the increases that have been put forward in the Business Plan for the Chief Ministers Department? Whether or not these funds in the future will also come back to the States for approval?

**11.1.2 Deputy G.C.L. Baudains:**

I do not think there is anybody that would not agree that no stone should be left unturned to bring this episode to a satisfactory conclusion. In that regard money should not be a consideration. However, I am concerned at the way this is mounting up. I have to say what is persuading me to support the proposition is the last part of the part (b) where the Minister for Treasury and Resources is going to ensure that the actual costs incurred are factual. I will be supporting it but I am getting concerned.

**11.1.3 The Deputy of St. Martin:**

I would like to be able to give my support as well, however, there are questions I would like of the Minister. Under Education, Sport and Culture it says: "A new post in the department regarding the care leavers' organisation." I would be grateful if we could have a bit more information what that is and what sort of costs we are looking at? Also the area I have about the Home Affairs largely policing costs. That will also come down to - further down where it says about the law officers - I do have a concern again, a question was raised this morning when Senator Syvret asked the Chief Minister. It says the law officers: "Detailed estimates of probable court and case costs plus full-time lawyer at the police headquarters for inquiry." I think in an interest of impartiality I would ask that maybe serious consideration is given to ensuring that the lawyers are separate from the police so you have the separation of the investigatory part and the prosecution. It could be seen - again perception is so important - we want to ensure that there is a separation so I would ask that consideration is given to seeing if indeed these lawyers who are going to be employed, a lawyer is going to be employed, could be employed outside away from the police station so it does not look as if both of them are working hand in hand with each other. The other area, naturally, I have a concern - as indeed my Connétable of St. Martin also will - is about the future of Haut de la Garenne. It says here Property Holdings: "Loss of income from the Y.H.A." I want to know where was that income going to go to. If they are not getting it, why should we show a loss of income. Where is that money going to go? You have no expenditure so why does that money have to be found? Also we talked about security at Haut de la Garenne, could I say that, I assume, is going to be the future security and are we at liberty to be told what sort of money are we looking at, because it talked about £500,000 and I do not think ... maybe to get that breakdown. The third issue there is, reinstating excavated areas of the site. Again, we heard this morning from Deputy Le Fondré that no decision has been made. While I can understand we are asking for money because it could be, but I just wonder whether £500,000 will be sufficient if it includes the loss of income, the future security of Haut de la Garenne - because I gather there is someone there 24 hours a day - correct me if I am wrong. Also whether it will be sufficient to pay for quite extensive renovations and refurbishment at Haut de la Garenne.



#### **11.1.4 The Deputy of Trinity:**

First I would like to say that I am a trustee of Haut de la Garenne. I support this proposition for funding of the Historic Child Abuse and especially the sum required for Haut de la Garenne of just over £500,000 to reinstate the place as it was before; as now the building is empty and it is to provide essential security. As we know the building is large with extensive glass, and security is vital to prevent any unwanted guests from vandalising the site as it is the same with Jersey College for Girls. I would just like to quote from a letter that the trustees had sent to the Minister for Treasury and Resources: "I speak for all the trustees in continuing to express extreme sadness and compassion for all those who have suffered at Haut de la Garenne. The alleged acts are unforgivable and we all trust that justice will be done. While the trustees have quite deliberately maintained a low profile they and the Y.H.A. have been working closely with Jersey Tourism and are deeply grateful for the wholehearted commitment of the departments and the help of many hoteliers who agreed to accommodate guests during the stay at Haut de la Garenne often at discounted rates. In part, it is worth noting that very few visitors previously booked at Haut de la Garenne decided not to come to Jersey over the last months following the revelations in the media. Indeed some visitors even indicated that they would stay at Haut de la Garenne if it is reopened in the summer months. The hostel has been running very successfully over the last years and in an enterprise scheme with Y.H.A. Just to quote, it had over 10,000 bed nights last year. The Y.H.A. unfortunately have been affected by the ongoing historical child abuse of which they have no connection and none of their making. Indeed by international coverage of Haut de la Garenne and initially the Y.H.A. logo it was good to hear the Minister for Economic Development fully supporting the Y.H.A. The trustees were initially appointed by this Assembly because of their commitment to Haut de la Garenne and the aims of the trust. In spite of all, we are fully aware of the real challenges that lay ahead and remain committed to Haut de la Garenne and Y.H.A."

#### **11.1.5 Deputy J.B. Fox:**

I shall be supporting this proposition because although inevitably from an accounting point of view or from an actuary point of view the Treasurer, the States or anybody that has accountancy responsibilities from the various departments will not necessarily have accurate figures; nevertheless it is very important both for the victims, for the police and for the law enforcement officers, law officers, et cetera, to have the necessary funds to do the work, much of which will still be *sub judice* and therefore will be not open to discussion. Having said that, I think the important thing that we must recognise that when we are talking about large sums of money that we are at the moment, and the continued amounts that will inevitably occur or be required, that it is only proper that being a responsible government that we ensure at the end of the day that there is a proper accountancy procedure and that if necessary this should be linked in with the proposed independent investigation or inquiry that has already been announced. Therefore in the interim I support this, recognising the necessity for the inquiry to continue to a proper conclusion and, at the same time, there should not be any hint that things cannot be done because there is not the funding being made available. That includes the considerations that the previous speaker has just been talking about, for the future of Haut de la Garenne.

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

Just a question of clarification really, obviously whatever it costs I support. It is just the financial manpower indications on the amendment do not say what (b) tells me. I think the Minister was telling us that departments will have to prove what they have done with the money, need this, spend it and then it will be allocated. The actual wording on the amendment says: "As previously indicated payment will only be made against expenditure incurred and validated by the accountant officer of the relevant department." It does not go on to say ... what it is telling me, it is the Minister for Treasury and Resources who decides the amount of evidence that this money is spent and spent properly and directed in the right area. As I say that is really a clarification, but I do think both statements are completely against each other.

#### **11.1.7 The Connétable of St. Brelade:**

I think I am right in saying that most thinking people are sick and tired of this whole debacle and would clearly like to get it dealt with for the benefit of those who suffered and for the benefit of the Island. What I would like to ask the Minister for Treasury and Resources, Sir, in the event that compensation will arise will he be coming back to this House asking for more money?

#### **11.1.8 Deputy C.J. Scott Warren:**

Months ago, Sir, the Chief Minister gave an assurance that all necessary money for a full and thorough investigation would be made available. Therefore, Sir, we as States Members, I feel, must give the necessary funds for properly accounted for expenditure that has been incurred to be fully reimbursed.

#### **11.1.9 Senator T.A. Le Sueur:**

In response to Deputy Le Claire; to the best of my knowledge the Chief Minister's requirement did not specifically include anything for legal advice that that department might require. On the other hand, of course, there is the law officers' budget which is quite considerable, although that is primarily in respect of court and case costs and bringing people to justice.

#### **Deputy P.V.F. Le Claire:**

I am sorry, could I please through the Chair ask the Minister to repeat that, because I am afraid I could not understand exactly what was said at the time you spoke, Sir.

#### **Deputy T.A. Le Sueur:**

What I am saying, Sir, is that the amount of money that the Chief Minister's Department has requested does not, as far as I am aware, include anything for legal advice to that department. On the other hand, if advice is sought from people other than the Law Officers' Department then that may have a reduction in the demands of that department. All I can do, Sir, is bring forward those requests which have been presented to me as requiring funding in 2008. I shall make this point, the important message, that this proposition relates to expenditure likely to be incurred in 2008. It does not include any expenditure which may well be incurred in 2009 or even beyond. That would be a matter for 2009 budget allocation, not the 2008 budget allocation. Going back then to the Deputy of St. Martin's question, the Education, Sport and Culture debate. In fact if he looks at the amendment, the original bid for Education, Sport and Culture has now been withdrawn but there is a bit in respect of the Jersey archive for £65,000, that is in respect of the various information sorting that has had to be done at the archive in order to provide the information required from historic records. To the Home Affairs and Law Officers in respect of legal advice; the question is whether those law officers should be at the police station. As far as I am concerned having a law officer at the police station is very helpful for the police inquiries, and the police themselves welcome the existence of that advice. So I believe that is good and efficient use of resources. As far as Treasury and Resources is concerned we are not getting rent from the Youth Hostel Association, so it is not a question of extra expenses being incurred, it is a question of income not being received. As to whether the £500,000 is sufficient for property refurbishment, we have downgraded our estimate slightly in the amended proposition, but again I repeat that this reflects only expenditure to be incurred in 2008. At this stage with no decisions having been made as to the future activities of Haut de la Garenne it is probably unlikely that expenditure of anything like that money will be incurred during the next 3 months. I thank the Deputy of Trinity for her comments as a trustee of Haut de la Garenne and reiterating the support of Youth Hostel Association, which I know from records and from correspondence is still wholehearted and I believe there is an exciting future for the Youth Hostel Association at that site. To Deputy Fox, he makes the very important point that we do need to ensure that there is full accountability and that will be part of the process. In relation to that point; Deputy Martin questions who is going to validate the expenditure. The first stage in the process is for a department to validate its own expenditure. Having validated it,

from a department's point of view, they then have to submit that to the Treasury. If the Treasury have any concerns about whether that has indeed been invalidly incurred then they will question it with the department concerned. But on the basis of general financial directions that is probably the case of any expenditure incurred by any department for any expenditure whatsoever anywhere in the States. Haut de la Garenne is not treated any differently in this respect from any other States expenditure. Finally, as far as the Connétable of St. Brelade is concerned, the question of compensation does not form part of this request. I have no indication of any potential quantum of claims at this stage. Even if there were claims I very much doubt if anything would be settled in 2008. I think the likelihood of requiring any funds in 2008 of that particular expense are very remote. I hope, Madame, that deals with all the questions and comments that Members have made and I maintain the proposition.

**The Deputy Greffier of the States (in the Chair):**

Members are asked to indicate whether they are in favour of the Historic Child Abuse Inquiry: Funding as amended. The vote is carried. Before we move on to the next item can I just announce that the Minister for Social Security has lodged his Draft Amendment No. 4 on the Employment Law P.142, and if it has not been circulated it will be in Members pigeon holes.

**12. Committee of Inquiry: Toxic Incinerator Ash Dumping in the St. Helier Waterfront Land Reclamation Schemes (P.96/2008)**

**The Deputy Greffier of the States (in the Chair):**

The Assembly now turns to the Committee of Inquiry: Toxic Incinerator Ash Dumping in the St. Helier Waterfront Land Reclamation Scheme 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 to establish a Committee of Inquiry in accordance with Standing Order 146 in order to examine all matters relating to the handling and dumping of toxic ash from the Island's municipal waste incinerator into the marine land reclamation sites and other areas, and specifically (a) to examine the breakdown in public administration which enabled the irresponsible and unsafe dumping of the toxic ash and to examine why this was able to occur and to consider what improvements and safeguards should be introduced in order to ensure that public administration is subject to effective checks and balances; (b) to consider what, if any, additional monitoring and proportion should be introduced to safeguard human health from the toxins within the reclamation site; (c) to consider what, if any, additional measures should be taken to protect the marine environment from the toxins within the reclamation site; (d) to consider whether States departments place Jersey (and by extension the United Kingdom) in a position in which it has breached its obligations under the OSPAR Convention as a result of the dumping; and (e) to examine and report on any related matters which the committee considers relevant to its inquiry.

**12.1 Senator S. Syvret:**

As Members may recall I did offer to make this a brief matter given the feebleness of the comments of the Council of Ministers and the fact that the intrinsic point I make in my proposition is accepted by them. I have received no indication from them that they are minded to so accept, so here goes. Checks and balances, I suppose that is the core issue that we have to consider here and I think it is worth Members recognising that this issue of the dumping of the toxic incinerator ash is a cipher for a variety of other failings on the part of public administration over the years and over the decades. While this Committee of Inquiry proposition looks simply at the history of the dumping of the ash, how it came about, how it was able to happen, why none of the checks and balances that should have worked to protect the public interest did, nevertheless that culture of breakdown in the good standards of public administration is not confined just to this one issue. As has been discussed and established in the past we cannot, given the ongoing police investigation and what

may flow from that, discuss the child protection issues. But this subject matter is a very good proxy for them because precisely the same syndromes, the culture, the failings, the total inability and unwillingness for States employees to hold each other to account is exactly the same in both cases. So, if we want to learn some important lessons about the need to improve public administration to improve its standards, to improve the public good, to improve public safety in all kinds of areas this subject is a very, very good area to focus on. Reading the Council of Ministers' comments in response to my report is quite interesting. It is both factually wrong in several places and perhaps more significantly it simply completely misses the point. Members reading those comments will see that the Council of Ministers assert that many of the questions, the key issues, the key points I am raising have been addressed by this or that report undertaken some years ago, therefore there is no need for a Committee of Inquiry now. Well, I am afraid by asserting that they have simply missed the point. It is certainly true that under my presidency, the Health and Social Services Committee of the day with the then Medical Officer of Health, Dr. John Harvey undertook the work to inquire into and make sure whether there was no direct and immediate human health threat from the toxic waste dumps that are the waterfront. So, it could be said that that work is done and we could state reasonably confidently today, with the standards of scientific knowledge as it is at the moment, that as far as we are aware there are no human health impacts. But the point is if there are no human health impacts presently or if none have occurred in the past that is more by luck than judgment. Such was the gross irresponsibility of the way in which the ash was handled and dumped over the best part of 2 decades that in fact if people were not exposed to the ash to a degree whereby they inhaled or ingested it, it would frankly be a miracle. Now, we have to ask ourselves, is it acceptable for public health, for the welfare of people, members of the public as well as workers, to have just perhaps "dodged the bullet" in that manner just being purely lucky, notwithstanding all of the gross incompetence of the States. I do not think that is good enough. I think we have to ask if we are serious about the quality of public administration, about good government, about effective standards. We have to ask how can it be that that risk was ever run in the first place. How can it be that a material, the ash, riddled with a combination of different toxins, the vast majority of which had been well known, well documented and proven scientifically to be human toxins for decades and decades and decades, how come that every single component of public administration failed? From 1979 until 1995 all parts of public administration failed; failed disastrously to take this matter seriously and it is worse than that. Not only did they fail to take it seriously, but different departments and different members of staff within those departments proactively colluded with each other in covering up and concealing the truth; that much is well evidenced. I remember one occasion when frustrated at the intransigence of the then Public Services Committee in the early 90s, the then Senator Qu  r  e and I went to see the then Medical Officer of Health and took a significant number of photographs with us showing the mound of festering, steaming ash on the West of Albert site just the other side of the Albert Pier wall right behind the caf   with seagulls rummaging through the ash eating bits of the unburnt, putrescent waste out of it and his response was one of anger, fear and dismissal, and that is the Island's Medical Officer of Health. What of the Agricultural and Fisheries Department? Even the comments of the Council of Ministers state that the Agriculture and Fisheries Department under various legislative provisions had a responsibility to make sure that this kind of toxic material, this kind of pollution, did not get into the environment. Indeed it says the previous Agriculture and Fisheries Committee Sea Fisheries Section also identified that under Article 3 of the Sea Fisheries (Miscellaneous Provisions) (Jersey) Regulations 1974: "Incinerator ash could not be deposited in an inter-tidal zone." Now, why did it take from 1979 until 1987 for the Agriculture and Fisheries Department of the day to realise that and, having realised that, why did they imagine for one instant that simply layering the ash across the surface of the site and a ban a couple of metres deep or in the odd, high level pocket would amount to disposing of it in a manner that was not available to the marine environment because it certainly is. The sites are sea porous; they are subject to the hydraulic forces of tide rise and fall; surface water saturation is drawn down through the sites; any toxins in that site are potentially available to the marine environment. To look at some of the other

points made by the Council of Ministers, Members will notice they focus very much on the West of Albert 1 and West of Albert 2. Largely and indeed perhaps entirely ignoring the fact that the toxic incinerator ash was just dumped straight down the tipping face of the land reclamation site at La Collette 1 before the West of Albert sites were begun, before they were initiated. So, it is not just the West of Albert sites we are considering. All of the land reclamation sites around St. Helier's harbour have hazardous waste issues associated with them now because of the gross incompetence of the States. The Council of Ministers comments say, and I quote directly: "It is accepted that the manner in which the incinerator ash was disposed of on the waterfront site was not managed appropriately resulting in the potential for operatives subsequently working on the site to be exposed to risks to their health when uncovering or working with the material. The legal requirement under the Health and Safety at Work (Jersey) Law 1989 ensuring that employees are not exposed to risks to their health is primarily placed on their employers." A lot of the workers who were exposed to the ash, fugitive dust from it, steaming residues, dumping it and excavating it were in fact States of Jersey employees. So, although it is not stated directly in the Council of Ministers' comments, here in black and white is a tacit acceptance of criminal culpability by the States of Jersey. The States of Jersey broke repeatedly and over an extended period of time its, the Island's, Health and Safety at Work laws. Why, throughout that whole episode did no officer in the Health and Safety at Work Division say to Public Services: "Sorry, you are not allowed to do this." Why did they not say: "You have to protect your work force. You are breaking the law by making them run this risk." None did and in fact back in the early 90s when people like I and former Senator Qu  r  e were campaigning on this issue we would go to the Health and Safety at Work people; we would go to Agriculture and Fisheries; we would go to Public Services; we would go to the Environmental Health Department as it then was; every single relevant States department, Planning, the whole bit. Every single States department that had any kind of hand in this matter, any kind of portion of responsibility for these areas, and every single one of them put up an implacable wall of denial. They all pretended - they all lied, let us make no bones about it - to the pair of us and probably to a good number of other States Members too. It was repeatedly insisted and it is well documented in the records of this Assembly, let alone anywhere else, that time after time after time politicians, the public's elective representatives, I do not doubt in good faith, stood in this Assembly in answer to questions from me and others and said: "There is no problem with the ash; it is not toxic; it is not an environmental hazard; it is not a potential risk for human health. This is just scaremongering and it is not worth being concerned about or worried about." I could not count the number of occasions those kinds of responses were delivered in this Assembly by the relevant politicians of the day. But as I said, I am sure that they were acting in good faith, but they were simply being fed a pack of lies by a range of senior civil servants who, when people like I and others started raising concerns about this matter suddenly realised: "Oh, my God, this is an environmental disaster we have created here. We should have said something or that department should have said something or the other department should have said something to stop this going on, but none of us did. We all really, really blew it. We really got this catastrophically wrong." So, in customary States of Jersey fashion, just like the child protection disasters, the cultural response was to close ranks and present a united front; hide it all; pretend everything in the garden is rosy and just dismiss and trample upon anyone who tries to say otherwise. These are the kind of issues we need to be asking ourselves. We need to be asking ourselves can we as individual Members of this Assembly, and as an Assembly as a whole, properly represent the people who elect us here; the people who pay our wages. If we remain entirely content to accept an edifice of public administration which can so blithely be so incompetent, idle, dishonest, duplicitous as to cause the Island's Parliament to be lied to frequently. I do not think this is a politically partisan issue. I would have thought any responsible politician would want to get at the heart of these issues. We have land reclamation sites which are essentially giant, toxic waste dumps. They will remain problematic indefinitely. That has to be of concern surely to any responsible Member, which is why we have to have a Committee of Inquiry and the main purpose of the Committee of Inquiry is not to examine again why the ash is toxic; we know it is; it is a demonstrable fact

evidenced, proven. The real purpose of the Committee of Inquiry is to ask the \$64,000 question; it is to look at the different States departments, the senior civil servants within them and how all of them failed; how no check and balance worked; no public safeguard mechanism kicked in throughout that whole episode. On the contrary, the truth was proactively concealed. I remember when I was first elected to this Assembly as a Deputy, I joined the then Public Services Committee under the former Deputy John Le Gallais. I eventually, after a couple of years, resigned from the committee largely over this issue because I kept pointing out to the committee at meetings that: "You know, we really should not be doing this. This material is a toxic waste. We should be binding it in some kind of matrix and mixing it with cement perhaps and certainly disposing of it in some manner of means that was not in such an environmentally available form." Time and time again I raised these issues at the committee and quite frequently my reward for doing so was to have abuse shouted at me by the senior civil servants of the day and on one occasion I went - this is one of my earlier memories of politics which may explain to some people why I am like I am today - I went in all naivety to the committee meeting with a handbook on toxicology, following all of these repeated denials that there was any kind of problem and I said: "Look here, look in this book it says cadmium is a human toxin; green indecorous, potentially cancers, lung damage, the whole bit and there is lots of cadmium in the ash. It says here that it is toxic." The response of the then Chief Officer was to go an even more intense shade of purple than usual. He slammed his fist on the table and shouted at me: "Who the bloody hell do you think you are talking to? I was an expert in these things when you were in short trousers." But that was in the face of unarguable, scientific evidence. Respectable handbook on toxicology stating the fact about the variety of toxins in the ash and the senior civil servants who cost taxpayers an awful lot of money, were just straightforwardly lying to the politicians of the day. Those politicians, as I said already, I think they were acting in good faith, but in their naivety they would say things like: "Well, if the Chief Officer says that it must be right because he is the expert in these things and you are not" quite disregarding the scientific evidence of the toxicology of the different things. That is why we have to examine how all of this was able to go wrong because it is entirely feasible because that culture of mutual support of closing of ranks, covering each other's backs is endemic and a fundamental feature of civil service in Jersey. We have to ask ourselves how many other possible areas of activity have similar things gone wrong in or may go wrong in, in the future? There could be quite a significant number of them. Sir, I will give way to the Senator.

**Senator J.L. Perchard:**

Could I just raise a point and ask the Senator to clarify, he very eloquently described a situation where it appears if the Senator is right that his advice from the Chief Officer at the time was wrong and he explained how he raised that at committee level and the Chief Officer gave wrong advice to him in the committee as far as the Senator believes. Then he leapt a huge distance into co-operation between officers of cover-ups and mutual support and I do not understand the connection and purpose. If the Senator could explain how he connects the 2?

**Senator S. Syvret:**

I thought I had explained that. Perhaps Senator Perchard was not listening very closely. The problem is that when one looks at an issue like the dumping of the incinerator ash into the land reclamation site, you are not considering an activity that is the responsibility purely and solely of one States department; the Public Services Department. The then Agricultural and Fisheries Committee had certainly a role to play in that protecting the marine environment from pollution. The Planning Committee of the day had a role to play in it, not creating contaminated land, toxic waste dumps on the doorstep of St Helier. Health and Safety at Work, Social Security Department, they most certainly had a role to play in ensuring that the law was enforced and workers and members of the public were not exposed to the toxic hazardous waste; something they clearly failed to do as is even admitted in the Council of Ministers' comments. All of these different departments - the Environmental Health Department also - they each had a stake in what went on and with each

of them it could have been said: “That department and that department and that department share some of the culpability” and they knew that, which is why they closed ranks and covered it up and tried to pretend there was no problem. Now, this is a very serious issue. We have comments from the Council of Ministers in which it is frankly admitted that the States of Jersey was breaking over a period of years its own Health and Safety at Work laws. The comments of the Council of Ministers accept the essential premise of my proposition, which is that the ash is toxic waste and it was dumped inappropriately throughout those sites, and given that the Council of Ministers have accepted that much, I do not see how the Assembly cannot now support a Committee of Inquiry. Here is an admission and an acceptance that the States of Jersey broke its own laws in the dumping and the handling of the ash and acceptance that it should not have been done in that way and acceptance of incompetence and deficiency on the part of the States of Jersey; all of that is accepted, it is written in the Council of Ministers’ comments. Therefore that is why I say their opposition to this report and proposition from me is feeble, very, very weak, mystifyingly so. The essential premise is accepted and yet still they will not vote, they will not support voting for a Committee of Inquiry in a matter of such importance as the clear demonstrated and accepted cross-departmental breakdown and public administration. An immensely expensive apparatus of departments and public sector employees each, who in their own way, should have been fulfilling their particular responsibilities to make sure these kinds of things did not happen, and they all failed. Now, we either care about taxpayers money, the public good and public safety or we do not and if we do, then we have to support this report and proposition, especially given that the Council of Ministers themselves do not argue with the core points. We are dealing with a disastrous breakdown on the part of public administration in Jersey. There was little else we could responsibly do at this moment in time other than establish a Committee of Inquiry to see what went wrong, how it went wrong and what lessons need to be learnt in the future to stop similar breakdowns in public administration. I move the proposition.

**The Deputy Greffier of the States (in the Chair):**

Is the proposition seconded? [**Seconded**] Thank you. Does any other Member wish to speak?

**12.1.1 Deputy P.V.F. Le Claire:**

I will speak ahead of the Ministers whose responsibility is now to defend these departments that Senator Syvret has highlighted in his speech and I will not take a great deal of time in explaining to Members why I believe that we should support this proposition today. Later on in the session I will be attempting to convince Members that the Environment and Planning Department should be separated and the Council of Ministers does not support that. It is probably unlikely then that I will succeed in attempting to establish a coherent, independent champion of the environment and we will move into the elections and into the next session of 3 years of administration at the least with things being of a status quo. Members may think that that is okay, but the problems that have been highlighted and the histories that have been described by Senator Syvret also have been repeated recently, and it was not more than a year and a half ago that I was being informed that ash was being dumped at La Collette and was going into the sea. At that time I took it upon myself, rather than visiting the sites, as I have been told I should to inform - I got a bit stupid and thought that I would try it the system way - I thought it would be right for me to inform the acting Minister for Health and Social Services, Deputy Celia Scott Warren and the Minister for Transport and Technical Services, Deputy de Faye, about what I had heard. Deputy Scott Warren immediately informed her department who began an investigation and Deputy de Faye pretty much dismissed what I was saying as fanciful, and I also did comment at the time that it did sound rather fantastic that people could be reporting toxic waste being dumped from the incinerator on the sides of La Collette in 2007 that was blowing into the sea; it sounded really ludicrous considering my own personal understanding of what had been happening in relation to the ash pits from when I was on the Public Services Committee from 1999, and subsequently the Health Committee in 2000 when it was demonstrably proven through the officers of the Medical Office of Health and the work that

Senator Syvret had undertaken, that what had gone on in the past which we have now built upon was unacceptable. So, it is not that historical, it is current. It is a current failing of administration and it is a current failing of administration that brings me to make Members consider later onwards in the session whether or not long term that is acceptable. If we jump forwards a little and I lose that proposition and we have not supported this, if those administrative procedures and public checks and balances are not in place then these things will continue. I am not well read on cadmium and other matters, but I am well versed in the culture of States departments and offices within States departments that will not speak out against their own, and recently I experienced that only over the summer recess where a senior member of a department reported a serious concern to me. I offered to approach Scrutiny and he quite strongly told me to say nothing; that he would be put down, put out and put under and that was the way that that department worked. It is not good enough for us to continually support blindly the chief officers and their departments in everything they do when there have been demonstrable evidential based incidents that have highlighted breakdowns. The ash at La Collette was contained and put into the pits - £95,000 a pit - and sealed, but the reason it was put on the side at the time that it was put on the side was because the pit was not ready. Well, that was not very effective planning, was it; and we have decided to go for an incinerator and that will produce more ash. So, I am asking Members just to consider this one aspect, if nothing else, about this proposition today to examine the breakdown in public administration, and if I can just read from that I think it is a very important part of what we need to consider: "To examine the breakdown in public administration which enabled this irresponsible and unsafe dumping of the toxic ash and to examine why this was able to occur and to consider what improvements and safeguards should be introduced in order to ensure that public administration is subject to effective checks and balances. Because one thing is for certain, if it is going on within the States of Jersey today, and there is even senior management involved, from my own personal experience I know the message from them is, say nothing, they will be put down, put out and put under." It is now time for us to recognise the good of the civil service and the good people in it, but to also recognise that we have an important role to play in effecting the safeguard of public health on this Island through this legislature and we need to authorise an independent inquiry to ascertain what is going wrong because there are things going wrong. When I turn around to the people in charge of departments that are responsible for health matters and tell them about this, that and the other I am constantly presented with a whole host of other reasons why they cannot get involved in doing anything. We have States departments in conflict with each other; one polluting and one protecting, and neither of them going to court until all of their costs are secured prior to doing that. The Constable of St. Helier I am hoping will rise in support - he seconded this - and speak about his own experiences. No doubt we will hear from the Minister for Transport and Technical Services in defence of his department, but I would not ask Members today to consider the words of those that speak in defence of their departments. I would ask Members to consider those that speak in defence of the public and the public administration is failing. I am sorry, it is a fact. The checks and balances are not working. They have not worked and they are not working still. If Members do not wish to support my proposition, that is one matter, but if they do not wish to look after the public health then they will not support this. If they believe, like I do, Ma'am, that there are serious problems, then I ask them to put aside their blind loyalties to departments and agree at the very least what could possibly be wrong with looking at whether or not we have sufficient checks and balances to protect the public.

#### **12.1.2 Deputy C.J. Scott Warren:**

In my opinion there are 2 issues. Firstly, as has been spoken about, responsibility regarding the historical questions and mistakes made by politicians and department officers regarding this dumping and storage of ash and it has been said in the Council of Ministers' report those responsible probably are retired now. The second issue is a concern, but I do still believe needs answers. What scientific evidence do we have now about the health aspects, potential future health problems from past actions on this site? Can we be sure that those living in this area and in Jersey



are free in future years from ongoing affects from these past actions? What is the situation regarding the leaching of ash into the marine environment in future years and into our food chain? Do we have and already have sufficient scientific evidence that can reassure everybody in Jersey that no danger exists today or in future years as a result of this dumping of ash? Because I think this is very important to establish. If we have done sufficient scientific research now that we have the answers, all the remedial work that can be done has been done, then you will have to decide whether you want an historical investigation or whether Members feel that this was obviously some years ago, Members may say that there is no point if all scientific evidence has been established as regarding future problems for the Island as a result of the dumping of ash. So, really I feel that if there is going to be a Committee of Inquiry I believe it would be to protect and enhance future health of the people of our population and find out as far as possible whether there is any danger regarding the remaining ash and the leaching of ash that an investigation could produce some remedial action as a result from scientists on giving evidence, and further safeguards could be put into effect for the health of the Jersey population. If we know these answers and if there is nothing more that can be done - and I would like the proposer to elaborate further on this - then one has to decide whether the historical aspects should be further looked into or not. My concern remains the future years of what is going to happen in that area and in the food chain in future years. I obviously do have concerns about what happened with politicians and people in departments in the past, but what I feel is the most important issue here today is the health of the people of Jersey. Thank you.

### **12.1.3 Deputy G.W.J. de Faye:**

It has been insinuated by a couple of speakers that somehow I am going to be springing to the defence of the Transport and Technical Services Department or its antecedents in the form of the Public Services Department. Nothing could be further from the truth and I wish to disabuse those Members who have those sort of warped thoughts and assure all Members of the House that if I was aware of any criminal culpability that affected the health of the public that came under the responsibility to the Transport and Technical Services Department I would pursue that very rigorously indeed. So, let us be quite clear, I am not here offering defences or instigating any level of cover up; that is something I despise and will not stand for. Now, let us look at this proposition in some detail, and I congratulate Senator Syvret for producing a very comprehensive and detailed report. Indeed it goes back to 1979 when I began work as a reporter for Channel Television and I well recall some of the issues that I myself pursued as a career journalist. One of them was a keen interest in the potentialities of low level radiation in marine environment which was currently then emanating from the capital Hague plant and I was in regular correspondence with the U.K. Radiological Protection Authority reading extremely detailed papers on that particular issue. That also led me to look at the output of the Bellozanne incinerator, both the emissions from the chimney and looking at what was happening to the ash at that time because that was when the reclamation sites were first beginning to be filled back in the early 80s. I was well aware at the time, and I think the lists of the materials, mercury, cadmium and so on, we were well aware it was well known then that heavy metals were being burnt at the Bellozanne incinerator, and I remember asking civil servants responsible what the issues were. Was there in fact a danger from the emissions drifting out over the sea of contaminating the local marine environment? It was quite clear that the culture and the thinking at the time was that - and this will be familiar to many Members - that the ocean or the seas around us were effectively the great digester of pollutants and that rarely the dilutions were so massive that it really was going to have very little impact. Well, 20 years later we now have far more information, a greater grasp of the scientific facts and indeed we have done things like emission studies of the Bellozanne chimney, so we know now that most of the flue gases do not necessarily fall over the sea; they are also falling in fact on to my constituents in St. Helier No. 3. The heavier elements of the emissions will tend to fall to ground early on in the exit process, and so it is residents up at La Pouquelaye and up at Haute Vallée School and d'Auvergne, those are the target areas for some of the nastier substances that still continue to come

out of the Bellozanne chimney. I have to say to Senator Syvret that I think he in particular did himself enormous credit over the years when he doggedly pursued both the issue of toxic emissions from the Bellozanne chimney and the issue of where the toxic ash was going, and I think he performed a service to the Island in doing that because it has certainly contributed to the change of thinking and, quite frankly, the new methods and procedures of dealing with toxic incinerator ash dumping in particular. I am sure I do not need to remind Members that it is now a carefully regulated process and it is dealt with in lined pits and we are now quite well aware of the leachate issues with the sea and so on and so forth. However, as I say, this all started over 20 years ago and I wonder why it is, we are both metaphorically and literally considering whether we want to rake over the old coals. I have to say my immediate reaction to the Senator's proposition was that I have not seen a more comprehensive and detailed document setting out a series of facts one after the other that then asked for a Committee of Inquiry. It appears to me that we do know most of the salient tracks and there does not seem to be much left to be researched into. Indeed, in the comments paper - and I am sure that Members will have read those through - there is a list of the questions under what will a Committee of Inquiry achieve. The response is simply this to all those questions: "Why did it happen? How was it able to happen? Who was responsible? What action can be taken to remediate?" and so on and so forth. It says: "The vast majority of these questions were addressed in 2002 when the Medical Officer of Health prepared a response to a series of questions posed by Senator Syvret." Then it goes on in the next paragraph: "A Committee of Inquiry will be able review the history of ash disposal, the historical and scientific data from the numerous reports already prepared. However, from all of the work undertaken in the period of 1995 to 2004 this has already been achieved. Whether or not anyone is culpable would be a matter for a Committee of Inquiry to establish although from a review of the records all those concerned in the historical disposal of ash have now retired from the service." Now, I do understand, I think, what the Senator is getting at when he says: "Look, the Council of Ministers seem to have missed the point" but there is very little point left here, it seems to me, other than finally trying to track down who is culpable and everyone seems to have retired, so what exactly is the use of that and the purpose of that going to be, other than some rather bizarre form of witch hunt? I will come to you, if you do not mind, Deputy, in a moment. It may be that Members feel that perhaps we should pursue that and similarly we should conduct some comprehensive review of how the current position might be mediated in the future. But I have to say to Members, I do not think a Committee of Inquiry would be helpful in that respect. Similarly, let us just look for a moment at what we may be committing ourselves to and whether we think this might be money well spent because the figures we are talking about is estimations of a Committee of Inquiry costing anything from £250,000 or more, and I am sure Members may consider that there are other areas that that money could be more usefully spent. I do want to have a couple of words with reference to Deputy Le Claire who I think slightly misunderstands the situation that currently applies down at La Collette where fairly rigorous procedures are put in place. I do need to say to the Deputy that I did consider it an irresponsible move when he was told, as he says, second hand, he was not on site to know this directly, but he heard that there had been some ash blowing off the site into the sea. I regret that the Deputy's response to then go down on to Channel Television and advise local residents that they should not let their children swim in the Harve Des Pas swimming pool was a very extreme reaction to what had been a very minor level of pollution.

**The Deputy Greffier of the States (in the Chair):**

Deputy Le Claire would like to raise a point of order. Can we just see what that is, please?

**Deputy P.V.F. Le Claire:**

The Deputy is now giving a point of historical information to the States Members and to the public who are listening that I took an action at that time at that particular incident.

**The Deputy Greffier of the States (in the Chair):**

What is the point of order?

**Deputy P.V.F. Le Claire:**

The point of order, Ma'am, is that he is misinforming, if not ill-informing, the States and the public because I did no such thing.

**The Deputy Greffier of the States (in the Chair):**

Right, the Deputy will clarify that point as he goes on.

**Deputy G.W.J. de Faye:**

Well, I went on to the Channel Television website and watched the video replay and I wrote down a transcript of it, copies of which I still retain.

**Deputy P.V.F. Le Claire:**

I am sorry, I cannot let that stand because the Deputy has said quite clearly that I went on to Channel Television and told the residents of Harve Des Pas that their children should not be swimming in the water. I did no such thing. I was informed by the Health Department via the Minister in charge at the time, Deputy Celia Scott Warren, that ash was blowing into the sea. I have that email. It was that email that I received some hours before reporting the story to Channel Television. At no time did I say that people should not be swimming in the Harve Des Pas swimming pool and unfortunately Deputy de Faye continues to misrepresent the facts.

**Deputy C.J. Scott Warren:**

On a point of order, I think now I would please, Ma'am, just have to say that when I received this information from Deputy Le Claire I informed an officer at Health and he then sent emails, so I did not make that statement myself.

**The Deputy Greffier of the States (in the Chair):**

Minister, would you continue your speech now, please.

**Deputy G.W.J. de Faye:**

Are things going wrong at La Collette now? No, they are not and that is because all the matters are regulated and Members can see quite clearly from reading both the comments from the Health Protection side and the comments from Health and Safety that things have changed very dramatically since the late 1970s and early 1980s. I simply say to Members, this is a matter for you. If you feel that a Committee of Inquiry going back, collating all the information and data that has already been collated, will serve some sort of purpose that is in the public interest, then clearly we should spend at least £250,000 in ensuring that Committee of Inquiry goes ahead. I have to say to Members that in my view that would be a grotesque waste of public funds.

**12.1.4 Connétable A.S. Crowcroft of St. Helier:**

I think first of all, Members needs to look carefully at the proposition which is not wholly about past failures. If it were true that that was all this was attempting to do then it might be difficult to support it and possibly the wording of the first paragraph (a) is not ideal for a Committee of Inquiry because it rather tells the Committee of Inquiry what conclusions to draw. I would have preferred a paragraph which left the Committee of Inquiry to conclude that the actions of the then departments were irresponsible and unsafe. But never mind that, I think the wording of the Committee of Inquiry is approved, can be tweaked somewhat. Most of the proposition however is dealing about what the legacy is of this allegedly - and I think pretty demonstrably clearly - unsafe dumping. Paragraph (b) is talking about whether we need additional monitoring and safeguards or precautions to safeguard human health from what is, we know, in the ground on the reclamation sites. Paragraph (c) is considering whether the marine environment which we have since designated around some area, at least to the east of the sites, or whether the marine environment requires any

further protection or further monitoring. Indeed, paragraph (d) develops on from that to look at our compliance with international obligations. Paragraph (e) leaves the Committee of Inquiry open to come up with any other findings which it considers relevant. I think all of those extra bits of added value are fairly easy for me to support because (1) it may be academic to find out who was in charge when this was done in a previous world... which we have now apparently completely moved on from and I will return to that in a minute - while that may be academic there is clearly a lot of present and future value to be had from this Committee of Inquiry and that is why I would urge Members to support it. Now, we are told by the Minister for T.T.S. (Transport and Technical Services) that once he got off his defence of our recent decision to build the incinerator he said that all aspects of ash handling are now new methods and the procedures are carefully regulated, and I would say if only that was so and I have raised this in the House before. I have seen with my own eyes the yellow trucks taking the ash down to La Collette, whizzing through town and I have seen ash billowing out of the back of them. I am not convinced that ash handling at the moment is being done with that rigorous 100 per cent safe guarantee that the Minister appears to be assuring us is in place. If only it was so. If only having said this tonight in the States, I will tomorrow receive an invitation from his department to show to me that in fact the handling of ash from the moment it is put into those little yellow trucks to the moment it is driven through the Parish I represent and unloaded into these carefully sealed pits at La Collette and every stage of the journey the ash handling is 100 per cent clear and safe, well, that would be fantastic and I look forward to the invitation. But I do not believe that is the case at the moment and nor, indeed, do I believe that the recent controversy - and I am not going to dig into it despite the urgings of Deputy Le Claire, because it is a matter that is now a subject of legal action - it is a pity that is so. But the Parish is resorting to lawyers because it is the only way we can appear to do anything about the nuisance being created by composting down at La Collette. I am not sufficiently comfortable that the departments of the States are working to the top of their ability to make sure that environmental protection is the order of the day. I believe that the Minister for T.T.S. said that he would pursue very rigorously any kind of cover-up and collusion. Well, I hope that if evidence of that happens that he will indeed pursue it because I have a sneaking feeling that we are seeing again in this latest problem with composting a rerun of the problems to do with the way ash was being treated 10 years ago or more when probably most Members in the house sat around thinking that it really was not an issue to concern them. It will be interesting to see how we get on with the last item of business on this current order paper which is to do with the cessation of operations down at La Collette. But to come back to the ash, I believe that there are very good reasons now - this is after all a major development site and in fact today of course is the launch of Architecture Week and we are going to be talking in particular about the Esplanade Quarter which is being built on reclaimed land, and I think that we really do need to be able to ensure for our future inhabitants of these areas that the land that their apartments, the land that the new financial services quarter is being built upon with its wonderful new parks and so on, that what is going on there does not pose any risk to the population either in the construction of it, which we know is going to be a fairly major affair down there, nor indeed for the future enjoyment of the site. So, I think there are good reasons for supporting this. Incidentally, I think we send out entirely the wrong message if we say that we are not prepared to support a Committee of Inquiry which is essentially all about the health of our inhabitants and the health of our environment. So, I urge Members to support it.

## **ADJOURNMENT PROPOSED**

**Senator M.E. Vibert:**

I propose the adjournment, Ma'am.

**The Deputy Greffier of the States (in the Chair):**

Thank you. Do Members agree to adjourn now ready for tomorrow? Right, the States are now adjourned and reconvene tomorrow at 9.30 a.m.

## ADJOURNMENT