

# STATES OF JERSEY

## OFFICIAL REPORT

**WEDNESDAY, 2nd NOVEMBER 2011**

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[09:31]

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

**PUBLIC BUSINESS – resumption**

**1. Draft Motor Traffic (Third Party Insurance) (Amendment No. 12) (Jersey) Law 201-(P.134/2011)**

**The Bailiff:**

Then we move on to the next matter on the Order Paper, which is the Draft Motor Traffic (Third Party Insurance) (Amendment No. 12) (Jersey) Law (P.134) lodged by the Minister for Transport and Technical Services and I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Motor Traffic (Third Party Insurance) (Amendment No. 12) (Jersey) Law. A Law to amend further the Motor Traffic (Third Party Insurance) (Jersey) Law 1948. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**Connétable M.K. Jackson of St. Brelade (The Minister for Transport and Technical Services):**

Sir, may I ask that Deputy Kevin Lewis, who is the Assistant Minister with responsibility for D.V.S. (Driver and Vehicle Standards) matters, acts as rapporteur in this case?

**The Bailiff:**

Very well. Yes, Assistant Minister.

**1.1 Deputy K.C. Lewis of St. Saviour (Assistant Minister for Transport and Technical Services - rapporteur):**

The Motor Traffic (Third Party Insurance) (Jersey) Law 1948, which falls under the domain of the Transport and Technical Services Department, makes third party car insurance a legal requirement, thus helping protect against the risk of uninsured drivers. Existing amendments to that law make some provision for the Health and Social Services Department to levy charges against motor insurance companies in relation to the cost of hospital treatment. Those charges are the subject of this new proposed amendment that I am bringing forward today. My colleague, the Minister for Health and Social Services, will provide more detail about the principles of this new amendment as it affects her departments more than T.T.S. (Transport and Technical Services), but I am pleased to propose the principles and ask Members to support them.

**The Bailiff:**

Are the principles seconded? **[Seconded]**

**1.1.1 Deputy A.E. Pryke of Trinity:**

I thank the Deputy for bringing this proposition to this Assembly. Under the Motor Traffic (Third Party Insurance) (Jersey) Law 1948, amended in 1989, my department can currently recoup some of the costs incurred in treating patients injured in road traffic accidents if they make a claim through their motor insurers. Under that law, these costs are currently set at a maximum of £2,000 towards the cost of treating an inpatient and £200 towards the cost of treating an outpatient. As you would expect, this does not come close to the actual costs incurred by my department. The taxpayers' car insurance premiums are already weighted to cover the significantly high charges imposed by U.K. (United Kingdom) hospitals. U.K. hospitals set their cost recovery at just over £44,000 for inpatient treatments, £600 for outpatient treatments and £181 for ambulance services. Regardless of whether you live in Jersey or the U.K., your insurance provider has already taken account of U.K. hospital cost recovery charges when calculating your premiums, not at the much lower Jersey hospital charges. This amendment seeks to address this by enabling the Minister for

Health and Social Services, in consultation with the Minister for Transport and Technical Services, to alter these charges by way of an Order. This will allow our hospital to recoup monies already available through car insurance policies. The money is equivalent to approximately £250,000 per year. It is important to stress that these are not charges levied on the individual, but on the insurance company in the event of an insurance claim being made. No insurance claim, no charge. Pedestrians, cyclists and non-insured road users who are injured or who cause an injury will not be liable for these charges. This amendment would also make it a requirement for insurers to notify the Health and Social Services Department whenever they receive an insurance claim which includes the provision of treatment at Jersey General Hospital. This will allow Jersey to recoup costs via the U.K. Cost Recovery Unit. Negotiations with this unit are already underway and all that is required for us to seamlessly dovetail with that existing system already used by motor insurance is a few minor modifications to postcode and National Insurance validations. Insurance companies know about this proposed change and are accepting of it. Over 90 insurance companies, including U.K. underwriters and Jersey brokers, have been notified. Not one has raised any objection or pushed the panic button and claimed that the premiums will rise. As drivers, we are already paying these premiums that cover these costs. The Chairman of the Jersey General Insurance Group has publicly stated in the *Jersey Evening Post*: “Insurers have already priced these things into our rating structure because they are used to dealing with the U.K. system.” This amendment will ensure that we have the ability to recoup what is already available to us and by enabling the Minister to make changes by order it provides flexibility, allowing the Health and Social Services Department, in partnership with Transport and Technical Services, to ensure that our cost recovery is always in line with the U.K. and insurance company margins. I recommend it to you.

**Deputy A.E. Jeune of St. Brelade:**

May I ask a point of clarification from the last speaker? The last speaker is saying that the benefit to Health and Social Services as a result of this proposition will mean income will be generated for the Health and Social Services Department. Can the Minister please clarify whether that saving will be returned to Treasury and not used for more expensive managers?

[09:45]

**Deputy A.E. Pryke:**

I am at a loss. It is recouped through those people who make a claim for their treatment in Jersey General Hospital. It is not going to Treasury, it is coming into our budget because the patients have either received inpatient care or outpatient care. It is as simple as that.

**The Bailiff:**

That clarifies the position. It stays in the Minister’s budget. What the Minister does with it is up to the Minister.

**1.1.2 Connétable K.P. Vibert of St. Ouen:**

While congratulating the department on bringing this amendment forward, which I think is an amendment that is very much needed, I would like to raise an associated matter with the Assistant Minister that I think the department would do well to look at: that is, a review of the fines as far as insurance is concerned. It is certainly something that the public out there desire of us. Many people feel that driving without insurance must be one of the most serious offences that you can undertake and I would ask the Assistant Minister if he would maybe go back to the department and see whether the level of fines could not be increased in this area.

**1.1.3 Senator S.C. Ferguson:**

I am also curious, much along the lines of the Connétable of St. Ouen. What will happen with the costs of uninsured drivers? Will that be available from the fund (the name of which I forget

unfortunately) which deals with accidents involving uninsured drivers? It is the Motor something or other?

**The Bailiff:**

Motor Insurance Bureau, I think.

**1.1.4 Senator S.C. Ferguson:**

Thank you, Sir. I knew somebody would know. The other thing, what happens in the case of a third party insured person where their insurance is for third party? What about their treatment? I would be grateful for answers to ... I think this is absolutely right and we should be bringing it up to date. I am just curious about these 2 elements.

**1.1.5 Deputy M. Tadier of St. Brelade:**

When I first saw the amendment I was slightly uneasy because I was worried perhaps that it would be a blanket insurance levy on every insurer at the point of purchase of the policy rather than only the sum being claimed in the case of an accident, which I have been reassured is the case. Nonetheless, I do think that we have to be realistic about this. This is perhaps similar to the V.A.T. (Value Added Tax) problems that we have been dealing with in the sense that for a long period of time Jersey insurance companies, which have had no business in levying this fee because it is not something that they are required to pay out up until now in Jersey, have essentially just been pocketing this money. That is something which needs to go on record as something which we cannot do much about now. It would be nice if we could claim that money back retrospectively but, of course, that is not realistic. So the issue I have is that certainly there is a sum of money that insurance companies were pocketing as profit and it seems perhaps unrealistic to say categorically that these insurance companies, at some point in the future, are not going to want to recoup that extra profit. So we have to be realistic about this and face the possibility that, sooner or later, some insurance companies, if not the majority, are going to put premiums up. Now, the thing that makes me slightly uneasy is that it targets the sensible drivers, the good drivers, as well as those who do get involved in traffic accidents. That is the nature of the beast. I do think there is some scope for using fines; the issue has been raised already. Why not have a 2-pronged approach where some of the money ... one example is exactly that: for those who do not have any insurance, any fines that would accrue from that should be going towards that fund as well so that money can be drawn, but not simply on those who drive with one headlight that is out; why should a portion of that money not be going into this fund so it can also pay? Because driving without a headlight, driving without a rear light, or whatever, these are all dangerous practices and it is only right, I think, that those who are more likely to be causing the accidents in the first place (which are costly to society, not simply on a financial level but also on a personal level) should also be the ones who are most likely to pay. It would also act as a disincentive, if you like, and encourage good behaviour. I am worried that what will happen is that we are tarring everybody with the same brush and people, good drivers as well as bad, will be hit in the future with an insurance policy increase.

**1.1.6 Deputy P.J. Rondel of St. John:**

I must second what the Connétable of St. Ouen said. He is absolutely right. I have real concerns here. I hope the new Minister for Transport and Technical Services acts on this because it is a criminal offence in my mind. If somebody is driving around without insurance it is like somebody wielding a knife and yet getting away with a modest fine that is cheaper than paying a premium which, to me, is absolutely ludicrous. It mentions third party here but there are drivers who, under the law, I believe (and it was in my time) are covered solely under the Road Cover Act. Now, would this be part and parcel of any claim? Under the Road Cover Act I think they carry their own liability. So would the States have a claim on the person who is carrying his own liability? I would like that answered, if at all possible. I am 100 per cent behind this and it is a shame that when this Law was originally brought or put in place in the 1970s, whenever it was, that we did not follow it

through then, in the good days, and we would not have to be doing this now when our back is against the wall. Anyway, I am fully supportive.

#### **1.1.7 Deputy A.E. Jeune:**

I, like others, feel that we have to have much more deterrence for uninsured drivers but I must come back again to the fact that the insurers, quite correctly ... I think this proposition being brought by the Minister is absolutely correct. When insurers are paying to the Health Department what has not been paid to the Health Department in the past for covering for emergency care like this, that going forward ... in the past it has been paid for by taxpayers' money. The Treasury have been giving the money to the Health Department. That will not be required any more. It seems to me that the Health Department, quite correctly, finds ways of generating income but is not passing anything back to the Health Department. I hope future Assemblies will keep an eye on this.

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

To pick up the point of Deputy Tadier about premiums and not being paid out by local insurance companies and pocketing the extra premium, in fact, if one looks, most insurance companies base charges on a Jersey base locally or U.K. companies take into account the Jersey syndrome, which is far less in a risk factor weighted by age or the place, postcode numbers, *et cetera*. To give examples, recently it came to my attention that in some places, such as areas in the north of England, motorists can be paying £8,000 for an annual premium for their motor insurance, whereas here the premium can be a matter of hundreds. So there is a difference and that is taken into account. Yes, people driving uninsured, especially in the U.K., do so because it is cheaper to drive uninsured and pay the fines than it is to pay premiums. That is why the authorities in the U.K. have link-ups between the registration of cars and the insurance of cars and those cars that are not insured are checked by the authorities such as the police. Although there are varying levels of penalties, there is also a penalty of having the vehicle concerned crushed and, therefore, it cannot be used on the road again. That is probably the ultimate deterrent to stop people from continuously abusing their rights and, indeed, creating additional costs and penalties such as being asked for recovery today. I support this proposition.

#### **1.1.9 Senator F. du H. Le Gresley:**

I am a little bit disappointed because we are very quick in this House to criticise civil servants who are paid large salaries but I recall that this failure, if you like, of the States of Jersey to collect money from insurance companies was brought to the attention of the Minister by the new Hospital Director. I think I am correct in saying that. So I think it is only right that we should praise this gentleman today [**Approbation**] because he has, in the past, come in for criticism from some quarters. When somebody does their job well it is only right we should say thank you. That is the first thing. I do not want to labour the point about insurance fines or fines for not having motor insurance (and the Attorney General is in the House, so he can correct me if I am wrong) but the fine is level 3 and I believe it is a maximum of £10,000 and/or imprisonment for 18 months. I would suggest to people that if we think that people are getting away, if you like, with not having insurance it is because the courts are not using the fine system at its maximum in appropriate cases. So sometimes it is very quick to criticise the fact that the level 3, as it is, is inadequate, but I think a £10,000 fine imposed on some people is a very significant fine. But the point I stood up to say was with reference to ambulance services. Now, according to this paper, page 4, it says the maximum that you can claim for an ambulance service is £181. I would be interested to know (and I do not suppose the Assistant Minister would perhaps have this information) whether the Health and Social Services Department have costed the cost of a callout, an emergency call out. I am aware, and I think again I am correct in saying this, that in Guernsey they do charge for ambulance services and I would be interested to know whether £181 is cost recovery if you look to Guernsey's tariff. Also, a word of warning: is this going to be the thin edge of the wedge? Are we possibly leading to

ambulance service charges being charged to everybody at some time in the future? I would be grateful to know that this is not going to happen but maybe somebody can reassure me.

**1.1.10 Senator B.I. Le Marquand:**

I also want to commend the Health and Social Services Department, the officers of that, for coming up with this excellent proposition and thank the Minister for Transport and Technical Services and Assistant Minister for running it through the House. This is exactly the sort of area where we should be seeking to maximise our income in a perfectly legitimate way. The debate has somewhat strayed into other areas and I hope the Chair will be tolerant with me in making one or 2 observations in an area in which I do have quite a great deal of expert knowledge. There is a need, and has been, in my opinion, for the last 10 years a need, for a review of the maximum penalties right across the board in relation to road traffic law. When I was Magistrate I was very much involved in such a review, which also involved you, Sir. We made a great deal of progress towards that but, unfortunately, it was one of these projects that subsequently got lost and did not proceed on.

[10:00]

It is not just this particular issue of penalties in relation to third party insurance that needs to be addressed. There are serious problems with the maximum level of speeding fine, for instance. I certainly will be wanting, in future, to work together with or urge the Minister for Transport and Technical Services, in whose area these are rather than in my own, to ensure that such a review takes place. Now, in relation to the actual use by judges of the penalties, the difficulty is that there is such a very wide range of categories. When Magistrate, I produced a revised sentencing guidelines document which reflected the different categories. At the very lowest level you have a situation where somebody may have a car which they have parked in a public car park and left there. They have not moved it. It has remained there for a time and it is the same offence, they are using third party insurance even if they do not drive it. So you have that range all the way up to, at the top, the person who is deliberately driving without insurance. Now, the person who is deliberately driving without insurance really deserves severe penalties but my view, certainly when I was the Senior Magistrate, was that the strongest penalty was disqualification and I believe that is a firm use of disqualification of drivers coupled with what was part of the policy which I designed, imprisonment for driving while disqualified, which is the most effective method. But, having said all that, there is this need for review and I certainly hope that future Ministers for T.T.S. will work with future Ministers for Home Affairs in order to take this forward.

**The Bailiff:**

Does any other Member wish to speak? Yes, the Constable of St. Brelade. Just before you do, Constable, we have strayed a little on to penalties [**Laughter**] and I allowed the Minister to reply as it had been raised but I think we have dealt with it and so can we now, in future, confine ourselves to this particular proposition.

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

Yes, I support the Minister's views. Moving on to the comments and if I may speak in support of the proposition. With regard to the comment made by my erstwhile colleague, the Deputy of St. Brelade No. 1, there are no doubts in my mind that this is angled towards the C.S.R. (Comprehensive Spending Review) process and I think we all have to appreciate that and it is a sensible move in order to make a contribution towards the necessary funding of H.S.S.D. (Health and Social Services Department). With regard to a couple of points, if I may just contribute. It is not the intention of the Minister for Health and Social Services to call upon the individuals to pay for the treatment. H.S.S.D. will liaise with insurers and all their legal representatives and not the client with regard to claims. So in answer to Deputy Tadier's point, the communications will be directly with the insurer. Where no insurance cover is identified, this is likely to be a criminal

matter and then we will stray into matters alluded to by the Minister for Home Affairs. Certainly, that will be in the first instance and, of course, civil action will await findings of such proceedings and be dealt with on a case-by-case basis. The other point with regard to the insurance costs, the Association of Insurance Brokers have advised verbally that, in their judgment, based on the percentage of Jersey motor insurance policies in relation to the total of U.K. motor insurance policyholders, it is extremely unlikely that premiums will go up. Also, given that insurance underwriters are generally unaware of H.S.S.D. being outside the N.H.S. (National Health Service), they already calculate Jersey premiums to take account of the U.K. level of cost recovery claims forming part of the Jersey motor insurance claims settlement. That really confirms what has been alluded to before so, given that, I would ask Members to support the proposition.

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

I too would like to commend the Minister for bringing this proposition forward but other Members have alluded to it. The people who will end up paying for uninsured drivers will be the insured drivers, at the end of the day, and this matter really does have to be addressed. Very briefly, a member of my family was involved in an accident not of their making with an uninsured driver very recently, causing £1,500 worth of damage to a vehicle. The person was fined in the Magistrates Court I believe £300 and we have basically been left out of pocket to the tune of £1,500. So I would request, through your good officers, that this is a matter that really does need to be addressed rather urgently in the Magistrates Court: how uninsured drivers are going to be dealt with in the future. How we are going to recoup those costs I do not know, that is something I am going to be looking into at a later date.

**The Bailiff:**

Does any other Member wish to speak? Very well, then, I call upon the Assistant Minister to reply.

**1.1.13 Deputy K.C. Lewis:**

I thank Members for their comments. The Constable of St. Ouen would like a review of fines. I would be more than happy to discuss that with the Minister for T.T.S. and take that back to the department. Uninsured drivers, motor insurance, third party fees, this is a matter of law and if anyone is not insured, that is a matter for the courts. Deputy Tadier said we are all paying now. That is absolutely correct. A portion of our insurance is already covered here for such a claim. Most of the companies in Jersey ... we have our own insurance companies but so many are agents for U.K. insurance companies so that element for hospital, ambulance, treatment, *et cetera*, is already covered. The Deputy of St. John obviously mentioned uninsured drivers, as Deputy Fox mentioned in the U.K. for certain offenders' cars are taken away and crushed. I think that would focus the mind for repeat offenders but we all make mistakes and I think someone who is deliberately driving without insurance, that will be fine, but as long as that is in moderation. Deputy Jeune wants us to keep an eye on things and we are happy to do so. Senator Le Gresley, level 3 fines, I think £10,000 is more than adequate. £181 for ambulance treatment, I think that is about the going rate at the moment. The Constable of St. Brelade - the Minister - I thank for his comments. Deputy Hilton, I am very sorry for your losses but I would recommend recourse to the courts. I think that is more or less everything covered. The breakdown in provisions, I would like to move the proposition.

**Deputy M. Tadier:**

I just wanted to ask for clarification. I have looked at the manpower implications where it says the manpower implications are negligible and the question is about ...

**The Bailiff:**

I am sorry, that is a new matter, you cannot raise a new matter at this stage. Very well. Now, all those in favour of adopting the principles, kindly show? The appel is called for, then, in relation to the principles. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 40</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator T.J. Le Main				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**The Bailiff:**

Now, Deputy of St. John, this is a matter which falls within the purview of your scrutiny panel. Do you wish to have the matter referred to a panel?

**The Deputy of St. John:**

Not at this point, Sir.

**The Bailiff:**

Very well. Then, Assistant Minister, do you wish to propose the Articles *en bloc*?

**Deputy K.C. Lewis:**

Yes please, Sir.

**The Bailiff:**

So you propose Articles 1 to 6. Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? Very well, all those in favour of adopting Articles 1 to 6, kindly show? Those against? They are adopted. Do you propose the Bill in Third Reading, Minister?

**Deputy K.C. Lewis:**

Yes please, Sir.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading?

**1.1.14 Deputy M. Tadier:**

The point which I did not bring up the first time round, I do not think it is of major concern but the manpower implications say that they are negligible. But one consideration, I think someone mentioned the lawyers from the legal firms and what I do not think has been addressed here is that of course insurance companies have the might of in-house lawyers and what I am concerned about is that we do not know ... insurance claims are not straightforward. I think anybody who has dealt with that in a civil capacity knows that insurance companies are very reluctant to pay. While I understand that they will have an agreement in place with the States is that when they start getting their own lawyers involved and saying: "We do not think that we are liable to pay this" I wonder if the Assistant Minister can address those issues. Have those costs been factored-in, because they do not seem to have been, and maybe this is one area which will not be as straightforward as envisaged.

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

Just briefly, I would like to thank the Commercial Manager at H.S.S.D. for the enormous amount of in-depth work which has gone into this proposition in terms of briefing both my assistant and myself to bring us up to speed with this complex matter.

**Senator F. du H. Le Gresley:**

I rise to correct something I said earlier if I may for the record. The Minister for Home Affairs has pointed out to me that level 3 is a £2,000 fine and not £10,000, so I apologise to the House for that.

**The Bailiff:**

Very well, I call upon the Assistant Minister to reply.

**1.1.16 Deputy K.C. Lewis:**

Just to clarify, the local Jersey brokers, the Jersey general insurance group representing local insurance brokers has been engaged in face-to-face discussions with the Commercial Manager at Health and Social Services Department. Meetings have taken place at the office of the Islands Insurance Company on 10th August and the General Hospital on 13th September. The Chairman of this group, Managing Director of Islands Insurance, has been interviewed by the *J.E.P. (Jersey Evening Post)* and gone on record to say that he does not expect Jersey motor insurance premiums to increase if cost recovery tariffs are increased to U.K. levels. Just regarding cost recovery, I believe that H.S.S.D. are in discussions with the Cost Recovery Unit - the C.R.U. - in Newcastle, which processes all the claims for the National Health Service so the cost will be very, very modest and minimal.

**1.1.17 Deputy M. Tadier:**

I was wondering whether the Assistant Minister could address my concerns about the legal cost implications for the States.

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

As far as I can see it, there is no cost there; there is no cost. Obviously, in the legal disputes the lawyers would deal with it but I do not envisage that.

#### **The Bailiff:**

Very well. All those in favour of adopting the Bill in Third Reading kindly show? Those against? The Bill is adopted in Third Reading.

## **ARRANGEMENT OF PUBLIC BUSINESS**

### **2. Deputy G.P. Southern of St. Helier:**

Before we move on to the next item and in the light of the request from the Chairman of P.P.C. (Privileges and Procedures Committee) to take a look at the running order and see what business is not essential for this session, can I announce that I wish to defer debate on P.165, Price Control Investigation. It is a matter that is not urgent and can be debated in the New Year.

#### **The Bailiff:**

Thank you very much, Deputy.

### **2.1 Senator A. Breckon:**

If I may, I have a matter there as well. I just wonder and I perhaps put this before the House and see how Members feel about another matter which could be deferred but then, if it is put to 6th December, I wonder what another Minister would say of the other Minister's comments because his comments are attached to that and it could well be that if Members do put things back, then things could be scuppered by a Minister saying: "Well, I have not really had time to consider this." So I would just put that before the House. I am considering withdrawing the matter that I have got but perhaps I will leave that until later in the day.

#### **The Bailiff:**

Well, obviously, when matters are deferred, as Deputy Southern has just said, he is deferring his. It is up to him when he seeks to bring it back. He may well decide January but Members may well seek to bring it back in January or something of that nature when the new Minister has had an opportunity to get his or her feet under the door. Very well, so Senator Breckon, just to be clear, you are not at the moment deferring? You are ...

### **Senator A. Breckon:**

No, Sir, I will consider that but, as I say, there are comments from the Minister and it might well be the same Minister but it might be another Minister who might have other comments.

## **3. Draft Health Insurance (Amendment No. 14) (Jersey) Law 201- (P.136/2011)**

#### **The Bailiff:**

Very well. So we come next to the Draft Health Insurance Amendment No. 14 (Jersey) Law - Projet 136 - lodged by the Minister for Social Security and I will ask the Greffier to read the citation.

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

Draft Health Insurance (Amendment No. 14) (Jersey) Law. A law to amend further the Health Insurance (Jersey) Law 1967. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

### **3.1 Deputy I.J. Gorst of St. Clement (the Minister for Social Security):**

I am very pleased to be able to propose these amendments to the 44-year old Health Insurance Law. They signify substantial progress towards a modern primary care structure in our Island.

[10:15]

As Minister for Social Security and as a patient, I am well aware of the quality of our local doctors and the personal supportive G.P. (General Practitioner) service that they provide. As Minister, it is my responsibility to ensure that this level of service continues into the future. A major reform of U.K. governance required by the U.K. General Medical Council (G.M.C.) means that change, however, is now inevitable. The light-touch regulatory framework that I am proposing today will satisfy the G.M.C. without imposing an unnecessary bureaucratic burden upon our local doctors and should ensure the continued success of our primary care sector. But if we fail to take this action now, we do, unfortunately, run the risk of creating a third-rate G.P. service within the coming decades. Last year, we debated P.36 on the future of primary health care in Jersey and this Assembly gave the Minister for Health and Social Services and myself a clear signal to continue with our joint work to create a modern governance structure for primary care. Earlier this year, a revised Medical Practitioners' Law was supported and today we are debating associated amendments to the Health Insurance Law. I am grateful to Members who attended a briefing session yesterday and took the time to understand the background and the details of these proposals and also had the opportunity to question the Medical Officer for Health, the Law Draftsmen and doctors from the primary care body which represent local G.P.s. The report that accompanies this proposition sets out the background to the current proposals in some detail. To briefly set the scene, there is currently no local governance of G.P.s working in Jersey. As I have said, recent changes in the U.K. mean that this system is no longer acceptable to the U.K. General Medical Council. All our local G.P.s are registered with the G.M.C. and to ensure that they can continue to be registered, a system of local governance must now be established. Self-regulation by G.P.s has been considered but it does not provide the arm's length governance structure required by the G.M.C. The only way in which local G.P.s can continue to be licensed by the G.M.C. is for the States to create this appropriate governance structure within which doctors can operate. This situation was originally set out in the debate on P.36 and at that time commitments were made by the Minister for Health and Social Services, by myself and by G.P.s to move forward in a number of areas to prepare for this new governance framework. Specifically, of course, that proposition increased the value of the medical benefit to enable G.P. practices to improve their organisation and infrastructure in advance of this new structure. Since May of last year, the 2 departments have continued to work very closely with local G.P. representatives and significant progress has been made in each key area. The States have agreed the Medical Practitioners' Law, as I have just said, which sets up a general framework to license and regulate all doctors working in Jersey, not just those in general practice. G.P.s themselves have been developing the way in which they record patient information and enhance their practice organisation and infrastructure and good progress has also been made on a specification for a central database which will hold clinical data providing important information both for individuals and in respect of the health of Islanders as a whole. This proposition represents another important milestone on the road to achieving that high quality modern primary care system. The changes proposed today cover 4 main areas. First, Performers List. A G.P.'s Performers List will be set up identifying doctors who are allowed to practise in this Island. To remain on the list, G.P.s must pass a regular appraisal and a periodic revalidation. The details, however, of the Performers List will be drawn up by the Minister for Health and Social Services who will return to the States with regulations outlining those details for approval by Members in 2012, which is next year. Second, patient registration. In future, local residents will register with a main practice of their own choice. They will still be able to visit a different doctor or practice whenever they choose. However, the main practice will be responsible for recording key information about those individuals. Thirdly, contracts. The Health Insurance Law will be expanded to allow contracts to be set up with G.P. practices. The first contract with G.P. practices will be the quality contract as proposed last year. The uplift in medical benefit will be withdrawn

and an equivalent sum will be payable but only to those practices that meet the required quality level. My officers will take the best possible advice from both local, U.K. and international doctors to create a straightforward workable system. Future contracts could, of course, cover areas such as chronic disease management and child development and in future a G.P. could employ a nurse to undertake routine monitoring of patients. I have also taken the opportunity of providing for contracts with pharmacists as well as G.P.s. In other countries, much greater use is made of the skills, training and experience of qualified pharmacists. Fourthly, a governance team. This change is to provide for the cost of a primary care governance team funded from the Health Insurance Fund. The team will maintain the Performers List and will draw up and maintain contracts with primary care providers. These initial regulations were lodged on 9th August but, since that date, I have had further discussions with colleagues in this Assembly and with local doctors and those discussions have led to an agreement to lodge various amendments to these regulations. I am pleased that we have been able to engage in positive negotiations with both G.P.s and others representing their views and I believe that the amendments that I am putting forward strengthen my original proposals. So to sum up, the proposed changes will ensure that patients in Jersey can continue to receive a good standard of care from their G.P. G.P.s will be able to work within an appropriate local governance framework and Jersey will be able to continue to operate under the overarching structure of the General Medical Council in the United Kingdom. I am pleased and quietly excited to be able to propose this proposition which I see as the foundation of a modern, high quality primary care service in Jersey and I ask that Members will support it.

**The Bailiff:**

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

**3.2 Senator P.F. Routier:**

Only to say that I am very excited by this rather than quietly excited. **[Members: Oh!]** I think this is an amazing step forward for the primary care of our Island. It has been something that has needed to happen for a long time and I can only congratulate the team that have worked on this that have brought this forward and hopefully everybody will get solidly behind this and have a full endorsement.

**3.3 Deputy R.G. Le Hérisier of St. Saviour:**

Yes, on the scale of excitement, ecstatic to quietness, I am again in the Senator Routier direction. I know the Minister has treated this whole thing as “softly, softly, catchee monkey” because of the politics and because of the controversy over the insurance fund from whence it is being financed but I wonder if the Minister would tell us whether there will be any transparency to the whole notion of G.P. performance lists. I am not suggesting we move, as in Education and areas like that in the U.K., to league tables and become slavish adherents to them but I would like to know what will the public be told about the movement that is occurring on and off that list. His quiet excitement talked only of the possibility of nurses doing some of the work but as he well knows, of course the shift to practice nurses in jurisdictions like the U.K. and Guernsey has been a major issue and it has really started to bring down ... well, sadly, it has brought down medical costs because the costs of G.P.s are so horrendously high now in the U.K. because of what happened with a previous government. But could he tell us what his plans are because he couches that in terribly mild terms and can he up the ante on excitement in that area?

**3.4 Deputy F.J. Hill of St. Martin:**

The Minister made a comment about the fact that the proposition was lodged on 9th August and that he took notice of some of the concerns that had been raised by some of the Members but I do not think he filled all Members in with really what happened because again, bearing in mind yesterday my proposition was defeated on the grounds that there was this lack of consultation, and yet here we have quite a major piece of legislation coming to the House without, it would appear,

the right consultation. It is all very well nodding heads but it is a fact because I was contacted soon after the lodging of the proposition by a group of doctors who claimed, of course, that their concerns had not been addressed. I did email the Ministers and all States Members that I was going to ask for the matter to be deferred to ensure that there was a proper consultation and I am grateful for at least 2 or 3 Members who are in the House who emailed their support because they too were concerned about a piece of legislation being rushed through at the behest of a larger group of doctors without every consideration given to the smaller group who, I believe, had a genuine right to express their concerns. Those concerns have now been addressed via the amendment and I compliment the Minister on taking notice of the concerns, certainly of mine and those raised by others. So indeed I am much happier now that we have a piece of legislation which is going through as a result of consulting with those who may have a minority voice but, at the same time, it was a very important voice because what we now have is a piece of legislation which will be monitored by the States and not by the Minister for Health and Social Services. It will come through via regulations and not by orders. Quite a simple piece of legislation but, at the same time, quite an omission when one considers the importance of this piece of legislation. But that said, again, I compliment the Minister for taking notice of the concerns that were raised. We now have a piece of legislation which I think is a far better package coming forward to the House. I did attend the briefing yesterday and I did not have enough time, or there was not enough time; I should have asked one question more from me, but I would raise it now and it was the infamous financial and manpower considerations. It always seems that when a Member or Back-Bencher brings a piece of legislation forward, the proposition is taken or torn to shreds by the lack of information from financial and manpower implications. Here again it is quite all right for a Minister to come forward and, again, just giving a lot of information here about the manpower implications. I just ask, it says: "As set out, the costs of primary care governance team is estimated to be up to £200,000 per annum. This cost will be borne by the Health Insurance Fund." Of course, it goes on to talking about another maximum £1.5 million but again there is not a lot of detail. But we also know that in the last paragraph it says: "The primary care governance team is estimated at 4 full-time employments which will be accommodated from within the Social Health Department overall manpower total." So does this mean that we are going to employ 4 new people to operate this and, if that is the case, is it only going to cost £200,000?

[10:30]

Again, if Members are looking to see what I am talking about, they may look to page 7 of the main proposition. Again I was subjected to quite a number of questions yesterday about the manpower implications when I said there were not any but here we have something which is going to cost £1.25 million plus and another £200,000 and yet it is only covered in a matter of a few lines without the full information, so maybe a bit more of that.

### **3.5 Senator S.C. Ferguson:**

As the Minister for Social Security has stated, this is an enabling law and, as Wellington said: "The devil is in the details." As the Deputy of St. Martin said, there were problems when the law was lodged. It was not clear to all G.P.s that this was an enabling law and that the real meat of the subject will come when the details of the Performers List ... I wonder if there is another name we can have for that because it sounds like the list for the Opera House or something. It is perhaps an unfortunate title. The Q.I.F. (Quality Improvement Framework), the real meat will come when the details of these are thrashed out because superficially the concept of the Q.I.F. is somewhat draconian. Is it really fair to penalise the performance of G.P.s with regard to the behaviour of their patients? As we all know, unless I have misunderstood it in my discussions (the Minister is shaking his head) that if the quality of work is based on the performance of G.P.s which is the way they can deal with patients and we all know there are patients who will refuse to modify their behaviour until they are brought in by ambulance, so that there was a feeling among the G.P.s that they were going to be penalised for this. I have been in contact with both sides of the G.P.s to

discuss the concerns which have been addressed in the amendment which the Minister has brought because, if the changes that we are proposing are viewed as putting together information in order to make our primary health care even better, then this is absolutely right. But it has got to be remembered that the changes must incorporate the patient and his or her concerns. Modern thinking and evidence is that an informed patient yields better results. With the greatest respect to the profession, the days of doctors being God are over; the patient should be the centre of the treatment, it is their concerns that should be pivotal to any changes. We have spent many years ensuring that advisers in the finance industry know their client, it is even more important that G.P.s know their patients. In other words, it is also necessary that doctors should treat their patients holistically, particularly with the new demographics; in other words, treat the patient not the individual disease. Specialist work will be affected in the hospital. The object of primary care is to keep patients out of hospital, which is what most people want anyway. The importance of a viable primary care system cannot be overestimated and the work that has been done indicates that a good primary care system has generalist family positions, long-term person focused care, comprehensive care for most common conditions being met through the primary care and treatment for uncommon conditions co-ordinated through the primary care physician. We have got a very good system in Jersey but like all systems, it could be better. The important factors are that people receiving care for common conditions from primary care physicians rather than specialists are healthier, and areas with higher rates of primary care physicians to population have lower total health care costs, which is always good. This law will enable us to give our primary care system its correct emphasis. There is a great deal of work to be done on the underlying regulations and it would be as well if we do not slavishly follow the U.K. The President of the Royal College of G.P.s, Dr. Claire Jackson, and other G.P.s have been highlighting the problems with the U.K. proposals. I understand (and Members will have had an email to this effect) that there will be a seminar on our new proposals in January when Dr. Iona Heath will attend. She has been one of the leaders in trying to make the U.K. system work and this input will enable us to tailor the system to suit the Island and not just cobble together a copy of the U.K. which is going nowhere at the moment, I understand. The information which we will get by the new information system will enable us to get a much better understanding of the pressures and attributes inherent in our primary care environment. There has been a lot of useful research into primary care systems and it is intuitive perhaps but not always understood, I think, within the industry. What they have found is that improving primary care reduces health costs, which is a win-win situation, but we have got to have good information in order to understand the system. As the Minister said, there is a very good information system which has been developed by the G.P.s themselves at a much lower cost than was estimated and it worked jolly well. I have seen it in operation. There has been work in Camden New Jersey and they found that careful analysis of patient information has improved outcomes for patients and reduced costs. They found that there were health hotspots in certain areas. There were certain areas where, for instance, every child was having its tonsils out or 63 per cent of the children. You go into the area next door which is 100 yards down the road and only 5 per cent of the children are having their tonsils out. What is the variation? Why is it there? John Vanberg in the U.S. has also examined the variation in treatments between G.P.s and the N.H.S. has now got the first geographic variation analysis for primary care trusts based on Vanberg's project and we need to be able to do the same kind of analysis here. For instance, why do we shift so many old people into residential homes? Are there no alternatives? This proposition will give us the information and structure to enable us to make a start towards an even better primary care system based on the evidence and I thoroughly recommend this proposition to the House.

### **3.6 Deputy M.R. Higgins of St. Helier:**

Although the main part of my question has been asked by the Deputy of St. Martin, there was reference in the paragraph that he mentioned that the primary care governance team would also be supported by an external specialist or external specialist support from 2 national bodies: the N.H.S. Primary Care Commission and National Clinical Assessment Service. I would like to know if they

have entered into any contracts with these bodies and, if so, if the cost of the support is part of the estimated £20,000 cost or, if not, what it will cost for their specialist support. Another area that I would like the Minister ... in fact, I would draw Members' attention to (which I would love some elaboration on) is the reference in Article 20(b), which I know we will be coming on to Articles later, but it was to do with the cost of the allocation of drugs and whether we are going to be going to route of N.I.C.E. (National Institute for Health and Clinical Excellence) where some external body is going to be recommending what drugs doctors can or cannot prescribe. So I would like that [Aside] ... okay, that is fine, that answered my question for that one, thank you.

### **3.7 Deputy A.E. Jeune of St. Brelade:**

I have to endorse a lot of what Senator Ferguson has said here this morning and I do understand some of her concerns but common sense has also got to take its place when assessing G.P.s. As a nurse, I will always advocate patient first and, in so doing, we have to ensure that practitioners are appropriately regulated and this proposition will do that. I would like to reassure Members that the Minister for Social Security has worked very closely with the General Practitioners here in the Island to ensure that we are all working together for the common good of the people of the Island. I would also like to pick up on the comment of Deputy Le Hérissier in relation to the Health Insurance Fund and I would like to remind Members of my understanding of what the F.P.P. (Fiscal Policy Panel) said at their last meeting with us in that, if I understood them correctly, they warned about - and to use my words - any raids on the Health Insurance Fund, and I ask Members to keep a close eye on that and I am sure the Deputy of St. John, who will be the Connétable of St. John, will do so.

### **3.8 Deputy G.P. Southern of St. Helier:**

I have risen to my feet just to note that the Health and Social Security and Housing Scrutiny Panel have examined this issue and are appreciative of the somewhat urgent nature of the fact that we have to have some control mechanism quality control of our G.P.s in place if we are to co-exist with the U.K. regulations. This issue was brought to our attention, I suppose, by the furore over the use of the Health Insurance Fund earlier in the year, but it is now satisfied that this is an appropriate measure and a way forward which can deliver better outcomes for our Health Service on the Island. Obviously, it relies on the modernisation of G.P. practices to involve more nurses in primary care in routine monitoring, in doing prevention work and also, I was pleased to see here, the possibility of involving pharmacists in the administration of primary care especially, because they have a different type of contact with the public. So it is obviously important that we do deliver services properly in the community but in order to do that (and I do not think anybody has mentioned it yet) what we have to do is bring the price of that care down. The fact is that currently on this Island, many people live in fear of falling ill because of the size of the G.P. bill that they will meet and many people already on this Island avoid going to the doctor at all costs. They certainly do not go for routine check-ups and they do not go even when they fall ill. They cross their fingers and hope they will recover this time. That is the reality and the single thing that is doing that is the high cost of G.P. visits. Now, if this can deliver better health care in the community at a lower price, then it will indeed be a step forward. If it fails to do that, then it will be a failure because nobody will be able to on their own control their own health without assistance from the professionals. What I look forward to seeing in the future as this new scheme develops is that the Minister for Social Security, whoever he or she may be, along with the Minister for Health and Social Services, whoever he or she may be at the time, will be working towards the delivery of better health care at a lower cost. That is absolutely essential or else we will fail on this Island. I look forward to it, I expect it, it must happen.

[10:45]

### **3.9 Senator B.I. Le Marquand:**

My colleagues on the Council of Ministers, I think, can confirm that I have generally been very good as a Minister in not trespassing on to their areas but in this particular area I did get involved and I thank them for their patience with me because I did become aware that there were concerns among some of the G.P.s in relation to this. I am pleased to say that by virtue of the amendments which have now been put in place, those concerns have now gone away for the present but there still remain issues which will need to be handled by the 2 Ministers with great care. I commend and I congratulate the Ministers and their colleagues on the work that they have done but there are issues which will need to be got right for the future and those are really in 2 different areas. Senator Ferguson has gone into much more detail than I propose to do on some of these areas. The very core of the proposals ... there are 2 aspects to it. The first aspect is the Q.I.F., sometimes called QIF standards, and it is absolutely vital that we get these right and that is why there is a need to take advice from people like Dr. Iona Heath and others from outside the Island who have a very good balanced experience in relation to this. If we get the standards too low, then they will merely be requiring doctors to do the blindingly obvious and will have no value. If we, on the other hand, set them at too detailed a level, then there is a significant danger of cutting across the ability of individual doctors to understand their patients and the needs of their individual patients, and that is where the tension will always lie: between quality standards on the one hand and the proper discretion of doctors on the other. So I flag that up again. I am well aware that the Ministers are both aware of these issues and I am grateful for that. The second area which has got to be got right is the procedural area which will now be covered by regulations. I believe that is absolutely right it be covered by regulations so that the whole of the States will have a say in relation to this. There are some difficult issues to get precisely right, particularly the key role of the responsible officer who is the person who will run the revalidation scheme. Now, I personally believe that it is very important. I had a conversation yesterday with the Minister for Health and Social Services and was very much comforted by her complete understanding of this issue. It is vitally important that that person be sufficiently independent, both from the management of the Health Service on the one hand and from the primary care body on the other so that there can be a proper and objective test of the competence of individual doctors. So I am wholly supportive of this. I am very pleased that we are now able to go forward with, I believe, agreement from all the groups of doctors and I will support the amendment as well.

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

I think there is a risk of losing the old-fashioned G.P. who has developed a professional relationship with their patients over the years in that there will be an advantage to be a part of the big impersonal practices which we have seen develop over the last few years. There is no doubt that, as nurses are regulated, it seems logical that G.P.s are as well, but I know that G.P.s (I refer to the smaller groups) do not really particularly appreciate a continued increase in bureaucracy and I think this proposition does tend to lean that way. While I shall support the proposition, I would ask the Ministers involved to keep a close watch on the costs and I would urge that their departments conduct regular consultations with the G.P.s to ensure that the regulatory framework does not become too top heavy and that it remains effective.

### **3.11 Connétable D.W. Mezbourian of St. Lawrence:**

I rise to support this new law. In my very brief time at the Health and Social Services Department, it was one area that was raised as being of importance and needed to be brought forward and I am pleased to see that it has indeed been done. But to follow on from my colleague, the Constable of St. Brelade, he has just mentioned the fact that we may lose the old-fashioned type of G.P. and medical service. I think that could become the case when the health care professionals are introduced into this primary care type of practice, the nurses that will be doing the blood tests and things like that, and I just wonder whether the Minister will be able to advise us how this has been planned for by the 95 or so G.P.s that are over here. Do we have enough registered medical health

care people to undertake this work or will we have a need to bring professionals over to work in the G.P.s' surgeries?

### **3.12 The Deputy of Trinity:**

I shall be brief. I just really wish to rise to thank people for supporting the Minister for Social Security and I add my thanks to him too. It is an important proposition and it just shows that the 2 departments over the last year have been working very closely together. As has been said by most people here, this proposition is vitally important. It is a piece of a jigsaw puzzle to really improve the future of primary care in Jersey. I know the Minister will be summing-up and then mention the points but there has been consultation with the G.P.s not only with the Social Security but also with my ... well, the States of Jersey Medical Officer of Health and myself we have gone round most G.P. practices. Deputy Southern is quite right that the aim must be to first of all improve the care of health within all Islanders but we also need to look at the cost. To pick up Senator Le Marquand's point about the responsible officer, his point... he and I did have a chat about it yesterday. It is vital that that person is independent not only because of the G.P.'s point of view and the Health and Social Services point of view but also in his responsible role, and it is set by statute towards the G.M.C. to revalidate G.P.s. Just to finish, this House over the last 3 years has made a significant change in healthcare by putting all the pieces together and including the Medical Practitioners Law, and that law will change primary care where nurses and allied health professionals can prescribe and be more proactive in the primary care and that can be nothing but of benefit for all Islanders and I cannot stress that highly enough. So it is an important day and if it is approved, it is a great day for the health of all Islanders and I will leave it there.

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

Just briefly, to say that I have been a recipient of the progression of changing healthcare. It is positive. It is going into preventions in far greater detail and support and it is working very effectively and I am aware of the difficulties that have been attained but the amendment that has been brought in has cemented this together and therefore I shall be supporting this proposition.

### **The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

### **3.14 Deputy I.J. Gorst:**

Perhaps I could start with an apology. I was possibly being in danger of slightly misleading the House when I was coming to my final remarks there when I said that I was quietly excited by these proposals. I am, as you know, an accountant by profession; excitement does not come easily to me [Laughter] [Aside] but the truth of the matter is I am very excited about these proposals [Members: Oh!] and why do I say that? Because I think it starts to allow us as a community to put the health of our community - the cost of providing that healthcare to our community - right at the centre of what we can do and it will allow us to be innovative, to retain the best of what we have got now but also to move forward to use new methodologies, new treatments and new ways of treating payments and, for a government, I do not think it gets much more exciting than this. But there we are. If I could perhaps now move on to answer some of the questions that have been raised. First of all, Deputy Le Hérissier asked about transparency. The G.P. Performers List will be public information, as it is in other jurisdictions, and that is absolutely right. It is absolutely as it should be. I have said before in this Assembly that I would like to see the cost of G.P. visits made public as well so that patients can see that there is a variance in cost. A lot of patients think that because the subsidy that I provide is a standard amount, the full cost is a standard amount but it is not, there can be quite a variance in the cost of visiting a G.P. so I would like to see that also public and that is work that we will need to do with G.P.s in due course. If I just talk perhaps about what else will be public, I would expect also the contracts will be negotiated (and this picks up on some of the points that Senator Ferguson made) by mutual agreement between G.P.s and the departments.

They will obviously be subject to Ministerial Decision and those decisions will be public so therefore they will be public information. Of course, the difficulties we spoke of yesterday will be that the department will be trying to get absolutely best value for money. G.P.s, not being discourteous to them, will be trying to get as much money for the service that they are providing as they possibly can and I believe that the health benefit should meet somewhere in the middle and that will be part of the responsibility of this Assembly to ensure that we have got that appropriate balance between excellent health care outcomes and the cost of the contracts that we are due to then put in place.

**Deputy R.G. Le Hérissier:**

On a point of clarification, could the Minister outline whether the reasons by which people are moved on or off the list will perhaps ... in an anonymised sense, will that be made available?

**Deputy I.J. Gorst:**

Well, this is part of the details. As I have said, the G.P. Performers List will come back to the Assembly via regulation and the States will be able to approve the details of that Performers List. That Performers List will, of course, outline reasons why someone would be moved off. Ultimately, if that person is moved off because of what has happened at the G.M.C. and the hearing there, then I suspect that that will be public but it will be for this Assembly to decide which elements of those disciplinary processes are public or not. So at this point I am not able to give a categorical assurance one way or the other but it will be for the States ultimately to decide. Of course, there will be medical and clinical issues that the States will need to consider when it is considering those regulations and that is one of the reasons why initially it was going to be in this regulation by Order because there will be some technicalities that the States are going to now have to agree by regulation which might make us uncomfortable but that is the way we have decided to go. On balance, I think that is the best way to go but there will be issues there that we will need to address and they will not necessarily be easily addressed but it will be this Assembly that does that. Nurses and pharmacists: yes, I expect that as part of the negotiation of these contracts, G.P.s will consider whether a service that they are currently providing which requires a visit or sight of the G.P. cannot be better provided for the cost that we are going to negotiate by a practice nurse.

[11:00]

Some G.P.s are already introducing practice nurses. I would expect that more will be introduced. There are other G.P.s who believe that that is not appropriate and that patients should always visit the G.P. so that again will be negotiated by mutual agreement when we are setting up those contracts and it will basically be about the amount of money that we are allowing and whether that allows a visit to the G.P. or it allows the cost of a visit to a nurse. As I said in my opening comments, other jurisdictions use pharmacists much more broadly than we do in Jersey and I would like to see ... there are without doubt services that pharmacists could be providing right now - not least of which I believe is smoking cessation - they could be providing that right now, but they are not. This is going to allow us in future to let them get on and do that. I will try and be a little bit quicker with other speakers. If I could, however, move to the Deputy of St. Martin. I was a little bit disappointed with his... where he continued to say that there has been a lack of consultation. I have been consulting with the Health Department, with interested parties, and with the legitimately-elected committee of the primary care body for the best part of 2 years and even a year before that so there has been consultation. I think where there has been a problem perhaps is that that committee has not always in a timely manner kept their members informed of the negotiations and the consultation that was going on. They do recognise that. Of course, even prior to us getting the email and the lobbying from the small practices or the family practices group we have got to remember that the vast majority - 70 per cent I think - of the P.C.B. (Primary Care Body) have always been behind this proposal and behind moving forward in this way and why is that? It is quite simply because we have to do it in order to allow us to continue to fall under the umbrella of

the General Medical Council in the U.K. and therefore it is absolutely necessary. He also raised questions about the financial and manpower implications. I pride myself on providing information with as much detail as I possibly can. I believe that that is what has been provided there. It is quite clear there will be a clinical governance team. It is estimated it is up to £200,000. With all these things I have negotiated with the Health Department, ever conscious that I am required to protect the Health Insurance Fund against prying eyes, and I have negotiated with them and said: "No, that for the services you wish to provide, that is the amount that I am going to say is appropriate." To answer Deputy Higgins, that does include the contracts with those 2 bodies that he asked about. The cost of those specific contracts, I understand, is around £15,000 and that is included in there. The rest, of course, is around manpower: a clinical director, a manager to oversee the process and the contract. So, it is not an unreasonable amount, but it is an amount up to. The £1.5 million of course comes from the P.36 where we uplifted the medical benefit. That amount is then converted into a quality contract, so we are just reiterating that that is money that we have already spent and will be converting into the quality contract and again for the patient database - the central server - it is estimated at around £1 million. We believe that they are appropriate estimations and we have been completely upfront about that. Senator Ferguson is absolutely right that all that we do is should put the patient, their concerns and their health and therefore the health of our community right at the forefront of our decision-making and the way that we move forward, and I will simply say that the patients with regard to this piece of legislation are without doubt best served by our G.P.s having appropriate governance and being able to fall under the framework of the General Medical Council in the United Kingdom because if they did not (and here I pick up on what the Connétable of St. Brelade and St. Lawrence were saying) we might think that this is a little bit cumbersome and bureaucratic, but if we did not take this approach, if we did not sit under the auspices of the General Medical Council, the amount of bureaucracy, the legislation that we would have to put in place to replicate that really does not bear thinking about, so it is without doubt in the best interest of the patients that we go ahead and do that. I have talked about the quality contracts and how that that will be public as well. Deputy Higgins asked about N.I.C.E. We do already have a body that that sits under the authority of my department and they bring forward recommendations for drugs that can go on the list to be red, amber and green; not dissimilar to the way that N.I.C.E. operates. We have an independent pharmacist adviser that reviews what G.P.s are prescribing and feeds that back to the body and looks at N.I.C.E. recommendations and best practice; not only N.I.C.E., but across the other jurisdictions as well and I think that that is a very good example of where Jersey takes practice from elsewhere and improves upon it. My Assistant Minister said yes, we have been working together and I have already addressed that issue. I just wanted to say one thing however about her comments with regard to the Fiscal Policy Panel and I did challenge them when they gave their presentation about not raiding the Health Insurance Fund. The point they were making was quite simply about how we account for that money, not that it was not an open transfer. It absolutely was because it required a separate decision by this Assembly, as will any other future transfers from that fund. Therefore I do not believe it can be described as "raid" in any way, shape or form. I think what they were saying was they would have liked to have seen it accounted for in the States Accounts in a different and more transparent manner. I am grateful to Deputy Southern for his support of this proposition. He did raise a very interesting point about cost of healthcare and it is somewhat perverse that in Jersey the cost of secondary healthcare going into the hospital is free; the cost of primary healthcare, which is where we want everybody to be treated and looked after, costs money and is a barrier to people receiving that care. We somehow have to reverse that. I am not sure that we can suddenly start introducing charges at the hospital (I do not believe that that will be acceptable although it will be a debate that this Assembly will have to have in due course) but we must get down the cost of access to primary healthcare because we know that all the best health outcomes around the world are those where people are cared for in a primary setting and not in a secondary setting. I believe that by the setting-up of these contracts (it comes back to my excitement) we will be able to drive down those costs. I have some, what I hope will be, exciting suggestions for the way that we deal with the provision of healthcare for the very low

paid members of our society and those who need to come to my department for support. I believe that this will allow us in future to set-up contracts with G.P.s so that those services ultimately can be provided free so they do not have to worry about the cost of access to G.P.s and ultimately other healthcare provision that we need to provide, that we want to provide on a community-wide basis, we can also say that they are going to be free at the point of need because the money will come out of the Health Insurance Fund. Of course we all know that nothing is free because in order to get money into the Health Insurance Fund we all have to contribute to that, but “free” at the point of need and point of receiving the service. So, as I have hopefully answered most of the questions, I do not believe that this is the demise of the old fashioned doctor. I believe that we have got some extremely capable, forward thinking people who want to develop best practice and cutting edge practice in our community among our G.P.s, particularly among the primary care body and their committee, and this goes some way to enabling them to get on and deliver those services in the absolute best interest of each member of our community. So, I really do wholeheartedly recommend these changes to the Assembly and I ask that Members will support them. Thank you, Sir. **[Approbation]**

**The Bailiff:**

Is the appel called for?

**Deputy I.J. Gorst:**

Yes, if I could, Sir.

**The Bailiff:**

The appel called for then in relation to the principles of the legislation. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 41</b>	<b>CONTRE: 1</b>	<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur	Deputy of St. John	
Senator P.F. Routier		
Senator T.J. Le Main		
Senator J.L. Perchard		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator A.J.H. Maclean		
Senator B.I. Le Marquand		
Senator F.du H. Le Gresley		
Connétable of St. Ouen		
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Deputy R.C. Duhamel (S)		
Deputy of St. Martin		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		

Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**The Bailiff:**

Deputy Southern, do you wish this matter to be referred to your scrutiny panel?

**Deputy G.P. Southern:**

No, thank you, Sir, we already studied it.

**The Bailiff:**

Very well, then we come on to the individual Articles. Now, there are a number of amendments as has already been mentioned. Where there is an amendment we will have to take the Article on its own, Minister, but if you can be brief.

**Deputy I.J. Gorst:**

I was hoping that you might grant me leave perhaps to take them *en bloc* as amended providing Members did not wish obviously to vote on separate Articles because I know that would not be possible if Members did wish so.

**3.14.1 Draft Health Insurance (Amendment No. 14) (Jersey) Law 201- (P.136/2011): Amendment**

**The Bailiff:**

Do Members agree to that? Very well then, in which case I think we must read out the amendment, so I will ask the Greffier to read the amendments and then we will take all the Articles in their amended form and then, if any Member wants to vote on a separate Article as amended, he or she may do so. Very well, Greffier.

**The Deputy Greffier of the States:**

Page 1, number 1, page 21, Article 2 for paragraph (b) substitute the following paragraph (b) for the word: “Therewith” there should be substituted the words: “Therewith to establish systems of governance of and minimum standards for persons providing a service for which the recipient is entitled to a benefit under the law to enable the funding out of the system of insurance of contracts for the provision of health services in accordance with standards or at levels of performance determined by the contracts.” Number 2, page 21, 22, Article 3 in page 1(a) delete subparagraph (c), (b) in paragraph subparagraph (d) in the definition Performers List for the word “Order” substitute the word “Regulations” and renumber the subparagraphs accordingly. Number 3, page 23, Article 4 in the inserted Article 9(a), (a) in paragraph 2 for the words: “An approved medical practitioner who is not practising as or within the person’s preferred practice” substitute the words: “For general medical practice which is not the person’s main practice.” (b) for the words: “Preferred practice” in each place that they appear substitute the words: “Main practice.” Number

4, page 24 to 25, Article 6 in Article 20(b), (c) of the inserted part 3(a), for the words: “An Order” substitute the word: “Regulations.” Number 5, page 27 and 28, Article 9(1) in Article 27(a) of the inserted part 5(a), (a) in paragraph 1, for the words: “The Minister for Health and Social Services shall by Order” substitute the words: “The States shall by Regulations.” (b) in paragraphs 2, 3, 4, 7, 8 and 9 for the words: “The Order” substitute the words: “The Regulations.” (c) in paragraphs 2(g), 2(h), 3(e) and 7 for the words: “The Order” substitute the words: “The Regulations.” (d) in paragraphs 5 and 6 for the words: “An Order” substitute the word: “Regulations.” (e) in paragraph 8 for the words: “Prescribed of any prescribed” substitute the words: “Specified of any specified.” (f) after paragraph 11 add the following paragraphs: “12 only the Minister for Health and Social Services may lodge draft Regulations under this article. Number 13 before lodging draft Regulations under this article the Minister for Health and Social Services shall (a) consult with such body or bodies of persons as appear to the Minister to be representative of General Medical Practitioners and (b) consider any representations made in respect of the proposed Regulations.” (2) in Article 27(b)(1) of the inserted part 5(a) delete the words: “So as to confer powers by Order” and number 6, page 30, Article 10 in paragraph (b) in the added paragraph 5(a)(i) and (b)(i) for the words: “An Order” substitute the word: “Regulations.”

**The Bailiff:**

Very well, so Minister, do you wish to propose the Articles *en bloc* as amended?

[11:15]

**3.14.2 Deputy I.J. Gorst:**

Yes, Sir. If I speak very briefly on them, (1) obviously defines the principal law; (2) amends the long title; (3) gives a new definition of general medical council; (4) is about individuals registering with a medical practice; (5) defines what is a medical service for the purpose of the law; (6) includes the allowance of pharmacists so that we can make contracts with them and also covers the contract and allows the Minister then to go away and make contracts; (7) really is about the money and the governance team, so it will allow the Minister to provide money from the Health Insurance Fund to allow this and obviously to pay for the governance team; (8) sets out details around the Performers List and in effect says that in future to receive the benefit from social security they will need to be on the Performers List; (9) says that that Performers List will now come back by amendment or by Regulation so that the States will then be able to approve that. It also says that we could establish further Performers Lists in due course; (10) is around administration and says that officers from the department will be able to visit premises to carry out the administration of this law and (11) revokes something under the old law so that we can then put in the new Performers List once that has been agreed. Thank you.

**The Bailiff:**

Very well, are Articles 1 to 12 seconded? **[Seconded]** Does any Member wish to speak on the individual Articles?

**3.14.3 Deputy G.P. Southern:**

Very briefly, can I just bring to attention and welcome the change that the Minister has accepted and, as pointed out by the Deputy of St. Martin, to change from “Order” to “Regulation.” It is often very important that matters do come to this House so that our attention is brought to those matters and some control remains with the House and I would just like to remind all future Ministers and Chief Ministers individually that they should pay attention every time they are asked to bring something by Order to think: “Is this appropriate? Do I want sole control over this or is it something that the House should be aware of and should have some say in?” and that is quite an important step I think, certainly for this House, and I welcome that change.

**3.14.4 Deputy J.A. Hilton:**

I think I am asking this in the right place, it is to do with the Performers List and removal from the Performers List under Article 8. In the main body of the report it gives the different reasons why a G.P. might be removed from the Performers List. Nowhere within that body can I see any reference to mental illness, and I was just wondering if the Minister could confirm how a Medical Practitioner would be dealt with if they were deemed to be suffering from some sort of mental illness. Thank you.

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

In the Minister's summing up he mentioned about the 70 per cent majority who are in favour of it. I would like to call those probably the 70 per cent who were the "hares", but there were 30 per cent who were the "tortoises" who were obviously much more concerned about the way in which this was being ploughed through without proper safeguards. In actual fact, just what they were after ensuring there were safeguards and, indeed, their concerns were being addressed. In actual fact their concerns had been vindicated by the fact that we have these amendments here today and one in particular, I think, is very important: the one on page 28, part 5, paragraph 27(a) which takes away from the, if one wants to call it, "power" of the Minister for Health and Social Services and puts that in the hands of the States and I think that was a very, very important piece of amendment. Again, I am delighted now that this is here and again if the "tortoise" had won the day, so much the better because again, as I said earlier, we have a much better piece of legislation here and again I will be giving it my support.

#### **The Bailiff:**

Does any other Member wish to speak on the individual Articles?

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

I am not sure if this is entirely the area, but I did in my points in the main debate raise the issue of the transparency of the process for performance and non-performance and I wonder if the Minister could assure us that he would be prepared to look, for example, at the introduction of a lay element into that process because we know in the great exalted professions ... and I think it was Oscar Wilde who said that professions were a conspiracy against the laity, and I wonder if he would be prepared to look because we did introduce that element. I know it has met a few legal obstacles of late, but that element has been introduced for example into the discipline procedures of the Law Society and I wonder whether he thinks, albeit with modifications, it could be considered in this instance also?

#### **3.14.7 Deputy P.J. Rondel of St. John:**

Members may wonder why I voted against this but, given that 70 per cent only supported this of the general practitioners (a number of them have spoken to me over a number of months) it still leaves some 30 per cent who are very unhappy or not happy at one point or another. Therefore I think somebody from within this Chamber - this listing - that I would have far preferred to see this up in the region of 90 per cent in favour and have a 10 per cent who were not. But when you only have a 70 per cent support rate, I do have concerns and we are simply moving forward to ... yes, healthcare has to move forward; I appreciate that. I have 2 doctors in my family in my daughter and my son-in-law and I understand all of this and they probably will not be happy that I voted the way I have but, that said, the patient I always think has to come first and turning things into supermarket practices, call it what you will, at the end of the day the pound seems to be ruling things and I always thought nursing and doctors were always a certain profession where it was a very, very caring profession. Generally it is, but it looks as if funding is simply more important now than the care; that is the way I am reading it. But I am here speaking on behalf of those practitioners who were not supportive of going down this road. Thank you, Sir.

#### **3.14.8 Senator S.C. Ferguson:**

Contrary to the Constable elect of St. John, I think a considerable number of the dissidents in fact are happier to have Regulations rather than Orders because it makes the whole process a great deal more transparent. One of the other big problems which has been accounted for within the amendments is the fact that it enables doctors to work as or act as locums in other practices in or outside the Island which was a particular problem for certain of our G.P.s and I think they are looking forward to a lively discussion over the Regulations.

**The Bailiff:**

Does any Member wish to speak on an individual Article?

**3.14.9 Deputy A.E. Jeune of St. Brelade:**

If I may just to say that these amendments, these Articles have all been altered in order to take into consideration those that were feeling rather uncomfortable with the original ones and I would like to reassure the Deputy of St. John that those people who were very concerned, we were very concerned about their concerns and we have amended appropriately.

**The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

**3.14.10 Deputy I.J. Gorst:**

Yes. If I start and address the Order issue. Deputy Southern is quite right and I have a rule of thumb of asking my officers when they are drafting legislation and they bring it forward and it says "by Order" why it cannot be by Regulation decided by this Assembly, and I believe that most Ministers take that view. Perhaps it is a little bit out of self-interest because one knows that if one has the Assembly supporting one's policy and legislation, one has a firm ground on which to stand, when one has an Order it should simply be either a very technical matter or a very small matter. I was advised by clinicians, by the Law Draftsman, that this potentially could be a very technical matter and it might be better by Order. I have been convinced by other Members that in actual fact it is better by Regulation and that is why we have the amendment before us today. However, it does raise the issue - Deputy Hilton asked about it - whether someone could be removed from that list because of mental illness concerns, and that now is a detail which will come back by Regulation, which is perhaps as it should be, but equally we will get into a very difficult area where the States is now having to decide fairly broadly, but is still in detail whether that will be right or wrong and in which circumstances those individuals can be on or off that list. So, on the one hand we have addressed some concerns, but we have got quite a difficult debate that we are going to have to in some ways remove ourselves from and try and take the bigger picture when we now do come forward and debate the Regulations. Will there be an element of lay involvement; there indeed could be. Again that will be part of the Regulations which will need to come forward. Members will be aware that I am in a process of trying to talk to as many people as possible having said what I have recently said and one of the good things about that process is that other Members are telling me about what they think and what changes they think we can make as a government and as an Assembly and I spoke to a Member last week it was and we started talking about user groups which are very much a lay involvement and I have reflected on that even more and I think that could be and can be a very useful tool going forward. I know that in my own department perhaps officers might not like it, perhaps politicians might not like it because it might make us ask uncomfortable questions, but I think it might help reconnect the public with the service that we are providing, which ultimately we are providing for their good, and therefore I would not necessarily be against having that lay involvement in this process. I think I have touched on the transparency issue earlier. I just wanted to then finally touch on some of the things that the Deputy of St. John said. He would have been right to vote against it had 70 per cent continued to support it and 30 not, but hopefully, as he now knows, I met at great length with those who had concerns about it and we reached an agreement. That agreement is outlined in some of the amendments that we have put

forward, and that now addresses their concerns. Yes, there will be the other issues to address in due course, but now I think only one G.P. has voted against this proposal, 4 have abstained and the remainder 84 have voted, I think, in favour of it. Some were out of the Island and are on long-term sickness leave, so could not support it, but those who had concerns - the small practice group or the family practice group - they have now confirmed, I believe, to all Members that they are supportive of this proposition and therefore I ask that perhaps in the Second and Third Reading the Deputy of St. John might now find his way to supporting it because I think it would give G.P.s confidence that we are supportive of this direction that we know we need to go in. Thank you, Sir.

**The Bailiff:**

Very well, all those in favour of adopting Articles 1 to 12, kindly show? Those against? They are adopted. Do you propose the Bill in Third Reading, Minister?

**Deputy I.J. Gorst:**

I do, Sir and if I could just at this point express my sincere thanks to the committee of the Primary Care Body which, as I have already said, has worked extremely hard with their colleagues to ensure now that all local G.P.s fully understand the changes that have been put forward and the reasons behind them, and if I could also thank officers of my department for all the work that they have put in, in bringing us to this point today and of course the officers at Health and Social Services and the Medical Officer for Health and I ask that Members support it in Third Reading and I call for the appel. Thank you.

[11:30]

**The Bailiff:**

Is the Bill seconded in Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? Very well, the appel is called for then, so I invite Members to return to their seats on third reading and the Greffier will now open the voting.

<b>POUR: 38</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Deputy of St. John		
Senator P.F. Routier				
Senator T.J. Le Main				
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				

Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**Deputy I.J. Gorst:**

Sorry it was remiss of me, I should have thanked another individual in my summing up there. This, I believe, is the last piece of legislation that my Assistant Minister will have been involved with in steering through this Assembly and negotiating and bringing her wealth of experience on these issues and I warmly thank her for all the work that she has put in during the last 3 years. Thank you. **[Approbation]**

**4. Ratification of the Agreement for the Exchange of Information relating to Tax Matters between the Government of Jersey and the Government of the Czech Republic (P.138/2011)**

**The Bailiff:**

Very well, so then we come to the next matter on the Order Paper which is P.138, Ratification of the Agreement for the Exchange of Information relating to Tax Matters between the Government of Jersey and the Government of the Czech Republic, and 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 to ratify the agreement for the exchange of information relating to tax matters between the Government of Jersey and the Government of the Czech Republic, as set out in the appendix to the report of the Chief Minister dated 9th August 2011.

**The Bailiff:**

Can we please have more silence when the Greffier reads matters out? It is courteous to allow her to read them out without a large background chatter.

**4.1 Senator T.A. Le Sueur (The Chief Minister):**

The number of absentees in this Chamber is perhaps evidence of the fact that these ratifications are becoming more common and when I look at the list on page 16 of this proposition I am reminded that when I took office we had 10 tax information agreements signed, of which only 2 had been ratified. We are now in a situation where these that we have before us today bring the total up to 24 tax exchange agreements and with the, hopefully, successful passing of ratification today, they will all have been ratified. One of the objections we had in 2009 was to ensure that we had at least a dozen T.I.E.A.s signed. We now have 2 dozen signed and about to be ratified and it is not the end of the matter by any means; we have another 4 almost ready to go and 6 shortly to follow behind. This is an ongoing process and I am very proud of the fact that in recent years Jersey has

demonstrated more clearly its willingness to participate fully in international matters. The arrangement with the Czech Republic may not appear to be, of itself, of great significance but of course the Czech Republic is one of the E.U. (European Union) member States and our objective is to make sure that we play our full part in the European Union. On that basis this agreement, which had been signed, is now presented to Members for ratification and it is in the standard form, along with all previous T.I.E.A.s of that nature. I propose the adoption of the ratification of the agreement with the Czech Republic.

**The Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? Very well. All those in favour of adopting the proposition, kindly show. All those against? The proposition is adopted.

**5. Ratification of the agreement for the exchange of information relating to tax matters between the Government of Jersey and the Government of the Republic of South Africa (P.139/2011)**

**The Bailiff:**

Then we come to the Projet 139: Ratification of the agreement for the exchange of information relating to tax matters between the Government of Jersey and the Government of the Republic of South Africa and 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 to ratify the agreement for the exchange of information relating to tax matters between the Government of Jersey and the Government of the Republic of South Africa as set out in the appendix of the report of the Chief Minister dated 9th August 2011.

**5.1 Senator T.A. Le Sueur (The Chief Minister):**

Much the same remarks apply in respect of the arrangements with South Africa except, of course that this is a country with whom we have far more economic links and the arrangements with the Republic of South Africa will only serve to strengthen those links. Indeed, as an addition to this tax information exchange agreement South Africa have signed a joint declaration committing themselves to recognising the higher standards that we have and their willingness to work with us in economic development. South Africa is a member of the G20 countries and this brings now to 17 of the 19 countries that we have signed an agreement with. The other 2 members of the G20, with whom we have not yet signed at this stage and may not be Russia and Saudi Arabia. But of all the other countries in the G20 we have now completed arrangements; the 20th country of course is the E.U. and we have signed with individual states. On the same basis as the previous one I present and commend this agreement for ratification.

**The Bailiff:**

Is it seconded? **[Seconded]** Does any Member wish to speak on the proposition? Very well. All those in favour of adopting the proposition, kindly show? Those against? The proposition is adopted.

**6. Draft Pharmacists and Pharmacy Technicians (Registration) (Amendment) (Jersey) Law 201- (P.140/2011)**

**The Bailiff:**

The next matter is Projet 140: Draft Pharmacists and Pharmacy Technicians (Registration) (Amendment) (Jersey) Law 201-, lodged by the Minister for Health and Social Services, and I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Pharmacists and Pharmacy Technicians (Registration) (Amendment) (Jersey) Law 201-. A Law to amend the Pharmacists and Pharmacy Technicians (Registration) (Jersey) Law 2010. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**6.1 Deputy A.E. Pryke of Trinity (The Minister for Health and Social Security):**

This proposition seeks to amend the existing Pharmacists and Pharmacy Technicians Registration Law. This Law, known as the principal law, makes it compulsory for pharmacists to be registered in Jersey if they wish to practice here. This amendment would extend that registration to pharmacy technicians. Over recent years the role of pharmacy technicians have changed, they now safely and effectively deliver functions previously considered just the domain of pharmacists, for example, the dispensing of prescriptions and provision of advice to patients about their medicines. It was in response to this changing role that the U.K. made the registration of pharmacy technicians compulsory in June 2011. This amendment will do the same here in Jersey. It will also make it a requirement for pharmacy technicians to be U.K.-registered prior to becoming Jersey-registered, as is the case for pharmacists. U.K. registration is via the General Pharmaceutical Council, the regulatory body that sets the professional and ethical standards which both pharmacists and pharmacy technicians must comply with. This includes continuing professional development and fitness to practice standards, making registration in Jersey compulsory for pharmacy technicians and therefore ensures that they are regulated, as are other healthcare professionals. In addition, this amendment will also make it unlawful for any person to practise or purport to practise as either a pharmacist or a pharmacy technician unless they are registered. The purpose of the law, this includes undertaking work or giving advice in relation to preparation, sale, supply or use of medicines; the science of medicines, the practice of a pharmacy or provision of healthcare. In summary, this is a straightforward amendment which makes the registration of pharmacy technicians compulsory, therefore offering enhanced protection to the public. I recommend it to the Assembly.

**The Bailiff:**

Is the Law of Principle seconded? **[Seconded]** Does any Member wish to speak on the principles? Very well. All those in favour of adopting the principles, kindly show? Those against? The principles are adopted. This is a matter which falls within the Health, Social Security and Housing Scrutiny Panel; Deputy Southern is the Chairman and ... the Constable of St. Lawrence?

**The Connétable of St. Lawrence:**

Yes. No, thank you, Sir.

**6.2 The Bailiff:**

Very well. Then we move to the individual Articles. Do you wish to propose them *en bloc*, Minister? Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? Very well. All those in favour of adopting Articles 1 to 6, kindly show? Those against? Articles 1 to 6 are adopted. Do you propose the Bill in Third Reading, Minister? Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Bill in Third Reading, kindly show? Those against? The Bill is adopted in Third Reading.

**7. Draft Poisons (Jersey) Law 201- (P.141/2011)**

### **The Bailiff:**

Then we come to the Draft Poisons (Jersey) Law - Projet 141 - lodged by the Minister for Health and Social Services and I will ask the Greffier to read the citation.

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

Draft Poisons (Jersey) Law 201-; a Law to regulate the sale and supply of poisons and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

#### **7.1 Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):**

The draft law before you today is designed to replace the existing Poisons Law (Jersey) 1952 and its subordinate Orders. Large parts of the 1952 Law have been withheld as a consequence of the introduction of the Medicines (Jersey) Law 1995 and the Pharmacists and Pharmacy Technicians (Registration) (Jersey) Law 2010 and what remains in it now is in need of updating. Many of the key principles of the 1952 Law are retained in a new law which controls who can sell poisons and the premises they can be sold from, controls labelling and packaging, controls sales from vending machines, provides for inspection of premises selling poisons and for differing levels of control over particularly dangerous poisons, such as strychnine. It places a requirement on the seller to report sales and to satisfy themselves that the purchaser has a proper use for the poison and that they are aware of its dangers and will both use and store it appropriately and responsibly. Detail to these controls will be contained in subordinate legislation by means of a General Provisions Order. They will be consistent with the controls contained in the U.K. Poisons Act 1972. The new law, like the existing law, includes a poisons list, that is a list of substances that are poisonous and that are not medicine products controlled under the Medicines Law. The poisons list, which consists largely of substances used as pesticides, will be divided into 2 parts: Part 1 poisons are generally more dangerous than Part 2. Part 1 poisons may only be sold in a registered pharmacy by or under the supervision of a pharmacist or from specified premises by a certified agrochemical supplier. Part 2 poisons may only be sold by persons lawfully conducting a retail pharmacy business or by persons duly authorised by the Minister as specified premises. Under the existing 1952 Law, that poisons list is prescribed by Order, therefore any changes or updates require an amendment to legislation. Under the proposed new law the poisons list will be declared by the Minister, providing a much more flexible and responsive method for designated poison. In addition, there are 2 other main differences between the new law and existing 1952 Law. The first is that under the new law certified agrochemical suppliers can be authorised to supply certain Part 1 poisons. Currently they can only supply those poisons under derogation, which only allows supply to others in their trade. This change is an appropriate acknowledgement of the expertise of certified agrochemical suppliers and will support them to operate in an effective manner. The second difference is a sharpening of the requirement of the seller to ensure the purchaser is buying the poison for proper use and is aware of the dangers and will use and store the poison responsibly. Under the 1952 Law the seller may sell a poison to someone who is unknown to them if the purchaser is in possession of a certificate for the purchase of poison. Any household in Jersey may issue such a certificate, confirming that they know the purchaser has proper reason to buy poison. The safeguard to the system is that the Parish Constable or Centenier endorses the certificate, confirming the household to be of good character, not the actual purchaser of the poison.

[11:45]

The new law will do away with a somewhat flawed system, placing the onus on the seller to confirm that the purchaser has a legitimate use for the poison. In summary, this new law provides up-to-date provisions regarding the sale and supply of substances designated as poisons and will, by subordinate legislation, set out the detailed controls required, controlling access to and regulating supply of potentially toxic chemicals, and perhaps limit the risk that these substances may cause

harm to individuals, for example, accidental poisoning or to the environment. I recommend this new law to the Assembly.

**The Bailiff:**

Is the principle seconded? **[Seconded]** Does any Member wish to speak on the principles? Senator Perchard.

**7.2 Senator J.L. Perchard:**

Does this legislation place any obligation on the purchaser to ensure that the seller has the necessary qualifications or certifications? I ask this particularly now that more and more purchasers are buying products online, and would the purchaser be liable for an offence should they unwittingly purchase from a seller who does not have this qualification or certification?

**The Bailiff:**

Does any other Member wish to speak on the principles? The Deputy of St. Mary.

**7.3 Deputy D.J.A. Wimberley of St. Mary:**

It is a single point, really. I know these Regulations cover the sale and the ability of the Minister to declare what is a poison and put it on a list. My question to the Minister is, if she can answer this, if a substance is withdrawn - and I am thinking in particular of, I think, neonicotinoid pesticides that have a harmful effect on bees, or which are believed to, and if such were made illegal to sell or use indeed in the U.K. and in Jersey - do these Regulations cover not only the putting on a list and therefore you cannot sell it anymore, but also the withdrawal from use? Is there a provision within these or within the Order-making powers or whatever lies underneath these Regulations' provisions to go around and collect the poison, the substance that is no longer allowed to be used?

**The Bailiff:**

Does any other Member wish to speak on the principles? Yes, the Connétable of St. Lawrence.

**7.4 The Connétable of St. Lawrence:**

I cannot see anywhere in here that there is a restriction on who may purchase poisons and I wonder whether there is any age limit on who may purchase a poison, as we have for the purchase of alcohol?

**The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

**7.5 The Deputy of Trinity:**

I will try and answer the detailed questions as best I can. I take Senator Perchard's point about the seller. It places a requirement on the seller to record the sales and satisfy themselves that the purchaser has proper use for poisons and so the onus has changed from the person who is wanting to purchase it to the actual person who is selling the poison. Regarding Deputy Wimberley's question on withdrawal; I think because it is made by Order and the businesses will be consistent with the U.K. Poisons Act, that any poison which is withdrawn can be withdrawn on either Part 1 or Part 2 of the list. Regarding the Constable of St. Lawrence; as I understand there is no age limit but it is the requirement that the seller has to record the sales and satisfy themselves and it is the same with Senator Perchard. It is illegal so I would have thought that whoever is selling it has to prove that they know their purchaser and the purchaser has to satisfy the seller that they are going to use that poison for the right reasons.

**The Bailiff:**

All those in favour of adopting ... sorry, Deputy.

**The Deputy of St. Mary:**

Could I ask a point of clarification from the Minister? She answered my question with respect to putting a poison on the list or off the list as the Minister but I do not think she answered my question about what then happens in terms of withdrawing the availability from sellers of going around and taking it off the shelves so that it cannot be used, if that is what the law says.

**The Deputy of Trinity:**

Sorry, I did not pick that bit up, that Part 1 of the poisons can be only sold to registered pharmacists and it would be, as I understand, the pharmacists' responsibility to make sure that it is withdrawn and there also will be inspections and whatever, so they will pick that up that way.

**The Bailiff:**

Very well. All those in favour of adopting the principles, kindly show? Those against? The principles are adopted. This is a matter which falls within the Health, Social Security and Housing Scrutiny Panel; the Vice Chairman, do you wish this matter to be referred to the Panel?

**The Connétable of St. Lawrence:**

I think, having had the response from the Minister, Sir, ordinarily I may have said that we would but as we are due to be disbanded shortly I will not accept it.

**The Bailiff:**

Very well. Then we move to the individual Articles. Do you wish to propose them *en bloc* and take questions, Minister?

**7.6 The Deputy of Trinity:**

That would be great, Sir, and try to get them *en bloc*. If I could just be brief; Part 1 introductory I think is self-explanatory. Part 2; persons who may sell poisons and it establishes that Part 1 poison may only be sold from a registered pharmacy. Part 2, again, replicates Article 3 that Part 2 poisons may only be sold from a registered pharmacy. Article 5 exempts the provisions of Articles 3 and 4; the sale of a poison by wholesale or for export and that is no change from the existing law. Part 3; the provisions contained in Part 3, which is Articles 6 to 12, are consistent with the provisions in the 1952 Law. Part 4 is the other offences; Article 13 specifies that the seller of a poison that is specified for this Article must keep a record of the details of that sale in a book kept for the purpose. Article 14 prohibits the sale of poisons, otherwise in accordance with the requirements for their labelling the containers in which they are sold. Article 15 prohibits the sale of poisons from a vending machine. Article 16 prohibits a person from claiming to be an authorised seller unless he or she is, in fact, authorised to sell. Article 17 prohibits persons from delaying, hindering or obstructing inspectors. Part 5, Articles 18 and 19, requires the Minister to take specialist advice regarding the discharge of his or her function under the law. Article 19 permits the Minister to make an Order in respect of regulating, restricting or prohibiting the sale or supply of poisons, the storage, transport and labelling of poisons, specifies the containers in which poisons may be sold or supplied or adding substances to poisons to enable them to be identified, specifying how record books for sales under Article 13 are to be kept, prescribing other matters that the law permits. This is similar to the 1952 Law and the details of these will be contained in the General Provisions Order. Article 20 enables the Minister to appoint pharmacists as inspectors and describes the power of entry, search and seizure that appointed inspectors have. Any inspector may not enter a residential premises under this Article. Part 6 is the concluding provision ...

**The Bailiff:**

Sorry, one moment. Senator Le Main and the Constable of St. Peter, I wonder if you could be quiet please so that we can hear. [Approbation]

**The Deputy of Trinity:**

Thank you, Sir. Part 6 is the concluding provision: Article 21 enables evidence of analysis of a substance, made on behalf of the Minister, to be admitted into evidence. Article 22 provides that any notice to be served under the law may be served by post. Article 23 repeals and amends enactments consequentially under the commencement of the law. Article 24 enables the Minister by Order to make transitional provisions for the purpose of the commencement of the law and the repeal of an amendment of any enactment under Article 23. Article 25 states the name of the law and that it should come into force on a day or days to be appointed by the States.

**The Bailiff:**

Are Articles 1 to 25 seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? The Connétable of St. Ouen.

**7.7 The Connétable of St. Ouen:**

Senator Perchard briefly alluded to the use of the Internet for buying materials and there is nothing in this law which addresses that possibility. I am just wondering whether the Minister is aware of how the English Government handle that situation and whether her department have even considered the possible ramifications of that happening.

**7.8 The Connétable of St. Lawrence:**

I do have some concerns under Article 3, Part 3, where the onus is on the seller to be satisfied that the purchaser intends to use the poison for a proper purpose, is aware of the dangers the poison may pose and intends to use and store it in a responsible manner. I wonder if there is anything which specifies how the seller is required to ascertain these parts under Article 3(3) because it seems to me that although they are required to make a note of who they have sold a poison to, and we are told that on page 5 that records will need to be kept by the seller of particular poisons, there is no specification as to what records need to be kept and how the seller has made the judgment that the person is indeed a fit and proper person, it seems to me, to buy and use any poison. I hope the Minister can allay my concerns about this because, having listened to her present the in-principle part of this it seems to me that this has not been given enough thought and I do have some concerns, particularly as there is no age restriction on anyone who may buy any of these poisons. Thank you.

**The Bailiff:**

Does any other Member wish to speak? Yes, the Connétable of St. Brelade.

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

I have just noticed, perhaps a bit late, that in the Articles there is no reference to anti-fouling compounds and I would ask the Minister whether it is intended to broaden the spectrum of the Poisons Law to that because they are generally considered poisonous, certainly in the U.K., and have to be declared in certain areas. Clarification on that or further consultation with the industry would be appreciated.

**The Bailiff:**

Does any other Member wish to speak? Senator Perchard.

**7.10 Senator J.L. Perchard:**

Perhaps the Minister can help me. I do apologise for not having studied this in more detail but I am becoming increasingly concerned with this piece of legislation and that we may be on the verge of approving what none of us are really sure about. Is there any obligation on behalf of the purchaser to comply with this piece of legislation or is all the onus on the seller? Is there any obligation on behalf of the purchaser to ensure that the storage of any poisons, if they should purchase from a non-qualified seller, is stored properly? I am worried that we may be criminalising somebody here

who has unwittingly purchased something from an unauthorised seller and I am not really sure that I fully comprehend this and, with respect to the Minister, I am not sure that she does.

[12:00]

**The Bailiff:**

Does any other Member wish to speak? Minister, are you intending to reply to these? I have asked the Solicitor General to come back in case you wish to refer the matters to him, but are you content to reply at the moment?

**7.11 The Deputy of Trinity:**

I will try as best as I can but I am sure I do need the ... In the old law, just to take Senator Perchard's point first, the purchaser had to just have a certificate to say that he was a good person and it was just counter-signed by either the Constable or Centenier and there was no record of what the purchaser was supposed to use it for or whether they were going to use it in the correct way or have it stored. Now, the onus is on the seller to be able to, I suppose, know your clients as such so that they are going to be used in a proper way and I think that is the most important change. Also, that the seller has to write down and record exactly who has bought it and what they have used it for. It is not supposed to be heavy-handed but it is more acknowledgement and knowing what the pesticide, because it is mostly pesticides, is going to be used for because these are dangerous drugs, whether they are Part 1 or Part 2, they are dangerous drugs. They have to be kept in the correct storage and will be inspected by pharmacists too. Regarding the Internet, I hope the Solicitor General can answer that one. It does not mention it in this law, but I would have thought it would cover it under Customs. The Solicitor General has just arrived. I will go on to about what the Constable of St. Lawrence said about 18 year-olds. Again, I would have thought they need to know that it is dangerous drugs, and they need to know the seller needs to again provide the purchaser with why they are using that drug and for what purpose. It is, like I said, know your clients, and it is used mostly in the agricultural industry and most of the people who store these drugs will know what it is going to be used for. But I would like to give way about the Internet.

**The Connétable of St. Brelade:**

I do not know if the Minister misheard me, but my point was towards anti-fouling compositions, which is stuff you put on the bottom of boats to stop weed growing, and they are generally classified as poisons, but there is no allusion in any of the Articles to them, and I would just urge before making final classifications that the department consult with the industry.

**The Deputy of Trinity:**

There is a Part 1 and Part 2 list, and we are not aiming to change what is on the Part 1 or Part 2 list, so if they are on the list, I mean, the list has got a lot of different drugs on it and if they are on Part 1 or Part 2, then nothing particularly will change. If they are not on either Part 1 or 2, then the *status quo* would stand.

**The Bailiff:**

Now, there were a number of questions asked. The first one, as I recall, was from Senator Perchard, which is whether a purchaser could be guilty of an offence if he unwittingly bought from a seller who was not in fact authorised to sell under this law, could the purchaser find himself being liable of an offence? Is that right, Senator Perchard?

**7.12 Mr. H. Sharp, H.M. Solicitor General:**

Yes, Sir. The answer to that is no.

**The Bailiff:**

Then the second point I think raised by the Connétable of St. Ouen was that this deals clearly with people selling in the Island. Does it in any way deal with buying poisons over the Internet from people outside the Island? Is that your question, Connétable?

**The Solicitor General:**

No, this law cannot bite on a seller outside the jurisdiction. That would be a matter for the law in that particular jurisdiction.

**The Bailiff:**

There was a third question, I think, as to whether there is any restriction on the age of purchasers. Can a pharmacist sell poisons to a young purchaser?

**The Solicitor General:**

There is no specific provision on age. However, if one looks at Article 3(3), the seller has to be satisfied that the purchaser intends to use the poison for a proper purpose and, quite clearly, if a 16 year-old walked into a shop and sought to buy poison, it is very difficult to imagine circumstances in which a seller could be so satisfied. The use of the “satisfied” implies quite a high test of certainty.

**The Bailiff:**

So the seller would, in those circumstances, probably commit an offence?

**The Solicitor General:**

Yes, Sir.

**The Connétable of St. Ouen:**

I think the other point I raised was asking whether there is any legislation in the U.K. which governs the sale of poisons such as this on the Internet.

**The Solicitor General:**

I believe there is, yes.

**The Bailiff:**

Sorry, the Connétable of St. Lawrence, did you wish a supplementary question?

**7.11.1 The Connétable of St. Lawrence:**

Yes, Sir, if I may. The Solicitor General has just told us that the seller must have a high level of satisfaction with regard to the intention of use of the poison by the purchaser, and my concern is how the seller will make that assessment, whether there is anything in place for them to have a standard set of questions, or a tick list almost, as to how they decide whether or not a person is fit and proper to buy and use the poison. Article 3(b) states that: “The seller must be satisfied that the purchaser is aware of the dangers the poison may pose to human, animal and environmental health and safety.” Does that mean that they will have to be questioned before the seller sells the product to them to prove to the seller that they are aware of it? I am just concerned, it seems very loose to me, and although I refer back to page 5 under 3.5 that: “Records will need to be kept by the seller of particular poisons where this is specified by the Minister in the poisons list” it does not say what those records are, and I am concerned that if anything was to happen that the seller must be able to go back and almost have an audit trail to show that they did ask enough reasonable questions of the purchaser.

**The Solicitor General:**

If I may say so, the purpose of this law, if adopted, appears to me to want to put the seller at the forefront of maintaining a proper control over substances which are defined as poisons, and

therefore the emphasis really is very much on the seller to be satisfied of particular criteria. Unless that seller is so satisfied, they should not sell, or at least they risk committing a criminal offence if they so do. Therefore, the conditions or the information that the seller needs as set out at 3(a), (b) and (c) is the information the seller requires before they can safely sell a substance, and one would have thought to be satisfied that the seller would want to obtain written records.

**7.11.2 Senator F. du H. Le Gresley:**

When the Minister was speaking earlier trying to clarify something, she made reference to the 1952 Law and the requirement for the purchaser to provide a certificate certifying that they are person to whom the poison may properly be sold. I understand the 1952 Law is going to be repealed by this new legislation, so my question is is there any check made in any shape or form on the purchaser for removing that certificate requirement?

**The Solicitor General:**

I lost part of the question.

**Senator F. du H. Le Gresley:**

Sorry, my question is if the 1952 Law is repealed by this new legislation, which apparently it will be, will there be any requirement for any certification of the purchaser which was required under the 1952 Law?

**The Solicitor General:**

No. The purpose of this law is to put all the emphasis on the seller.

**7.11.3 Senator J.L. Perchard:**

With reference to Article 2, I am worried about the poisons list, and perhaps the Attorney can help us. Would a retailer, a D.I.Y. (do it yourself) retailer selling wood stain, which would be poisonous if consumed, have to comply with Part 2 of the poisons list, and would they have the obligation to know your customer in that case?

**The Solicitor General:**

No. The requirements in respect of knowing your customer, which I assume is a reference to Article 3.3, only relates to Part 1 of the list.

**Senator J.L. Perchard:**

But there is not a definitive list of Part 1, so what assurances do the Assembly have that this will not be too prescriptive on a retailer trying to sell wood stain?

**The Solicitor General:**

I do not know if that is a legal question, but the point is that the poisons list is to be provided by the Minister and whatever falls within Part 1, the seller must comply with the requirements set out in Article 3.

**The Bailiff:**

Any other questions of the Solicitor General? Very well, thank you. Minister, have you finished your reply then?

**The Deputy of Trinity:**

I have indeed, Sir, and I would like to thank the Solicitor General for his advice.

**The Bailiff:**

Very well. Then the matter before the Assembly is Articles 1 to 25. Those in favour of adopting Articles 1 to 25, kindly show; those against. Articles 1 to 25 are adopted. Do you propose the Bill

in Third Reading, Minister, the Second and Third Reading? Does any Member wish to speak on the Third Reading? Senator Le Marquand.

**7.12 Senator B.I. Le Marquand:**

I regret that I did not, in fact, speak slightly earlier, because I think some of the concerns being expressed in relation to the purchase on the Internet of items of course are matters that would properly fall within the Customs function. Now, I am afraid that I do not, off the top of my head, know precisely whether individual poisons are listed as controlled items, and if so, what list, but it seems to me clear from the discussions today that I need now to take up this issue with the Customs and Immigration Department so that it is clear that where items are listed on either of the lists of the Minister that we have equivalent controls in relation to the entry of those items into Jersey. That seems to me to be the safeguard, and that I will seek to do in the few days that remain to me before I cease to be Minister for Home Affairs under the current House.

**The Bailiff:**

Very well. Does any other Member wish to speak in the Third Reading? Very well. All those in favour of adopting the Bill in the Third Reading, kindly show. The appel is called for in relation to the Third Reading of the Bill. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 33</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 1</b>
Senator T.A. Le Sueur		Senator J.L. Perchard		Connétable of St. Ouen
Senator P.F. Routier		Connétable of St. Lawrence		
Senator T.J. Le Main		Deputy J.A. Hilton (H)		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

## **8. Draft Shipping (Amendment No. 3) (Jersey) Law 201- (P.143/2001)**

### **The Bailiff:**

Very well. We move next to the Draft Shipping (Amendment No. 3) (Jersey) Law 201-, Projet 143, lodged by the Minister for Economic Development, and I will ask the Greffier to read the citation.

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

A law to amend further the Shipping (Jersey) Law 2002. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

### **8.1 Senator A.J.H. Maclean (The Minister for Economic Development):**

This amendment involves 3 unconnected minor changes proposed for the Shipping (Jersey) Law 2002. I will briefly outline the effect of each one. The first is carrying of colours. At the moment, the law too narrowly restricts who can enforce the flying of the correct flag on Jersey ships. The proposed change will improve matters by allowing the Registrar of Shipping and others to be authorised to enforce the law in this way. The second is the refusal to register or to renew registration of a Jersey ship. Again, the current provision is too narrow to be of any real use, except in matters of ship safety.

[12:15]

Bermuda, the British Virgin Islands, Cayman Islands and the Isle of Man all have more robust powers than Jersey does within their equivalent legislation, and the United Kingdom is now seeking to introduce its own amendments. The amendment extends Jersey's powers to deny registration to those who may have used their ship illegally and thus will protect the Island's reputation. The third change involves international agreements to reduce the risk of pollution of the sea. I have been advised that the Regulation-making powers could be too restrictive, and this amendment ensures that the States will be able to apply an international shipping agreement more effectively than at present. These amendments are important in making sure that Jersey is genuinely committed to high standards of compliance and transparency in all maritime matters. The Island must protect its reputation for being able to have a more effective legal control over its fleet. I maintain the principles. Thank you.

### **The Bailiff:**

This is seconded? [**Seconded**] Does any Member wish to speak on the principles? Connétable of St. Brelade.

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

There has been an issue, I understand, with the flying of defaced ensigns by yacht club members, namely the Royal Channel Islands Yacht Club for the defaced blue ensign and the St. Helier Yacht for the defaced red. Will the Minister confirm that these have been brought into these Articles, because I understand that they were left out of previous ones?

### **The Bailiff:**

Does any other Member wish to speak on the principles? Then I ask the Minister to reply.

### **8.3 Senator A.J.H. Maclean:**

In fact, this is a separate issue. This amendment deals with the enforcement of the carrying of colours and in fact, if an inappropriate colour is raised, the matter that the Constable is referring to is not relevant specifically to this. It is merely a matter of enforcement and who can carry out the enforcement and making the matter easier to deal with. It is a management matter rather than directly related to ensigns to which he refers.

**The Bailiff:**

Very well. So all those in favour of adopting the principles kindly show; those against. The principles are adopted. Deputy of Grouville, do you wish this matter referred to a Scrutiny Panel?

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

No, Sir.

**The Bailiff:**

Very well. Then we come to the original Articles. Do you wish to propose them all together, Minister?

**8.4 Senator A.J.H. Maclean:**

Yes, I would, Sir. There are only 5. As Members can see, they are explained in the proposition and it is very straightforward. I propose them *en bloc*, thank you.

**The Bailiff:**

Very well. Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? Very well. All those in favour of adopting Articles 1 to 5, kindly show; those against. Articles 1 to 5 are adopted. Do you propose the Bill in the Third Reading, Minister?

**Senator A.J.H. Maclean:**

Yes.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on Third Reading? Very well, all those in favour of adopting the Bill in Third Reading, kindly show, those against. The Bill is adopted in Third Reading.

**ARRANGEMENT OF PUBLIC BUSINESS**

**The Bailiff:**

We come next to Radon Gas Levels and Cancer Rates in Jersey ...

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

Deputy Le Claire has asked that we apologise to the House. He has been delayed with a medical appointment and he has asked whether or not the House would indulge him in taking the item after lunch.

**The Bailiff:**

Do Members agree to that? There is a valid reason. He had to go for a medical appointment. I mean, I think if it was for a Member simply not being here, then that is not satisfactory, but this sounds a good reason, so it is deferred then.

**9. Road Fuel Prices: display (P.146/2001)**

**The Bailiff:**

Very well, so we come instead to Projet 146, Road Fuel Prices: Display, lodged by Senator Breckon. I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of the opinion to request the Minister for Economic Development to bring forward for approval the necessary legislation to introduce a requirement for

all retailers of road fuel to display the price of road fuel on sale so that it is clearly visible to passing motorists from the adjacent roadway.

### **9.1 Senator A. Breckon:**

This proposal arose from a report that was produced by the Review of Jersey Market for Road Fuels by the J.C.R.A. (Jersey Competition Regulatory Authority) and this was in August this year. The reason I say that is throughout the States departments' administration or whatever, the place is littered with reports that have been produced over the years that have just been put on the shelf to gather dust. So the question then is raised is we have somebody proposing a report. The rule of thumb for these things when they are produced is usually they work out about £1,000 a page, so perhaps the Minister could enlighten us on the cost of this report when he says something about this. This has got 55 pages, and much of what is contained in this report was not news to me at all. So the question is once you have got it then do you do anything with it? Does anybody do anything? Well, apparently now the Minister is going to write to a few people because we have produced a report for around £50,000 plus. I respectfully suggest that perhaps he could have written to them before. We did not need a report from the J.C.R.A, I could have told him this. He could have saved £50,000 and we could give the post office a bit of business and send out a few letters to 29 garages, it would have been a bit cheaper. Anyway, from this I think the question is, is anybody going to do anything, and it was apparent to me that no, they were not. This has been an issue for a long time. It has been contentious. Gone are the days when people used to drive in the garage and say: "Put £10 in" or: "Put £20 worth in." Those days are now gone, principally because £10 or £20 does not go very far when you are putting it into the petrol tank of a car. So people are becoming more price conscious but, allied to that, they do not know in most cases until they stop at the pump how much the petrol is. Now - and I must declare an interest - through the Consumer Council we do have somebody that goes on a monthly basis, we buy petrol from 10 or 11 garages, get receipts, and this goes back to 2004, 2005, and we supply them to the *J.E.P*; we publish them in newsletters and have done things, and people are aware to a certain extent. But having said that, there is still room - without littering the Island - to have some serious advertising material displayed. Now, there is a cost, but there is also a benefit and the benefit is highlighted in the J.C.R.A.'s report. It says this: "It appears that there is room for road fuel prices in Jersey to be subject to greater competitive pressures and, if clearly displayed prices from the roadside result in heightened price awareness, in competition, such that, for example, if the average price reduced by just 1 pence per litre, this would be equivalent to a direct £430,000 per year saving to Jersey consumers in addition to any benefits from increased competition from driving greater efficiencies." So although there may be a cost to putting up a sign, once it is in, if it is electronic ... and I am looking at the Minister for Planning and Environment as I speak this. I notice there is one. I looked last night in Queen's Road and it not that noticeable, but you can, and it has got an L.E.D. (light-emitting diode) display in so they can change it without going there, climbing up a pole with chalk or something like that. It is fairly easy to do, I would think, and there is a benefit to that, because if the price is right, then people will go and use it. If it is not, then of course they will not, but people will be able to see it without driving in, going up to the pump or asking: "Well, how much does your petrol cost?" The J.C.R.A. also said in their report that they suggested at paragraph 4.5: "Advertising the price of road fuel so it is visible from the road." They went on to say: "One key difference between Jersey and most European countries is that it is not common in Jersey for the price of road fuel to be displayed so that it is clearly visible to passing motorists." Well, anybody who has been to France recently, you do not have to drive very far to see garages and see the price of fuel displayed, so that is an example of what happens with near neighbours, and of course the U.K. is the same. The report goes on to say: "A survey carried out by the J.C.R.A. in early July 2011 found that of the 34 retail forecourts, only 9 displayed the price so that it was clearly visible from the road. Of these 9, it was considered that only 5 displayed the price such that a passing motorist would notice it without specifically looking for the price information. Returns from a questionnaire to the retail forecourts also showed 8 garages claimed to display prices so that

they are clearly visible from the road.” They enclosed an annex in their report which showed photographs and some, I must say, were better than others. Also in the report, it mentioned that ...

**The Bailiff:**

Deputy, one moment. Deputy Southern, I think we are about to go in quorate.

**Senator A. Breckon:**

“It was extremely rare in the U.K. for a forecourt not to display the price on a large electronic sign, and it seems likely that a failure to do so would be viewed as suspicious by most U.K. consumers.” Also they mentioned in their report that: “Consumers in Jersey were becoming more price aware about road fuels and various sources from consumer price comparisons and also from word of mouth.” There are websites as well, and one has been set up in Jersey so that people have access, but of course not everybody has access to that. There were some tests where they did do a survey of their own in Jersey and it said that: “Stakeholders gave us a range of views on roadside displays. Some argued that prices displayed so that they are visible from the roadside would make no difference at all, while others agreed that it would make a positive difference and said they would be in favour of all retailers displaying fuel prices so they are visible from the road.” They go on to say: “In our survey of Jersey consumers, 183 people, that is 91 per cent, said that they thought the price of petrol should be clearly displayed so it is visible from the roadside.” If we go back to my earlier comments, then when we receive a report, do we do anything about it (the public have said this, or a certain section of them; I assume they were selected randomly) or do we just do nothing at all? Finally, from the J.C.R.A.’s report, they do stress that they think that in their view, displaying prices so they are clearly visible from the road is likely to contribute to the development of competition in road fuel and make a positive contribution to consumers’ rights to have sufficient notice of the price to be paid before they made a commitment to a particular trader. They acknowledged that there is a balance to be struck between planning restrictions and the clear display of prices. It seems unlikely to us that the balance is impossible to achieve. So what I am asking I do not think is impossible to achieve and it can be done, and the Minister can do that as well. He can write following this debate, and perhaps give the sentiments of this House, especially if it is supportive. They do conclude their report, the J.C.R.A., by saying this: “The J.C.R.A. strongly recommends all forecourts should display price signs that are clearly visible from the roadside. If the J.C.R.A.’s recommendation is accepted, further work would need to be undertaken with the Department for Planning and Environment, Trading Standards and the industry to formulate the obligation to display prices in practical terms.” It seems possible that the change could be brought about relatively easily by incorporating the requirements into the Price Indicators (Jersey) Regulations 2008. Any change would, of course, need to be followed up with appropriate enforcement so that change becomes part of the normal business practice of the road fuel market in Jersey. We note that the Isle of Man brought about a requirement to display the price of fuel so it is visible from the roadside with the following wording in the Price Marking Order 2005, and the quote is: “In the case of motor fuel, an indication of unit price shall be displayed on the premises from which it is sold in such a manner that it is easily read by a person in a motor vehicle on the highway from whichever direction he may lawfully approach and enter the premises.” That is where I got the background information from this. The question is we produce a fairly expensive report- which the Minister will tell us in a minute how much it cost - and then to do nothing: to me I think it is a waste. What I am suggesting, I believe, is fair and reasonable in the circumstances. It could benefit people if there was a downward price effect of well over £400,000 a year, which is a sum not to be sneezed at.

[12:30]

The Minister for Treasury and Resources could even mint a £200 note, we could even do something else with the money. So we can do things there. There is a benefit as well, and one of the benefits is - and this has been proven in the U.K. - where people in the community use a car, their standard

of living has been affected, especially in rural communities when they need to do it, because it is a cost that they have to bear, and it means that they have got less disposable income to spend in taking their kids out or going to the cinema or whatever it is. So if we can bear down, and I know the Minister knows - and the Minister for Treasury and Resources, who is not here now - there are some issues about the margins on petrol. If you strip out all the duties, it is still significantly more expensive in Jersey than it is in the U.K. by an unexplainable amount, and the industry is not embarrassed about this, but if we can do something - and this is a small measure, and I believe it is a small measure - then I believe we should do that and I make the proposition.

**The Bailiff:**

Proposition seconded? [**Seconded**] Yes, Senator Maclean.

**9.2 Senator A.J.H. Maclean:**

Thank you. I was a little bit too quick off the mark there. Just to help Members, I make a few remarks here for those that have not had an opportunity to consider the comments. Senator Breckon was not, if I may say so, very friendly in his opening remarks, and I shall address first of all some of the comments that he made. He referred to the report and the cost of the report. In fact, it is a J.C.R.A. report, and of course it is funded from their budget, it is not an Economic Development report. All I would say with regard to the costs (I am happy to report back on the exact costs, which I do not have to hand) is that if the end result is that motorists are more aware of pricing and we help to drive down the cost of fuel in the Island, then the result of the decision for the J.C.R.A. to look at this matter I think will be, and will represent, without doubt good value, and I think we can all be thankful of that. I should add and be quite clear that I fully support this proposition. I fully support the sentiments behind it. What I have said in my comments is what I believe to be a commonsense and practical approach, and that is that rather than imposing legislation upon a range of businesses - garage forecourts in this instance - and the associated red tape bureaucracy and cost associated, I believe a more practical approach is first of all, having had the benefit of this report, to write to the garages and ask them to voluntarily agree to the principles of displaying their fuel costs on the forecourt in a visible way, as the report quite rightly suggests. I have noticed, Members might be interested, that since this particular report came out, a number of garage forecourts have in fact put up displays of fuel, in particular Motor Mall have put a very fine display, electronic display, and that is very visible from the road, and that certainly is something I was delighted to see a number of other garages have done similarly. So I would say that I would hope Members would give the opportunity to businesses who are quite naturally struggling in this difficult economic climate to comply with the request that I intend to make to them to ensure that all garages display in an appropriate manner the cost of their fuel. I would also hope - and I have not had an opportunity to speak to the Minister for Planning and Environment, who I am looking at now - there are certain costs associated with certain signage that might be necessary, and I would hope that in a joined-up way, perhaps the Planning Department might consider those costs and their dealing with applications from garages for appropriate signage in a fair and reasonable way, as I am sure they always would do. I do not wish to continue to speak any further on this matter. I would hope the Members would accept my practical proposal to write, and if indeed we have not had compliance within the next 6 or so months, I would intend to come back, or I would hope that whoever my successor is at Economic Development would come back to this Assembly and go down the more draconian route of imposing legislation, but I really do hope that businesses would take this quite strong message on board and comply. I do thank Senator Breckon for raising this matter. I think it is important. I think that the J.C.R.A. report has also been important, and it has stimulated the debate and hopefully will have a desired result which consumers will benefit from in the Island, that being lower fuel prices.

**9.3 Deputy J.A. Martin of St. Helier:**

I, like Senator Breckon, wonder where the Senator and Minister for Economic Development has been since 3rd August when this report came out, and then Senator Breckon lodged on 23rd August his recommendations for the report to be acted upon. Then we had today comments on 28th October with a point that he will write to the retailers and ask them if they will comply. I really think it is again one of those things that the Minister for Economic Development should have brought, should have enforced. He makes a point about the J.C.R.A. budget, and it is not their budget, but very, very distant memory: somebody funds the J.C.R.A. and I think a part of it comes from Economic Development. The rest comes from licence fees charged, and that is always the way it has been. I am very suspicious on the second paragraph: "However, I am also mindful that this action will impose more red tape on businesses, many of which are struggling to survive." We spend £41 million on petrol every year. Not many of them struggling then, I would suggest. We always get this. As a Back-Bencher who has acted on something that is easy to be done and it is done everywhere else, you can see it from the road. I would suggest now if these retailers contacted a few displaced Senators, you would get some boards that could be seen from the moon, and they are probably going cheap sitting in their garages at the moment. But again it is pick, pick, pick from the Economic Development. The J.C.R.A. never really addressed the problem with fuel. We have a Minister for Treasury and Resources who came into the States how many years ago – 10 - and he was going to decide, because their impôts and everything else is supposedly cheaper than the U.K. but the profit margins for not the retailers necessarily, but the distributors are very, very high indeed. This has not been addressed so, as Senator Breckon did point out, a penny each off each retailer would be good for the consumer, and it is peanuts to what we spend per year. So I have no sympathy for the Minister for Economic Development. He has not been fighting an election. He has either been on holiday or he has been having a nice rest. Very good luck to him, I know he has got a nice young family and I am glad he enjoyed a good holiday in Jersey, but he should have written to these people the day after the report came out, and the only way to get them to comply ... because it is very nice when you are short-sighted and you drive up there and you cannot see what is what. **[Laughter]** Well, I can see if you are short-sighted you can see the big, big signs, and as with the free advertising for one of the garages up at Queen's Road the Minister for Economic Development just gave. But they are there, and I know people who do drive from where ... I am one of those people who I do not drop more than I need, and I just about limp to the garage to get round the corner, but there we go. It would really hurt me if my car broke down and I had a full tank of petrol in it. It is just the way I am. I might have a bit of Jersey in me yet, as they say. Anyway, I have no sympathy at all for the Minister for Economic Development. His comments are weak, they are late and they do not do justice to the report of the J.C.R.A., and if he had any sense he would just accept this, go away and do the work. By the time he has looked at it, we have got a new Minister. I am sure all the other garages would be complying, because you can bet your bottom dollar that as soon as they know that they are selling it for 2 pence less up the road, that is where they will be going. So it forces competition and it forces them to display it. Please accept this, Minister, as one of your gracious outgoing courtesies. If he had been listening, he might have accepted it, but he was more interested in talking to his Assistant Minister, obviously he gets more support there.

**Senator A.J.H. Maclean:**

I was consulting.

**9.4 Connétable P.F.M. Hanning of St. Saviour:**

As Deputy Martin's Constable, I am sure she is not short-sighted enough to have to give up her driving licence. Seriously, there is just one point with this I wonder if the proposer can clarify. We need to be sure that the price advertised, if they are all going to be advertised, is what the price is if you come off the road without any loyalty cards, without being able to claim any discounts, simply a driver going past, stopping and wanting some petrol. There is a problem we have in Jersey where they do expect you either to have a loyalty card or to be a regular customer and thereby get a

discount, and I do not really want to see us advertising special prices. What we need are prices that people will have to pay if they just drive past.

**9.5 Deputy M. Tadier:**

I am glad to follow on that point, because that was the first point I was going to make, and I would go one step further and say that whether this legislation is passed today or not, I think that the forecourt price does have to be the pump price, because a lot of the times you will pull up, it is a discounted price but you have to have a loyalty card. You cannot get the loyalty card on that particular time when you fill up, and it also says on page 4 of the report that in the 2008 Regulations it requires prices to be unambiguous and they certainly are not unambiguous if they were offering a discount which is not available to everybody. I am not quite as cynical in this instance as perhaps Deputy Martin, because I have some sympathy for the Minister for Economic Development. I have had dealings with him in the past and when we try in positions in the private sector to effect positive change on society in general and on practice, I know that he prefers a light-touch legislation, he prefers voluntary compliance rather than obligatory compliance, which is not a bad thing. I have had dealings with him and the Minister for Social Security to look at a living wage for Jersey, but one which would perhaps be brought in as a voluntary practice rather than an obligatory one. So I do have some sympathy, but where I think the comments are flawed is by making this non-compliant or non-obligatory voluntary compliance is that it creates more red tape, I think, because we have had a suggestion from the J.C.R.A. that this is a good thing to do, it brings down prices. If we are going to have to write letters to all of the retailers in Jersey who sell fuel and then get them to follow up and say: "We have only got 50 per cent take up" and next year we write some more letters and say: "We have noticed you have not taken this up. Why have you not done it?" it could be a long, drawn-out process and we find that 20 per cent of the people have not voluntarily complied. Those are the 20 per cent of people perhaps who were charging the most expensive prices for their petrol in the Island. Then we have to go back to them and say, "Well, you have not complied with this" and they say: "Of course we have not. That is because it is not obligatory. We are not going to advertise the fact that we charge the most expensive prices for petrol in Jersey." It is a complete nonsense, so I think, as a pragmatist, we should all be saying: "This is a well-thought out report. It has been considered by the Consumer Council, by the J.C.R.A. It is a very sensible step forward." Is it really going to create that much red tape? It is simply a sign. We know many garages have those swinging signs outside. I think the one I am thinking of is at Bel Royal, which is easily visible. It is not a massive piece of equipment, is not L.E.D. lights, which need to be constructed, as they do, on motorways in the U.K., which obviously need a bigger run up, cars are travelling at much greater speeds. I think we are making too much hard work of this. We should simply pass this today. It is good for competition, but more fundamentally it is good for the consumer in the Island and it is a step we should be taking.

**The Bailiff:**

Does any other Member wish to speak?

**LUNCHEON ADJOURNMENT PROPOSED**

**The Bailiff:**

Very well, the adjournment is proposed then, so the Assembly will reconvene at 2.15 p.m.

[12:43]

**LUNCHEON ADJOURNMENT**

[14.16]

**The Bailiff:**

We are not quorate. Usher, please summon Members. The Assembly sits at 2.15 p.m. It is late as it is. Very well, so we continue with the debate on the proposition of Senator Breckon. Does any other Member wish to speak?

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

Yes, Sir. I am glad that the Minister has come in, because I hope over lunch he may have given serious consideration to the proposition, particularly as he says that he fully supports this proposition, and I would hope again to reiterate what other Members have said: really, do we need to waste all afternoon discussing something which the Minister himself agrees? The other question I cannot ask him, because he has already spoken, but I would like the Minister to somehow explain how if we are going to have a voluntary system, if someone chooses not to abide with the voluntary system, what action you can then take. I think this is the area which I think needs legislation, and that is why I believe that we ought to support what Senator Breckon is saying. Of course, during the course of the developing of the legislation, I am sure the Minister will be able to deal with all the queries he has managed to find in his 3 paragraphs of his comments, but really I would ask the Minister to accept this rather than the States be spending too much time on it.

**9.7 Senator A.J.H. Maclean:**

I appreciate that I have spoken. I just thought it might be helpful with the debate if I just made a quick comment. It is not a question of opposition that Members have raised. I have listened to helpful comments that Members have made and helpful guidance, and on that basis, I am happy to accept what Senator Breckon is proposing.

**The Bailiff:**

Thank you. In which case, does any other Member wish to speak? I will invite Senator Breckon to reply.

**9.8 Senator A. Breckon:**

Thank you, and I thank the Minister for that. I will not dwell on this, just to say that sometimes comparisons are made with elsewhere and I would draw Members to the fact that the Isle of Man did something very similar in, I think it was, 2005. So with that, Sir, I will maintain the proposition and ask for the appel.

**The Bailiff:**

Very well.

**The Connétable of St. Saviour:**

Could I just ask Senator Breckon if he could answer the question about the actual pricing that would be shown?

**Senator A. Breckon:**

Yes. The Constable did ask about prices advertised, and generally speaking the price is the price, and there has been some pressure and there are loyalty cards and systems, but sometimes it is a bit like smoke and mirrors. You pay more for the petrol and other things and then get a discount, so generally the pressure, certainly from the Consumer Council, it is the same as service charges in restaurants, it is for the price to be the price, so that if you are driving, everybody pays the price. There was a period where garages were saying: "This is the price, and you get 10 per cent off or 15 per cent off" and we discouraged them from doing that. So I hear what the Constable says, but the move is to make the price available to anybody, and then if a trade association - for example, say like a taxi firm - got a deeper discount, then that is understandable on volume, but generally it should be available to everyone that goes in off the road, as it is. Thank you.

**The Bailiff:**

Very well. The appel has been called for then in relation to the proposition of Senator Breckon. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 34</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Senator B.I. Le Marquand		
Senator P.F. Routier		Deputy A.E. Jeune (B)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator F.du H. Le Gresley				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Saviour				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

## **10. Radon Gas Levels and Cancer Rates in Jersey (P.144/2011)**

### **The Bailiff:**

Very well. Now, if Members agree, I suggest then we return to the matter lodged by Deputy Le Claire, Radon Gas Levels and Cancer Rates in Jersey - Projet 144 - and I will ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to request the Minister for Health and Social Services (a) to conduct an updated study on radon gas levels in Jersey; (b) to undertake a campaign to increase public awareness of the dangers posed by radon gas (including where in Jersey the risks are greatest) and to set out what precautions can be taken, including the use of detectors (c) to commission and publish an independent expert's report into why Jersey has the cancer rates that it does and, in particular, why those rates are higher for certain cancers than in the southwest of England, with this study to include an epidemiological study of cancer incidence in

Jersey, based on an audit over a defined period and an exploration of individuals' documented exposure to recognised risk factors.

### **10.1 Deputy P.V.F. Le Claire of St. Helier:**

Good afternoon. I would like to thank Members for their patience in allowing me to bring this this afternoon. First of all, I would like to thank the Minister for Health and Social Services, who has always been very positive in anything that I have brought to her attention, and her officers. In bringing this, I sought to meet with the now Medical Officer of Health and the Minister for Health and Social Services to discuss the aims and objectives of what it was I was trying to do and they were most helpful in discussing and agreeing to meet with me to go over these things. Over the years, they have provided some significant support for me, and also in relation to some technical answers recently they have been a model in relation to information and the provision of it to Back-Bench Members. Health's recently-announced initiative on radon - which was published in the paper today, I believe, and sent to all States Members and the media yesterday - is to be welcomed and some good has come from this proposition and the efforts of others to raise awareness of this toxic gas. It has been some 30 years since the last survey was conducted and revealed a worrying amount of homes that failed to meet the required safety standard. However, the media release fails to identify how many households will be invited to take part and we need to know the percentage of the population that will be invited. Furthermore, there is no detail as to how the radon testing scheme is to be publicised. Will leaflets be left at G.P. surgeries, for example, or will there be some form of advertising on the radio or in the newspaper? The main component of the proposition remains unaffected, however, and that is to inquire into Jersey's high cancer statistics. It is often said that this can be laid at the door of smoking and drinking and no doubt they play a significant part, but without proper scientific enquiry that claim is, at best, an educated guess. Moreover, we know that many cases do not involve drink or smoking. There have been a number of cases of rare cancer in infants, particularly cancers occurring in the eye socket, of which I am aware of 3 being diagnosed this last year. There have also been a number of sadly unfortunate deaths of teenage children in the Island over the past year, including leukaemia and ovarian cancer. Smoking and drinking were not a factor in these cases and there are many others where people who did not drink or did not smoke died of cancer. When one adds-in the 2001 European Parliament Report that I circulated in relation to Cap de la Hague and Sellafield to all Members and the media, the case for a proper inquiry is beyond doubt. This report was not publicised in Jersey at the time that it was released and nor were we on Health (I was a member of the Health Committee at that time) informed of its content, some of which is alarming. Its findings refer to toxic materials being released from Cap de la Hague and to increased rates of cancer within a 10-kilometre radius. In particular, it refers to the surprising fact that official tests revealed low levels of releases whereas independent tests revealed far higher levels. Basically, it is not necessarily the case that you can rely upon the official levels of monitoring, and that is why Jersey needs to monitor things itself. That was the predication, or motivation rather, for my questions to the Minister for Health and Social Services yesterday and the answers that we received need further study. My proposition is in 3 parts. I am asking the States to conduct an updated study on radon gas levels in Jersey. This is partly being done in association with the other Channel Islands and the United Kingdom so it could be argued that this proposition has achieved its goal in terms of aim. Parts (b) and (c), which are not supported, unfortunately, by the Minister for Health and Social Services for financial reasons and the need to conduct a bowel screening study, are supported in principle if the money were to be available. Now, we have often heard about the need to invest to save and I have asked many questions over the years about the costs on our society in relation to air quality, the impact that breathing diseases have upon lost productivity, and the loss on the social side of people who have illnesses, the long terms of treatment and also the sad cases where people have to deal with a family member who they have lost or a loved one that they have lost. All of those are not being factored-in to this equation. We are talking about a small amount of money, £30,000 to £40,000. It was not even the lost amount of money that was predicted in relation to the £100 bank note, and we are

incapable, it seems, on a strategic level of accepting the fact that the professionals would like to do this work but they do not have the qualifications necessary to conduct it on their own. That is why an outside independent study is needed. Epidemiology is something that I am asking Members to support, an independent expert's report into why cancers are occurring. If I could just briefly ask Members to bear with me, I think this is a very important subject. I do not wish to go on at length, but I think Members will agree there are many associations and charities that deal with cancer and a lot of the community is impacted by it. I think we should treat it with the patience it deserves this afternoon. I would like to just briefly explain why it is that we need specialists to conduct this. Epidemiology is the study of health events, health characteristic or health determinant patterns in a population. It is the cornerstone method of public health research and it helps inform policy decisions and evidence-based medicine by identifying risk factors for disease and targets for preventative medicine. Epidemiologists are involved in the design of studies, collection and statistical analysis of data, and interpretation and determination of results. There are not many universities that offer this kind of undergraduate degree. They are very few and far between in relation to what they do. However, they can come in and they can conduct a study that will bring us a number of benefits. In terms of population-based health management, epidemiological practice and the results of epidemiological analysis make a significant contribution to emerging population-based health management frameworks. Population-based health management encompasses the ability to assess the health states and needs of a target population, implement and evaluate interventions that are designed to improve the health of that population, and efficiently and effectively provide care for members of that population in a way that is consistent with the community's cultural, policy and health resource values. Modern population-based health management is complex, requiring a multiple set of skills. If we look at the other organisations in the world that conduct these sorts of studies, particularly in relation to Canadian companies, we see the sorts of work that they do. I can provide these to Members; I do not want to take up too much more of their time. They look at these sorts of things. Population life impact simulations: measurement of the future potential impact of disease upon a population with respect to new disease cases, prevalence, premature deaths as well as potential years of life lost on disability and death. Labour force life impact simulations: measurement of the future potential impact of disease upon the labour force with respect to new disease cases, prevalence, premature death and potential years of life lost from disability and death. Finally, economic impacts of disease simulations: measurement of the future potential impact of disease upon private sector disposable income impacts, wages, corporate profits, private healthcare costs and public sector disposable income impacts, personal income tax, corporate income tax, consumption taxes, publicly-funded healthcare costs, *ad infinitum*. So, it is not just about radon and this debate should not just be about whether or not one opens the windows or whether or not there is granite everywhere. These issues are well known to people and they are well understood.

[14:30]

It does not do us any good at all to narrow these high levels of cancer incidences in Jersey down to the fact that we have granite or old granite houses or that we have had a cheap booze and fag culture for the last 30 years. There is something more that needs to be understood and it needs to be documented and the work needs to be done on a scientific basis. We cannot deliberate or come to the conclusion that the reason for these illnesses are due to these factors when we have not done the studies. It is an unscientific conclusion. It is risible to simply say that this is down to drinking and smoking. We have an obligation, in my view, and I would like Members to support me this afternoon in backing Health in relation to the high levels of cancer within our community and to work forwards either through Scrutiny, which was an idea that came to me last night, by backing up the evidence that has been presented to us with a separately-funded Scrutiny examination of the issue. If Scrutiny could put £35,000 or £50,000 aside and bring in an epidemiologist and scrutinise the results of the findings that we are being given and the reasons for those findings, then perhaps that is an alternative that we could consider as well. Certainly, I look forward to a debate that is a

little bit higher than the one I set out in relation to the fact that there is drinking and smoking occurring and the fact that granite is prevalent within the community. The proposition is in 3 parts. Part 1 is the radon gas level study, which is being undertaken in part. We need more information about that. Part 2 is to undertake a campaign to increase public awareness of the dangers posed by radon gas, including where in Jersey the risks are greatest and to set out what precautions can we take, including the use of detectors. I would like that campaign to go ahead. I believe that we have a duty to do that. Radon gas is the second leading cause of lung cancer. When I first took up the issue of a smoking strategy on the Health Committee, the majority of the committee - and I am not sure if the Deputy of St. Martin will back me up on this or not but he is the only one I can see in the room that I think was present that day - the Health Committee and the officers wanted to just move to the next item on the agenda. If it had not been for my persistent, dogmatic, youthful approach (stubborn, that is the word I was looking for; I thank the Constable of Grouville) we would never have got the former Health President to target me to go and do this work. I implore Members to recognise that this is also as necessary as the smoking strategy was at that time. It is the second leading cause of lung cancer and we are dismissing it out of hand on the grounds that people have been smoking and drinking. We need to understand and we need to investigate and we need to, at the very least, campaign in a way so that people can take their own lives into their own hands. There is an opportunity at the moment that people can buy into the study that Health are undertaking, and I believe it is £65 or something per person per household, where these units will be placed within their house for 3 months. We need to get answers as to how many of these studies are going to be undertaken in the Island, considering there is 100,000 people or so, how many houses are these things going into, and we need to make a bigger effort in terms of making people understand how they can at least protect themselves from this. The last part, which I have gone at length to explain, is to commission and publish an independent expert's report into why Jersey has the cancer rates that it does and, in particular, why those rates are higher for certain cancers than in the southwest of England, with the study to include an epidemiological study of cancer incidence in Jersey based on an audit over a defined period and an exploration of individuals' documented exposure to recognised risk factors. This will not be something that will occur over the course of 3 or 4 months. This is likely to take 2, 3, maybe 4 years to determine. The study, the experts, the Medical Officer of Health is telling me is going to cost somewhere in the region between £35,000 and £50,000. If this Assembly can support the Minister for Health and Social Services and me today in this proposition, we can begin that work and we can get down to answering why there are high levels of cancer, and if it is because of smoking and drinking then we can be comfortable in knowing that the answers are those; at the moment it is guesswork. If we do not do this this afternoon, if we do not support my proposition, then it is going to be a matter for new Members and existing Members to look at opportunities in the future. I would hope that the current Minister for Health and Social Services is certainly a candidate, certainly would have had my support to be re-elected for a Minister for Health and Social Services position. She has been excellent in her position and certainly has been very, very helpful for me and others that I have witnessed over the years she has been in. So I want her support as well on this proposition. I want other Members' support, and if I am not able to get that today ... because this is not for me, I do not have cancer; at least I am not aware that I have cancer. I know people, as everybody does, that have had it and have lost through it. I have lost family through it. I certainly want to get us to focus down on this. If we cannot support my proposition today I would be very disappointed but at least Members know the alternatives are more funding for Health in this area in the future in budgets to do this work. The experts want to do it, they do not have the money, they do not have the expertise; they have to buy it in. Or if we cannot do that, as I said, it will have to be a matter that will be left over for Scrutiny. The other opportunities are beyond me. I make the proposition and ask somebody to be kind enough to second it.

**The Bailiff:**

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

## **10.2 Deputy A.E. Jeune:**

Can I ask a point of clarity from the proposer? On the back page, on page 10 of his proposition, he has a map of radon geology from the States of Jersey website, but there is no legend attached and, therefore, I do not know what green, blue, red, *et cetera*, means. Perhaps he could advise.

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

The map that is included on the proposition, which is probably easier to view on the website of the States of Jersey, was given to me through the Departments of the States. What it does is it highlights the areas within Jersey that have high levels of radon and the geology in relation to that in Jersey. I am not a geologist and I am not a radon gas expert, probably not an expert on anything, but basically it highlights the areas where there is higher incidences of the gases. If one is to determine that or understand it, then one has to really look at something that reproduces better than this. The main part of my call for a better understanding of this subject is based upon the fact that that is the best we have and it is very hard to determine.

## **Deputy R.G. Le Hérissier:**

On a point of clarification, is it the time to ask if the proposer will be taking it in 3 parts or can, indeed, take it in 3 parts?

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

I will take it in 3 parts.

## **The Bailiff:**

Just so we are clear, Deputy, you are unable to assist on the brown/red parts? Is that high radon or low radon?

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

If the Deputy will forgive me, I will deal with it when I respond, but basically I am hoping that has given her some of the answer and I will try to study it more in particular to give her the actual legend as I sum up. It is difficult to determine on my feet from this map as most people will see. This is the kind of information that we are working with and it is not good enough, in my view.

## **10.4 The Deputy of Trinity:**

This is a very interesting proposition and I always welcome Deputy Le Claire's comments and concerns to improve the understanding of the causes of cancer. However, for reasons I will give, I find myself unable to support it in its entirety. The proposition has 3 parts, which I will deal with individually, and I am pleased that the Deputy will take each part separately. Part 1 is to request to conduct an updated study on radon gas levels. The Deputy is correct that there are valid concerns about the link between radon and cancer and that our Island geology with all its granite is similar to other areas where there are high levels of radon. He also points to a previous survey undertaken in Jersey, which did show that around 12 per cent of the properties surveyed were found at that time to have radon levels at or below the recommended action level. While these findings are not necessarily a cause of concern, given changes to building regulations which mitigate the potential and, given natural fluctuations that do occur, we are always not complacent. My department's health protection team have already committed to taking part in a major national study of radon levels being undertaken by the U.K. Health Protection Agency. As you know, by a press release which came out yesterday, that survey is starting and with results available early in 2012. The cost of the survey is £3,000 and it provides some clarity as to whether more action is required. Going on to his second part, Part 2 of his proposition calls for a public awareness campaign relating to the potential risks associated with radon. The public health experts in my department do not believe that this is required. If the U.K. health protection survey should highlight any particular concerns about radon levels or make any particular recommendations, we will obviously review this position.

But as it stands at the moment, we do not believe that this is the best investment of public funds. We will wait for the results of the survey. Any Islander who is concerned can purchase a testing kit for £45 or have a monitor installed for £95. I have no doubt that if there were valid grounds for investing in publicity then the manufacturers of these products will be stealing the march. Part (c) of this proposition calls for an independent study of cancer rates in Jersey. The Deputy rightly points out that we have particularly high rates of certain cancers, most notably lung cancer and cancers of the head and neck, when compared to most areas of the U.K. This is almost certainly the legacy of very high rates of tobacco smoking in the 1960s given that 9 out of 10 lung cancers are caused by smoking. Exposure to tobacco can take many years, decades, to cause a cancer. Our current high rates are, therefore, to be the result of the time lag effect. But there is a bit of good news here in that the prevalence of smoking in Jersey has been declining for several years, in part as a result of the measures that have been taken by this Assembly and my officers in the department. This trend is likely to continue and in time we would expect the high rates of smoking-related cancers also to decline. As I said, we are never complacent and the department is working on other measures related to cancer prevention; for example, improving the coverage and effectiveness of our existing screening programmes for cervical and breast cancer. Only this week we launched a new “What is pants but could save your life?” campaign relating to cervical smears. Last month we launched a “Time to act” campaign aimed at encouraging women aged 50 plus to register for breast screening. These 2 things are so important, especially at the moment when we do not have data to call these women back or to call these women at all when they reach 50. Our next priority is to introduce bowel cancer screening. Around 15 Islanders die each year of bowel cancer, yet screening, which is proven to be effective, has the potential to reduce this number by at least half. In addition to those who die of these conditions, around 60 other Islanders are diagnosed each year, many when the cancer is well advanced and major surgery is needed. An established screening programme will detect cancers at an early stage or even completely prevent them by detecting and treating pre-cancerous changes. This screening programme, which is arguably long overdue, has proven impact on cancer rates, both saving lives and saving money. Deputy Le Claire calls for an expert report into Jersey’s cancer rates with a focus on individuals with cancer and their past exposures to risk.

[14:45]

This may be a fascinating and worthwhile piece of work if done thoroughly and using robust methodology, but the cost would be considerable, potentially starting at around £35,000 to £40,000. My department would require expert advice on the scope of the study in order to be more precise about the costs, and the whole study itself would take many years. Jersey has a small population; therefore, while some of the rates of cancers are relatively high, the actual number of cancers in real terms are low. If researchers are to reach meaningful conclusions, any study would need to review cases over the last 10 to 20 years. There is no doubt that the Deputy’s proposed study has merits, but if this Assembly adopts this proposition it requires the department to identify funding from within its current resources. Therefore, it is a very complicated question, really, but quite a simple one: I would rather prefer to put those funds into screening, where it will - with good screening programmes - save lives. The bowel screening one we aim for next year. That must be a priority. The costs associated with this research are too high and also in terms of opportunity cost. We would have to delay, as I said, a much needed effective bowel screening programme. We need to be much more aware of prevention and screening. Therefore, I understand where the Deputy is coming from, but I would recommend that we reject part (b) and part (c) of the proposition.

**The Bailiff:**

Does any other Member wish to speak? The Deputy of St. Mary.

**10.5 The Deputy of St. Mary:**

I thank the Minister for Health and Social Services for speaking early. That is always useful to know what, if you like, the 2 sides of the debate think. It is a strange one, is it not? I am not going to really talk about (a) and (b) much, but mainly on (c). Her comments say: "While I and my officers applaud the conviction that underpins this proposition I must recommend that it is rejected." So, I agree with it but I cannot agree with it. This is a sort of paradox, is it not? I know where the paradox comes from. The Minister said so herself, that the money would have to come from her budget and, therefore, something else would have to go. It is a matter of: "If the money is available", as so often. Well, I would ask Members to ask themselves what we are doing sitting here? One of the things we are doing is to try to improve the wellbeing and the quality of life of Island residents. In this instance, that is done by protecting Island residents. If you are looking at relatively high levels of cancer, then one of the things you do is you find out why and then seek to do something about it. While I can agree with the Minister's emphasis on screening, if that is a proven method of early identification and then possibility of early treatment, that is fine, but this is a matter of collecting sound data, finding out why it is that these rates in different kinds of cancers, not only lung cancer but other kinds of cancer, are so high, relatively speaking. It is interesting when we compare the reluctance to find out why there are relatively high rates of cancer in Jersey we cannot find £40,000 to do this, but when it comes to the health of our economy, not the health of our people, then we know this, we know that and we know the other. I was just running through in my head that we know our G.V.A. (Gross Value Added) by sector; we know our G.V.A. by head by sector; we know the rate of inflation in 4 different ways, calculated in 4 different ways, to inform different kinds of decisions depending on whether they affect pensioners or people without mortgages or the general population and so on and so on. We really do take a lot of trouble in certain areas to collect data. I remember I think it was the Minister for Treasury and Resources patting ourselves collectively on the back, or patting himself on the back on our behalf or whatever it was, for the excellent data that in general this Island has and for the work of the Statistics Unit. Well, that is fine, but when it comes to cancer rates and why and, as the Minister said, going back 10 to 20 years and then looking at trends and so on to find out just what is going on, then oh dear, down comes the guillotine, we do not have the money. That is my first and main point. The second point I want to make is to ask the proposer about on page 9, third paragraph from the bottom, he talks about a national study in the U.K. - presumably about cancer rates and epidemiology study of those rates - is soon to be repeated and Jersey can take part in that with the additional benefits of a local study. He says quite explicitly that it would be a pity to miss that opportunity. There is the national study; we can piggyback and achieve a benefit from that. I would just like him to enlarge on that, whether that is not the radon study in fact that he is talking about. I am not quite clear. It would be good, obviously. It would be an additional argument if we could say that we were taking advantage of a national study and fitting in with that, as we are doing with the radon, which is an excellent thing and look at the value for money, £3,000 only, to find out the basic facts about the radon situation. My third point is on paragraph (b) where the Minister is digging her heels in, I think, unnecessarily. She says that (a) is redundant. Well, that is fair enough, we will just vote for it because it is happening already. But on (b) she says that to undertake a campaign to increase public awareness of the dangers posed by radon gas (and presumably, of course, those are the dangers identified by the study under paragraph (a)) and then somehow she says we should not vote for that because we need to wait for the results of the study. But the campaign is dependent on the results of the study anyway. If the study says there is no risk, then there will not be a campaign. If the study says there is a risk there, there and there, then the campaign can be targeted to there, there and there, and I would add at effectively nil cost. We do have a Communications Unit. I do think their job is to communicate. If they cannot communicate to certain areas of the Island that they should get up and have a test done on their house, then they are not very good at their job. I would suggest that there is a nil cost there. It is within their tasks anyway so what is the problem? There is no cost and it depends on the results of paragraph (a) anyway. So I would urge Members to vote for (b) on that basis, and also for (c) because I really think that it is extraordinary that we are saying data is alright in some areas. We have an excellent

stats unit giving us that data, but when it comes to human health, the health of our residents, we cannot do it.

#### **10.6 Senator F. du H. Le Gresley:**

I only really wanted to speak in support of Part 3 of the Deputy's proposition. It strikes me that we should be doing exactly what the Deputy is proposing. I am surprised that the Minister has found reasons to reject it. It is always very easy to come up with, and I am sure she did not do this on purpose, something quite sensitive like the bowel screening programme as a reason that this would be shelved, if you like, if we went ahead with this research. It is quite an emotional subject. We know that the Minister told us that 15 people died from this last year and obviously we are going to be in our own minds thinking: "Well, can we afford not to do bowel screening?" But I would say that we now have a pan-Island health protection officer and this is a golden opportunity to share this research with Guernsey and the costs, of course. If we have a pan-Island health protection officer, surely we can do a pan-Island research project funded in equal parts by both Islands. That would halve the cost. I am just looking at the budget for Health and Social Services. They have a budget or net revenue expenditure of £193 million, of which just over £2.173 million is for public health strategies. It strikes me that if we can negotiate with Guernsey, and no reason why we could not as we have a pan-Island health protection officer, we are only looking at a really very small percentage of public health strategy budget to be used to pay for this piece of research. It is a fact that using the figures in Deputy Le Claire's report, the average death from cancers over the period 2005 to 2009 was 207 per annum as the average. Now, to me, that is a very significant figure and I am sure we are all aware of the concerns that a lot of Jersey residents have, understandably, because of our proximity to the Cap de la Hague plant. Personally, I think I would really welcome this research and I am sure our neighbours in Guernsey would, too. I would say to the Minister for Health and Social Services would she reconsider Deputy Le Claire's proposition in the same way as the Deputy of St. Martin asked the Minister for Economic Development just now to reconsider, because I do believe that this piece of research would be of great value to both Islands. If we can share the costs, in relation to a budget of nearly £200 million it does seem to me that we should be going ahead with this piece of research and I hope Members will support it.

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

It is wholly understandable that people would like to understand what caused a friend or loved one to contract cancer, and equally to do what they can to stop others contracting this particular horrible disease. There is, however, still a great deal of uncertainty surrounding what causes cancer and the different types of cancer. In fact, I can remember quite vividly mention being made of bread, bacon and a whole other range of foods that were attributed to cancer, and this is part of the problem. Although science is progressing and is far more able now to deal with the effect of someone contracting cancer, it is still difficult - nigh on impossible - to identify what caused that initial cancer outbreak. I believe that part (c), albeit well intentioned, is trying to seek to do just that where others cannot and have not been able to do so as yet. I pick up the point that Senator Le Gresley made about Cap de la Hague. Perhaps, yes, we should be concerned, we are 10 miles away from it. How are we going to identify the impact or possible effects of Cap de la Hague against radon gas? Both are unseen, totally invisible. How are we going to determine which poses the greatest risk? This is the problem with the sort of proposal that is being put in front of us. What is clear - and I believe that the Minister for Health and Social Services has already mentioned this - is that there are opportunities where we can affect the incidence of cancer with advanced screening and the advances in technology that are available to us that deal with something that is known and is proven and is experienced to help. I think that it is absolutely right that the Minister for Health and Social Services says at the moment that is where we need to concentrate all of our efforts and all of our resources.

#### **10.8 Senator S.C. Ferguson:**

I think one of the problems is that this proposition is conflating radon and cancer. There should perhaps have been 2 propositions. This is one of the reasons why we need the patient information database to be set up under P.136 and the primary care set-up, because we have some statistics here.

[15:00]

Well, they need more analysis because what cases are from families who have been here for the last 1,000 years? What cases are from recent immigrants? What cases are from longer term immigrants who may have been subjected to childhood conditions encouraging the development of various cancers? There may even be hereditary factors. We have not looked at that side of it yet and until we can confirm or eliminate radon as being a problem in the Island, which we cannot until the results of the recent health tests that the Health Department are undergoing, until we can say: “Radon, we do not have enough here, we seem to be coping with it, it is not a problem” or: “Yes, it looks as though it could be a problem”, until we have looked at the background to the data we cannot really start trying to say why we have the cancer rates until we have looked at the various factors that may be causing it. So I agree with the Minister for Health and Social Services on this and I think also to start having a campaign to increase public awareness before we have more of the evidence and more of the facts is just scaremongering and I do not think that is right. I would agree, as I say, with the Minister for Health and Social Services’ approach to this.

#### **10.9 Connétable A.S. Crowcroft of St. Helier:**

I must say, I am very disappointed by the comments of the outgoing Minister for Health and Social Services and Minister for Education, Sport and Culture. I say outgoing in the sense that their terms are coming to a natural end. They have, as Senator Le Gresley pointed out, between them an enormous budget and to say that they do not support the extremely small amount of funding that Deputy Le Claire is calling for I think is extremely sad. It is one of those cases, I think, where the Back-Bencher feels quite rightly that unless a plan is formulated by the Council of Ministers or by Ministers it simply has little chance of getting supported in the States. The last speaker’s comment about scaremongering is ... I do not know whether Members were listening to the radio this morning, but if what Deputy Le Claire is doing is scaremongering then so was the radio this morning. The fact is we are trying to raise awareness about the dangers of radon gas and the need to take it more seriously, so it is entirely wrong to say that this proposition is scaremongering. I suspect Deputy Le Claire can speak for himself, but he must be feeling a certain amount of frustration as his career, at least for the time being, comes to an end to hear these kind of obstructive and shaking-out-of-the-pockets reactions from Ministers, as I say, with enormous budgets. It seems to me that this is an entirely reasonable proposition. If we support it today it sends out the message that we as an Assembly take all causes of cancer seriously. Deputy Le Claire is not the only Member of the States who is concerned by the number of people who are known to us who contract cancer. I will certainly give it my support and urge Members not to be put off by the comments made so far by the Ministers.

#### **10.10 Deputy R.C. Duhamel:**

I did think that the Health and Social Services Department was moving into a brave new world where we told everybody of the merits of preventative health measures as a way to invest to save. It strikes me that both ... well, not both because there are 3, all 3 items that are being put forward by Deputy Le Claire are potentially supportable in that context. I certainly support (a) and (a) will be done in any event, I suspect, because we have already done an element of work. It has been agreed that it needs to be updated. It is an ongoing piece of theoretical research that needs to be kept in that particular state. (b) on the other hand, to undertake a campaign to increase public awareness of the dangers posed by radon, I think perhaps the Environment Department can help in this instance. Members will know that the building bylaw requirements in respect of radon protective measures has been extant since 1997. We have had building bylaws requiring that all

new dwellings do have radon protective measures built in at the time of construction. Those measures are 2-fold, primarily: one is to provide a radon-proof barrier within the ground floor construction, generally a polythene sheet, and secondly the provision of a sump below ground supported floors that will allow radon-laden air to be extracted from beneath the building should the barrier be found not to be effective. These measures have been taken, as I said, since 1997 on new houses and the department estimates that 7,500 houses out of the total building stock of round about 38,000 houses has been treated in this way. I think that (b) could possibly be voted against but quite adequately taken up as an additional requirement or brief by the Eco-Active programme within the Environment Department. We have been supporting such measures as smoke alarms and what have you, and I think there is certainly a body of work that could be incorporated within the Eco-Active scheme to perhaps do the thing that Deputy Le Claire is asking for to increase public awareness of the dangers potentially posed by radon gas. I will certainly, if I have anything to do with the department in the future, take that into account. Part (c), as a number of other Members have already indicated, is something separate and I think again we would want to be doing this in any event. That is to commission and publish an independent expert's report into why Jersey has the cancer rates that it does. It is not saying, although it is within the same report, that we are only going to look at cancer rates that are potentially caused by the inhalation of radon gas, but it is looking at all cancer rates across the board. Again, from an environmental health perspective, I would have thought that will be something that we would wish to do, possibly are doing, and would continue to want to do in the future. On that basis, I think I am going to support (a). I am going to pick up as far as possible (b) under the remit of the Environment Department, and I shall be supporting (c) as well.

**10.11 Deputy A.E. Jeune:**

Senator Ferguson was absolutely right when she asked how do you analyse a lot of this data that you get in relation to cancers. For example, in the Minister for Health and Social Services' comments she makes reference to 15 cases, I think, of bowel cancer last year. But how old were those people, how long had they lived here, how long had they had the problem? There are so many different things, and I can remember over the years many different trials and research that has been done. Ovarian cancer: there was a belief that this could very often be familial. The Anglo-Japanese trials for breast cancer: they thought there was a relationship to fish. There are so many. I can remember there was another one, stomach cancer and white bleached flour. You can go on and on. The point is that we should leave this kind of thing to the Health Department to decide to take it forward rather than us doing it in here.

**The Bailiff:**

Does any other Member wish to speak? Very well, I call upon Deputy Le Claire to reply.

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

It is a great pity that Members have not given this a little bit more thought or study that have opposed it because taking up the last sentence of Deputy Jeune, who supports everything that Senator Ferguson said, it really enables me to break a little confidence inasmuch as when I discussed my radon study with the Medical Officer of Health, she also said would it not be great to conduct what we really need, an epidemiological study in relation to cancer. I did not even know there was a word, let alone how to pronounce epidemiological or epidemiology, until the Medical Officer of Health informed me of that word. So when Deputy Jeune speaks about leaving it to the Health Department to tell us rather than Deputy Le Claire, all I would say in breaking a small confidence is that this was not my bright idea. This was the idea of the Medical Officer of Health. The problem is the Medical Officer of Health has finite resources. I am not asking and nor are they able to conduct an epidemiological study of the high incidences of cancer because they do not have the skill sets and we do not have them in the Island. We do not have them in Guernsey. What an epidemiological study and a scientist or a doctor who would come to do that work would undertake

is a body of analysis that would determine exactly the sorts of things that Deputy Jeune and Senator Ferguson outlined. They would look at the cancers. They would look at the history. They would look at what they have been eating. They would look at how long they had been living here. They would look at the hereditary issues and they would then be able to extrapolate from those various studies and those various people an analysis, scientific or statistical evidence-based analysis, as to why these cancers are caused rather than let us blame it on the fags and booze. So I would just say to Deputy Jeune and Senator Ferguson, with the greatest of respect, what they are saying I should be doing is exactly what I am doing. In part 3, not to be confused with parts 1 and 2, or (a) and (b), I am asking for an independent expert to come to Jersey and to do this work. It is a pitiful amount of money when you look at the cost to the community of cancer. Now, I do not need to stand here and lecture people about the economic impacts of a disease or a history of diseases, a high level of diseases, in a community. It may not be statistically higher than some parts of the United Kingdom, but it certainly is higher for certain cancers than the southwest of England, and 207 deaths a year in my book is 207 too many. I would ask Deputy Jeune to listen. I know that my last speech ... when I took up the issue of a tobacco strategy on the Health Committee, it was killing 200 people a year and at the time the officers with limited resources and the politicians, with limited patience wanted to move on to the next item on the agenda. It was only because I said we would not allow somebody to walk through the streets shooting 200 people a year and ignore it that they stopped and allowed me to go off with the officers, the Medical Officer of Health and his assistants, the doctors there that wanted the strategy but did not have the support of the politicians. When they had the support of the politicians and when I was targeted to give them that support and act as a conduit back to the committee, which I did, they were freed-up to bring their expertise to bear upon the problems. The tobacco strategy has been hailed by the subsequent Medical Officer of Health, who has now gone, as the greatest benefit to Island health. Now, nobody wanted to touch that at the time - it was a pitiful amount of money - because there was no political support. The experts, as in this case, are chewing at the bit that it is work they want to do, but in reality they are telling us quite clearly it is not work they will be doing. It is work of an independent expert. It is just that they do not have the money and, more importantly, as with many, many things in Jersey, they do not have the political support. Now, if it was £50,000 for a statue because somebody was coming to the Island, you can bet your bottom dollar we would find £50,000 for that. If it was £50,000 to announce whether or not we are going to have double-decker buses or a trial for those, whether they would be a good idea, we would find the money for that. If it was £50,000 to make better use of compost material, we find £850,000 to £2.5 million for that every year. Trying to be positive, I would like to return to the top of the Order Paper. The Minister for Health and Social Services is quite rightly defending the position of her health experts. They only have a certain amount of money and although they want to do this work they have been ... it is a bit like the old-age pensioners.

[15:15]

They were promised a deal: do you want eyesight provision or your toes looked after or ... or shall we do all 3? Then we went back to them and said: "Oh, we can only do one." This is the same sort of thing. If we provided Health with the money ... it is a shame Senator-elect Deputy Gorst is not here because I would ask him for the money. He normally has loads of it to pass to the Minister for Health and Social Services. I would ask him to give her £50,000 and sort it out because it is her officers that want to do this work. It was a fantastic suggestion (and I really do thank him for it) of Senator Le Gresley's that we could take advantage of a pan-Island health officer, split the costs among the community and have some analysis in respect of this long-term analysis that is needed. At potentially no cost - and a well set out argument by the Deputy of St. Mary as usual, hit the nail on the head - we have a plethora of statistical information coming out of our ears about G.V.A., G.D.P. (Gross Domestic Product), X.Y.Z. and L.M.O.P. but we have nothing on health. Anything to do with money and: "We need to go on independent advice and let us hire some more people to give us independent advice and we will go with that." But when it comes to people dropping down

dead in our community, we will blame it on the fags and tobacco and the fact that they were not looking after themselves 30 years ago, even if they are only 9 years of age. If tobacco causes cancer for people over generations, then how can you blame tobacco as the cause for people that are dropping dead before they have lived that term? It is not scientific. It is not realistic. This is a very, very small amount of money. Let us be honest, they are doing (a) anyway. It is £3,000. Maybe they will give some indication that we are going to support part (a) because we are doing that anyway. All he is doing is he is just ... I had the idea. I did not know this study was going along. To get back in specifics in relation to page 9, I was talking about the study that was occurring on the U.K. or Great Britain scale that the Channel Islands was able to piggyback upon, so they are doing that work anyway. To give me some kind of recognition or to give me some kind of support for something that they have already decided to do I think is ... it is atypical of why half of me is wondering what on earth I am doing in here. Part (b) was to highlight studies in relation to the study they are already doing as highlighted quite credibly and intelligently, as usual, by the Deputy of St. Mary hitting the nail on the head. It is statistics. It is information. We need the information. We need to understand. We need to make decisions based upon better information. It relates to our G.D.P. It relates to our G.N.P. (Gross National Product). It relates to how big a hospital we build and what kind of a hospital we build and what kind of technology we build and what kind of services we provide to the community in relation to that technology that we buy in for. It is not just about screening, we should be doing all that anyway, it is about how we plan for the future and what piece of equipment we buy. In my proposition I told Members in the back there about finance and manpower implications, you see these robots that work and they cost a lot of money, maybe £2 million or £3 million or whatever, for this robot to highlight where the areas of cancer are. But they get all of the cancer out, so the investment is in making sure that that patient does not return within 6 months at a cost of £100,000 for representing themselves. This is an investment to save money. We could put the Communications Unit to work in a very, very positive way in a pan-Island perspective. Yes, hats off to Deputy Duhamel, the Minister for Planning and Environment, a very environmentally-conscious chap. Hats off to the building bylaws that we have been doing since 1997. So we are saying basically we must do this with all new buildings since 1997. Why must we? We do not have to do it for this proposition. Why do we have building bylaws that make us do this? Why do we have 7,500 homes in our community now that have had all these things done to them and we are ignoring the rest? What is it, people that live in those houses do not get affected by those gases or it is only the new houses that require us to take steps? There is, in fact, a great number of houses in the community that need to be tested and likely as not most people do not have the kind of money that we are talking about here, £94 to put in one monitor when you need 2. They may not be aware of the topic or the subject anyway. They may not be focusing upon our activities in the Assembly this afternoon. I am asking us to not only get behind the Minister for Planning and Environment in promoting better building regulations and taking advantage of Eco-Active, I am asking us to do it with the States Communications Unit as well. Let us do it with Scrutiny if we cannot. I am very pleased to receive his support on part (a) and part (c) but I would like to ask him to reconsider, seeing as he is going to support part (b) anyway independently, that he also collectively supports me on part (b). Part (c) is in particular in relation to the incidences of cancer. In finishing, I would just like to say how very pleased I was to receive such strong support from the Constable of St. Helier. Over the years I have worked with him on a number of issues and he has always given me credit where credit was due and always taken credit away from me where he thought I did not deserve it. He has always been straight with me and he is being straight with me this afternoon - I am not scaremongering - and I think he is being straight with everybody else as well. It is right I am not scaremongering; I am trying to do this rationally. I am not running around saying: "We have all got cancer, we are all going to die." No, I am not saying that and I was not saying that when we brought through the tobacco strategy either. I am not going off the rails; I am staying right on target. This is what the Medical Officer of Health and her team would like us to support her with. They do not have the money and because they need to do the bowel cancer screening they do not want to sacrifice that (which they can

achieve themselves and be productive themselves) because of money we give to some independent expert from outside of Jersey, because we are practically outsourcing their task then, are we not? Or is that why we have got a pan-Island-wide health expert now? I do not know. I think if you have got the people, and the current Medical Officer of Health and her team are excellent people, then we should get them to work on as many things as possible that they can do and give them the money. Where they have identified something they want to do that they do not have the expertise for, nor the money to do, but they set it out quite clearly for us to understand in my proposition, we should get behind them 100 per cent (and everybody who has contracted these diseases and who will contract these diseases in the future) by giving them a better answer than: “It is fags and booze.” I ask for the appel, please, Sir, in 3 different parts.

**Deputy A.E. Jeune:**

May I ask a point of clarity on the summing up of the Deputy? I would just like to be sure that I have understood him correctly in that he has said that the Medical Officer of Health has asked the Deputy rather than her Minister to get the additional States funding for this research. Am I correct in that understanding?

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

The position was that when I spoke to the Medical Officer of Health about radon gas levels and cancer incidences in Jersey we had a long discussion, which I was grateful for, about why cancer rates were presenting themselves in Jersey in the first place. It was from a discussion with the Medical Officer of Health (at the time Acting Medical Officer of Health) that I began to understand that, together with a study for radon which they were going to embark upon, what was needed was an independent expert’s report into an epidemiological study of cancer rates in Jersey, something that they did not have the money for at this time and something that if they suggested they put money towards; (1) they do not have the expertise; and (2) they would be sacrificing the work in relation to the bowel screening. At no time did the Medical Officer of Health seek to get around or in any way subvert her process with the Minister. She explained to me reasonably and rationally, as a Back-Bench Member that was seeking information, that while she would love to do this work I would have to seek support for it myself through this Assembly. I could not go to her Minister and she had her own body of work. This is an independent expert’s body of work that will work well with what they are doing, funded, hopefully, by this Assembly’s approval of this proposition. If the Minister for Health and Social Services comes back in the Business Plan or in next year’s plan (as she is wont to do when she runs out of money) for £50,000, I am certain, Members having given support to this this afternoon, she will be able to give her another £50,000 for this study or at least £20,000 to get it going and funded over the next 3 or 4 years. The Medical Officer of Health was not trying to subvert her position, nor was I asking her to. She was supporting me as a Back-Bench Member. I hope that is quite clear to the Deputy.

**The Bailiff:**

Very well, thank you, Deputy. The appel is called for in relation to the proposition of Deputy Le Claire. I invite Members to return to their seats and the vote will be on the 3 paragraphs separately. The first vote is for paragraph (a) and I invite the Greffier to open the voting.

<b>POUR: 34</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 1</b>
Senator T.A. Le Sueur		Connétable of St. Brelade		Deputy A.E. Jeune (B)
Senator P.F. Routier		Connétable of St. Peter		
Senator S.C. Ferguson		Connétable of St. Mary		
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				

Connétable of Grouville				
Connétable of St. Saviour				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**The Bailiff:**

Very well, then we will move to paragraph (b) and the Greffier will open the voting.

<b>POUR: 18</b>	<b>CONTRE: 18</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier	Senator T.A. Le Sueur	
Senator F. du H. Le Gresley	Senator S.C. Ferguson	
Connétable of St. Helier	Senator B.I. Le Marquand	
Connétable of St. Lawrence	Connétable of St. Ouen	
Deputy of St. Martin	Connétable of Trinity	
Deputy R.G. Le Hérisier (S)	Connétable of Grouville	
Deputy J.A. Martin (H)	Connétable of St. Brelade	
Deputy of Grouville	Connétable of St. Saviour	
Deputy J.A. Hilton (H)	Connétable of St. Mary	
Deputy P.V.F. Le Claire (H)	Deputy R.C. Duhamel (S)	
Deputy S. Pitman (H)	Deputy J.B. Fox (H)	
Deputy K.C. Lewis (S)	Deputy of St. Ouen	
Deputy of St. John	Deputy of Trinity	
Deputy M. Tadier (B)	Deputy A.E. Jeune (B)	
Deputy of St. Mary	Deputy A.T. Dupré (C)	
Deputy T.M. Pitman (H)	Deputy E.J. Noel (L)	
Deputy T.A. Vallois (S)	Deputy A.K.F. Green (H)	
Deputy M.R. Higgins (H)	Deputy J.M. Maçon (S)	

**The Bailiff:**

For paragraph (b) there are 18 votes pour and 18 votes contre and, therefore, under Standing Orders, paragraph (b) is lost. Then we turn to paragraph (c) and the Greffier will open the voting.

<b>POUR: 21</b>		<b>CONTRE: 17</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator T.A. Le Sueur		
Senator F. du H. Le Gresley		Senator S.C. Ferguson		
Connétable of St. Ouen		Senator B.I. Le Marquand		
Connétable of St. Helier		Connétable of Trinity		
Connétable of St. Lawrence		Connétable of Grouville		
Deputy R.C. Duhamel (S)		Connétable of St. Brelade		
Deputy of St. Martin		Connétable of St. Saviour		
Deputy R.G. Le Hérissier (S)		Connétable of St. Peter		
Deputy J.A. Martin (H)		Connétable of St. Mary		
Deputy of Grouville		Deputy J.B. Fox (H)		
Deputy J.A. Hilton (H)		Deputy of St. Ouen		
Deputy P.V.F. Le Claire (H)		Deputy of Trinity		
Deputy J.A.N. Le Fondré (L)		Deputy A.E. Jeune (B)		
Deputy S. Pitman (H)		Deputy A.T. Dupré (C)		
Deputy K.C. Lewis (S)		Deputy E.J. Noel (L)		
Deputy of St. John		Deputy A.K.F. Green (H)		
Deputy M. Tadier (B)		Deputy J.M. Maçon (S)		
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				

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

Could I just thank everybody that took part in the debate and offer my best wishes to the Health Department and the officers.

## **11. Land Development Tax or equivalent mechanisms (P.147/2011):**

### **The Bailiff:**

We come to the next matter on the Order Paper which is P.147 - Land Development Tax or Equivalent Mechanisms - lodged by the Deputy of St. Mary and I will ask the Greffier to read the proposition.

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

(a) The States are asked to decide whether they are of the opinion to agree that, to further the aim of a fair tax system, a land development tax or an equivalent charging mechanism or mechanisms of any kind should be introduced to raise revenue for the States from any significant uplift in the value of land when it is re-zoned and/or when planning permission is granted (b) to request the Minister for Treasury and Resources to bring forward for approval the necessary legislation as part of the Budget 2013 proposals to give effect to the decision (c) to agree that it is the wish of the Assembly that the proposals in paragraph (a) should also be designed to have the effect of capturing uplifts in the value of land arising between the date of this debate and the coming into force of the necessary legislation as part of the Budget 2013 and to request the Minister for Treasury and Resources, having sought appropriate advice, to take the necessary steps to achieve this objective if possible (d) to request the Minister for Treasury and Resources, in consultation with the Minister for Housing, to bring forward for approval a method for ring-fencing the revenue raised for the provision of affordable housing, whether for renting or for purchase.

### **11.1 The Deputy of St. Mary:**

This proposition is about basic fairness. When land is re-zoned or receives planning permission its value increases massively and this windfall goes only to landowners and only those landowners

whose land is developed. I am asking Members to support a source of revenue which very, very, few people would quarrel with. In fact, the only question really is why has this not been done before, which is a question we quite often hear in this Chamber. It is really a straightforward issue of social justice and I think it is useful if Members just think how we are seen from outside this Chamber, whether we can simply (in this case) just find this source of revenue which would then mean that their tax burden would be correspondingly reduced.

[15:30]

There are technical aspects to this proposition which the Minister for Treasury and Resources has highlighted in his comments but these should not distract us from the basic fact that, in essence, this is a simple matter of grasping a long-ignored nettle. The issue is how do we raise money more fairly? How do we raise the revenue we need more fairly? We know that the other taxes, G.S.T., the highly controversial “20 per cent Means 20 per cent”... and so it goes on. The issues around 1(1)ks: will they leave, will they stay, and so on. What I am suggesting here is a fair way of raising some revenue and we are not talking peanuts. The Oxera study in 2005 looked at the uplift which occurred as a result of the 2002 Island Plan and their calculations were a £32 million uplift more or less immediately, a further £18 million down the line, £50 million. In my maths, 50 per cent makes £25 million for the States and £25 million for the landowners, which is not bad going, and that is not to be sniffed at. We could buy several epidemiological studies for £25 million and lots of other things too. The increase in land value is between 80 and 200 times when land is re-zoned and this gain goes to certain - a very few - private individuals as a result of public policy and public decisions: public policy about population and public decisions about where to locate housing. This gain is completely unearned. The spur to this proposition was the Island Plan debate and the run-up to the Island Plan debate and the zoning of this field and that field and the other field. There were, in fact, 10, no, 11 amendments which changed, or tried to change the zoning of this or that piece of land or which would have had that effect in one way or the other. There are 3 points I want to make about that: the first is that it should make States Members feel uneasy when they are voting on a field this or a field that which can make or unmake a millionaire in the time it takes to push that button on our desks. That is the first thing, just that sense of unease that I think we should feel and if we do not feel then that is a bit odd, but I do appeal to Members’ sense of morality there. The second thing, of course, following from the first, is the shadow of corruption. I am not saying it is real but I am saying that it is perceived and these massive changes in value do cast a shadow on all the decisions we take and which Planning Officers take or make recommendations on. It is very hard to disentangle these decisions in a small community with a small land area from these massive sums of money. The third thing I want to highlight about the Island Plan debate is where the Minister for Treasury and Resources in his comments, last paragraph of page 3, says about the Island Plan: “It contains no new re-zoning of greenfield land for residential development that would deliver the significant uplift in land values the proposition refers.” Therefore, this is a matter that can be left to the “later” pile or the “never” pile because there was no significant re-zoning. Well, I would question that. Once H1 and H3 are sorted out my understanding is that that can trigger the coming back to the States of certain sites. In any case, private Members also can bring propositions to “solve the housing crisis” and zone this or that field, but it would probably be done by the Minister. Okay, the States owns land and we have been told that we can develop it but we all know how long that might take. The fact is there is a very real chance that land, as a result of the reviews of H1 and H3, will come back to the House for zoning. I would say most strongly, we missed the boat in 2002 with reference to £50 million-worth of uplift, we missed the boat in 2008 with reference to 60 vergées of re-zoned land that was re-zoned on the hoof, which the Minister for Treasury and Resources is saying will not happen but it happened. I am saying that we must not miss the boat in 2012, 2013 which is when the next re-zonings might happen. States Members’ views on this, right across the board, are that we have to do something and it is just instructive to read out what the Minister for Treasury and Resources (who unfortunately is not with us today) says in page 6 of my report, paragraph 20: “I am fully committed to the principle of redistributing

some of the windfall profits from land re-zoning.” Fully committed and, indeed, in his comments he says that he wishes to investigate this matter. So he will be voting for paragraph (a), I hope, with all other Members. By paragraph 23 on page 6 we have Senator Cohen: “I want to be very clear, I do not want to see new taxation, with the possible exception of a greenfield rezoning levy.” Then we have Constable Refault who said in the debate on the Island Plan: “I am not in the business of making millionaires.” Amen to that. Then, more strikingly, we have the Constable of St. Clement who is always good for a quote. He said, most picturesquely - and I am just looking for it, nearly there - who said about Longueville Nurseries (it is so nice to quote the Constable of St. Clement): “I think we need to know if we are going to pay for the value of unused agricultural land of a few tens of thousands of pounds or are we going adopt this amendment first and pay £8 million, £10 million, £12 million, £15 million, £20 million? I think really we need to know. I do not exaggerate this value because if we do re-zone the site ...” dah, dah, dah “...it would have been zoned for Category A housing and Category A housing includes first-time buyer homes that sell for £400,000 to £450,000 or it might be open-market sheltered housing possibly, which is £400,000 plus. This is going to be an amazingly valuable site. That is what we are talking about, a massive financial bonus for the landowner more than most pools wins and even the vast majority of lottery first prizes. It is wrong that we should be asked to do this, to provide riches beyond the dreams of most to someone for doing nothing.” That is the moral taste, if you like, in a nutshell. I am fairly sure I remember that both Senator Le Main and the Constable of Grouville are on record, either in writing or orally, in this Chamber as supporting the concept of tackling the land value issue and many other Members on all sides of the House, particularly in the Island Plan debate, shared this view. So why for years has nothing happened? It has been tabled. It was in the documents around the rural strategy in 2005 that a study would be done. It was agreed by the States and, indeed, some work has been done by Oxera and I will refer to that later. But nothing happens on the ground. The tax is not there and the question is why. Well, here is a clue. On 28th June Deputy Southern lodged a proposition, Medium Term Financial Plan Minimum Lodging Period, and in paragraph (a) he said that the law should be changed to provide that the financial plan should have a minimum lodging period of 12 weeks. The Minister for Treasury and Resources read the proposition and thought that 12 weeks was too long. He put an amendment in 2 weeks later saying to substitute the 12 weeks for 9 weeks and he argued the case to change it from 12 weeks to 9 weeks. Why am I referring to this ancient history of what happened at the end of June? Because my proposition came to the States 3 months ago - this proposition - and I remember the Minister for Treasury and Resources getting up and saying: “Oh, but you cannot do it by 2012.” There was nothing stopping him putting an amendment to make it into 2013 so the debate could continue. There was nothing stopping him sending me an email saying: “By the way, 2012 is a bit unrealistic, would you like to amend that to 2013?” because in the one case he was happy to amend it and in the other case he was not. I think that is a clue as to why this gets nowhere, there is not the will. Here is another clue, S.P.G. (Supplementary Planning Guidance) affordable housing, dated August 2010 and the chart on the back of my proposition comes from this S.P.G. and it talks about how to deal with the affordable housing issue, the 12.5 per cent, the 20 per cent, they are all in here, August 2010. Yet when we came to the debate months and months and months later this had not been sorted. This was a mess. The Attorney General and everybody gave advice around this that has not been resolved. I wonder why. It just seems to me that this is a kind of train-wreck area. It is an area where we do not want to go. The third point on this, clues about why we do not get anywhere, the first thing we debated this morning, this thing about motor insurance and the Health Department getting their mitts on £0.25 million at nil cost to drivers in Jersey. Why has that not happened before? £250,000, thank you very much. A year and it had not happened because maybe nobody noticed, nobody picked it up and maybe I just have in my head a picture of the new hospital director saying: “What about this? Do you not get this? What about this because in England we ... oh, how might this yield? Oh, round about £0.25 million. Let us look at this more closely. Let us consult. Let us do it. Thank you very much, £0.25 million.” But in this case when we are talking £25 million, or whatever, if we are set to raise that, we are talking many millions of pounds,

nothing happens and it has been on the table for years. I do think there is an issue of political will. Now, how would the tax levy work? The reason that I struggled with this notion with a tax or levy on land value is because I think I had the misconception (I am sure it is shared by many) that this must drive up the price of housing. If we put a tax on it then surely the end price goes up. That is why I dug down into the Oxera documents to see how they dealt with this issue. Oxera answered the question very clearly, their work is clean and understandable, and I quote it on my page 5, paragraph 15: "The value of the land that is to be used for housing is determined by the difference between what the resulting house or flat can be sold for and the costs of transforming the land into housing." In other words, it is the end price that drives the whole process and then you construct the house, you pay your costs and what is left is the value of the land underneath. I did circulate this morning, and I asked Members to look at this, a little chart of what comes at the last page in the Supplementary Planning Guidance.

[15:45]

I want to take Members through it because this shows how this tax works, how development works and it was news to me. The first several lines... and I have starred the sub-totals on the right-hand side. In this example given by the Planning Department we see a proxy development in any street, any Parish and the gross development value is the first figure and it is worked out on the basis of the kind of properties times the value per square metre and the value of the development is £49,700,000, gross development value. It then adds up all the construction costs, £31 million or so; the fees of all the different professions, £3.5 million; the profit at 15 per cent, £7.5 million; cost of selling the properties, £1.25 million; finance costs plus the borrowing, £1.5 million. The total costs of this fictitious development, £45.5 million and the difference between the costs and the value, the gross development value, is the residual land value and that is what this proposition seeks to tax. It is that way round; it is the value of the house backwards to the value of the land. In normal circumstances development gains tax this tax, Land Development Levy, has no impact on house prices. That is the first point that Members must get, that this tax will not increase house prices at all. They depend on other factors like the wealth of the people who can buy the houses and scarcity. The second thing is how does the tax work? Well, it can be done in 2 ways. There are others but the 2 principal ways: either by the developer maybe at planning permission stage, you get your planning permission: "Oh, and by the way, that will be so much." Because the developer knows that he is going to have to pay that levy, he, when he buys the land, says to the landowner: "I can only afford to pay so much because down the line I am going to have to pay so much tax." The landowner pays the tax by getting less for his land (I am saying "his" all the time but his or her). The other way of doing it is that the landowner pays the tax when he/she sells the land. Those are the 2 basic methods. The comments of the Minister for Treasury and Resources; I set those things out because then it is easier to follow when it gets a little bit technical. The first thing is where he says on his page 3 about the problems of doing this and he calls them the issues identified by Oxera. The last 3 bullets are practical issues; the "how do you do it". What would constitute a taxable event? How would the taxable amount be calculated? What would the tax be payable? All these are dealt with in my report; they are not substantial objections at all. The first bullet is about the effect on the Jersey housing market and the fact the Jersey housing market is limited. What is the J.C.R.A. for if not to deal with anti-competitive practices, not to deal with monopolies whereby rents and sale prices can be controlled? Those are the detailed comments and they do not stack up. What they are is a wish list for doing nothing and we have heard, of course, examples of that today in other debates. Of the big points he makes, the first is timescale. He says: "We will get to this later. We cannot do it by 2013 and it is much better to do it as part of a bigger package." I have already mentioned the issue of political will, which I think is what it is really about. I would remind Members that Oxera have done a lot of this work already. They have written 2 substantial reports. Kelvin MacDonald has written another 60 or 70 pages for the Planning Department about affordable housing which includes consideration of land development tax and there has been work on the Supplementary Planning Guidance which somehow was not recognised in the Island Plan

debate. A lot of the groundwork has been done and I would remind Members when we hear this mantra of: "It is going to be very difficult to do it in 11 months" of the £100 note which we debated earlier and which the Minister for Treasury and Resources and his team knocked-up in 6 months. What is the difference between setting up a £100 note and setting up a tax where a lot of the groundwork has already been done? Yes, he will have to consult, but the fact is if the will was there it could be done. The second point is there is no urgency because of this business with the Island Plan and I repeat what I said before, because it is a very important point, we missed the boat in 2002, we missed it in 2008, we missed out on millions of pounds of revenue that would have been pain-free and we must not miss the boat again. Now, to the Minister for Treasury and Resources' main objection, which is that planning obligation agreements do the job anyway ... they do the job anyway. He is on record as saying that planning obligations and development gain tax, or this tax I am suggesting, are the same. The Deputy of Grouville (this is Hansard) 21st September 2009: "I do but I was not talking about planning gain, I was talking about windfall taxes." Senator Ozouf: "It is the same thing." It is not the same thing. Planning obligation agreements and land windfall tax are not the same thing. Oxera makes this quite clear when they say that if you use planning gains then the developer does not know in advance how much he/she will have to pay. Oxera says, paragraph 34 in my report: "Several issues arise in the context of using planning gains as a tax measure to capture uplifts in land value. Unlike a land development tax which is set in advance, the financial commitments imposed on a developer by a planning gain are likely to be largely unknown to the developer in advance as they are decided on a case-by-case basis. At the time of purchasing the land from landowners, developers, therefore, cannot fully factor the financial implications of the planning obligations into the bidding price." That is why it does not work as a method of capturing the uplift: "The only way for the charge to fall on the landowner is for the cost of the obligation to be known in advance." By definition, it is not, it is the result of negotiations. The developer does not know how much and, therefore, the developer cannot reduce the amount they offer to the landowner. There are other disadvantages, technical disadvantages, of planning obligations versus land development tax which I will not bore you with but they are there in the Oxera report and I can go into them in my summing up if people want to hear the further disadvantages of P.O.A.s (Planning Obligation Agreements) against land development tax. They are not the same. The land development tax does hit the landowner and there are advantages as against planning obligation agreements. Now, to the proposition itself, I just want to go through (a), (b), (c), (d) and explain why, what they are and why I should be taking them separately.

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

I am not sure we can necessarily take them separately, Deputy, because they interrelate, do they not, one refers to paragraph (a) and (c) refers to paragraph (a)?

**The Deputy of St. Mary:**

We shall see. The Minister for Treasury and Resources has returned, I am glad to see. Paragraph (a) is asking Members to agree that: "... a land development tax, or an equivalent mechanism, should be introduced to raise revenue for the States from any significant uplift in the value of land when it is re-zoned and/or when planning permission is granted." "To agree that it should be introduced", that is the general one. If you cannot stomach the timelines, you say you agree with the Minister for Treasury and Resources that it cannot be done in the time. If you agree with the Minister for Treasury and Resources there are problems with retrospective application, as in paragraph (c), and so on, then just vote for (a). Just send that signal to the Minister for Treasury and Resources, which he agrees with himself in any case because his comments say that he agrees and that he commits to review the land development tax option as part of the wider review of tax policy. The Minister for Treasury and Resources will be voting for (a) and I would hope that everyone else will, just as we voted for the radon study which was already under way. Paragraph (b), asking the Minister for Treasury and Resources is more specific. It says that this tax should be

brought forward by the Budget 2013. I have covered the matter of delay and political will. I feel that it is possible. I feel it is one of these back-burner jobs; it just sits around like the Police Authority which we waited 12 years for at vast cost to the Island in various ways. It is another of those and I am just saying do it by Budget 2013. If Members feel that it is not possible, fine, please vote for (a) and disagree with (b). Paragraph (c): I agree that it would be consequential on (b) that if the Minister does bring proposals for the Budget 2013 that they be designed to capture uplift from the date of this debate. The Minister for Treasury and Resources says that I am asking for retrospective legislation and he said that I might not have considered human rights implications. But, in fact, I do in the report cover that and I do in the proposition say that he does this if he can, if after taking advice he finds that he can. But it is important that we send this message that we want to, that we intend to capture the uplift from now and the reason is quite clear and it is set out by Oxera, my paragraph 523 in my report: "If we do not signal this Assembly's intention to capture all transactions starting immediately, then end-users (that is, people who buy houses or flats) may end up effectively paying the tax and not landowners." That is the result of the economic agents not knowing in advance what is going to happen. If they do know in advance they will factor it in and that is why it is important to send that message in paragraph (c). Paragraph (d) is the notion that it would be a good idea to use the money that we raise in this way for the provision of affordable housing. As I say in my report, I do not usually support the hypothecation of revenue - saying this revenue comes from this and therefore must be spent on that - but I think in this case it is justifiable. There is a huge problem in Jersey with affordable housing and I think that it does make sense to go down that route. There is another good reason which is that Kelvin MacDonald (who I am informed is Professor Kelvin MacDonald, I am not absolutely sure about that but I think he is) in his extensive report to the Planning Department he has a chapter on the methods of delivering affordable housing. Under that chapter he has a section on development land tax: "One method of potentially overcoming some of these difficulties and of bringing a greater degree of certainty into the system..." [I am talking about certainty. If things are certain then it will be the landowner who ends up paying. If it is not certain, if it is negotiation between the developer and Planning Department then it will end up in a much more fluid situation] "...is to set some form of development land taxation which, in whole or in part, will be ring-fenced for use as a support for affordable housing."

[16:00]

A bit like Deputy Le Claire a moment ago: "It was not my idea, gov." Professor Kelvin MacDonald has said it already: "A statutory system of taxation to deliver affordable housing has a number of advantages, it brings certainty to the development industry in assessing the viability of potential schemes and it replaces the need for individual negotiations on a site-by-site basis. If set on a transparent basis, i.e. per dwelling or per square metre, then the income can be assessed in advance and it can be used not only for affordable housing but for other aspects of the impact of the development." There you have it; that is Professor Kelvin.

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

Sorry, Deputy, we are inquorate. I ask the Usher to summon Members into the Chamber. Yes, continue, Deputy.

**The Deputy of St. Mary:**

It is sad to go inquorate just before I quote from the great Winston Churchill and I owe this quotation to Deputy Le Claire: "Meeting the needs of the community", that is by providing housing: "should not lead to unearned windfall gains for fortunate landowners, public or private." With that I propose this proposition.

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

Is the proposition seconded? **[Seconded]** Deputy, it may just help if I just address your ... when you said you wanted the paragraphs separately I was thinking of the traditional method, for example, used by the Deputy Le Claire where one paragraph stood alone and they could all be taken separately. I think you could, as I think you have indicated, take (a) on its own and then clearly if (a) was rejected the rest falls away. You could take (a) and if that were adopted you could go on to take the others separately. What I meant is you could not, for example, if (a) was rejected, go on to take the others separately.

**The Deputy of St. Mary:**

If we agreed that there should be a land development tax and then said we ...

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

I think procedurally it is possible if you want to do that. Senator Ozouf.

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

This is the Deputy's second attempt on a land development tax and I do note and recognise that the Deputy has dealt with one flaw in the previous proposition, that of sufficient time. However, I am sorry to say that he has failed to recognise that there are other issues in the proposition and, in fact, has introduced another new aspect of the proposition which is problematic, notably retrospective application. I recognise, following decisions of this Assembly, the value of land which is re-zoned increases significantly and not only the developers but its landowners are made very wealthy as a consequence of re-zoning. I am fully committed to the principle of redistributing, of taking some of the uplift in re-zoning and to use that for wider investment in affordable homes and other purposes. In fact, I think it was me that brought forward the whole original proposition for planning obligations, the original 45-55 per cent planning obligation that solved the problem of the previous re-zonings that they did not have any form of planning obligation in them at all. That was my idea and it has worked. I noted with interest the Minister for Planning and Environment's question yesterday when he asked how many planning obligations had been used for various different developments. That was a good answer and the answer did not - no criticism - set out the value of the planning obligations for affordable homes in terms of the 45-55 per cent split. I believe that planning obligations are important. The only criticism, I guess, is that planning obligations could have perhaps gone further since they were introduced a number of years ago. Generally, in terms of tax, the correct way of progressing tax is through detailed research, solid analysis and that research and analysis should lead to the development of credible tax propositions which are laid before this Assembly. By all means, this Assembly should ask the Minister of Treasury and Resources to undertake that necessary research. What I do not believe that we can support is a proposition which instructs a Minister to bring legislation to support a particular measure when that research has not been done. I support property taxes. While the Corporate Services Chairman and I, I think, disagree on £100 notes, I think we agree that property taxes are an important part of tax-raising measures and certainly uplift in land is something that should be looked at. I am strongly of the view that the issue that the Deputy seeks to tackle, I think - which is the delivery of affordable homes and affordable housing - is being delivered. The new Island Plan seeks to deliver the affordable homes that we need by planning obligations. Progress has already been made in this area by the existing operation of planning obligation agreements. Research has shown that this appears to be a better and more far-reaching alternative that delivers affordable homes as opposed to land development taxes of which there were numerous examples in jurisdictions which we can draw experience from. The agreements do have the same economic effect as land development tax. The transfer of value from landowner to the wider community in terms of affordable homes economic advisers testify to this in their various reports that have been written on the difference between planning obligations and land development tax. So I should also say that I do not think that there is, in fact, an urgency to enact measures as the Island Plan does not contain any rezoning for greenfield land for residential development, as the Assembly has

approved. Clearly if the Assembly should - and indeed I believe it must - bring forward some greenfield or brownfield green house site development, then clearly we will need that arrangement in place; planning obligation or tax. But we do not have any re-zonings that we would need to deal with the tax or planning obligation at this time. So there is potential for a measure to raise significant revenues but it is unfortunately, in terms of tax, quite limited. In my view, agreeing to bring forward a land development tax in isolation without all of the research, consideration of the interaction between planning obligation agreements and the consideration of alternative forms of property taxations would be inappropriate. If I may turn to the specific parts of the proposition. The Deputy asks the Assembly to agree that measures to raise revenue from uplift in land value of whatever nature should be introduced, seemingly regardless of whether those measures would be in the best interests of the Island. He asks for the implementing legislation to be brought to the Assembly for the budget 2013 in a year's time. I, or any successor, could not commit to introduce a measure when significant work would need to be done to determine whether such a measure of whatever nature would work. The Deputy says that substantial work has already been done by Oxera and so it should be easy to find a solution. What the Deputy does not say is that Oxera has said that because of the particular circumstances of the housing market in Jersey, further work would need to be done to ensure that there are no unintended consequences of such measures. It is the unintended consequences of attempts to take some of the uplift in land which do run the risk of having unintended consequences to the housing market. Those risks - those unintended consequences - could be even more important in a much smaller market that would not be, for example, in a market much larger to that of, say, the whole of Greater London. We really do need to carry out investigation into the unique circumstances of Jersey's housing market before such a tax could be introduced so that the economic implications are fully understood. Without research there is a risk that a land development tax could increase house prices. I have often argued that the uplift in planning obligations - the increase in costs - some of which the original planning obligations were argued... and they have been fiercely fought by the previous Planning and Environment Committee of which I was a member. There was concern that the additional cost of a planning obligation on those 45 to 55 per cent rezoned sites would have the effect of lifting the first-time buying price. I understand why that representation was made, I do not agree with it but it is indicative of what developers will represent as an increase cost which could increase the end result of the first time buyer product. We really need to be extremely sure that the well-intentioned effect of either planning obligations or development taxes do not increase prices. In an Island where house prices are already expensive it would be, I think, irresponsible of the Assembly to take such a risk without having the analysis of the effect before them particularly when the revenue potential of a land development tax is, in the grand scheme of things, quite small. Those are not my words; those are the words of our economic advisers. The U.K. expended a significant amount of time and energy looking at land development taxes in the 2000s. There was, in fact, a very high profile report - I think it was the Barker Report, on housing - which analysed these very issues. The U.K. under the Labour administration - no criticism there - did some extremely good work on the whole issue of how to capture the uplift in land value. There is a great deal of research that has been brought forward in development of housing policies both in the United Kingdom, in New Zealand, in Australia and Canada which is very important. Following the genuine concerns raised on land development tax in the U.K., the idea was abandoned in 2007 before any legislation was drafted. It did not even get past first base in terms of bringing forward legislation and the U.K. has moved to section 106 obligations and that has been their focus in terms of the uplift in land value. Indeed, in the last 3 or 4 years has been extremely effective. If you pick up newspapers advertising property in a number of cities around the U.K. you now see corporations - not-for-profit organisations - running shared equity and a whole myriad of new home tenure which are all, at the heart of it, as a result of the very informed work that was done on planning obligations. They are beginning to pay fruit and I certainly believe that is the area which both Planning and Housing need to be looking at. I think there really is a substantial body of evidence that could use planning obligations experience in order to deliver low cost housing, and taking the uplift of land. I do not

believe that it should just be the uplift in green zone land but I think it should be the uplift in other commercial land. That is a very controversial one. I am portrayed as being somebody that is friendly with business ideals but I believe there is a very strong case for setting a clear direction over a number of years, of effectively capturing the uplift of planning, and investing in affordable homes. I would like to see all commercial developments having an uplift in land value and as the Island Plan that was debated by this Assembly said: "All commercial developments of more than 5 units should have an element of affordable homes" and that is an alternative way of a tax. The evidence is, I am afraid, not as straightforward as the Deputy represents. Part (c) of the proposition effectively asks for the legislation to be retrospective if possible. To apply from the date of this debate even though the legislation will not be introduced until 2013. This is really important and I would like to raise, if I may, 2 points here. Firstly, retrospective legislation is not a feature of this Assembly's consideration on tax or any other matter. I for one would certainly strongly advise against the retrospective application of any tax. I think that would set a dangerous precedent. I do concede that childcare relief is effectively retrospective, or the childcare relief that we are proposing next week, because it is effectively going to mean that we have amended the arrangements for next year. But I think there is a very different application when you are giving something back. You can change something to give something back: I do not believe you can change something when you are taking something away. So before ... the Deputy says that is almost a one-way value in respect of retrospective legislation. Secondly, assuming - and it is a big assumption - that it does not contravene human rights legislation (which, I would add, has not been confirmed) it would create, I believe, such uncertainty in the property development market which is already struggling with a very constrained credit market, I think such would the uncertainty be of this Assembly passing that that any development that could be going through would cease. It could be the tipping point to say: "We do not know what this is going to mean" and really we cannot go ahead with any of that development at all.

[16:15]

I think that would be extremely unwise particularly when we are trying to do things to boost and trying to get some construction under way. So as Members will no doubt be aware from the recent debate on the Island Plan, the Minister for Planning and Environment is bringing forward measures which will oblige developers to dedicate a proportion of every development to affordable housing. I am really pleased with that and we are going to work strongly and proactively with the Planning Department, the Treasury will commit its resources to do that and working with the Minister for Housing to achieve that objective. When that is introduced, and I am confident that it can, it will mean that the measure will reduce the amount that landowners get in terms of the uplift in land and Jersey will benefit from the availability of increased stock of housing. The introduction of a land development tax alongside existing planning obligation clearly leads to a duplication of measures and that would need very careful consideration. As I have stated, after the careful consideration of the overall review of property tax, we will monitor how the planning obligation process works. If it does not, then as with all things there is the option of looking again at a land development tax option, but I do not believe that is the preferred option. We should be sending a message to the Minister for Planning and Environment to concentrate on delivery of the planning obligation route. If that fails - and evidence elsewhere indicates that it should not fail, but if it did fail - then we would look at a land development tax. But it would be far more complicated, it would not ring-fence the money for the purposes in which the Deputy is trying to do and, moreover, I have to say that if we did consider a land development tax I think that there would be some unintended consequences to the overall certainty of the market which I do not think would be in the best interests of the Island. I know the Deputy thinks this is the only way forward. I know that he is in his last 10 days or so in this Assembly and I do agree with him about the fundamental objectives of uplifting the land value and investment in affordable homes. But I genuinely think there is a better, an alternative way, to achieve the objectives which he sets out and in his twilight time in this Assembly I would ask him to really consider whether or not he thinks that this is way to go but

rather should he not give his departing energy to the Minister for Planning and Environment in order to achieve what will be a much more successful outcome with what we all agree is the right objective. With regret I ask Members to reject the proposition in its entirety.

**Deputy R.G. Le Hérisser:**

I wonder if on a point of clarification I could ask the Minister... he said: "Research has shown that this objective of affordable housing is best achieved by planning obligations." Could he cite the research?

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

The Deputy is very computer literate and while he might not have a fibre optic cable connected to his computer, a Google search on the research that has been carried out by governments around the world would indicate that that is the case. I would cite the Thatcher Administration under William Waldegrave who started the whole concept of section 106 and I would commend also the Barker Review on housing that was commissioned by Gordon Brown when he was Chancellor of the Exchequer in the U.K., which set out many of these arguments and, together with many other academic papers on this subject and just to look at how well section 106 objectives are working now in the U.K. and delivering affordable homes. The U.K. has not done a tax: they are using section 106 and they doing so on the basis of a very substantial amount of research.

**The Deputy of St. Mary:**

Could I ask a further point of clarification following from that? Does the Minister think that the situation in the UK with the regard to the scarcity of land is comparable to the scarcity of land in Jersey?

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

I think it is exactly the same. I think it is particularly the same when considering the land values in London are particularly difficult for key workers and other social housing obligations and, for example, I cite the example of the Harrods Depository which the former Mayor of London put a planning obligation on section 106 to deliver key worker and affordable homes which has been very successful. That I would cite as one example of why Jersey is the same as Inner London.

**Deputy M.R. Higgins:**

Could I seek clarification?

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

As long as it is clarification of something the Minister said. The last one I should have stopped as it was just a question.

**Deputy M.R. Higgins:**

It is. The Minister throughout his speech was talking about advice from economic advisers but he did not state who his advisers were. I would very much like to know. In fact, to be honest, it seems all the reports that he has quoted ...

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

Deputy, that is your question.

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

The economic advice which we receive is managed by our Economic Adviser who is well known and well-respected by this Assembly and there is an ongoing retainer by the firm Oxera, who have an impressive track record in examining issues, and they have examined this issue for the economic adviser in addition to his own work which, of course, he has overseen himself.

**Deputy G.P. Southern:**

May I ask a point of order, I believe it is. Is there a question in debating this particular topic of a direct pecuniary interest for anyone who is a landowner in this Chamber?

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

The Bailiff has been asked privately on that issue and the Bailiff's view to the Member who asked was that only if a Member felt that there was an immediate prospect of any land being rezoned or a gain. It is not simply ... unless a Member had land in the Island Plan that had been rezoned, the fact the Member may have land there is no direct immediate financial interest.

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

Might I just say, for just good order sake, I am a landowner and I have land which, over a period of time, I certainly would seek to develop but I would say that planning obligations would be tougher in terms of the uplift than of development tax. So I am arguing against my own interest and any Member who is supporting planning obligations are going to be much tougher than a tax.

**Deputy G.P. Southern:**

That is an opinion. Is there relevance in the word "immediate" in the ruling that has been made? Is that ...?

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

There is, yes. That is what the Standing Order says. Deputy Le Claire.

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

For years now people have been making a great deal of money out of developing property in Jersey and for years now housing has been unrealistically priced for many, many people on many, many standards, lower incomes. While it is to be commended that Senator Ozouf introduced a new split to make affordable housing a portion of developments, it is quite arguable that affordable housing, as pointed out by many people, is totally unaffordable in the Jersey context. If anybody cares to examine just some of the most recent documents that have been presented to the States by the experts, including the ones that were outlined in the Island Plan, they will see that no unit of accommodation is affordable. Whereas the average house price in the United Kingdom is £207,000 or £208,000 - probably falling - for a 3-bedroom unit, it is £450,000 plus in Jersey. I would agree with Senator Ozouf that section 106 is an extremely useful tool and it has been used ... I can cite an example, it is unfortunate he is rushing out, I was going to cite an example. Croydon, I believe, took 10 per cent, or has been taking 10 per cent, and I can verify which jurisdiction it is because I used it in research recently for some questions I asked of the Minister for Planning and Environment. They took 10 per cent of the value of the flats that were approved in the city centre to pay for affordable housing outside of the city centre. Now, if you are going to use a plan ... this is something the Deputy of St. Mary is going to have to get his head around, the land value outside of the city centre is obviously nowhere near the land value of the inside of the city centre. So if you are levelling a tool, such as section 106, with 10 per cent of any development within a higher land value area like a city centre to provide for social housing, then that needs to be a factor in the equation of whether or not planning obligations are satisfactory. They are certainly not satisfactory in my opinion when you have got a development as cited in answers to this week's question of 47 flats and 5 houses: at a bare minimum you are looking at £20 million and we get a £6,000 bus shelter. A £6,000 bus shelter? We should have had, if it costs £6,000 for every bus shelter, bus shelters the length and breadth of the Island. If they had taken 10 per cent of the value of that property and given us it for bus shelters, we would not have had one bus shelter, we would have had bus shelters throughout the Island and then some money left over. So I am supporting the Deputy of St. Mary because it is a 'can do' approach. Not only do I think we should be levelling mechanisms to draw back some of this profit that is rife through the community and people turning their potato fields into gold mines, we should also be including, within this proposal in the future, the planning obligations that other people include as well. We have got a different type of system

in Jersey. We cannot look at the U.K. every 10 minutes and say this is what they doing, is it not wonderful, and yet when your raise things such as inheritance tax you do not want to go there. We are talking about raising money to run the Island to provide for the services that we need for health, education, *et cetera*, medicine. Unless we look at new methods of raising taxation we are going to return to the same old system of taxing the poor, more and more and more. I am sorry, it has come to that stage now where the poor do not have enough to tax any more and if we are going to raise new revenues we need new forms of taxation. Planning obligations will not give us affordable housing nor will they raise necessarily revenue, not for us, only for the land developer and the land owner. We need to introduce a land development tax and we need to have stronger planning obligations exercised by a progressive system which is being undertaken currently by this Minister for Planning and Environment that was nowhere the type of planning obligation that we saw with that example I cited. £20 million, £30 million, £40 million worth of property and we have got a £6,000 bus shelter. Come on.

#### **11.4 Deputy T.A. Vallois of St. Saviour:**

I could not help but to speak on this proposition with a view of the budget coming up next week. I am in agreement with part (a) of the proposition because it is not just based on the land development tax, it looks at equivalent charging mechanisms or any kind that could be introduced to raise the revenue. So we are not just focusing on development tax and I would like to thank the Deputy of St. Mary for bringing this because the comments of the Minister for Treasury and Resources go to some extent of explaining why I have put my amendment into the budget. Because we are told that we need lots of research, lots of analysis, proper risk analysis, proper work done to make sure that we do not put any unnecessary effects on other parts of the economy, *et cetera*. I think we are all of view - well, I particularly am - with regards to our tax system now, that it is has got to the point it has been tinkered so much it cannot be tinkered any more and we need to look at it in the round and properly, as the Minister for Treasury and Resources said, research, analysis, risk and ensure that we have a proper tax system for the long term interests of the economy in Jersey. So I support part (a) because I believe that we should be looking at all areas of taxation, identifying what the appropriate taxation for Jersey would be in the long-term, with all the research and the risk analysis done. So I will be supporting part (a) but as per the parts (b), (c) and (d), for next year's budget with a new Assembly coming in and the C.S.R. process that is going on, and of course everything else that is going on in the background, I do not believe that a proper analysis on the taxation that needs to be done can be done by next year. Hence the reason why I quite happy going for part (a), because I think we should be looking at all of the areas and I am glad that the Minister for Treasury and Resources supports me and my amendment.

[16:30]

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

That came around swiftly. I have heard a very clear, as always, exposition of the Deputy of St. Mary's proposition in which he has clearly laid out that his proposal has a fundamental difference between the planning applications and his tax in that his tax better lays out what the obligation is and makes it clear that it is the landowner that pays the tax and therefore the argument about putting up house prices by any tax is rendered ineligible or spurious. Having done that I waited with bated breath to hear what the counterarguments were and quite frankly I am disappointed. The Minister for Treasury and Resources said that he was committed to review this whole process of value tax and that he would return with some further study. I was thinking: "Ah yes, budget matters, taxation matters, where have I heard the Minister for Treasury and Resources earlier in the year speaking on this topic, on these topics?" He was talking about what do we do to tax the companies who pay zero tax under Zero/Ten, the non-locally owned companies, non finance companies who pay zero tax under Zero/Ten, and I heard him promise in March and in May and in July that this was a budget measure and he would not say anything about what he was doing until the budget came, he was researching it, he was investigating it and he would come with measures in

this budget 2012. What is wrong with that, you say? Because he has not. There is no measure in the 2012 budget to do that which he promised. He committed himself: "Research is ongoing. I am not telling you about it, Deputy Southern, I will tell you about it in the budget." I have looked in the budget and it is simply remarkable by its absence. So a promise to research, do not hold your breath when that promise comes from this Minister for Treasury and Resources. "It is not necessarily so", as the old song goes. He then went on to describe his uncertainty over prescribing this particular solution to "the unique circumstances of the Jersey house market" then, when asked on a different point, not perhaps 12 minutes later: "What comparison do you make?", he said: "The Jersey house market is exactly like the London house market and the comparison can be made, and therefore planning obligations work in London, planning obligations are going to work here." So either Jersey is a unique circumstance that we could not possibly touch this, or it is very similar to London. It is very similar to London in that houses prices are unachievable to most ordinary people, no matter how hard they save they cannot catch up with them, and supply is by no means meeting demand. The fundamental comparison is one of supply and demand and yet he says: "Planning obligations will deliver. Planning obligations in the U.K. have delivered and are continuing to deliver: their market is okay." Is it? His research says it is. What is happening in the U.K. housing market? It is stagnant. House are not being built. Like here, supply is by no means meeting demand. The housing market in the U.K. has stopped. Look anywhere you like, look in any paper you like, you do not have to go to the internet, and that is exactly what you will find. House building has virtually come to a standstill in the U.K., with or without planning obligations. Affordable housing, 2-fold. It has come to a standstill and yet this Minister for Treasury can say confidently that that is the model he prefers and that is the model that can and will work in Jersey. All 3 of those arguments that he produced are arrant nonsense. He is making it up. This particular proposition clearly set out that it is a way forward, it can be made to work and we should, with safety, be able to support it.

#### **11.6 Senator F. du H. Le Gresley:**

I would like Members to, if they would, look at the very brief comment from the Council of Ministers, comment 2, and it says, second paragraph: "Ministers wish to reiterate their view that the decision of the States to carry out further work on policies H1 and H3 of the 2011 Island Plan will deliver not only an inherently more viable and proportionate system of deriving revenue from land development but also actual affordable homes." So the key words there are "will deliver". Now, my recollection of the Island Plan debate was the very point that we were not sure that this would deliver and that is why it was more or less passed back to the Minister ...

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

Sorry to have to stop you, Minister, but the Assembly has gone inquorate yet again. It has just become quorate again. Perhaps I would give Members notice that we have become inquorate at least 4 or 5 times this week and I think the next time it happens I will either myself or invite the Bailiff to call the roll fairly quickly if Members do not return. Senator Le Gresley.

#### **Senator F. du H. Le Gresley:**

Yes, so the key words were the Council of Ministers statement "will deliver" and I am saying to Members that my recollection of the Island Plan debate was that we were not certain that H3 and H1 would deliver more affordable homes and thus it was passed back to the Minister to have further negotiations with the construction industry. Now, I am one of a number of Members who attended a meeting organised by the Construction Council prior to the debate on the Island Plan and there was considerable concern expressed there by members of the Council that there had not been enough discussion, they did not understand how the mechanism of planning obligations would work with the proposals in the Island Plan and they were particularly concerned that it was a system brought over from the U.K. which was relevant to greenfield sites but not necessarily to brownfield sites, and the Island Plan concentrates new developments on brownfield sites. So there were a lot

of questions that were unanswered and I asked a question of the Minister for Planning and Environment yesterday about Policy H3 and he pointed out that they had taken expert advice and that there would be negotiations commencing this month with the industry. So we are not there yet, and I would suggest to Members that we cannot necessarily accept this statement by the Council of Ministers that Policy H3 will deliver because the negotiations are ongoing. I think we have to keep all our options open and hence supporting part (a) of the Deputy of St. Mary's proposition is a sensible route I would suggest. Now, there is some other evidence to support what I am saying here, and this is in the documents that the Deputy of St. Mary kindly provided from Oxera, and there are 2 things that I have always been worried about with planning and this may not surprise some Members because I do have concerns, and on page 18 of the Deputy of St. Mary's proposition, we have an extract from the Oxera report: "Which tax is best suited to Jersey's objectives?" We are talking about planning gain which is very similar basically to planning obligations. I want to read you something here because I think it is very relevant. Basically it says: "On the other hand, there is likely to be a degree of uncertainty as to the actual costs involved at the point the land is sold to developers. This is likely to make the success or failure of the policy more dependent on the ability of the government to successfully negotiate with the developers or equivalent and to set in place a coherent and consistent policy on what developers can expect in terms of the costs they will bear as a result of the requirement to provide planning gain." Now, is that not exactly what I have just been saying to you? We have not yet put in place a coherent and consistent policy. This is still being negotiated. "In particular, the problem of creditability has not gone away, hence if landowners think that a future administration would demand less costly gains they may delay development." So in other words we have a new States sitting in 2 weeks' time. We may have a new administration. So who is to say that we will not end up in a situation where landowners and developers will sit back and say: "Well, the policy may change so we are not going to press ahead with some of our developments." Now, here is the other thing which the Deputy of St. Mary also touched on and something we need to be concerned about, and these are the words of Oxera, not myself: "In addition, the flexibility of the planning gain can create situations where the treatment of different developers or landowners is seen to be inconsistent and unfair and raises the potential for corruption as the negotiation process of a planning gain can alter the profitability of any particular development." Now, I would suggest to Members that if we are going to have planning gain or planning obligations as a long term policy of the States of Jersey, the potential for corruption is there and I do not think that we should place the Minister for Planning and Environment in such a position where he could be accused of corruption or faced with possible corruption. I would also say that one of the other issues that will happen while all these negotiations are taking place with developers about planning gain, is the whole process of planning decisions will be delayed. There is already a backlog, as we well know, at the Planning Department and developers and private individuals are complaining that sometimes their application takes over year, sometimes longer to come for a decision. The more we place the burden effectively of collecting a tax, which we could collect through the route that the Deputy of St. Mary is proposing, the longer we have delays in planning decisions and I really believe that Members should support certainly part (a) of the Deputy's proposition because we have to keep our options open. We do not know if the planning obligation route will be successful, whether it will produce the planning gains that we are hoping for, whether it will speed up the provision of more affordable housing, we do not know. We are going into unknown territory. I think we would be very unwise to not vote for part (a) certainly. I think that is all I wanted to say. I feel I have missed something but I have to stop there so I will stop there.

**The Bailiff:**

Does any other Member wish to speak? Senator Le Marquand.

**11.7 Senator B.I. Le Marquand:**

I may be in a position where I need to declare a potential interest but that will depend upon the answer to the question.

**Deputy of St. Mary:**

Could the Senator speak up, please, I cannot hear.

**Senator B.I. Le Marquand:**

Sorry, that will depend upon the answer to the question that I want to pose to the Deputy of St. Mary to answer, and that is, what does he mean in the proposition by “land”? Although that may appear to be a simple question, in planning terms the definition in the planning laws of land includes buildings. So I am left in doubt at the moment as to whether or not he intended simply areas of open ground, as it were, or whether he also intended buildings which might have the potential of being knocked down, shall we say a single house on a large site which could be knocked down and 6 houses built in place of it. If the intention is the land would include that then I would have to declare a potential future interest - not an imminent interest.

**The Bailiff:**

I do not think, Senator, you need to declare an interest. This is a possible tax measure which affects different people differently. The Assembly has always said the tax measures affect the community as a whole. Some Members may be affected by it, others may not.

**Senator B.I. Le Marquand:**

I am just being ultra cautious but I am posing the question in any eventuality. Now, if it includes the wider definition then I think there is a major problem in the area, which is set out in page 9 of the Deputy’s report, of “hope value.”

[16:45]

There may well be a problem in any eventuality because the concept of hope value is where somebody acquires something, purchases something, knowing there is a percentage chance of them obtaining development permission which will cause an uplift in relation to that. Now, that principally will apply in relation to buildings, a classic example is the one I have just given of the small house on a large site with building potential. There are great difficulties in working out what the true value is. The fact that somebody may then gain planning permission which then increases the value, what does it increase the value from in the first place? Particularly if somebody has purchased it with that potential. But equally, what if someone has inherited a property with the potential in the first place? Does one discount that potential because that potential existed and belonged to the previous owner before the person died and it is carried on? So I see all manner of difficulties in practice, particularly massive difficulties if it is not clear that land simply means open pieces of space. I wanted to point out those difficulties which are inherent in any such proposition. Coming up with a fair system to deal with that in my view would be incredibly difficult. The last thing I wanted to say was simply to reiterate that which the Minister for Treasury has already said in relation to paragraph (c), which it is clearly retrospective and I do not think that we should be passing retrospective taxation legislation. So I have difficulties with this, particularly my difficulty is even greater if land is not taken to have a very narrow definition.

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

This looks like another one of those all or nothing propositions. It is a bit like mine yesterday really, if you did not agree with it nothing is going to happen again, and I could feel a bit of sympathy here for the Deputy of St. Mary. This also takes me back to some years ago when we had the issue of share transfer tax because land development tax is nothing new. It has been hanging around now for years. We have all been saying that should happen but no one does anything about it. It reminds me of my way of trying to get something done about the share transfer tax because I kept asking questions for some time and in the end I brought a proposition to

the States and surprisingly that got through unanimously because everyone agreed that the present system was unfair. However, although it was passed, it took about 5 years to get to fruition because time and all the law drafting, all the other arguments we put in, took around 5 years before we started collecting any money from it. I do not know how many millions of pounds was lost but we knew it was around £1 million or so a year was being lost by no tax on share transfer properties. So of course now we have here another one of these which we all think is a good idea but no one really wants to make a commitment, although we have a commitment here from the Minister for Treasury and Resources himself who says: "The Minister has committed to a review on the land development tax as part of a wider review of property of taxation" and so it goes on. Then we look down at part (a) of his comments it says: "Although significant work has been undertaken by Oxera, it is clear from their reports that further substantial work would be needed to ensure that such a system was credible, effective and does not result in unintended consequences." One must ask, what was Oxera doing in the first place? Surely when they were asked to do something they were going to point in some direction as to the value of this land development tax. So it leads us on then to saying that either we do this all or nothing, either we agree today to do something because if we do not when will it come up again. We have this commitment from the Minister but where will the Minister be next year? Who knows. So I see that there is no problem whatsoever for Member again agreeing to part (a) because part (a) makes that commitment today. Let us get on with it. Then the question about part (b), *et cetera*, I can see a problem here where in actual fact the work can be done within 12 months and, again, if we really had a commitment from the Minister for Treasury and Resources one would have thought he could have easily put in an amendment that said instead of budget 2013 he could have made it 2014 or 2015, but no. So that will be for Members to decide whether they want to go along with (b), (c) and (d), but I think in the first instance we ought to agree to the principle. Let us agree to the principle, let us get the work underway and then if we do wish to support (b), (c), and (d), which I will because I believe unless we do nothing really will ... we are going to say: "Get on with the work but do not make any timescales." I would certainly urge Members certainly to agree (a) and then I am going to agree with (b), (c) and (d) and I would ask Members also to do that.

### **11.9 Deputy R.C. Duhamel:**

There are a couple of points that were made by Senator Le Gresley that were not quite right. In reading out selected paragraphs from the Oxera report I think it is only fair to redress the balance. He made great play, or some play about brownfield sites, another point that was taken up by Senator Le Marquand. There is a difference between the gains that can be made on greenfields and the gains that can be made on brownfields. Under A2.6 on page 18, and further on page 19, in Proposition P.147 Oxera do begin to get into the differences. But one particular paragraph should have been read out in order to set the comments of Senator Le Gresley correctly. I will just read it if I may: "Due to relatively higher certainty over the gains that arise from the rezoning of greenfield land compared to those arising from brownfield redevelopment permission, a differentiated lower levy on brown field gains would be useful in providing the right incentive structure. However it is understood that there is very little brownfield land in Jersey." This is why it is vital in my mind if indeed this Assembly is going to go along with the Deputy of St. Mary - and I do hope that they do not - that a proper definition of land should really have been developed under part (a). Land is not just land: there is brownfield land, greenfield land, other land. There is quite a lot of different types of land and it seems to me to just come forward with a general proposition that seeks to put all of the different land categories into the same basket when the advice from Oxera is in fact that we should not really be doing that, seems to me fundamentally wrong. The other comments that were made was that the Planning Department - and I think there was a bit of a jibe against my tenure of office - had slowed down in giving planning permissions. Indeed if you look at the statistics that were recently produced by the department it is quite clearly not the case. There are a number of permits that have been given by the department and the developers are, at the moment, sitting on them. They have not started the work due to the recession. The property market has stalled

somewhat and it is by no means the case that we should be encouraging business activity to come forward at a rate which is inflationary. A lot of the Island Plan debate was specifically about providing mechanisms to bring about a large enough quantum of affordable homes, and by affordable we meant truly affordable and, indeed, this is what this House decided when we came to our conclusion that the Minister for Planning and Environment next time around will be given up to 2 years to come forward with at least 150 truly affordable units, principally on States-owned sites at truly affordable home prices as a way of showing to the market, to the public and to the world that we can deliver these units of accommodation in a truly affordable fashion. If indeed the Minister for Planning and Environment of the time is unable to deliver on that 2 year window of opportunity then this House must be reminded of what we agreed in the Island Plan debate which was that there would be a further reconsideration of the sites that some Members of the House had hoped would be redeveloped. Now some of those were greenfield sites, some of those were brownfield sites but quite clearly in terms of the quantum the release of those sites would not be enough to solve Jersey's affordable housing problem. That point has to be underlined and stressed. If indeed we do end up in that position it will require the further release of greenfield sites and that policy will have to continue into the future. This House decided that we did not wish to build all over the countryside, indeed we thought the opposite that the countryside should be protected and that is why this Island Plan has stressed the importance of urban regeneration and delivering truly affordable houses in built up areas. Just to raise monies to be put into the Treasury will not bring the cost of housing down and we have to realise this and this is why my working group of politicians who wanted to assist in this matter are looking into ways of coming forward with mechanisms to deliver the truly affordable homes that this House has required us to bring forward. As some Members have said, if the policy cannot be achieved and we cannot put the flesh on the bones and deliver the things that this House has asked us to deliver in the timeframe that it has given us to do so, then indeed we will have to go back and think about different ways to deliver. But a point that was made by the Minister for Treasury and Resources must also be underlined and that was we do not have lots of greenfield sites at the moment coming forward because specifically this House has decided that is not the way to go. So I think to sum up the Deputy of St. Martin, his heart is in the right place but unfortunately I think this proposition is at least 2 years premature - maybe even 3 years - and perhaps if he comes back at a later time or another time in the future, he might be in time to tell us: "There we are, I told so" and bring forward this as his opening proposition as a part of a re-election campaign. But on that basis I do not think, as I have mentioned earlier, we should really be going along with this. The States have given the Minister for Planning and Environment – myself - and other States Members the opportunity to deliver in a different fashion and we must be allowed to get on with the job.

#### **11.10 Deputy A.K.F. Green of St. Helier:**

I am pleased to be following the Minister for Planning and Environment because he made a number of very good points, some of which I was going to make but will not repeat. For me as Minister for Housing it is quite simple: which of the mechanisms are likely to deliver the most homes, most quickly, affordable homes, social rented homes, homes that are needed now, and that is to my mind the planning obligation route. To put more money as the Minister for Planning and Environment said, to tax people, put more money into the Exchequer will not deliver more homes. We need those homes now and I feel I would be failing in my duty if I did not point out that the way to get those is through the planning obligation. Deputy Le Claire pointed out a situation where we got a bus shelter, I believe, some time in the past. Okay, if that happened, that was wrong. We have got to move forward. Part of the Island Plan debate said very clearly we were going to come up with a method for working this out, we were going to come up with a system, a fair system, a quota system, a system that will be free of corruption because it will be transparent. To my mind as Minister for Housing this will deliver more affordable homes, homes that are needed now, homes that the industry needs to get on and build, homes that people are waiting to move into and we need to get on with it. I ask people to reject this proposition in its entirety.

**The Bailiff:**

Does any other Member wish to speak? Yes, the Connétable of St. Peter.

**11.11 Connétable J.M. Refault of St. Peter:**

I have to say that I agree with the sentiments of the Deputy of St. Mary and the moral issues that he is trying to do to ... which he hopes will bring down the cost of housing. Unfortunately I do not agree with the method that he is proposing to do that with.

[17:00]

I am very pleased to be following the Minister for Housing because he has set out exactly my point as well in that we need to deliver these homes now. One thing I would like to clear up is a comment that the Deputy of St. Mary made in the initial part of his speech in that I made a comment to the Island Plan that I am not in the business of creating millionaires. He is absolutely correct, I did make that comment. I made it in the context of a couple of housing sites that wanted to be rezoned in St. Peter and I said they would only get my support if they bonded 25 per cent of the value to the Parish to ensure they only ever sold 75 per cent of their value because I am not in the business of making millionaires. It was said in that context. However, I am not in the business of making millionaires anyway but I am in the business of trying to get housing prices down and I do not believe this is going to achieve that. Very well motivated and it is well thought through; and I do commend the Deputy of St. Mary on the amount of research he does and the hard work he does behind the scenes. He is very well motivated in bringing it forward. But I think for me bringing forward basically tax policy on what is fundamentally a good idea, and with some research, is not the way that we as a government should be setting tax policy. The one thing which is not in here for me, which really does concern me, is where is there any thought about the economic impact of doing this? Is it likely to slow down the development of new sites for delivering the affordable homes which it is alleged it is going to do? Is it possible in the current market place that it would prevent development in a year or 2s time as we start to lift out of the recession because there is not the motivation there because of the underlying tax that people will see being paid. One other thing - what my experience from a few years in the property world has taught me - people, landowners included and homeowners, do not like dropping their prices. How many of you came to the States today driving, walking or on the bus and saw that property still with a "For Sale" sign on? Those properties or land or whatever it was, buildings, they have still got the "For Sale" sign on for 2 reasons: one, because buyers cannot get mortgages and, 2, because the current owners will not drop their prices to sell them. So I do not believe that this is going to drive down the prices because at the end of the day if we put a tax on the landowner he will recover that loss in some way. I do not see that any mechanism which will dictate that the actual finishing sale price will be any lower by applying the tax. We can say, and the Deputy does say in the last part of his proposition, that to bring forward a mechanism to ring-fence the funds to ensure it is used to fund affordable homes or rental homes. What are affordable homes? Is it one at £450,000? Let us assume for a moment it is £450,000. I build a home for £475,000: I pay a tax so the man buying the house at £450,000 can get his £450,000 cheaper. Is that what we are trying to do? Unfortunately for me the proposition is too loose in the detail and that really worries me. But underpinning all that I am really, really concerned about we as a Chamber bringing forward tax legislation effectively on the back of a very well motivated and seemingly good idea. Unfortunately on that basis I cannot support the proposition.

**The Bailiff:**

Does any other Member wish to speak? Deputy Tadier.

**11.12 Deputy M. Tadier:**

It seems like we are here again. We have all agreed that it is completely unacceptable that millionaires are made overnight often when land is rezoned. This was one of the big sticking points

in the Island Plan debate that a lot of people could not agree to development in the country for all sorts of reasons because many, like myself, have said in their manifestos that they opposed the development of greenfields. But an underlying issue, an underlying reason for that, was because of the land increase in value. I certainly can support rezoning for one reason, until we had a mechanism to tax the uplift in land value. Now, this is exactly what has been proposed today. Certainly the first 2 parts of the proposition, as far as I can see, are very modest. They should all be things that we can all agree to. It seems to me that yet again we have the disingenuous arguments coming from certain quarters because the States are here time and time again to protect the interests of the wealthy who are in Jersey, the landowners and those who make obscene amounts of money from the uplifts in their property values. I do not really know if anything I say will change this debate but it seems to me that have been conflating 2 issues. For some reason the argument today has seemed to be focusing more on affordable housing and suggesting that this proposition, if adopted, is going to make the affordable housing situation worse in Jersey, which seems to be complete nonsense. I hope that this is something which the Deputy of St. Mary will address in his summing up because he has already stated at the beginning that what he is proposing will not affect house prices one way or the other and that seems to be the case in my understanding. Affordable housing clearly is an issue in Jersey. We know it is an issue, whether it is something which can be solved in any meaningful way remains to be seen. We are not here to debate that today but the problem is I understand that there have been concerns raised about the fact that this may affect affordable housing. Is it better to rely on planning obligations to deliver benefits to the Islands and to recoup? Certainly if what Deputy Le Claire said about the Portland development is true that we will build a massive development and they provide a bus stop; that was the wry joke I made yesterday: was it a contribution to the transport problems on the Island or was it their contribution to affordable housing? In other words for people, affordable housing, is that going to be a bus stop? We know that there are lots of people still living in car parks in Jersey. I have got constituents who I know who have got problems at the shelter, they cannot stay there, they are living in car parks and they are not getting any help from anyone in the system, and they do not feel that they can get help either. That is a separate issue but we do definitely have a housing problem in Jersey. But why are we conflating these 2 issues? Surely we can keep planning obligations, meaningful planning obligations, and have a land value tax. It seems to me also that the planning obligations and the land value tax would hit 2 different people. I may need to have further clarification on this but it seems to me that the land value tax is there for the person who owns the land which may be worth, let us say, £60,000 at one point and may be worth £5 million at another point after it has been rezoned. That would tax the owner of the land, it is the developers after that who would be hit with the planning obligations, and so they would say after they have taken on the land: "You have to provide 20 per cent of your houses for affordable housing", 30 per cent, whatever the fixed and agreed amount is which would be in line with the housing policies, the planning and environment policies. They are 2 separate issues and to conflate them, I think, is to do a disservice to the proposition that is being brought forward by the Deputy of St. Mary. I do not think it is an either/or. I think if we say that we are committed in theory, if we say that we support the underlying sentiments of the proposition being brought forward by the Deputy of St. Mary, we should be supporting the proposition fully by voting for it today. I would remind Members that there is a great amount of latitude within parts (a) and (b) in particular which say: "Let us have a land development tax", or something equivalent and then it is up to the Minister for Treasury and Resources and his very experienced officers. If they cannot come out with a land development tax or something similar when other countries can do it - other countries who also have, perhaps, a finance industry, things related... and I am wondering what the real argument is here today because we are hearing arguments which seem very conflated, which seem disingenuous and I am wondering if there is something underlying which is the reason why we cannot have this tax introduced. Is it because it is a capital gains tax? Is that part of the reason? I want to know the real reason. These arguments are not coming up today hopefully because they do not exist, and so I think we should be supporting this. We should put our trust in the Minister for Treasury and

Resources and his staff to be able to bring forward and draw-up measures which can achieve what we all want in a meaningful way and let us not get sidetracked with affordable housing issues. We will have to debate affordable housing at another time. There are ways to produce it, I think, and it is something I would wish to work with other Members but today we are debating how do we stop and encourage a revenue back to the States for those people who are making money overnight - vast sums of money - which so many people in this Assembly and in the Island find unacceptable. Let us give this our full support. Let us be a 'can do' government, rather than finding excuses not to support this.

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

I am pleased to follow Deputy Tadier because I was going to say that it is frightening that certain Members in this Chamber are confusing and conflating the 2 issues of affordable housing and a land development tax, and we should not. Certainly it is unwise to suggest that a taxation solution is necessarily the right solution to the one of affordable housing. So this proposition should stand or fall on its merits as a tax raising measure. As a tax-raising measure it has certain attractions, there is no doubt, and had the proposition said that the land development tax should be considered as one of the options to the review, that would be, I would have thought, a better way to do it, rather than a mandatory "it should be introduced" which suggests that it is only a matter of how, not a matter of if. It strikes me that the way the part (a) of the proposition is worded gives rise to all sorts of uncertainty and, in tax law (and I speak as a former tax practitioner) what one needs is some degree of certainty in the way that the law is worded; certainty, both from the view of the tax payer and the view of the court should it ever come to a question of interpreting that tax law. The first question is uplift in the value of land and, as Senator Le Marquand says, land in this case would mean land and buildings. There comes a difficulty here knowing just where and how to draw the line because if you have a farm with a couple of vergées of land, you may be able to put half a dozen houses on it or more. If you have got a house with a large garden, you may be able to put one house for one of your children in that garden. If you have got a house which can be extended, then an extension to that house will indeed add to the value of that house. So it gets quite difficult in actual definition terms to define what gets taxed and what does not. The Deputy tries to be helpful by saying: "Any significant uplift", and clearly just adding on a garage to a house probably would not give a significant uplift in value but tax law cannot be interpreted simply on the word "significant", it would require an actual figure. So would that figure be £10,000, £50,000, £1 million? That is a matter which becomes very subjective and also very difficult because tax legislation does not normally distinguish between one level of activity which is taxable and another, at a different level, which is not taxable. It may well be that in future the Tax Controller would say: "This is a liability which I am not going to collect but it is still a liability." So I think there are all sorts of difficulties in trying to interpret part (a) in the way that the Deputy would like us to do so. In any case, I think that this creates difficulties because if we look at this purely as a measure for taxation, irrespective of affordable housing or not, then there is absolutely no reason to approve part (d) of this proposition because part (d) links that revenue very firmly to the provision of affordable housing. I think if you go down that line, if you accept part (d), you get into all sorts of difficulties because while the price of an affordable house may or may not vary depending on the imposition of a land development tax, if that revenue gets recycled back into the provision of affordable housing with no additional supply, then it is going to mean that the value of those houses will go up and equally the rent subsidies on affordable housing will also go up comparably. So, in fact, what we do is go round and round in a circle chasing our own tail here. Certainly part (d) would be totally contrary to the general idea that this is a tax-raising measure for general taxation revenue, not specific to this revenue. As far as part (b) is concerned in timing, I would leave that to the Minister for Treasury and Resources' arguments but certainly when, in a former activity, I was President of the Finance and Economics Committee looking at taxation, the interaction between different forms of taxation and the complexities of this are such that it is not by any means a simple matter.

[17:15]

I go back to my days as a tax practitioner, thinking in terms of UK capital gains tax which occasionally came across my desk, and UK capital gains tax is fine when you are dealing with quoted investments where you have got a share price detailed on a daily basis and traded nationally and at the market price. When you come to unquoted investments or land, you get all sorts of difficulties and the complexity of that legislation should not be underestimated and the difficulty of delivering it properly should not be underestimated. That is why the UK over the years have had such enormous difficulties with their capital gains tax legislation and with the amount of revenue they collect from it. Certainly, this is not as simple or straightforward as it might be. Indeed, if you think about that valuation, I forget who it was spoke about the site at Longueville Nurseries. What is its value at today's money? I have no idea; it certainly has some value already. Is it agricultural land now? It is not zoned land but I would say if I were a gambler it might be worth slipping a few pounds on it on the basis it might well get rezoned in the next 20 years. I do not know but certainly trying to put a value on it at today's date strikes me as being very a subjective and difficult thing to do, and certainly difficult to put into any form of taxation legislation. While, quite clearly, the Minister for Treasury and Resources is right, one needs to look at property taxes as one tool to be used in raising revenue, one should not underestimate the complexity of what is being put forward today and not merely the complexity but the pitfalls, the dangers and the real problems in certain parts of the proposition. For all those reasons, in different aspects, I would oppose all parts of the proposition.

#### **11.14 The Connétable of St. Helier:**

If the Deputy of St. Mary loses this proposition today, I would like to give him a word of encouragement because the comments by the Council of Ministers give Members of the Assembly who are going to be here in the next session a very powerful tool. They say in the fourth bullet point: "There is no urgency." Those words by themselves could give one a wry smile, I think, given the timetable of this, but they go on: "There is no urgency to enact measures because the 2011 Island Plan contains no new rezoning of greenfield land for residential development that would deliver the uplift in land values." I was one of many Members still in the House who were appalled when, in spite of a previous Island Plan, the Assembly happily passed the development of quite a lot of greenfield sites with the support of most of the Constables. I know that not all of those, perhaps not any of those, resulted in the kind of uplifts that have been talked about because some of them were given by very community-focused individuals in those Parishes who were not seeking to make money at all. This is a powerful tool for those of us who will oppose any rezoning that is brought to the States of greenfield land and it is good to have that in black and white, and I am going to keep these comments for that first occasion when someone brings forward a rezoning proposal for a greenfield site in the absence of any measure which, as the Deputy and others have said, is incredibly overdue. It is not just overdue for the newer Members; they were talking about this when I joined the States and really nothing has happened apart from the changes to the Planning Law that allow us to get a percentage for art and the occasional bus shelter, which is useful, of course, but it is not enough. I am pleased that this debate if it achieves nothing else, apart from giving us that weapon against future rezoning, will be another shot across the bows of the Minister for Treasury and Resources or his successor in terms of doing something about land development tax.

#### **11.15 Deputy T.M. Pitman of St. Helier:**

Very briefly, I listened to some of the comments from the Minister for Treasury and Resources and the Chief Minister - and maybe it is because I have become somewhat cynical - it always seems to be jam tomorrow: "A jolly good idea but let us not do it now." I just think back to a couple of months ago when we had the G.S.T. exemptions on healthy food. Initially we were told by the Minister for Treasury and Resources: "Yes, perhaps it could be done but 2012 budget, it is just not possible." So what happened? The proposer took it away, changed it to accommodate that timescale. What happened? Suddenly, when it was brought back, that was not the problem at all.

It is constantly stalling and I am sorry, I know we have to have faith in whatever Members say but it always seems from the Council of Ministers, there is this: "Put this off, put this off, put this off" and the actual reality of it is if we do put it off and accept those comments, those objections, nothing ever happens. I just find it disappointing in the least that in the economic situation we find ourselves, that something which does offer certain solutions, not the entire solution, but it does offer genuine scope for alleviating some of the pressures that we find ourselves in, and yet, again, the Council of Ministers - this Council of Ministers - does not want to even consider it. It is more excuses. I think people who listen to this must think that there is always a hidden agenda. Land development tax is something which I think most people are agreed on, it has got huge potential but it has to have the political will to implement it, and that will, I believe, does not exist within this Council of Ministers. I think if the Deputy of St. Mary loses this today, well, we know he will never get another change unless he comes back in the future, which I certainly hope he does. I think this will be another of those things that ends up gathering dust. It will never come back and see the light of day and we will continue to take the easy option of hitting middle-Jersey and those who can least afford it with nice convenient taxes like G.S.T. The tax tap as it were will be turned up and up and up. I just think it is a very bad thing for whatever you are; right, left or centre. As I often say we seem so absolutely immovable in our objection to do anything that might impact on those who stand to make a great deal from these issues. As the Deputy said, there is always - whether it is real or not - that concern about corruption, and I am not suggesting there is, but when we seem so unwilling to tackle that... we are always putting it off. I think it is no wonder that the public really question our desire to have that fair and more equal society we are always talking about and putting into lovely documents like business plans and strategic plans that again gather dust and seem to have nothing more than lip service. I am going to support the Deputy of St. Mary. I do hope people listen to him in his summing up. I do hope that Members consider the fairness of taxation, and the deepness of the problem that we are in because we are always being reminded about it by the Minister for Treasury and Resources, and rightly so. Yet, as I say, why do some Members of this House seem so reluctant to grasp certain particular nettles. Unless we do, well, as I say, the Deputy of St. Mary will be gone sadly but I think it will come back in another form and we will have the same debate again. It will come back on the Hoppa bus reincarnation, and we will all be sitting here sweltering in this lovely greenhouse that we call a Chamber waiting to go home but knowing that really we have got an obligation to the people who elected us to do the right thing, to do what is fair and what is surely, surely justifiable. I do not buy into the Minister for Treasury and Resources' objections. I would urge him to think again, change his mind and if the Deputy of St. Mary gets this through then I think it is a fitting swan song and something which he can rightly be proud of, and which will be greatly beneficial to many people on this Island. I would urge all Members to support the Deputy. Thank you.

**The Bailiff:**

Does any Member wish to speak? I call upon the Deputy of St. Mary to reply.

**11.16 Deputy D.J.A. Wimberley of St. Mary:**

We are left with the possibility of either people missing their buses or taxis or whatever, or me gabbling like a lunatic for 3 minutes because it will take slightly more than 3 minutes to summarise, to look at the issues raised in a very good debate, and I thank those who took part.

**The Bailiff:**

Perhaps, Deputy, just to assist you, I can test the mood of the House. Does the Assembly agree that we should complete this matter and the Deputy of St. Mary should be allowed to continue? Yes. I think, Deputy, you have your time to reply as you wish.

**The Deputy of St. Mary:**

I am easy but I think we probably should take an indication of whether people want to stay or whether people want to have it in the morning.

**The Bailiff:**

I think I just have, Deputy.

**The Deputy of St. Mary:**

I thought I was hearing shouts in both directions, that is all.

**The Bailiff:**

I did not hear any against it.

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

Can I propose the adjournment, please?

**The Bailiff:**

I will test the mood of the House. The adjournment is proposed so if you wish to adjourn now and the Deputy of St. Mary will sum up at 9.30 a.m., you will vote pour. First of all, is that proposition seconded? [**Seconded**] Yes. If you wish to adjourn now and the summing up take place in the morning, you vote pour. If you wish to continue and finish this particular debate, you vote contre.

**The Connétable J. Gallichan of St. Mary:**

Sir, I am sorry. I missed what the Deputy said. Has he got an indication of how long he is likely to speak for?

**The Deputy of St. Mary:**

Between 10 and 15 minutes.

**The Bailiff:**

Very well, Deputy Tadier has put the proposition, so all those in favour of Deputy Tadier's proposition, kindly show? The Appel is called for. Yes, the Appel is called for then in relation Deputy Tadier's proposition that we should adjourn now. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 23</b>		<b>CONTRE: 20</b>		<b>ABSTAIN: 0</b>
Senator A.J.H. Maclean		Senator T.A. Le Sueur		
Connétable of St. Ouen		Senator P.F. Routier		
Connétable of Grouville		Senator P.F.C. Ozouf		
Connétable of St. Martin		Senator J.L. Perchard		
Connétable of St. Peter		Senator A. Breckon		
Connétable of St. Lawrence		Senator S.C. Ferguson		
Connétable of St. Mary		Senator B.I. Le Marquand		
Deputy of St. Martin		Senator F.du H. Le Gresley		
Deputy J.B. Fox (H)		Connétable of St. Helier		
Deputy G.P. Southern (H)		Connétable of Trinity		
Deputy of Grouville		Connétable of St. Brelade		
Deputy P.V.F. Le Claire (H)		Connétable of St. Saviour		
Deputy S. Pitman (H)		Deputy R.C. Duhamel (S)		
Deputy K.C. Lewis (S)		Deputy R.G. Le Hérisssier (S)		
Deputy I.J. Gorst (C)		Deputy J.A. Martin (H)		
Deputy M. Tadier (B)		Deputy of St. Ouen		
Deputy A.E. Jeune (B)		Deputy J.A. Hilton (H)		
Deputy of St. Mary		Deputy of Trinity		
Deputy T.M. Pitman (H)		Deputy E.J. Noel (L)		

Deputy A.T. Dupré (C)		Deputy A.K.F. Green (H)		
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

**The Bailiff:**

Therefore the Assembly will **[Laughter]** adjourn and we will reconvene at 9.30 a.m. at which time the Deputy will sum up.

**ADJOURNMENT**

[17:27]