

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 19th JULY 2011

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[9:00]

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

PUBLIC BUSINESS

1. Roads and Pavements: legal liability in case of negligence (P.75/2011)

The Greffier of the States (in the Chair):

Very well. We now turn to Public Business and the first item is in the name of the Deputy of St. Martin, P.75 Roads and Pavements: legal liability, 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 (a) to agree that appropriate legislation should be brought forward for approval to make the States, in respect of main roads ('grandes routes') and the Parishes in respect of Parish roads (chemins vicinaux), legally responsible for damage to individuals suffered as a result of negligence caused by a failure by the relevant highway authority to maintain the roads and pavements in a proper state of repair and (b) to request the Minister for Transport and Technical Services to bring forward the appropriate amendments for States approval.

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

My proposition is about the world of potholes, nonfeasance, misfeasance and misplaced fear. We have States Members travelling to far-reaching parts of the world, extolling the virtues of Jersey as being a highly modern international player. Yet, in reality, in some instances, we are still akin to an Anglo-Saxon fiefdom which denies a duty of care to its citizens who may be injured on our highway as a result of acts of omission or neglect. My proposition seeks to bring Jersey into line with most other jurisdictions within the Commonwealth and asks Members to allow our citizens the right of redress given to those citizens over 50 years ago. It seems likely that historically the duty to repair roads in the Island lay with the Parishes in which the roads fell. Certainly the Code of 1771 under the heading "*Règlement Pour La Réparation des Chemins*" expressed such a duty. The position remained essentially unchanged until a Loi of 1914, *sur la Voirie*, which provided the States to draw up a list from time to time of the roads that needed to be repaired and contribute an annual sum towards the repair of such roads in the Parish. The 1914 law also set up the Roads Committee within each Parish to supervise the repair and the upkeep of the roads in that Parish. In passing, I would like to commend the work undertaken by members of the Roads Committees throughout the Island. If my proposition is adopted, their role will be enhanced for they are indeed the eyes and ears of the Constable. They will be required to ensure that any work is undertaken on Parish roads, they are not left unguarded or are fully repaired. My proposition should ensure greater safety on the roads as there will be a requirement for greater care being given when potholes appear or road repairs are undertaken. That point seems to have been missed or ignored by those who choose not to support my proposition. The 1914 Loi, which is still in French, has remained mainly unamended apart from in 1941 when responsibility for the main roads was transferred to the States. At present, the Loi places no duty of care on the Parishes or the States via T.T.S. (Transport and Technical Services) to repair its highways. Also, there is no common law duty of care to repair the highways. The position in England until 1961 was that a highway authority was not responsible to people who suffered injury as a result of the failure to carry out repairs, in legal terms nonfeasance or an exemption from liability. The highway authority was, however, responsible for injury which arose as a result of repairing the highways negligently. For example, creating a hole and leaving it unguarded, that, in law, is known as misfeasance. The Highways Miscellaneous Provisions Act was adopted in 1961. However, it was repealed by the Highways Act of 1980 so as

to provide that the highway authorities were responsible for injury where it failed to undertake any repair (nonfeasance), but, and it is very important, it gave a defence to the highway authority if it could prove that it had undertaken all responsible steps to prevent injury. My proposition asks Members to agree that appropriate legislation should be brought forward for approval to make the States and the Parishes legally responsible for damage to individuals suffered as a result of negligence caused by a failure by the relevant highway authority to maintain their roads and pavements in proper state of repair. Presumably, a defence provision will be drafted into the law. My interest arose following a call from a parishioner last Christmas. The lady and her husband were walking on the pavement on the unlit Route de Saint-Martin. As one can see from the photograph - and I hope Members have got a photograph now in front of them on their desks - at that particular juncture, the pavement is pretty narrow, which meant the husband was walking on the road and showing his torch to oncoming traffic. Unfortunately, his wife fell, unintentionally stepping into the pothole that one can see in the photograph. The lady suffered extreme pain to her leg and ankle and subsequently returned home to rest. She saw no sign of visible injury. However, over the Christmas period, she suffered extreme pain and inconvenience. The lady is of good St. Martin's stock and not given to complaining or even swinging her leg and she returned to work soon after Christmas. She was, of course, conscious of the pothole, and had contacted T.T.S. to inform them of the danger. The T.T.S. officer thanked her and stated if she wanted to make a claim for the injury suffered, then she should write in. The lady contacted me and explained what had happened and complained about the severe pain she was in and the difficulties she was experiencing as her job as a cleaner required her to be on her feet all day and moving furniture. I advised her to have an X-ray. The X-ray revealed hairline fractures to her leg and ankle and she was immediately placed on the sick list and told to rest. I visited the scene of the accident and, as one can see, there had been work carried out around the manhole cover. I too made contact with T.T.S. and the pothole was eventually repaired. When I first made contact, I was informed that the pothole had been created by Jersey Telecom but was later informed that this was not the case and T.T.S. had no idea who had carried out the work next to the manhole cover. I ask Members to look at their photograph. As one can see, there has been work carried out there by the manhole cover, but the work to the right of it has been left.

[9:15]

Ideally, that should have been covered in at the time when the work was carried out, but the law at present means, of course, that T.T.S. does not need to be told when anyone carries out work on the roadway and indeed we hope there will be legislation in time to put that correct. So there we have the situation.

Connétable M.K. Jackson of St. Brelade:

Just on a point of clarity, if the Deputy would allow me just to point out that that is not the case. There is an obligation on anyone digging up the public road to advise the authority.

The Deputy of St. Martin:

I may well beg to differ. One can see that the hole was left unguarded and of course at the States there is no need for anyone to do anything about it because there is no law that requires people to repair after them. As advised, the lady entered into correspondence with T.T.S. insurers but was eventually told that they were not liable for any compensation due to the absence of a statutory obligation. Members who will have read my proposition will have seen that on page 3 I have included the reply from T.T.S. For the benefit of those who are listening, I will read it. This is the letter the insurers sent back to my lady parishioner: "We are sorry to hear that you are injured and hope you are progressing swiftly towards a full recovery. Our understanding of the law in Jersey is that in the absence of an express statutory provision [and there is none], the States of Jersey cannot be held legally liable for injury to a third party as a result of failing to maintain a public highway in

a good state of repair. There is no equivalent Highway Act in Jersey. While we are sorry to hear of your injury and subsequent disruption of your celebration of the Christmas season, we regret we have no offer to make in the way of financial compensation on behalf of our insured.” So, as one can see, it could be any member of our family or indeed any member that we are responsible for as elected Members. That could be any constituent walking along there, seriously injuring herself, and we owe no duty of care to those people as indeed this insurance company make it quite clear. Having been informed of the letter, I made further inquiry to the T.T.S., the Law Officers, Parish secretaries and Connétables and learnt that the law in Jersey was certainly different from other countries. I was also made aware of a Royal Court judgment dated 3rd September 2003, which is attached as an appendix to my proposition, and I ask that Members will read it. In the judgment, Members will have noted that a resident of Jersey had sought redress through the court for injury he had suffered after falling on the pavement. The case was dismissed on the grounds that the 1914 Loi did not create any right of action against a Parish or States for injury for the failure to carry out its maintenance. That indeed was the reply that my lady parishioner received. However, the Royal Court was clearly troubled by the situation and, although it acknowledged that there might be a resource implication, it felt it was not a matter for it to decide but that reform must be dealt with by legislation. In the final paragraph of his judgment, the judge at the time - who was Mr. Michael Birt - had this to say about the lack of legislation in Jersey. If Members will look at page 17, I will read out what Mr. Birt had to say: “I should add that, as experience has shown in other jurisdictions, this may not be regarded as a satisfactory outcome in current times. Individuals who suffer damage through failure by a highway authority repairing the highway should be entitled to recompense subject to appropriate safeguards for the public and parochial purse. I would therefore invite the relevant committee to consider introducing appropriate legislation. It might well find it helpful to refer the matter to the Jersey Law Commission in the first instance. The Commission will no doubt be able to review the solutions adopted by various jurisdictions throughout the Commonwealth with a view to recommending what is most suitable for Jersey.” Quite clear. That statement was made in 2003. However, successive Presidents and Ministers have failed to refer the matter to the Jersey Law Commission and neither have they lodged any amendments. It is also highly likely the matter would have remained dormant had I not brought it to anyone’s attention. It is also likely that it will remain dormant unless we support my proposition today. I personally do not think there is any need to refer the matter to the Jersey Law Commission. That is a get out of jail card for Members that do nothing or procrastination party. It is patently obvious that the English Highway Act is a good model. Members will have noted the comments on page 2, and I refer Members to the comments from the T.T.S. It says: “Most Commonwealth countries have adopted a law change that provides a solution to the intent of the proposition by imposing a common law duty of care to maintain the highway as an absolute obligation but then provides for a statutory offence. In Guernsey, they share the same legal situation as Jersey by not permitting any claims for damages against the highway authority.” It is unfortunate Jersey and Guernsey are in the dark ages. Never mind; we may well move forward. However, whereas the Isle of Man does accept claims but they are low in number and they have not experienced a claims culture like the U.K. (United Kingdom), it is reported that the Isle of Man legal licensing laws restrict influx of no-win no-fee for solicitors. I did not put that. This is the evidence from T.T.S. who are not going to support my proposition today. I would maintain, particularly with reference to the Isle of Man, what is good enough for the Isle of Man is good enough for Jersey. No doubt we shall hear claims that we are opening the door to a compensation culture, which says very little about the residents of Jersey if we can think so poorly of them. That does not happen in the Isle of Man. As I say, there is no evidence of abuse in the Isle of Man and I believe we should have no fears in Jersey either, particularly - most important - as the Parishes have a roads committee whose role is to supervise its highways. Also, T.T.S. is going to lodge very soon, I hope, a draft law which will require utility companies who wish to carry out work on the roads to seek consent from T.T.S. with certain obligations, including making sure that the road is repaired completely when they finish or is left with some form of warning signs. I have had several discussions with the Minister for T.T.S. and

his officers and I have also had discussions with individual Connétables and met Constables at a formal Comité des Connétables meeting, which was also attended by the A.G. (Attorney General) and the T.T.S. officers. There is concern that by approving my proposition, it could lead to increased premiums being required from insurance companies. However, on the plus side, my proposition would ... I repeat the word "would" lead to greater safety for all our Island residents. Therefore, if the highways are kept in good condition and the road works are properly supervised, there should be fewer accidents and fewer insurance claims. Some may say a win-win situation. At present, the Parishes and T.T.S. already pay a third party cover. However it appears that insurance companies are accepting the premiums but are not liable for paying any compensation for neglect. There has been evidence from the experience from my lady parishioner. At the Connétables meeting, it was generally accepted that the current situation was unfair but it would involve considerable cost to implement the law in Jersey. I strongly dispute that claim. My understanding of the outcome of that meeting was that I, along with T.T.S. staff, should meet the law draftsman with the view to possibly including my proposed amendment into a new law which is currently being drafted which will require the utility companies to inform T.T.S. before new road works are undertaken. Also, I did discuss the matter with the officers. The general feeling was that unless the Connétables and the Ministers agree in principle to support my proposition, nothing can go ahead. My belief is supported as a result of my meeting with a law draftsman and the Connétable of St. Peter. The law draftsman quite correctly stated that she could draft anything provided she was given a brief but that brief could not be submitted until the States had approved my proposition. Again, this asks Members to support the principle that the Parishes and the States should be legally responsible for the maintenance of their highways. As one can see, the Connétable has not presented his own comments but appears to be in agreement with the Minister for Transport and Technical Services. That is to do nothing. The Minister considers my proposition to be laudable, and I am grateful, but cannot at this time support it. Unfortunately, he does not say when will be a good time. I submit that it will never be a good time for those who put cash before care. No doubt we shall hear claims that a law change will cause hundreds of thousands of pounds and my proposition is a lawyer's dream ticket. I hope that when those claims are made, evidence will be produced to support those claims. However, it will be for Members to decide whether to support my proposition. I welcome their comments and, more importantly, their support. I make the proposition.

The Deputy Bailiff:

The proposition is made. Is it seconded? **[Seconded]** I call on the Connétable of St. Brelade.

Deputy A.E. Jeune of St. Brelade:

May I ask a point of clarity from the opening speech, if I may? We were all offered a photograph and I am looking at it and in his speech the Deputy said it was work carried out on the manhole cover but it would appear there is an opening right above. Is that correct?

The Deputy of St. Martin:

I think the photograph is quite clear. If Members will look at the photograph, one can see that the manhole cover is to the left, and just to the right there appears to have been some work carried out which has not been completed. If one looks afterwards, underneath there, we can see what should really have happened. In fact that happened after T.T.S. were informed. However, what I am saying is that that should have been repaired at the time the work was carried out. That is not just a wear-and-tear pothole. That has been manufactured. No doubt the Attorney General may well agree with me that that would then amount to negligence as opposed to the wear and tear of a pothole.

The Deputy Bailiff:

But the point of your photographs is that your constituent tripped in that area underneath the wall, and what looks like a gap to the left of the manhole cover is irrelevant. That is the point.

1.1.1 The Connétable of St. Brelade:

If I may just elaborate on the photograph before speaking. It is quite clear that the work done on the pavement in the upper photograph was as a result of the change from a surface water situation, and Members will note the hole in the wall you can just see to the right of the repair. Originally, water would have come over the pavement and clearly it was decided by the householder or under direction that that needed to be connected to the surface water sewer, which is mandatory these days. Work has been done by the householder and not been adequately repaired.

Deputy P.J. Rondel of St. John:

Could I challenge the Minister on his comments there, because that in fact is an air vent to a property, not a drain.

The Connétable of St. Brelade:

That is the Deputy's opinion. As Members will appreciate, Transport and Technical Services is the highway authority for the States' main roads, les grandes voies.

[9:30]

Any change in the law that permits T.T.S. and the other 12 Parish highway authorities, the Parish highway authorities being responsible for the *chemins vicinaux*, to become liable for claims for negligence need to be very carefully considered. There is a fear that the impact of such a proposed law change on the Island's highway authorities will lead to an increase in claims, an increase in legal fees to defend those claims and increase in insurance premiums that may develop into a claims culture that is so prevalent in the U.K. I shall expand further on these points in a moment, but firstly I do agree that it is time to review the current legal situation. A situation that sees the public without any real hope of redress for negligence cannot be acceptable, but I cannot agree with the introduction of legislation without extensive consultation and consideration of all the legal, financial and technical implications that might follow. The proposition asks the States to agree the appropriate legislation which should be brought forward for approval to make the States in respect of main roads and the Parish and the respective Parish roads legally responsible for the damage to individuals suffered as a result of negligence caused by a failure of the relevant authority to maintain the roads and pavements in a proper state of repair. I cannot agree to bring legislation back to the House without knowing if such legislation is required or whether it is appropriate or in the interests of the public as a whole. In the judgment of the appeal case, *Dobson v Public Services Committee*, the judge, being the former Deputy Bailiff at the time, Deputy Bailiff Michael Birt, was careful in phrasing the summary to emphasise the appropriate safeguards the public purse would need to be introduced. He invited the then Public Services Committee to refer the matter to the Jersey Law Commission. I believe that is what we need to do. I hope this House will agree with me that asking the Jersey Law Commission to conduct a thorough review of all the implications of highway liability is the right course of action. This review timescale should allow effective consultation and research. This is a sensible way forward to address the main purpose of this proposition and not to agree to a law change just simply to follow the U.K. model which has led to extensive costs, bureaucracy and red tape. The U.K. law referred to is the Highways Act 1980. It charges all highway authorities in England and Wales with a statutory duty to maintain the highway. Each highway authority may become liable for the damage or loss as a result of a failure. The Act also provides a statutory defence for them when they find themselves in court. They need to be able to convince the court that their policies on highway maintenance are robust, reasonable and are being complied with, they are exercising a reasonable duty of care in inspecting the highway for condition and safety, the individuals making the inspections are suitably trained and

qualified. I would say that while T.T.S. are generally meeting this level of defence for most of its highway assets, because my department tries to adopt best practices, the situation with the Parishes may, as a result of historic practice in the Island, be different. Such a law change will nevertheless expose the States and each Parish to considerable risk if a claim is taken to court. If such a claim was to come to court now as a civil action, the States and Parishes are not presently liable for personal injury caused by the disrepair of roads and pavements. So what would be the additional risk or cost that each highway authority could experience should a U.K.-style law be introduced? The U.K. is spending between £100 million and £500 million a year managing highway claims. This is documented. This includes compensation and legal fees. The U.K. have seen an 88 per cent increase in claims over the 10-year period 1999 to 2009. Over £10.6 million paid out in 2010 to 2011 was for the road user compensation alone. In the U.K., authorities have had to develop robust claims handling administration that is not currently needed in Jersey. That costs an average of nearly £100,000 or, to be exact, £98,000 for each authority per year. In addition to the claims handling administration, legal costs can add considerably to defending a claim. In the U.K., legal representation costs in court between £7,500 and £15,000 per day. Legal costs may be higher in Jersey and defending claims is not a service the Law Officers can provide without increasing staff and that being charged for. These are sums of money that the Island's highway authorities do not currently have in their budgets. Using U.K. figures, each claim could cost between £9,000 and £22,000 to defend in court. This is the reality. For other jurisdictions, the situation is varied, as has been alluded to by the Deputy. Guernsey has the same legal framework as Jersey, providing Guernsey states with exemption from liability for non-repair and nonfeasance, and there is no move to change. The highway authority in Guernsey is recommended by their insurers to settle small-value claims of £750 to prevent such claims becoming major time-consuming issues. The Isle of Man nonfeasance has been replaced by legislation similar to the U.K. The highway authority there defends all claims by using best practice and following the U.K. guidelines. The issue is a more complex one than just the introduction of a new highway law. Whether it is by pragmatic guidance from insurance companies or limiting risks through licensing, there are other solutions that need to be explored. This is an area that requires research and may form the basis for setting up policies or laws to provide a similar situation in Jersey. This research falls within the expertise of the Jersey Law Commission and T.T.S. would invite them to investigate and review. The proposition claims that there is no financial or manpower implication to the introduction of the law. This is totally incorrect. It is certainly totally incorrect. Evidence gathered to date demonstrates that if the U.K. model was followed, substantial costs would be incurred assessing, managing and dealing with claims that would require the recruitment of additional staff, resources that are not currently available. In addition, there is the risk that the introduction of such a law could encourage the development of a local claims culture. This is the real fear for all of us. The true cost of potential claims to T.T.S. and the Parish is unknown. The current nonfeasance legal situation stops cases coming to the attention of the highway authorities, thereby preventing an assessment of the quantum of claims from being estimated. However, what can be evidenced from the U.K. is that insurance premiums will inevitably rise to take account of the additional volume of claims that are likely to be received as a result of the proposition. Law Officers have indicated that additional and significant legal representation would be required to assist highway authorities in defending claims. One lesson that can be drawn from the U.K. experience is that while additional cost is incurred in implementing systems to protect the highway authority from third party claims, this does not necessarily result in safer roads or better maintenance. The cost of claims and claims management comes from the highway maintenance budget which invariably results in less money available for repairs. In Jersey, unless Treasury would be able to increase budgets to compensate for successful claims, the only recourse to T.T.S. would be to reduce road maintenance funding at a time when the roads really need improvement. The Parishes, without recourse to Treasury, may have no option but to increase rates. In the U.K., the claims culture and damaging court settlement costs have recently been the subject of reviews by Lord Justice Jackson - that is no relation, by the way - and has led to the Justice Secretary, Ken Clarke, announcing changes in March 2011 to the no-win no-

fee arrangements. These arrangements have often discouraged defendants to settle, even when they are in the right, simply because of the fear of huge legal bills. It is therefore imperative with the potential for allowing claims to come to court that the Jersey Law condition need this review. The proposition, as I have indicated, will lead to a massive increase in bureaucracy, red tape, and I think totally unnecessary inconvenience to the general public. Our present system enshrined in the 1771 code, of which I have a copy here, and I think it has stood the Island in extremely good stead over the years with its later amendments, is, I think, a law that should not be changed on a whim. I simply do not think we should change it to follow what I consider are unsatisfactory arrangements in other jurisdictions. I cannot agree with this proposition because it will lead to significant financial risk for T.T.S. and all the Parishes. The true cost to T.T.S. and the Parishes is unknown but I am absolutely certain, should the proposition be adopted, there would be a significant increase in compensation claims. There would be an increase in the Parish rates. There would be an increase to insurance premiums. Additional staff and training to handle claims would be required. There would be an increase in legal representation needed to provide a robust defence and an associated increase in the T.T.S. roads maintenance budget would be necessary for those roads and pavements and I think the inconvenience to the general public on the grounds of having to close off roads because of health and safety issues would be unpalatable from the point of view of the general public. Just before closing, I would say that prior to being elected I was a roads inspector for the Parish of St. Brelade for some 6 years and I can assure Members that those roads inspectors in the Parishes do a diligent job. They pick up all sorts of omissions in the road surfaces and I would say that the bulk of those issues are created by third parties digging up the public roads and I will refer to the new street works law which the Deputy mentioned earlier on and I am keen that this becomes on the statute book and I certainly think it will be during the course of next year. It is in the later stages of preparation and that will certainly assist my department in managing the utility companies during their trenching processes, which are undertaken at the moment. Finally, I applaud the Deputy for bringing this as a result of his constituent's unfortunate fall. I do not think this is the right way to approach it, but I think the Deputy's proposition will stimulate activity in the terms of road inspection and I do not think there is any reason why that should not be sharpened up.

Deputy D.J.A. Wimberley St. Mary:

May I ask a couple of points of clarification? The Minister gave us a lot of figures which frankly would have been better in the comments because it is quite difficult to absorb them now. Firstly, he mentioned a figure of £100 million per annum and I have no idea what that was for or about - I just cannot write fast enough and I cannot hear fast enough - so could he tell us what that figure was for? He mentioned also 2010, 2011 and he mentioned a figure for road user compensation. Could he repeat that figure and say what it was for?

The Connétable of St. Brelade:

Certainly. The U.K. are spending between £100 million and £500 million a year managing highway claims. This includes compensation and legal fees and the £10.6 million paid out between 2010 and 2011 was for road user compensation alone.

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

What was that figure, the road user compensation figure?

The Connétable of St. Brelade:

£10.6 million.

Deputy M. Tadier of St. Brelade:

Can I ask clarification? The Minister has quoted U.K. figures there. What would that work out pro rata for Jersey considering the U.K. is a lot larger?

The Deputy Bailiff:

Perhaps the Minister will work on that and come back to it at a later stage.

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

If the first 2 speeches are anything to go by, the road ahead might not have holes but it is going to be long and winding, I think. I am going to speak very briefly. I have to say I do not think the argument of potential, possible, hypothetical costs is any reason for a jurisdiction to stay in the dark ages. I have had a similar experience to the proposer and certainly the person I was involved with had the same advice from the Citizens Advice Bureau that really there was no adequate statutory law in Jersey. On a slightly different basis, I think, back to last Christmas - and the Constable would be aware - I had a constituent who, thanks to a dispute over who had not prepared the roads adequately, that constituent had her Christmas and that of her 97 year-old mother absolutely ruined because a torrential downpour flooded their flat; resulted in 3 or 4 months of absolute stress moving out; could not live there; stress-related illness. I think anything that can be done to make this clearer has got to be a good thing. So I am going to support the proposition and leave it there because, judging by the cartoon we have been given, I think the Deputy of St. John is probably going to speak for a very long time, so thank you.

1.1.3 The Deputy of St. John:

I think the photographs that we have been given by the proposer say it all, and that is only the beginning. In my time as a Member and also Vice-President of the Public Services Committee of the day, we did put in place research on the condition of our roads.

[9:45]

As I think most Members have been now given a copy of this Al Thomas cartoon and where it says (this was back in the late 1990s): "Roads will be improved by 2004." I think the President of the day has now left the Chamber, he is the balding one at the end and the other balding one is myself, about 2004. But we all know what has happened since the 1990s and when I came into the House in 1994, prior to that, 10-15 years before, it was in the millions of pounds that were being spent on having good quality roads in Jersey. We were proud to have some of the finest roads in this Island. In latter years, our infrastructure has been allowed to go, to fall into total disrepair, and I am not surprised that the Deputy of St. Martin has brought this to the House; I am not surprised one iota. I was given promises that there would be funding back in the late 1990s. 2004, I obviously raised it because, once again, Al Thomas had made another cartoon, and I have got several of these cartoons at home. I thought: "Well, we are now 2011, coming on 2012, and we are talking about £1 million-odd to be spent on that part of the infrastructure in 2012 when, in fact, if we were spending £8 million and £9 million in the early 1990s, and in one year in particular I think we touched nearly £15 million in road repairs or road resurfacing, we are now not even touching the potholes." We are hearing the Minister asking the public to report potholes. The Parishes have got their own inspectors, they are doing their bit, and the Parish roads generally are in very good fettle. It is us, the States of Jersey, who in the good years have not been investing in our infrastructure. We have now got our back to the wall because of the 2008 world crisis and the recession we have got ourselves in and yet with the fiscal stimulus we decide to spend £7.3 million on doing the work on Victoria Avenue, or re-engineering it when possibly all it needed, given that they have only given it a 20-year re-engineering life, instead of doing the job properly and giving it a 30-40 year re-engineered life, we could have spent half that figure, resurfaced it, or a third of that figure, and then done X number of miles of roads in other parts of the Island. What are we doing? A lot of the research has been done. We had teams of people come over from the U.K. taking cores of various roads over the years when I was on the Public Services Committee; where is all this research? What has happened to all that evidence? Last week, a fortnight ago, I was with officers from the department who are telling me we are now re-engineering the area in front of Commercial

Buildings. I have been aware that this needed re-engineering for the last 10 or 15 years. I was expecting to be told that we were going to be doing a proper job, that it would be re-engineered for something in the region of 30-40 years and I am told we are engineering it for a period of 20 years. This is false economy, Chief Minister, through the Chair. I would expect the Council of Ministers to do what is right. We must have a programme looking up to 50 years ahead and not go down the road of short-termism because, in my view, short-termism is 20 years. This is why the U.K.'s roads are probably as bad as they are because they work on a 20-year programme. You go into France and Germany where they work on a much longer timescale, 40, 50 years, their roads are in far better fettle. We must do what is right by the people who use these roads. Because the Minister pulled out the 1771 code, which, yes, it served us well, but were they not the days when we used to have people who paid their rates, gave the horse and cart and the red gravel treatment to the roads a day a year or 2 days a year to pay their rates and looking after our roads? Those people who were manual labourers would have to give 3 or 4 days a year to the Parish spreading that red gravel. The code is fine, but it needs updating. Where is all the research that has been done? I am sure the Parishes who know how to look after their roads could give the Connétable, a former roads inspector himself, a few tips when they are all sitting around the table how to work within his department and instruct his men who have done all the research on getting on with the job. As I said yesterday, I expect the Minister for T.T.S. to fight his corner within the Council of Ministers. It is all well and good for us to hear we are setting up new departments like Foreign Affairs ministries and all the rest. There is a cost implication; let us look after our infrastructure first. Put in the right checks and balances. I am not 100 per cent sure I can go with the proposition, although my heart is telling me I have got to, but we have to put laws into place to make it happen. I know the Minister has spoken and it is a shame he spoke early. Possibly his Assistant Minister might be able to put my mind at rest that we get something put in place right away that is going to resolve the problems that we have and that we get all the research that has been done in the 1990s and 2000 up-to-date, put in a package, worked on, and put a law in place so we do protect the people who use our roads, whether it is on foot, on bicycles, or in vehicles, people who are getting injured. It is important that we do what is right. Once again, I know the Minister for Treasury and Resources is not in the House, but I see one of the Assistant Ministers - yes, only one of them, not 2 - within the Chamber. I believe they need to get around the table and look at putting the proper funding in place to make sure that Transport and Technical Services have the necessary funding for our infrastructure. I know I go on about this year on year; I go on about the state of roads or our drains or sea defences and the like, but at the end of the day, we have got to leave what is right for our children. We are just creating problems for them. Short-termism is not acceptable. Do what is right and do the job properly now. Get the funding, stop all these grandiose ideas of wanting to build on the Waterfront and the like, look after what we have got. Put all that in good fettle before we do anything else. Really, I am getting very passionate about this, I think I have probably said ...

The Deputy Bailiff:

You are also getting off the point, Deputy. This is not really a debate about the quality of roads, although, clearly that is part of the discussion, but keep to the main points.

The Deputy of St. John:

It is when I see that photograph. I have probably said sufficient, and they know where I am coming from, the Minister knows where I am coming from. 99 per cent of the research has been done, it is all there, it just needs updating. So, please ask your officers to dig through their files and find it, Minister. Thank you.

1.1.4 Deputy M. Tadier:

We were told by the Minister, pretty much, in his opening gambit that adopting this proposition may lead to more claims. Now, we are often accused on this side of the Chamber of seeing things

half full rather than half empty. What it could lead to and what I think it would lead to is roads being better maintained in the first place, jobs being done properly in the first place, so that claims - but more importantly, accidents - do not happen in the first place. I think we have to put this back in the context; this is not about money, it is not about lawyers' fees, this is about best practice, it is about the responsibility of the States doing what is right for the people of the Island. I think also, we do not have to presume that everybody out there - every lawyer out there, for a start - is some kind of ambulance chaser, but more to the point, that every member of the public is going to turn around and sue just because they trip over. I do have to say this is a matter that is close to my own heart because yesterday my mother had a fall and she has ended up in hospital for at least 2 weeks; she has cracked her hip. That is very unfortunate and I am not suggesting that was to do with the roads being badly maintained, but I do know that in my Parish, for example, there have been incidents because there have been areas that are maintained by Property Holdings which are badly lit and which are unstable for walking. I know that at least 2 or 3 years ago a similar incident did happen with an elderly lady who also fell over and broke her hip, which led to Property Holdings putting a handrail in, but they have not put any lighting in. So, there is an ongoing question with them as to, first of all, whose responsibility and liability it is, whether they are likely to be sued, and whether it is more cost effective to put lighting in there to stop accidents happening in the first place or to just wait and see if a claim does arise. So there is a cost to society and to the individual when an injury occurs and that is irrespective of whether or not it is malfeasance, nonfeasance, or any other kind of feausance, and that is irrespective of whether or not there are going to be any claims pursuant. Because we have to remember, anybody who ends up in a hospital bed for 2 weeks or a month, that is going to happen at the cost to the public anyway. So, I think the reality of it is we have had a lot of unverified figures from the Minister. We have got figures which are based on the U.K., we have had figures of £100-500 million, which have been suggested. Now, I appreciate the Minister is in a position where he does not know what the costs are going to be because we are in an unknown area, but if we transfer those same figures to Jersey pro rata, they are not significant at all. But more to the point, if we did the work in the first place, this puts an onus back on the States of Jersey because there will be a liability to maintain the roads. Now, that is not to say that our staff do not maintain roads properly, but there is an issue here. Prevention is better than cure, I think, is the message that needs to come over loud and clear and I think that is all that needs to be said; prevention is better than cure. We need to invest to save and I think this is an invest to save.

1.1.5 Connétable J.M. Refault of St. Peter:

Moving back to the proposition, I think the Deputy of St. Martin has brought forward a well-meaning and responsible proposition that protects the public from injury. However, it is unfortunately, I believe, out of sync with the reality of where we are. We are just months away now from seeing the Street Works Law, which is being put together by Transport and Technical Services, come into fruition, hopefully around about June next year, which puts a lot of responsibilities on the people that damage the roads deliberately because they are the utilities and they have to open the roads to get to their services. The new Street Works Law also makes provisions to ensure that the repair is done to a far higher standard and also to involve the area of influence of the works that they are doing. All too often we see, particularly after wet periods and cold periods, where on the interface between the old and the new asphalt potholes will appear overnight. It is very difficult to get out there and resolve it first thing in the morning because it takes somebody to report them before the work can be done. Certainly, St. Peter has a far higher proportion, I think, than most of the rural Parishes of parochially maintained roads. It is a big problem for us when the utilities keep opening roads. Very often in an emergency we are not even advised that they are being done and that gives us a big problem if we are going to be made legally responsible for a pothole which has appeared overnight or within the last day or 2 on a rarely-used road and somebody trips in them. One of the things that I do tend to do particularly on early mornings - I am an early-morning riser unfortunately - and particularly in the winter I do go out

walking the Parish roads and I always carry a torch because it is unreasonable to expect, as the last speaker has suggested, that we have street lighting all around the Island to make sure people can see where they are going. I think we all have responsibilities of our own to ensure that we protect ourselves and we take the necessary steps to ensure we do not get injured by carrying a torch. One of the other comments I would make is that pavements are not necessarily the safest places to walk on in the dark because all too often - we have this problem in St. Peter and I am sure other Parishes have the same problem - where property owners will perhaps modify the pavements to make it easier to get in and out of their driveways without permission. So, we get these ups and downs on a pavement, which you will not get on the associated roadway. So, in the dark it is quite often easier and safer to walk on the roadway and step on to the pavement when some traffic comes along.

[10:00]

I think one of the other things I would like to really comment on was a comment that our roads were in total disrepair. Well, I would challenge that; I think they are in very good repair in the main. There are some examples of very poor roads, or what I would consider very poor roads, some are T.T.S. and possibly some are Parish roads. But in the main, I travelled both into France and the U.K. and I enjoy driving and I enjoy driving an old car which suffers from bad roads and I know where I would rather be driving; that is back here in Jersey in my old car than dodging potholes and loose surfaces in France and very poorly maintained roads and byroads in the U.K. The main roads clearly are generally of much better condition, but other than one or 2 exceptions in Jersey, I think the main roads are generally fairly good. One of the comments I think that may well be levelled is that the Connétables are against this proposition because they are worried about the costs to the Parish. That is partly correct, but they are also looking after the interests of the parishioners overall as well as in the States here today to ensure the jobs are done properly and the funding streams are put in place to do that. The difficulty for Parishes are the finite budgets that they have and without the ability to move monies around because they do not have that luxury, is that we may be in a position where we will just have to shut a road because there is a pothole we cannot afford to repair. Is this in the best interest of parishioners? I am certainly marking it as a first option. These are the considerations we need to put in place. What I would respectfully say to the Deputy of St. Martin that I agree with his principles in bringing this forward. It is entirely right; we need to protect the innocent from injury, but I would ask him to consider the impact of the Street Works Law and all of that and make the utilities and people who do works on our roads party to the responsibility rather than put the responsibility purely on the States and the Parishes. Thank you.

The Deputy of St. Martin:

I did not want to interrupt the Connétable, but I just wondered whether the Connétable understood what my proposition was about? It is not about ...

The Deputy Bailiff:

Deputy, I am sorry, you will be able to reply at the end of the debate.

The Deputy of St. Martin:

I know, but I am just asking whether it might be convenient at this stage to maybe just ask the Attorney General the difference between malfeasance, misfeasance and nonfeasance because I just believe that people believe this is a charge and if a pothole appears overnight the Parishes are liable. It is not that.

The Deputy Bailiff:

Deputy, you are able to sum up at the end of the debate and it is really not right to intervene at this stage.

1.1.6 Connétable K.P. Vibert of St. Ouen:

I think it is important to realise that the Connétables are not against this proposition per se. In fact, the Connétables have been asking for the *Loi sur la Voirie* to be looked at. Certainly, in the 6 years that I have sat on the Council of Ministers, it has come up every year and every year it just falls off the bottom of the list so it never gets done and the Connétables are well aware that that particular law does need looking at. But I think where we come at odds with the Deputy's proposition is the fact that the Court clearly said, and I quote from the bottom of page 4 of the Deputy's report: "The Court acknowledge, however, that creation of a liability for injury from failure to repair could have significant resource implications for the States in respect of main roads and for Parishes in respect of minor roads." This is where we come at odds with the Deputy because I am fairly sure that if this proposition had been brought by the Council of Ministers the Deputy would be the first to say: "There has been no cost analysis of this proposition." The Deputy says that he does not believe there is any cost to this proposition. I respectfully tell the Deputy that I believe there is a cost to this proposition and a cost which has not properly been worked out before this proposition comes to the States. I think that is what should have happened. Deputy Tadier, when he raised a point of order following the Minister's response to this proposition, highlighted how no one could tell him the cost of each incident that will occur. I think this work needs to be done. I am not convinced that the Law Commission is necessarily the place for it to be done. I would now mention the Deputy of St. John, whose speech was all about the cost of maintaining roads, very little about the proposition and the problems we have with the potholes. Many of the potholes, of course, are not created by the authority themselves, but are created by a third party that undertakes work on our byroads and on our main roads. I say, in a way I would like to support this proposition, but I do not believe that sufficient work has been undertaken to properly support it. Therefore, I would like to invoke Standing Orders of the States of Jersey, Article 79, and ask for this matter to be referred to a Scrutiny Committee so that proper Scrutiny of the full costs and benefits can be assessed.

1.2 Roads and Pavements: legal liability in case of negligence (P.75/2011) - referral to Corporate Services Scrutiny Panel

The Deputy Bailiff:

Just so that Members are clear as to which panel it would be referred to, would it be the Corporate Services Panel? Standing Order 79 provides that any Member of the States may propose without notice that the debate on any proposition be suspended and the States request the relevant Scrutiny Panel which, notwithstanding the fact, if I may put it that way, that Senator Ferguson pulled a moment ago, I think it is the Corporate Services Panel to consider having the proposition referred to it. Is that proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? Deputy Martin.

Deputy J.A. Martin of St. Helier:

Well, mine was more of a question. Are you sure it is Corporate Services? It comes under Environment, I thought, T.T.S.?

The Deputy Bailiff:

I will ask Members on this.

Deputy J.A. Martin:

I know the Constable needs to direct to which Scrutiny Panel because although the law comes under Corporate the contents of all this proposition comes under T.T.S., so we need to know where we are going before we have the debate; whether we refer to Scrutiny.

The Deputy Bailiff:

Deputy, I entirely agree with you; we do need to say where we are going before we have the debate. **[Laughter]** Connétable, have you identified the Scrutiny Panel? It does seem to me that Corporate Services is the most obvious one, but ...

The Connétable of St. Ouen:

I believe it should be Corporate Services and I would like to reply to what Deputy Martin just said. This is not all about T.T.S. Over half our Island's roads are administered by the Parishes.

The Deputy Bailiff:

You will have a chance to respond at the end of the debate on whether the debate should be suspended and the States request the Corporate Services Scrutiny Panel. Now, Deputy Martin, do you wish to speak? You have started speaking.

1.2.1 Deputy J.A. Martin:

Yes, please. Here we go again; games that we will play. I do know the Standing Order; if we refer it back to the relevant Scrutiny Panel, they have to come back on our next States sitting, which is in September, so knock it back into the long grass and, you know, hopefully it might even find Senator Perchard if it is kicked far enough. My objection to this is it is the exact speech that the Constable of St. Ouen gave because he said there is lots of work to be done. Now, all of a sudden it has got to be done by Scrutiny. If anybody reads the Deputy's proposition, it is (a) to agree that appropriate legislation - appropriate legislation - now, he maybe should have put in there for Jersey and not the U.K.; you know, 70-80 million people, he may have put that, but of course we know that is what he means; it will be done by our Law Officers - and (b) to request the Minister for Transport and Technical Services to bring back appropriate amendments. It is not anything more. Again, knock it into Scrutiny is really just a way ... I cannot support this. You have the convictions: we have the Deputy of St. John; with his heart he feels he should support it. He is the one who has been on about roads and highways for many, many years. I think the proposition is doable. It will take a lot of research, but it will be research by whom? We have waited years now. I must admit, I did not realise we went back to 1771 and that people were not being covered for accidents. What are we paying insurance for? This is probably the reference-back speech because I have a lot more to say. We have heard it all. I nearly fell off my chair when the Constable of St. Peter said: "We are best walking in the road with a miner's helmet on with a light on it." I think we would all be if we were in 1771, but it would have been a candle or something, I suppose. Anyway, to just refer again to the Constable of St. Ouen's speech, and if this had been brought by the Council of Ministers I am sure the Deputy of St. Martin would have his question: "No, no, no, this should have been brought by the Council of Ministers. It has been waiting too long and now knock it back again until the next House." Corporate Services is not going to do this. They have no time. If you have at least the courage of your convictions in this House, knock this one out, vote against the Deputy of St. Martin, but do not use this - again, a quirk of our Standing Orders - to basically move on to the next item. Vote one way or the other, but do not support this, the Constable of St. Ouen's suggestion that Scrutiny can do something now. Never. Thank you. **[Approbation]**

1.2.2 Senator S.C. Ferguson:

Obviously, we are in the hands of the Assembly. Quite honestly, time is extremely limited. I think the only thing we could have produced is a comment, but we have August looming and September will be taken up with the Business Plan. It is possible this could be started and continued by a subsequent panel after the elections, but I merely emphasise to the Assembly that time is extremely short. We would obviously endeavour to report back by the first meeting in September regarding this but, as I say, we are in the hands of the Assembly.

1.2.3 Connétable A.S. Crowcroft of St. Helier:

I disagree with Deputy Martin. I do not think this is the same as moving on to the next item. I think that disparages the Scrutiny function considerably [**Approbation**] to say that. Also, I would query the chairman of the panel, who has just spoken, saying that it will be difficult to do. I have been involved in a very effective sub-panel chaired by Deputy Maçon, which has produced a report that is certainly making waves and I would have thought that Corporate Services could quite easily appoint a sub-panel to do this work. I would be very happy to be on that sub-panel. So, I do not see any threat from this; it does not seem to me to be a delaying tactic. As I say, I think the simple question of should Scrutiny be able to review the legislative issues here, the potential costs to Parishes and the States, and crucially whether this decision by the States we are being asked to make by the Deputy of St. Martin will make our roads any safer, particularly for the more vulnerable road users. That seems, to me, the crucial question: what can we do to make our roads safer? One of the things that I am most worried about is any delay to the long-awaited Street Works Law and effectively that is what will happen if the Deputy's proposition is passed. T.T.S. effectively seems to me to be required to make space in their work that will be delayed and, from my point of view, the majority of things we are dealing with result from utility companies digging up highways and pavements and other third parties, not just utility companies. The sooner we can get a handle on that and legislate and make them do the job properly, the safer our pavements and highways will be. In practical terms, I think referring to Scrutiny to a sub-panel as motivated as Deputy Maçon's on litter and anti-social behaviour will achieve a lot and I shall certainly support the proposition.

Deputy J.A. Martin:

On a procedural matter, the Constable has just said: "It is not the same as moving on." The Standing Order the Constable is trying to invoke, 79.1, if you read down to 79.4: "At the next meeting the Presiding Officer will ask the relevant panel." Now, the next meeting is September and then you get 4 sittings after that. We will be in a new House. So, you cannot bind a new House and the sub-panel ... if all the stompers of Scrutiny had really realised what Scrutiny can do, they would understand nothing can be done until the Corporate Services Panel chair sits down with the thing and it comes back to the House in September with either a yay or a nay.

[10:15]

The Deputy Bailiff:

This is beginning to sound like a separate speech.

Deputy J.A. Martin:

I just would like them to understand the Standing Orders.

The Deputy Bailiff:

This is beginning to sound like a separate speech.

1.2.4 Deputy M. Tadier:

This is essentially a bluff that we are seeing from the very shrewd Constable of St. Ouen. He knows that this cannot be referred to Scrutiny in any way. First of all, there is not time. Second of all, there is not the appetite. We have heard from the Corporate Services Panel that they do not want to do it. It would be interesting to hear from the Environment Panel before we kick this out anyway and then go to the main vote. Whether or not Deputy Martin is correct in saying this is akin to a reference back, it certainly is a device which is being used to avoid having to register one's vote pour or contre a couple of months before an election. [**Approbation**] My first question is - well, a suggestion, first of all - I think P.P.C. (Privileges and Procedures Committee) should consider that any time somebody refers something to Scrutiny in the future that they should be on a

sub-panel to look at it. I would ask how many of the 12 Constables with their expertise are currently on a Scrutiny Panel; I think zero are currently on Scrutiny.

Deputy G.P. Southern of St. Helier:

I've got 2.

Deputy M. Tadier:

On a panel? Okay. So there are 2 out of 12, is that right, who are currently on a Scrutiny Panel?

The Deputy Bailiff:

Deputy, will you please make your speech? You do not have questions to put to the Assembly; just make your speech.

Deputy M. Tadier:

It is a rhetorical question; these are the devices which one uses in rhetoric in order to try and convince Members one way or the other. The point I am making is that it is very easy to refer something to Scrutiny; the actual Scrutiny part of it is much more difficult, especially 2 or 3 months before an election. Of course, I do not know if my suggestion would even be viable seeing as the Constable in question has a seat on the Council of Ministers, so presumably he would be precluded from serving on Scrutiny anyway, although he should be. So, the point I am making is that, I think Deputy Martin said it already, we simply have to take a vote on this, yes or no. It may be uncomfortable for some of us, but I think a reference to Scrutiny at a point when Scrutiny is pretty much in dire straits I think is not the right way to go.

1.2.5 Deputy D.J. De Sousa of St. Helier:

Deputy Martin basically made my speech. I am on the Corporate Services Panel and I would implore Members not to refer this to Scrutiny. Let us go to the vote. We do not have the time. We are doing C.S.R. (Comprehensive Spending Review) and other things and we would not be able to give it justice.

1.2.6 Deputy G.P. Southern:

I will just rise to my feet to back up the words of Deputy Martin, who has pointed out that in fact this would have to come back to a new House and we cannot bind a new House, so for technical reasons what is being proposed is out of order, I think. But to just contradict Deputy Tadier, at the moment the 2 Constables that serve on my Scrutiny Panel are the backbone of my panel; they are the ones that turn up every time and they are the ones that are doing the work. I urge the Constables especially not to fall for this trick, because it is a trick. The Constable of St. Helier, a promoter of cycling, a promoter of pedestrianisation, of pedestrians and their safety, time and time again says: "Oh, we should just kick this into the long grass of Scrutiny." It seems to me contradictory that my own Constable should be saying that in order to sabotage a vote on this issue. I urge Members, do not fall for this absolutely time-wasting trick, but to vote on this proposition for or against, so reject this proposition to refer it to Scrutiny.

1.2.7 Connétable J. Gallichan of St. Mary:

Very briefly, just to put Deputy Tadier's mind at rest, I have got absolutely no problem coming to a decision on how to vote on this and that is because I am informed. I have been informed by meetings with the Attorney General, with meetings with T.T.S., with meetings with my Roads Committee, by reviewing the law, by discussions with insurance brokers, I have had meetings with the Deputy of St. Martin. There are 2 very different ways to look at this issue. I think everybody would look at achieving the same ultimate outcome, which is driving forward safety and making sure there is equity for people, but what we do not have is the evidence. We have 2 different views looking at different things. With the greatest respect to the Deputy of St. Martin, he is very well

known for being tenacious, but he has, on every occasion, chosen not to listen to evidence that has been given to him and he is within his rights to do so. He has got a particular view. What reference to Scrutiny would do - and I challenge the fact that there is not time or resources, because as has been said, amply and well before, a sub-panel is surely the way to tackle this - what we would get from that is the evidence. It is all very well for me to say: "The costs of this are going to be considerable" and for the Deputy of St. Martin to say: "There are no cost implications." Somewhere in the middle of that is the reality and the fact and that is what the Scrutiny Review will get to and enable this Assembly to make the right choice that will achieve what everybody seems to want to do. I am fearful that the proposition, as it stands, will achieve something, but not what people expect. Thank you.

1.2.8 The Deputy of St. Martin:

I am known for the work and research I do and I would say this was a well-researched, evidence-based proposition. My evidence, to answer the Connétable of St. Mary, is quite simple: I did check with all the Parishes and all the Parishes are paying insurance. So, therefore, providing the roads are kept in good condition, in fact, I believe my proposition will indeed improve and enhance the roads because the Parishes will know if we do not do something about it we could be liable. So, I believe it is a win-win situation. But I have been involved in this now for over 6 months with the Constables and T.T.S.; no one has put an amendment. Opportunity: there could have been an amendment and no one has chosen to. One of the reasons why the Constable of St. Ouen wants it is because they have thought about this over the years, but it has been too painful to adopt. Really, at the end of the day, one has got to make a decision. You have got to face your electorate and say: "I did not vote for it because I do not think it is good for you. It may cost you money." Well, I do not know. I do not have a problem with it, obviously, that is why I brought it here. I think Constables and everyone should have the courage of their convictions. It is a simple proposition asking us to accept responsibility when we are negligent. That is what it is; it is not for potholes appearing overnight. Again, I despair at times when people do not read reports fully; they just believe it is just something: "Well, we will find out on the day." But here we are. There is no point going to Scrutiny. Only last week the House rejected a well-presented Scrutiny report produced, indeed ... we had a Connétable on that panel and yet people voted against it and when we hear why: "Well, we did not understand it." Well, of course they do not understand it. If Members do not read propositions and do not remain in the Chamber, how will they ever learn it? This is a ruse. I am disappointed in the Constable of St. Ouen because, really, this is another reason to procrastinate. Let us do nothing. If we do not want to do something, let us vote for the Constable of St. Ouen. I am not of that opinion. I would hope Members will share it with me.

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

For the past 2 summers I have sat on Scrutiny over the August period and I make no ... I will not pretend, it is the most difficult time to discuss Scrutiny. People are off Island, Members are away, people are doing things for Battle. It is an absolutely difficult time in order to carry out a Scrutiny Review. However, if we have Members who are willing to stand up and say: "Yes, I will sit on the Scrutiny Sub-Panel over August" then, fine, I will support it, but there is no point in referring this to Scrutiny if we do not have people to do the work. So if Members are willing to stand up and give that commitment fair enough, but I make no bones about it; conducting a Scrutiny Review over August and September will be incredibly difficult and you will not have the motivation to do it within a new House. Thank you.

Senator S.C. Ferguson:

A point of clarification: is the Deputy volunteering?

Deputy J.M. Maçon:

No, I am not.

1.2.10 The Connétable of St. Brelade:

If I just may speak to this latest proposition with regard to the time processes and the fact that I suggested in my speech that the matter be referred to the Law Commission. In practice, the Law Commission need a bit of political direction and there also needs to be work done on the consequences of the law. In terms of timescale, Members have expressed fears that it will not be done in time for this term, if you like, and I do not think there is much doubt about that. But to put it into the scale of things, and as a result of conversations had with the law draftsman, the indications are that if we needed to create a new law it would take something like a year to develop an instruction, probably about a year to bring the law to the States, and 6 months beyond this before it became statute. Clearly, this is not going to happen in the short term and I would suggest to Members that the proper process would be for the law to be considered by Scrutiny, Corporate Services and Environment, if necessary, to feed into my department to produce a good law which will serve the purposes for parishioners, for residents of the Island in the future. Let us not do this in a rush; let us get it right and make it correct and meaningful, which is the Deputy's main focus on this. Let us not rush it.

1.2.11 The Deputy of St. John:

I accept what the previous speaker just said about reviewing the legislation, the law, but should that not be what we are going to review? We are asking Members to review this piece of work by the Deputy of St. Martin. I would have preferred for the Scrutiny Panel concerned to be reviewing the law that the Minister was referring to, not this particular piece of law; a law to do what needs to be done. Therefore, I will not be supporting the view of referring this to Scrutiny because this is the wrong way of doing things. The other thing, if I may have a direction from the Chair, am I correct that this House is still in place, every Member here, until I think it is 12th December when we finish?

The Deputy Bailiff:

No, until 14th November.

The Deputy of St. John:

14th November, is it? Fine. So, therefore we have a little longer. But even given those dates I think it would be unfair to put something forward, which comes from the Deputy of St. Martin to be reviewed; it is the wrong way of doing things. We need to be reviewing the law that T.T.S. would be bringing forward and therefore I cannot support what is being proposed here this morning.

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

The Deputy of St. John made the very point - or one of the 2 points - I was going to make; the very same point was made by the Deputy of St. John. It is not for Scrutiny to go away and create laws: it is for Scrutiny to examine laws that are being proposed and hold those up to the light of day. **[Approbation]** While there is certainly a need to review our systems and there is a need to review Scrutiny, I also agree with Deputy Maçon; this is just unrealistic. Now, I am going to oppose the move to send this to Scrutiny. I am going to also - in case this is lost - just briefly touch upon why I believe we need the Constable of St. Brelade, the Minister for Transport and Technical Services, to instruct his officers to send a brief to the Law Review people, the Law Commission, and ask them to undertake the work which was first advised upon as set out in the Deputy of St. Martin's proposition in the judgment handed down by the Bailiff. I believe that with an ageing population we are going to see more and more people significantly, in demographic terms, becoming more susceptible to falls. The impacts of those falls as they grow older are going to become more of a burden upon our health systems and we need to be looking at this holistically, not only from ... I do agree; we also need to be careful not to create a culture of litigation so that we are always ... you know, you get these companies in England texting you to sue everybody for anything. I do believe

we have got to be wary of that. I do believe we have got to be wary of the red tape. But I also think we also need to think a little bit into the future in recognising that there is going to be a significant increase in the amount of elderly people in our population. I am saddened to hear Deputy Tadier talk about his mother falling and breaking her hip.

The Deputy Bailiff:

Deputy, you will be able to make this speech, if I may say so, when we return to the main proposition. At the moment, we are only considering the reference to Scrutiny.

[10:30]

Deputy P.V.F. Le Claire:

I did make the point that if this ...

The Deputy Bailiff:

If you do not return to the main proposition because it is referred to Scrutiny you will be able to make this speech when the matter comes back.

Deputy P.V.F. Le Claire:

If I am re-elected, if the matter ever comes back, that is why I was making this point that I feel that this is the time ...

The Deputy Bailiff:

I am sorry, that is not in order to speak in case you are not re-elected. **[Laughter]** You have to speak on the proposition because that is what is relevant. The proposition is whether to refer to Scrutiny. Is there anything further you want to say on that?

Deputy P.V.F. Le Claire:

No, thank you.

1.2.13 Connétable P.F.M. Hanning of St. Saviour:

As you have pointed out, this is about whether we will refer it to Scrutiny. The problem we have got is that the proposition we are debating is flawed and it is flawed very much on the point of costs. The proposition states that there will be no insurance costs, no cost to the T.T.S. or to the Parishes because we are insured. Well, I am sorry, having been President of Jersey Mutual Insurance, I do have some insurance background and I can tell the Deputy that if you increase the liability your costs of insurance cover are going to go up. It is not a case of saying: "They are already covered" the liability will go up. The claims will go up, the cost of processing those claims will go up.

Deputy P.V.F. Le Claire:

On a point of order, does this have anything to do with referring to Scrutiny?

The Connétable of St. Saviour:

Therefore, we need to get evidence about this. We are being invited to debate this proposition with incorrect information in front of us and I suspect the only way out of it is to get evidence from Scrutiny.

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

I was going to ask the Solicitor General a question and I think it pertains to the referral to Scrutiny because it strikes me, this ambiguity is floating around that does the law, as currently constituted and the payment by authorities as insurance, indicate that the system is indeed set up now to achieve what the Deputy is seeking to achieve? I wonder if the Solicitor General could advise us,

the Attorney General as well [**Laughter**] whose eminence is just as impressive at the best of times.
[**Laughter**]

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

I am sorry, I mean no disrespect, but I am not sure that I fully understood the question. I wondered ... [**Laughter**]

Deputy R.G. Le Hérissier:

To rephrase, and if the great minds cannot understand it it does not give much hope to the rest of us, but to rephrase, does the law, as currently written, and the payment of insurance, imply that Parishes and T.T.S. are in a position to pay compensation at the moment?

The Attorney General:

No. The position is that insurance operates as by means of an indemnity to the insured person. Although often payments flow directly from the claimants from the insurance company, the legal reality is that what the insurance company is doing is indemnifying the Parish or the local authority as the case may be against its liability. If the Parish or the local authority has no liability the insurance indemnity will not flow. The insurers will say: "You have no liability, therefore I do not need to indemnify you for it." It seems to me another facet of insurance, if this is part of the same question, is that the premium, when it is set, is directly linked to the risk. The insurers assess the risk, assess their likely pay outs, and will therefore assess the premium accordingly. If the insurers believe that the risks increase then the normal practice is that the premium will increase.

The Deputy Bailiff:

This is just a question of whether the matter should be referred to Scrutiny. Does any other Member wish to speak?

1.2.15 The Deputy of St. Mary:

Well, starting with that point on liability because it is important because we seem to be saying that this has to be referred back, now it has to be referred to Scrutiny because of the costs issue. We are hearing that Parishes are indemnified for their liability, but they have not got much of a liability, so the insurance policies are relatively cheap. What we are being asked to do is shoulder our responsibilities as a government and as Parishes and have a liability. Of course, that will lead to the excellent consequence that Parishes and T.T.S., presumably to avoid having to pay out, will get on and keep the roads in good order. So, it does seem to me that this issue, that particular issue, is a little bit of a kind of suddenly worth talking about that in order to, as others have said, boot this into the long grass. I was not going to say that, but the good Constable of St. Saviour led me down that path. But it is an important point. The other 4 points I was going to make briefly, the Constable of St. Helier spoke about the Street Works Law and he said: "If we do not refer this back, somehow the Street Works Law might be delayed." Well, that is extraordinary because my understanding was that that was with the law draftsman. He also suggested that the virtue of the Street Works Law is that the sooner it gets passed it will make them do the job properly. Well, amen to that. That is a part of the package that we are talking about. If this goes through and we say then that appropriate legislation must be brought forward, then that will of course put some energy into the Street Works Law and make it work that much better. So, I cannot see the conflict there. I really cannot. The second point is Scrutiny; referring this to Scrutiny. Suddenly Scrutiny will effectively create policy. Suddenly Scrutiny will do the research that the officers and the departments should do. Suddenly Scrutiny will become a sort of quasi-Law Officers' Department. It is absurd; it is absolutely absurd. Since when was Scrutiny a policy-creating body? Oh, when we want to kick something into the long grass. The third point is how long does it take? Others have mentioned this, but I should just remind Members that in the U.K., because of the same issues that I have alluded to and that the Deputy Bailiff at the time alluded to in his judgment, because of those issues the U.K. dealt with this in 1961. Then I think they revised that provision in 1980 to make it even

tighter. So, we are looking 30 years ago, 60 years ago - no, 50 years ago - and we are now proposing to delay yet again. The judgment that the then Deputy Bailiff, Mr. Birt, gave in the Royal Court in 2003 was quite clear and, again, was saying: “*Manana.*” This proposition is not about what it costs or what the law should look like, it is about making a commitment; a commitment to this Government having a duty of care to its people. That is what it is about. It is not about these little details ... well, not little details, but it is not about framing the law. I just remind Members of what it says: “To agree that appropriate legislation should be brought forward for approval to make the States legally responsible.” Of course, as the report says, that will include statutory defence, it will include those issues of the balance to be struck there. Appropriate legislation. The Constable of St. Brelade talked about the Law Commission: “This should go to the Law Commission, but they need political direction.” Exactly, that is what this proposition does. It gives political direction and if T.T.S. and the various authorities decide that the way to get appropriate legislation is to refer this to the Law Commission, which certainly is the way that I would go, I would suggest, and I will be saying that in my later speech, that is fine. They may very well be the appropriate body to find out what appropriate legislation should be and they can review what is said elsewhere. I will close by reminding Members of what our Deputy Bailiff, now our Bailiff, said in his judgment: “Individuals who suffer damage through a failure by the highway authority to repair the highway should be entitled to recompense, subject to appropriate safeguards for the public or parochial purse” which is exactly the point. He goes on: “I would therefore invite [this is 2003] the relevant committee to consider introducing appropriate legislation. It might well find it helpful to refer the matter to the Jersey Law Commission in the first instance. The Commission will no doubt be able to review the solutions adopted by various jurisdictions throughout the Commonwealth with a view to recommending that which is most suitable for Jersey.” I rest my case and we should really kick this proposition itself into the long grass and get on with this important debate which will cement a proper relationship between us and our residents.

1.2.16 Deputy K.C. Lewis of St. Saviour:

I will speak briefly as I will be speaking on the main proposition if and when we get to it. We have 13 highway authorities, all have adequate cover, T.T.S. and the Parishes. Obviously, as has been said, if we increase the risk we will increase the premiums and Parish rates. We can only minimise the risk; we cannot eliminate it. If all risk came with a guarantee there would be no risk. I will be referring to Scrutiny.

The Deputy Bailiff:

If no other Member wishes to speak then I call on the Connétable of St. Ouen to reply.

1.2.17 The Connétable of St. Ouen:

A number of speakers more or less accused me of trying to push this into the long grass. Can I maybe point out to them that even the proposition itself will not come back to this Assembly during the life of this Assembly. It will take quite a long time before it comes back as a proposition. What I maintain is that the work has not been done to enable us to make this particular decision. The Deputy of St. Martin said that the Connétables would have to go back to their Parishes and say: “It may cost you money.” I am afraid that shows how little the Deputy of St. Martin knows about Parish Assemblies. If I went to a Parish Assembly and said that I would be crucified. I need to go back to a Parish Assembly and state exactly how much it is going to cost and then they decide whether they are prepared to support it or not. That piece of work has not been done. My proposition was that it be referred to Scrutiny for the full costs and benefits to be assessed and that is what I think they should do. I am not, as Deputy Le Claire and the Deputy of St. Mary pointed out, trying to get Scrutiny to make a law. I am only asking Scrutiny to make sure that the evidence which is needed to produce this law is properly assessed and properly put before us. Thank you.

The Deputy Bailiff:

The debate is now closed on the question of reference to Scrutiny. The proposition is that the matter be referred to the Corporate Services Scrutiny Panel. The appel is called for. I invite Members to return to their seats and I will ask the Greffier to open the voting.

POUR: 22		CONTRE: 23		ABSTAIN: 2
Senator T.A. Le Sueur		Senator P.F.C. Ozouf		Senator S.C. Ferguson
Senator P.F. Routier		Senator B.E. Shenton		Connétable of St. Brelade
Senator T.J. Le Main		Senator A. Breckon		
Senator F.E. Cohen		Senator A.J.H. Maclean		
Connétable of St. Ouen		Senator B.I. Le Marquand		
Connétable of St. Helier		Senator F.du H. Le Gresley		
Connétable of Trinity		Connétable of St. Lawrence		
Connétable of Grouville		Deputy R.C. Duhamel (S)		
Connétable of St. Martin		Deputy of St. Martin		
Connétable of St. Saviour		Deputy R.G. Le Hérisssier (S)		
Connétable of St. Clement		Deputy J.A. Martin (H)		
Connétable of St. Mary		Deputy G.P. Southern (H)		
Deputy J.B. Fox (H)		Deputy of Grouville		
Deputy of St. Ouen		Deputy P.V.F. Le Claire (H)		
Deputy of St. Peter		Deputy of St. John		
Deputy J.A. Hilton (H)		Deputy M. Tadier (B)		
Deputy of Trinity		Deputy A.E. Jeune (B)		
Deputy S.S.P.A. Power (B)		Deputy of St. Mary		
Deputy K.C. Lewis (S)		Deputy T.M. Pitman (H)		
Deputy I.J. Gorst (C)		Deputy T.A. Vallois (S)		
Deputy A.T. Dupré (C)		Deputy A.K.F. Green (H)		
Deputy E.J. Noel (L)		Deputy D.J. De Sousa (H)		
		Deputy J.M. Maçon (S)		

Senator B.E. Shenton:

Given the amount of business we have I propose the closure motion in half an hour on this debate.

The Deputy Bailiff:

Very well. We return to the main debate and next to speak is the Connétable of St. Helier.

1.3 Roads and Pavements: legal liability in case of negligence (P.75/2011) – resumption**1.3.1 The Connétable of St. Helier:**

If Deputies Southern, Martin, St. Martin and others are to be believed, the last debate was a ruse or a bluff. Therefore, those who supported the reference to Scrutiny will go on to vote against the proposition. To prove them wrong, I plan to support the proposition. I had genuine reasons for wanting it referred to Scrutiny and I was genuinely putting myself forward to be on the sub-panel, but that has gone now. First of all, certainly the Parish of St. Helier has nothing to fear from this proposition being approved; nor, I suspect, do the other Parishes and the Transport and Technical Services Minister.

[10:45]

I suppose those people who have things to fear may be the ratepayers and the taxpayers, but that is another matter. At this stage we are looking at an in principle debate; we are not looking at specific legislation. That will come forward in due course for amendment, if necessary, and debate, however I do have misgivings and while I applaud what the Deputy of St. Martin is doing here, I am concerned on a number of grounds, even though I plan to support the proposition. The first

ground is will it work? Will this proposition, when it eventually comes back, make our roads and pavements in a better condition than if we were not to accept the proposition? I have just recently been on the Parish branchage and I know I was ridiculed in a recent debate for talking about the Roads Committee, but I happen to think that the Parish way of doing things in Jersey has tremendous strengths. One of the things I noticed on our branchage is that we were picking up defects. This normally happens in the September branchage but we do it in July as well. We were picking up defects in the roads and pavements as we went around the Parish with our long pole measuring branches, and we came up with an extraordinary shopping list of improvements that we want to see in the Parish roads and indeed in the States roads. The Parish system, without any further legislation is acting in a very responsible manner towards people who want to have safe access on our roads. I really do deplore some of the earlier speeches that we had which seem to suggest that someone who does not vote for this does not care about people falling over or tripping over. Because people do care and some people believe that the Parish system that we currently have with the branchages, with the roads inspectors, in the case of St. Helier with paid staff whose job it is to check the pavements and the carriageways on a monthly basis, and I think to say to us that we do not care unless we support this proposition is simply wrong. Sometimes following U.K. legislation slavishly does not produce a better society. We could look for an example at other things. I am not going to digress but there are other things where we are being asked to follow the U.K. and quite clearly the system that Jersey has developed over centuries is doing an extremely good job. That does not mean it cannot be improved. Of course it can. So I am not sure whether, if this happens, it will lead to safer roads and pavements. I hope it will help but there is a danger. Deputy Tadier, in his speech, talked about how the proposition was about investing to save. Well, the Deputy of St. John in his wonderful digression from the proposition, he was right. The best way to invest in safer roads is to put money, more money into the capital programme for repairing and maintaining our roads and pavements. Whether legislation is going to have that effect I have some doubts and that is why I think the key word in the Deputy's proposition is "appropriate". The legislation has to be appropriate. It has to be appropriate for Jersey and it has to dovetail with the system we already have that is working, extremely well I think, 99 per cent of the time, in the Parishes and probably also in the case of States roads and roads inspections. Another example, the other day I noticed the new surface in York Street near the Town Hall was starting to delaminate and come up. A simple phone call, a couple of days later the T.T.S. staff are out there doing a great job repairing where it has come away. Things happen very quickly in Jersey. We all know this as Members of this Assembly. We see something that is wrong, we talk to the Constable, we talk to the officers and it gets fixed, normally within 7 days. So, I think we have a pretty good system. Of course, it is deplorable that these problems occur. Sometimes it is the weather but sometimes it is the utility companies and other third parties digging up the road yet again, putting in another trench which destroys the surface. That is why I do not want to see any delay in that street works legislation coming forward and I hope the Deputy of St. Martin will agree with that. That, if it is possible to put his legislation in with the Street Works Law, that has got to make sense because they belong together, but we do not want to see any delay in it. So I would say in closing that I think that there will be issues. There is a genuine risk of a claims culture coming out of this. There is a risk of insurance premiums going up, but we will have a chance when the legislation comes forward, to amend it in such a way as possibly can mitigate those disadvantages. Thank you.

1.3.2 Deputy P.V.F. Le Claire:

In the previous debate I was talking about the cost of falls to society. I just commented about how unfortunate it was, I was saddened to hear about Deputy Tadier's mother falling and breaking her hip. In my experience in town, there have been a number of times when I have been approached by people who have fallen, or I have seen people fall, or I have gone to help people who have fallen. I can remember one in particular in Val Plaisant just up the road from where I live, in between St. Thomas' church, an elderly gentleman had tripped, fallen flat on his face and cut his face. He was bleeding and everything, and I was appalled at the width of the pavements in Val Plaisant. When I

saw the issue was that the pavement was not level, the pavement was very narrow, it was obviously a very well-travelled thoroughfare because lots of people use that area, not only for the church when there are weddings, funerals, services, et cetera, but also as a main vein into town. When I undertook to look at that particular street, Val Plaisant into town, into New Street, I was appalled at the actual width of the pavements. I remember looking at the width of the pavement outside Jason's, the hairdressers and it was 12 inches from the wall to the street, and yet mothers with prams and children holding hands were having to navigate that in sometimes wet, rainy conditions with traffic. I believe at the time it was 2-lane traffic because the traffic used to turn in a different direction. So, I set about trying to change that and the only way that I could do that at the time was by bringing an amendment to the Island Plan, and this was the 2002 Island Plan. In that amendment I got the States to agree that they would do road improvements in Val Plaisant and New Street. I am not even certain if it is completed yet, but I do know that initially it did take some time to get going and then we saw some improvements, and we have seen some more recently. The Constable of St. Helier talks about improvements being made in a relatively quick period of time. In that experience it was not quick at all and the situation had existed for a number of years. We have also got other streets where we are not looking at this in the round. I was hoping the Transport strategy would look at this further, for example, Midvale Road where we could engineer out some of the issues, where 2 cars have to pass on narrow pavements, et cetera. The biggest benefit has obviously been in our lifetimes, in relation to the pedestrianisation of town and I remember in particular the very morning that they started to pedestrianise the side entrance to the market, opposite where the Café de Paris was at the time, which is at the little entrance there and at that point there the cars used to drive down to the end and do a 16-point turn and drive out. From the moment that we started to pedestrianise town from that street onwards, and we went forwards in great steps, we changed the manner of the way we live in town. We changed the shopping experience, we changed the tourist experience and we certainly improved the lot of pedestrians, the residents and - although they did not believe so at first - we certainly improved the shopping conditions for the retailers. The Constable talks about changing things in 7 days. I am sure he will agree with me, as will the Minister for Transport and Technical Services. When the previous Minister, who I was not as big a fan of as this Minister, decided to change the directions of the traffic at Garden Lane ...

The Deputy Bailiff:

Deputy, I am sorry but I must ask you to come back to the proposition. The question is not about pedestrian precincts and whether they are a good thing or a bad thing, their effect on tourism. The question is not about whether Garden Lane should or should not have something, its direction moved or whatever it happens to be. The question is here, whether or not to request the Minister to bring forward legislation which has the effect of carrying liability in the public, whether the Parish or the States. I wonder if you could please return to that question.

Deputy P.V.F. Le Claire:

Certainly, Sir. I was just making the point that what I thought was important for everybody to consider was it is important to design out the number of falls and the way that we have access to our town, thereby negating the need for legislation and these debates. We all acknowledge that falls are dangerous. We also need to bear and have mind in relation to the fact of the consequences, financially and otherwise, of falls to the community. So, we have got somebody who breaks their hip. They end up in hospital. They block a bed, perhaps, that was being planned for an operation or hip replacement or something, and if we do not invest now in changes then we are going to continue to see, with the continuing ageing demographic population, an increase in people experiencing falls, so I would say in relation to those that have said this is going to be the wrong thing to do because we'll see an increase in insurance premiums, I would like to ask them if they would ... the Minister has come up with evidence this morning about how much it has cost the U.K. economy in compensation culture, let us ask the Minister for Health and Social Services and the

Council of Ministers next time we have these debates to produce a cost to us of how much it has cost the Jersey economy this year in falls. How much has it cost the hospital to treat people who have had falls in relation to pavements and accidents in pedestrian issues? Then we could look comparably at the insurance premiums and how much they would go up. "In my experience [the Constable says] legislation will not change things." and I believe he is right. In my experience legislation has never made a difference. What has made a difference is litigation, because you can have all the legislation you want and it does not mean a thing. It does not cost a thing until litigation comes to bear and we have seen that most recently in some historic debates where we spent significant amounts of money to put right things that were wrong. In my experience in the 11 years that I have been in the States, is that the States is minded to do nothing until there is a litigation that has a chance of success on the horizon, and then we fold like a pack of cards and immediately start to address issues. I would also make the point, if the Constables in the other Parishes were anything like my Constable, they have one thing in mind at a rates assembly and that is getting the lowest possible rate on to the front of the *J.E.P. (Jersey Evening Post)* the next morning. I do not think that having 13 different roads authorities is necessarily the best way to approach this argument. I believe the argument should be approached from the need to invest to save. The fact that if we have legislation, litigation will force us into making changes to our Island that will design out these areas where people fall and negate the need to treat them, and negate the need for these debates, whether I am on topic or not. So, I think we should back the Deputy of St. Martin, put the right legislation in place which was identified as being necessary and if we are not able to do that, at the very least ask the Minister for Transport and Technical Services to take away this debate today and make sure that it is referred, as I suggested in my previous speech and as has been mentioned by other people and in fact the Minister himself, a pro-active Minister. Let us ask him to take this debate as a clear signal that something should be progressed.

The Connétable of St. Mary:

I was going to ask before I spoke if I could have leave to ask another question of the Attorney General, if he is in the vicinity?

The Deputy Bailiff:

I am sure he will be returning shortly. I will put you down the batting order, if I can put it that way?

1.3.3 Deputy J.G. Fox of St. Helier:

I can quite understand why the Deputy of St. Martin wants to bring this forward. As a Deputy you always get people that ring you up and tell you of where they have fallen into a pothole and they have got injured, and they want to tell you about it and: "What can we do about it?" The Constable of St. Helier is quite right. He does have roads inspectors, he does have roads committees and yes, they do get repaired in 2 days or 7 days but nevertheless, one of the problems with the proposition that is laid out: "To agree appropriate legislation should be brought forward for approval to make the States" et cetera. One of the problems with this proposition: "as a result of negligence caused by failure of relevant highway authorities to maintain the roads and pavements." That is where the problem lies. As also being a retired director of Jersey Mutual I can assure you that you have to have evidence and evidence, as a retired policeman also, is very hard to do.

[11:00]

Especially when you are looking at negligence or recklessness, or various other things like that. It is easy to put down in a proposition but it is extremely difficult for a legislature or States departments or ministries or Parishes to be able to move that forward. It is a huge subject and then when you carry on to look at people being no-fees no-wins and all the rest of it, litigation and compensation means that these things can permeate for years. Usually a result is that by the time that you have done all these things, people grow very old, very weak or have had all the necessary

treatments that are available, but it does not prevent the pain from occurring in the first place because of the complication. Then the final part of the Deputy's proposition: "Financial and man power implications, there should be none in the relevant insurance places held by the States, and the Parishes should already cover this risk." Well, clearly they have not and if the Deputy thinks they have, I would suggest to you that to put this under the scrutiny of legal opinion. It would probably take years to define whether that has any relevant matter or not. As much as I would love to support the Deputy, I am afraid that the answer to this one has to be no. It needs an awful lot more work done on it and I appreciate that as a Back-Bencher it is impossible for the Deputy to be able to fulfil that, and yes, it probably needs to have been the Law Officers, the Legislature, or indeed the Scrutiny Panels being able to bring in professional people to be able to look at this in a great deal more detail before it has any hope whatsoever of coming anywhere near the States for consideration for legislation. Thank you.

1.3.4 The Connétable of St. Mary:

The first part of my question is really following on from what has been said before. I understood the Attorney General quite clearly to say indemnity can only be provided by insurance for a liability that currently exists. As my understanding, and these terms have been used before, I am currently covered as an authority for malfeasance, when I have done something and done it badly and it in fact causes a problem, but not by nonfeasance and I wonder if the Attorney General could comment on that and explain carefully to me what the differences are so that I can be sure I understand. Also, in the proposition, maintaining roads and pavements in a "proper state of repair", could the Attorney give some thought to what that would entail? One of my particular concerns is how far does it go? Does repair mean that the roads, the highways must be in a state where they can be safely driven on at all times or reasonably at all times, and I am thinking particularly of something that occurs here rarely, but I am not prepared for as an authority, which is snow and ice? Would I be required to ensure that the roads were passable safely in all terms of snow and ice and in which case, obviously there would be a different element to that; and obviously I would need to know what my powers would be to simply close the road, if at any time I could not assure my parishioners or road users that the roads were in an adequate state of repair due to rapidly arising conditions?

The Attorney General:

There are a number of questions there and I will try and address them in sequence. Firstly the distinction between malfeasance and nonfeasance, as the Connétable asked. In very, very simplistic terms nonfeasance is not doing something and malfeasance is doing something badly. Nonfeasance in this case is therefore not keeping the road to a sufficient state of repair, malfeasance would be carrying out an activity on the road which led to its disrepair, and so those 2 are quite distinct as concepts, as is clear from the case of *Dobson*. Nonfeasance, that is simply not repairing, does not give rise to a cause of action under Jersey law. I am not sure if that meets the first point as far as the Connétable was asking? As for ice and snow, if one was dealing within a statutory context, one would of course look as to what the statute required of the highway authority. I do not think that there is an obligation, although I have not researched this point specifically as I am sure the Assembly will understand, I do not think there is an obligation to immediately keep the roads clear of ice and snow. That does not seem to me to be keeping the road in a state of repair. Repair seems to be to me any damage to the structure of the road, which in ordinary course of events would make it impassable or open to difficulties. I think ice and snow is a weather hazard and I do not think that that would fall within an obligation to keep a road in a state of repair, but I caveat that with the statement that I have not looked at that point specifically. That is simply my view as I stand here. As to whether there would be an obligation to close a road in the event that it was not in a state of repair, that would depend on the legal position if that statute were passed. A statute in accordance with the United Kingdom model for example, would make it an absolute obligation to keep the road in a state of repair, but there would be a defence if the authority had carried out every

act which was reasonable in the circumstances to do that but nonetheless the road had fallen into a state of repair. I am afraid I do not know the full ambit of that defence. I have not looked at all the authorities which touch upon it, but in general a statutory regime on the U.K. model provides for that. As to whether there is an obligation to close the road in the present circumstances where there is, my view is there is probably not if there is no right to a personal claim, then it would seem to be an obligation to close the road, but again I have to say that that would be subject to further consideration. I think that is as much help as I could give at the present time.

The Connétable of St. Mary:

I am grateful to the Attorney General for his explanations and I think it shows that this is a very wide-reaching subject that we are talking about. There are lots of things to be explored, lots of things that we need to be more certain of. I would just like to add a few things to what has been said previously because, having raised this matter with my Roads Committee, we are extremely mindful of the obligations not just in law, that are upon us but we believe it is our duty to go beyond what is absolutely required of us to ensure that the roads are in as safe and as good as condition as we can. One thing that will come out of this proposition, adopted or not, is that in St. Mary we have met recently and put together a different sort of strategy for noting defects on our regular inspections. Like the Constable of St. Helier we have just had a branchage in which we went around and we checked things, but these inspections happen at other times during the year as well. We have now got a formal reporting procedure and log to be carried out and so for all intents and purposes, just looking at what is necessary from this proposition has sharpened up the practice in St. Mary and I am sure has sharpened up practice in other Parishes as well. So, that is one thing. But I am extremely mindful, and it is not a question of being frightened to make a decision as I have already said, and it is certainly not a worry of having to face my electorate and say: "I made this decision because ...", because of course as a Constable, I face them every year to discuss the costs, to discuss the obligations, to discuss what is necessary, and I will do that with the outcome of this debate as is required of me, without any fear because that is what a Constable does. But there are issues that have not really been touched upon. Deputy Le Claire said that he was not sure that 13 highways authorities was necessarily the way to go. I personally think it is absolutely the way to go because on a local level the Comité des Chemins make their inspections. There are general discussions. The Parish Hall staff are contacted weekly, I would say, in St. Mary and possibly a lot more in other Parishes, by members of the roads committee going about their normal business, driving to work, walking the dog, whatever, saying: "I have noticed a pothole, I have noticed a crack. The surface is breaking up. Somebody has pinched the road sign." At stag dos and things like that, that is quite a thing that happens. I have just heard one of my road signs "Mont de la Barcelone" is happily in St. Saviour last time I heard about it. I got phoned up by someone in St. Saviour to say: "Your road sign is in my garden. What do I do with it?" Things happen because we know where to contact and that is absolutely the right way to do it. We also have the paid and fully qualified inspectors from the T.T.S. Department making their inspections. We have all seen the yellow chalk marks around potholes in the main roads and if they notice something that is happening in a by-road, I can tell you that I have had calls from T.T.S. Likewise, if one of my inspectors or members of the public contacts the Parish Hall and said: "There is a problem in La Rue des Buttes" the first thing we do is advise the relevant highway authority. There is a 2-way process here and it means there is a second guess, there is a second sweep which in all kinds of corporate governance is always what you are looking for ... that extra pair of eyes and I think, absolutely, that is the way to go. But what concerns me is, more and more, and I am very fortunate in St. Mary that I do not have this problem at present, but more and more Parishes are finding it harder and harder to get people to do the voluntary tasks because over time ... because of increases in legislation, which are probably necessary and are all duly passed, the voluntary organisations become much more onerous to operate. We are talking here of involving liability, so we are talking of people who are competent, not just who have been told by word of mouth, who have been passed on how to go about carrying on a road inspection, not just people who can tick the boxes, but

people who know exactly what the requirements of the law are; people who are trained, people who will have to stand by, in a case, the decisions they have made. It becomes more and more difficult to get lay people, members of the public to take on these voluntary roles. We think very carefully before we make major changes that impact upon the honorary system that we have and I think that is very important. I could see that, depending how we tackle this, and it is something that must be tackled but it depends how we do it, that we could have great difficulty in filling the roads committee, the Comité des Chemins and the Inspecteurs du Travail. We could have great difficulty doing that. We would have an onerous training regime. We would have to make sure that defences were robust. We are not just talking about the cost of insurance, or about the cost of making a claim and therefore increased premiums, we are talking about the cost of defending a claim. We are talking about what it takes in time, in man-power and we know from reading widely on this subject before this meeting, that in some authorities in the United Kingdom do not defend their cases, because they cannot afford to do so, so they have a policy of paying out. Some authorities have a very large excess that they only invoke their insurance policies if the claims are really quite substantial, and I have had figures quoted to me of many thousands of pounds. That may be possible in a U.K. authority. It certainly is not possible on the basis of rates from just a few thousand households, or even less in the case of St. Mary. So, we are not really looking at a level playing field as to what each authority can afford. That is another thing that has not been brought into consideration and I am extremely concerned that the proposition has such a cavalier attitude to financial and manpower implications. This is not just about financial implications but as has already been said, it is not the Parishes that will be paying for this increased cover. It is the parishioners, the ratepayers. Likewise for T.T.S. cover, it is the taxpayer so before we say that we need to make sure that people are covered for any accidents, we have to understand there are accidents. Accidents happen and it is not necessarily because of malfeasance or nonfeasance. Sometimes accidents happen and then people decide perhaps they would like to pursue that claim, and then we need to defend the fact that it was not due to the authority. But before we go too far down that route, we have to understand at the bottom line that it is the ordinary people of Jersey, the taxpayer and the ratepayer, that are paying for this and ask yourselves, do your constituents want to be paying out on what we have heard could be the claims culture? Do they want that as an increased burden? I think that is an important thing to consider. I have probably said all the few things I could say but I believe, as has been said in the comments, that this has merit to be considered, and I frankly believe, as the Deputy of St. Martin has said, that it has been too long coming.

[11:15]

Now that is the fault of every one of us because we are all States Members and we all shoulder that blame. Any one of us could have done this. It is unfortunate from a timing point of view that it has come at the end of the Assembly but this is not the way to do it. The Law Commission should investigate the whole picture to come up with what is right for Jersey and what is right for the Island, because I think that is very important. The other thing, just very briefly, I would like the proposer in his summing up to give me some indication of scale on this. We have heard that this was prompted through one incident. We have seen the photographs and I know we have talked about this privately, the Deputy and I, whether or not the right person was targeted for compensation or the right authority or whether that was water damage causing that pothole coming off the property. I do not know. I do not know the circumstances. It is wrong to speculate here, but there are times that compensation is payable and sometimes it is not against the authority at all. Sometimes it is against the neighbouring land owner, but I would like to know some idea of the scale because I have been a Constable for very nearly 3 years and I have had 2 comments to me through the Parish Hall about possible damage caused by highways, neither of which was substantiated by damage to the actual highway itself. That took quite a lot of time to deal with, but there was no liability, even if this had come in, the thing that caused the accident was not down to

the highway authority itself. So, I really want to know are we again, as we often do, using the sledge hammer to crack the nut or is a more targeted approach to this what is really required?

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

This proposition is a very persuasive proposition and what is in there that we should not support? But, the reality is in the detail of insurance because I had no qualms at all because the Parish has public liability insurance, it has employee insurance, it has property insurance and insurance for all sorts of risks and situations, but I think that the proposition has not been researched enough and I know that the possibilities of malfeasance and nonfeasance, this sort of intrigues me. I would like to ask the Deputy please, because this happens often enough in my office, the telephone rings, there is a gentleman on the other end of the telephone who says: "I have just tripped over a pothole in one of your lanes, Rue des Marettes I think it is and I have hurt my knee." "Oh, I am very sorry about that, I did not know about that pothole." So, that I think would be nonfeasance. The chap has tripped over the pothole, hurt his knee a bit and I did not know about it. So, there would be no negligence and I would think that probably where it is nonfeasance my public liability would cover me for any damages. Now, a month later the telephone rings again, a lady this time perhaps: "I have just tripped over a pothole." "Oh, dear oh dear, did you hurt yourself?" "Well, I did really, yes I have hurt my ankle." "Where was the pothole please?" "Oh, it is in Rue des Marettes." "Oh, that is that one." Now, the same pothole but this time I knew about it and although I told the roads committee about it, it has not been done yet. So, that would be malfeasance and probably subject to negligence. Now, I would want to know, please, perhaps the Deputy could tell me how I would deal with this, because quite frankly I would like to get my head around this and that is why I would rather have liked it go to Scrutiny or go to further investigation of the situations, because there are 2 examples I have just given to the Deputy, exactly the same pothole, exactly the same accident. One is no negligence and the other one is negligence. Where do I stand as chairman of the Roads Committee? I do not think I can support this because the actual financial manpower implications must be incorrect. I cannot see that it is going to cost the taxpayer and the rate payer and the Parishes probably quite a lot of money. At the present moment I do not think I can support this proposition.

Senator B.E. Shenton:

With apologies to the Deputy of St. Martin, given the amount of business we have I would like to invoke the closure motion.

The Deputy Bailiff:

The closure motion is proposed. Senator Shenton gave notice of this at 10.45 a.m. So far 12 Members have spoken. I have 4 Members wishing to speak. The Standing Order says the Presiding Officer shall not allow the proposal if it appears to him or her that it is an abuse of the procedure of the States. I do not think it is an abuse of procedure of the States or an infringement of the rights of the minority while 12 persons have spoken. It is a matter for Members. Therefore, I invite Members to return to their seats. The closure motion is seconded, I take it. **[Seconded]** The vote is on whether or not to close the debate. I ask the Greffier ...

Deputy J.A. Martin:

Sorry, I am slightly confused. The closure motion was proposed after the debate on the reference to Scrutiny. Is that not classed as a separate debate, Sir, on when we referred back?

The Deputy Bailiff:

The debate opened at 9.09 a.m., the reference to Scrutiny commenced at 10.10 a.m. In other words the debate on the main proposition had been running at that stage for one hour and one minute and at 10.45 a.m. after the Scrutiny debate, Senator Shenton gave notice. It is in order. Now, I invite Members to return to their seats. The closure motion has been proposed and I ask the Greffier to open the voting.

POUR: 28		CONTRE: 16		ABSTAIN: 1
Senator T.A. Le Sueur		Senator A.J.H. Maclean		Connétable of St. Brelade
Senator P.F. Routier		Deputy of St. Martin		
Senator P.F.C. Ozouf		Deputy R.G. Le Hérisssier (S)		
Senator T.J. Le Main		Deputy J.A. Martin (H)		
Senator B.E. Shenton		Deputy G.P. Southern (H)		
Senator S.C. Ferguson		Deputy of Grouville		
Senator B.I. Le Marquand		Deputy J.A. Hilton (H)		
Senator F.du H. Le Gresley		Deputy P.V.F. Le Claire (H)		
Connétable of St. Ouen		Deputy S.S.P.A. Power (B)		
Connétable of Trinity		Deputy K.C. Lewis (S)		
Connétable of Grouville		Deputy M. Tadier (B)		
Connétable of St. Martin		Deputy of St. Mary		
Connétable of St. John		Deputy T.M. Pitman (H)		
Connétable of St. Saviour		Deputy T.A. Vallois (S)		
Connétable of St. Clement		Deputy A.K.F. Green (H)		
Connétable of St. Peter		Deputy D.J. De Sousa (H)		
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy of Trinity				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

The closure motion having been adopted, I call on the Deputy of St. Martin ...

The Deputy of St. Mary:

Can I just raise a point of order on that closure motion? Was it the case that you ruled first before the vote, before saying that there could be a vote, did you have to rule that it was not an abuse of the minority? I was not sure about whether there was a first step before the second step.

The Deputy Bailiff:

I did rule that as 12 Members had spoken I did not think it was an infringement of the minority and therefore it was a matter for Members to decide. So, I call on the Deputy of St. Martin to reply.

1.3.6 The Deputy of St. Martin:

I thank all those who spoke and also I am disappointed that a number who wanted to speak and wanted to speak in favour have been denied the opportunity of doing so and I would hope that possibly this will not be the norm for the future next 3 days whenever we get started with a debate when someone feels they have had enough of it after an hour they will ask then that we can have a closure motion because this is a very important debate which is being stifled. We have had a reference back and now we have had a successful closure. But, really this is a very, very important debate and it is not just about someone falling in a pothole and then entitled to compensation. I do not know if I need to answer the Connétable of St. Martin or whether I should ask the Attorney General but a question was asked about the system about when there is a pothole, I think it is an important principle because if someone has an accident and they were not aware of the pothole the Attorney General no doubt will support me on this, he will say: "Well, right, that becomes

nonfeasance, we are not liable because we did not know the hole was there” but the whole point of this law is that in future if someone is made aware of a hole they will do something about it because they will become liable for it. Is that not the right way to be treating our public? I do not know if the Attorney General would like to support what I am saying but basically you would not be liable the first time but you would be liable the second time because having been made aware of the danger and ignored it then you become liable. Maybe I could ask the Attorney General whether he agrees with me, because I think it is an important issue. I am disappointed the Constables do not appear to know but I would have thought there was an object. Maybe we could get an opinion maybe from the Attorney General.

The Attorney General:

The position is that quite clearly the Parish or T.T.S., as the case may be, have an obligation to maintain the road in a good state of repair. However, that obligation cannot give rise to a personal cause of action by anyone who suffers injury as a result of a failure of that obligation. It seems to me that that general principle is not affected by whether or not the Parish or T.T.S. knows whether or not there is a hole in the ground. That principle, it seems to me, remains established in any event. I think the difference between nonfeasance and misfeasance is that nonfeasance is a failure to do something and misfeasance is doing something in a manner which gives rise to the danger in the first place. So, a failure to do something it seems to me is covered by the Connétable of St. Martin’s - both of those situations - whereas doing something badly would be circumstances where T.T.S. or the Parish authorities went and repaired a road but left it in a bad state of repair after that.

The Deputy of St. Martin:

I am grateful to the Attorney General. If Members would look to the photograph there is a classic example here whereby the pavement has not been repaired properly. However, even though we have an instance here where someone tripped and fell that person, your family member, one of our residents who support us at the electorate, cannot claim because the current law does not allow us to. Now, I am asking whether we want that to continue, and also, the cost of doing nothing. There is a cost. I think it was Deputy Tadier that mentioned it; the cost of doing nothing meant that there was a cost because the parishioner suffered a great amount of inconvenience over Christmas. Okay, if we do things and we hurt ourselves, okay we have that pain and suffering. We do not expect to be recompensed for it. However, there was a cost of course in the hospital, the X-ray and everything else that followed. There was the cost of paying this lady to be off work, so there was a cost and how much would it have cost for someone to have gone around and put a bit of tarmac on there? If you weigh up the 2, no contest. The price of doing nothing is just voting against my proposition. I am disappointed that people have missed the point that when this particular law came into force in 1771 people were not paying their road taxes, they were not paying rates. We all pay a tax on our petrol. Where is that money going? Should it not be going on the roads? Those are questions that maybe T.T.S. should be asking, the Constables should be asking: “Why are we not getting the money to repair our roads?” Also, should the public bear the brunt for other people’s responsibilities? I would like to read and Members will have probably read this anyway from the *Dobson* judgment, it is on page 15 and it was when British Columbia in 1977 had to make this decision, this difficult decision that we are making today. I am pleased to report they did make it in a positive way but they are saying: “We have no doubt that the enactment of our recommendation that we should have a law will increase the economic burden on municipalities and may, we put it no higher, result in higher municipal taxes. We cannot persuade ourselves however that this result is anything other than sensible and fair. At present the community no doubt benefits from lower taxes payable by reason of the immunity and the fact that the full burden falls upon the injured plaintiff. In our opinion this is simply unfair. To shift the risk of loss from the injured person to the community seems to us then both eminently fair and a matter of distributive justice likely to be productive of social benefit in the form of [hear it, folks] improved highway maintenance.”

[11:30]

Quite simple. How Members can oppose my proposition I do not know. We need to make a start and what we are having today is agreeing in principle. We are not agreeing to any particular law. We have heard about, and I am grateful to the Connétable of St. Helier who mentioned that really this is the day we start looking to see how we can put things right and that is really why, when I spoke to the law draftsman, the law draftsman said: "I cannot do anything until we agree in principle." Unless we get the thing started today what will happen, no one has come up with any other alternative. My proposition has been lodged now for 2 or 3 months. This has been ongoing with the Connétables and particularly T.T.S. for over 6 months. Someone could have lodged an amendment and said: "Okay, with reference, but it must go to the Law Commission first." I still believe it will go to the Law Commission but we have got to agree to it. I say let us start from today. I am not going to go through everybody, what they have had to say, I do thank them for their contribution but I do believe that if we start today we will have a safer, fairer society and it is right for Jersey, it is right for the Isle of Man and we have heard all these horror stories of hundreds of millions of pounds. I did ask when I started this morning that if anyone was to make those claims bring the evidence. We have not had the evidence. The incident at the Isle of Man comes from T.T.S. What is going on there is right. Unless we make a start today we will not get anywhere. A number of us will probably not be in the Chamber when this comes back in 2 or 3 years either through our choice or electorates' choice, but unless we agree today what will happen? No one has come forward and given a different option. What I am asking for is to agree that appropriate legislation should be brought forward for approval. I am not saying what that appropriate will be. That will no doubt come through consultation with the Connétables and the Law Commission and everybody else. Again, in respect of main roads and the Parishes, in respect of Parish roads and again the States to make them legally responsible for damage to individuals suffered as a result of negligence. It is not because you have got a pothole that people can claim, it is negligence caused by the failure by the relevant highway authority. I think it is quite a simple proposition. If we do mean to do something for our community let us make a start today. Let us approve my proposition. Let it then go off to do the rounds and indeed very importantly in tandem with what the Minister for Transport and Technical Services is coming through with this new piece of legislation. I think it will help and my piece of legislation will make it I think again a fairer society. I ask for the appel.

The Greffier of the States (in the Chair):

Very well, the appel is called for on the proposition of the Deputy of St. Martin. With Members in their seats, the Greffier will open the voting.

POUR: 18		CONTRE: 30		ABSTAIN: 0
Senator A. Breckon		Senator T.A. Le Sueur		
Senator F. du H. Le Gresley		Senator P.F. Routier		
Connétable of St. Helier		Senator P.F.C. Ozouf		
Deputy R.C. Duhamel (S)		Senator T.J. Le Main		
Deputy of St. Martin		Senator B.E. Shenton		
Deputy R.G. Le Hérisssier (S)		Senator S.C. Ferguson		
Deputy J.A. Martin (H)		Senator A.J.H. Maclean		
Deputy G.P. Southern (H)		Senator B.I. Le Marquand		
Deputy of St. Ouen		Connétable of St. Ouen		
Deputy of St. Peter		Connétable of Trinity		
Deputy J.A. Hilton (H)		Connétable of Grouville		
Deputy P.V.F. Le Claire (H)		Connétable of St. Brelade		
Deputy of St. John		Connétable of St. Martin		
Deputy M. Tadier (B)		Connétable of St. John		
Deputy of St. Mary		Connétable of St. Saviour		

Deputy T.M. Pitman (H)		Connétable of St. Clement		
Deputy T.A. Vallois (S)		Connétable of St. Peter		
Deputy D.J. De Sousa (H)		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy J.B. Fox (H)		
		Deputy of Grouville		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		

2. Draft Security Interests (Jersey) Law 201- (P.88/2011)

The Greffier of the States (in the Chair):

Very well. We come now to the Draft Security Interests (Jersey) Law, P.88, and I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Security Interests (Jersey) Law. A law to make provision about security interests in intangible movable property and about assignments of receivables. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

2.1 Senator A.J.H. Maclean (The Minister for Economic Development):

I will begin by outlining the principles of this Draft Security Interests (Jersey) Law. Before I do so I would like to just briefly thank those Members who were able to attend the briefing on this law last Friday and I hope that for them that provided some insight into what we are proposing here. Being able to access loans by borrowing on the strength of property is fundamental to businesses and individuals. Jersey introduced the 1983 Security Interests Law partly to deal with the granting of loans over share transfer property. It also enabled loans to be granted over a whole range of intangible movable property. Examples of intangible movable property include stocks and shares, life insurance policies and bank accounts to name but a few. This draft law before Members today covers intangible movable property only but it will be followed by a second draft law dealing with tangible movable property in due course. This second stage, which I will refer to as part 2, will be brought forward to this House as an amendment to this law in around about 12 months' time. Both parts of the law will enable individuals, that is the man in the street, and local businesses in St. Helier and elsewhere in the Island as well as the international finance industry to obtain loans based on a wider number of types of security. The key aim of the law is to enable people and businesses to borrow more easily if they choose to by allowing the lender to secure the loan against a wider number of types of security. Is this a good thing? In my view the answer is undoubtedly yes, and let me give you an example. Let us say a retail store in St. Helier is waiting for a shipment of stock which it intends to put on sale. It has a document evidencing and giving title to the goods in shipment. The shop has paid the money upfront but needs a short-term loan because cash flow is tight until it can sell the goods. In order to obtain the loan it needs to be able to grant a security interest over the assets to the lender. That is both before the asset arrives and until it has sold the assets, then it can repay the loan and discharge the security interest. The new law is designed to take security in a better manner than the existing law in a number of ways. The second law, or part 2, will be brought to the Assembly in approximately 12 months, as I have already mentioned, and this is over tangible movables and will increase the number of items that can be offered as collateral

at that particular point as well as being of huge benefit to businesses and individuals. This law covers intangible property in general and investment securities in particular and are of huge importance as security or to use the terminology of this draft law, collateral in modern financing. Jersey is a leading offshore international finance centre. Consequently it is important that the existing legal framework governing the creation of security interests is kept up-to-date. This law creates a new regime for taking security by repealing the existing 1983 law. The draft law is the product of extensive consultation with interested parties both through meeting with consultees and receiving written comments. The law will provide Jersey with a simplified, modern, efficient, legal regime for the creation of security interests, intangible movables, collateral in other words, and their proceeds. It is designed to give Jersey one of the most up-to-date legal regimes in this field. A number of provisions reflect in a simplified form the approach adopted in the United States, in Canada and in New Zealand, and most recently in Australia. In addition, much assistance has been derived from the English Law Commission's 2 reports, *Company Security Interests: A Consultative Report* and *Company Security Interests*. The draft law will improve on the old law by provision for a modern, electronic filing system in which registrations may be effected and searches made on a computer-to-computer basis. This is a key improvement on the old system; a range of efficient, easily exercisable default remedies but with safeguards for the grantor of the security interest. Enforcement action can be halted once it becomes clear that the debtor can pay his debts. This was not possible under the old regime in certain circumstances. For example, where a bank holds assets such as shares that are falling in value it will be able to sell them more quickly both for its own benefit and also for the debtor's benefit. In summary, this law deals with intangible property in general and investment securities in particular which are of huge importance in modern financing. The central objective of the law is to provide Jersey with a simplified, modern, efficient legal regime that will enhance the Island's attractiveness, both to local and foreign investors. It offers the creation and protection of security interests and assignments with minimum of formality; that lay down priority rules, as well as meeting the reasonable expectations of the business community. I propose the principles of the law.

The Greffier of the States (in the Chair):

Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles of the law? If not, I put the principles. Those Members in favour of adopting them kindly show. The appel is called for on the principles of the law. I invite Members to return to their seats. The Greffier will open the voting.

POUR: 34		CONTRE: 1		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy J.A. Martin (H)		
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator B.E. Shenton				
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 Grouville				
Connétable of St. John				
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 of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy I.J. Gorst (C)				
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 A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Greffier of the States (in the Chair):

The Deputy of Grouville, this falls within the remit of your panel. Is it something you wish to look at?

Deputy C.F. Labey of Grouville (Chairman, Economic Affairs Scrutiny Panel):

No, Sir.

The Greffier of the States (in the Chair):

Very well. Minister, how do you wish to proceed with the articles? Do you wish to take them in parts, or several parts?

Senator A.J.H. Maclean:

I was intending to take them in parts, starting with part 1 which is Articles 1 to 3 very briefly, I was going to do a brief explanation on that and then move on to part 2. I did feel it was necessary to give some explanation to Members and so I would hope the Members would bear with me as I go through this. There is quite a bit of detail but I do feel it is necessary to do so.

The Greffier of the States (in the Chair):

Yes. Do you wish to therefore propose part 1, Articles 1 to 3?

2.2 Senator A.J.H. Maclean:

Yes, please, Sir. Article 1 deals with definitions. Article 2 makes it clear that a reference to a grantor or obligor or a secured party includes their successors or assigns, and Article 3 deals with the meaning of control. It is an important concept because control is one of the criteria for taking security over certain assets. Therefore, in the context of a deposit account, Article 3(3) sets out what the control includes. If the deposit account is transferred or assigned into the name of the secured party it is agreed the secured party can direct the disposition of funds in the account, or the secured party is the bank with which a deposit account is held. A financing statement is the data entered into the Security Interests Register. Similar definitions of control appear in Article 3 concerning investment securities and securities accounts. I propose part 1, Articles 1 to 3.

The Greffier of the States (in the Chair):

Articles 1 to 3 are proposed and seconded. **[Seconded]** Does any Member wish to speak? All those in favour of adopting Articles 1 to 3, kindly show, and against. They are adopted. Do you propose part 2, Minister, Articles 4 to 14?

2.3 Senator A.J.H. Maclean:

Yes, Sir. Part 2 deals with the scope of the law, Articles 4 to 14 as you pointed out. Article 4 describes the territorial scope of the law. The key idea is to confine the law to intangible movable properties situated in Jersey. This is straightforward for documentary intangibles but less so for non-documentary intangibles. Accordingly, Article 4 selects a more appropriate link to Jersey. So, the law applies to security interests in (1) directly held non-negotiable investment securities listed on a register maintained in Jersey or by a Jersey company or by a Jersey individual; (2) investment securities held through an account with an intermediary where the account is maintained in Jersey; (3) deposit accounts maintained in Jersey, and (4) any other intangibles, for example receivables or ordinary contract rights where the account debtor or other person owing the obligation is a Jersey company or a Jersey individual. Article 5 allows parties to a security agreement over intangible property to apply the law to a security interest which falls outside Article 4 but would otherwise be within the law. This gives parties the ability to enjoy advantages of the law in relation to a security interest over foreign intangible movables, for example without there being the requisite connection to Jersey. However, this only applies in their relations with each other, so that the rights of third parties are not affected. Articles 8 to 11 contain various exclusions and ensure that other interests or rules of law are preserved. Therefore, the law is excluded from applying to certain interests, including liens, rights of set-off or transfers of rights to damages *en tort*, various assignments, and subordination agreements unless expressly provided.

[11:45]

Article 12 ensures that no security interests in intangible movable property can be created other than under this law. The law does not affect any right acquired in relation to intangible property under the law of a foreign jurisdiction while that property is situated within that jurisdiction. Article 13 makes it clear that a Jersey company or individual is deemed to have capacity to give security governed by foreign law over assets situated outside of Jersey. This affects the principle of private international law that dealing in movable property is governed by law of its situation at the time of dealing. Article 14 then deals with rules concerning notice and priority of a security interest agreement. Priority applies based on the date of the filing of the register, rather than a knowledge of the priority security interest. I propose a part 2, Articles 4-14.

The Greffier of the States (in the Chair):

Those articles are proposed, are they seconded? **[Seconded]** Does anyone wish to speak? Deputy Le Hérissier?

2.3.1 Deputy R.G. Le Hérissier:

I am sure I am alone in this but I am slightly confused. I wonder if under 4(a)(C) where it talks of a Jersey individual, the Minister described that as meaning that it was someone who was almost rooted in Jersey, but yet when you read the definition of a Jersey individual in the definitions under 1, I find those definitions almost contradictory; in other words it is a person who is in Jersey, a person who is not in Jersey. I wonder, could he inform us when they talk of a Jersey company or a Jersey individual, are they talking solely of someone who has a physical or an exclusive legal presence on the Island, in terms of a company?

2.3.2 The Deputy of St. Martin:

It is just the fact we have been talking about 1771 laws and 1914 laws and I know that Members are fully *au fait* with them and maybe I could refer the Minister to page 48 under Article 11, Le Loi 1880 and maybe the Minister could tell us really what this particular 1880 law does for us and it says it is hereby declared that: “Nothing in that law shall affect the validity of the security interest.” Maybe he could elaborate, I am sorry I did not go to the briefing, maybe I would have raised that then but I am sure listeners will be delighted to hear the difference.

The Greffier of the States (in the Chair):

Does anyone wish to speak? I call on the Minister to reply.

2.3.3 Senator A.J.H. Maclean:

I thank the 2 Members for their questions. Deputy Le Hérissier; it depends where it is registered in simple terms, is probably the best way of describing that. As far as the definition of the 1880 law, which I think is what the Deputy of St. Martin was asking, I think I would refer that to the Attorney General, he might wish to give a far more succinct answer than I would.

The Attorney General:

The Loi (1880) sur la propriété foncière is one of the main pieces of legislation dealing with the Jersey law of immovable estate and primarily the mortgaging of property, the mortgaging of Jersey immovable estate. I am not quite sure what reference it would have to what is effectively the securitisation of intangible, movable property, but this provision merely makes it clear that it has no reference so to the extent anyone were to seek a read across, then they would not be able to do so.

Deputy R.G. Le Hérissier:

I wonder if the Minister could define further what a Jersey individual is. I was not satisfied. Does he mean somebody who is physically based in Jersey and whose business is exclusively based here because that is not clear from the definition under 1?

Senator A.J.H. Maclean:

I thought I did make that clear. It depends where it is registered as far as a business is concerned.

The Greffier of the States (in the Chair):

Very well. Articles 4-14 have been proposed, all Members in favour of adopting them, kindly show. Against. They are adopted. Do you propose part 3, Minister, Articles 15 to 28?

2.4 Senator A.J.H. Maclean:

Yes, indeed. Part 3 deals with the manner in which security interests can be created, how they attach to the collateral, and how they can be perfected. Attachment denotes the creation of a security interest so as to be enforceable against a grantor and some third parties. Article 15 provides that where the security interest is attached to a collateral by agreement, it is enforceable, not only against the grantor but against third parties except so far as the law otherwise provides. Article 16 clarifies that a security interest in proceeds is enforceable against third parties. Article 17 states that the effect of the attachment is that security interest becomes enforceable against the grantor. Articles 18 to 20 describe the process of attachment. In most cases a security interest will not be enforceable against third parties unless it is not only attached but been perfected, as I will describe shortly. There are 3 requirements for attachment, the secured party must have given value, the grantor must have rights in the collateral and either the secured party must have possession or control of the collateral or the security agreement must be in writing, signed by or on behalf of the grantor and contain a description of the collaterals sufficient to identify it. The identification requirements set out in Article 18(2) are very flexible, for example, they enable security to be taken over all or any category of the grantor's present and future collateral. Article 19 extends this to after acquired property. Article 20 creates specific rules for investment securities as held by an intermediary. There are a number of automatic attachment in favour of the securities intermediary who places securities in its customer securities account when the intermediary has bought them with the intermediary's own money for the customer's behalf. Articles 21 to 28 deal with perfection. Perfection denotes the further step required to give the security interest protection against others, mostly third parties including a liquidator. Under Article 22 this involves an act which gives third parties notice of existence of the interest such as registration in the public register or possession of a negotiable instrument or certificate embodying a negotiable investment security or giving the secured creditor control over intangible perfection, though necessary to preserve priority, it does not guarantee priority. Priority is determined by

priority rules dealing with the ranking of competing interests and would be considered later in the law. For example, an unperfected security interest ranks behind a subsequently taken but perfected security interest. Under Article 23 there is a security interest perfected in one way is later perfected in another way without a gap, the security interest is continuously perfected. Under Article 25 a security interest in proceeds of collateral is continuously perfected security interest if (a) the cash group proceeds is described or (b) the proceeds are of a kind falling within the description of the original collateral. An example of the latter case is where the original collateral consists of investment securities which are sold and the proceeds reinvested in other securities. Under Articles 26 and 27 certain security interests including in proceeds and in negotiable instruments enjoy a period of temporary perfection. After this period they need to be perfected in the ordinary way. Article 28 provides for the temporary automatic perfection of a security interest created and perfected under the law of another jurisdiction over collateral then situated in that jurisdiction but subsequently removed to Jersey. I propose part 3 Articles 15 to 28.

The Greffier of the States (in the Chair):

Are those articles seconded? [**Seconded**] Does any Member wish to speak on any of those articles? Deputy Le Hérisssier?

2.4.1 Deputy R.G. Le Hérisssier:

I wonder if the Minister could define what “perfection” is? We are referred to 21 but it is defined in terms of the same word, in other words it is defined in terms of perfection. I wonder if he could define it?

The Greffier of the States (in the Chair):

I call on the Minister to reply.

2.4.2 Senator A.J.H. Maclean:

Perfection is short, succinct questions. Perfection, in the case of the security interest, the registration of the security interest or the possession or control of the collateral and in the case of an assignment the registration of the assignment.

The Greffier of the States (in the Chair):

Those Members in favour of adopting Articles 15 to 28 kindly show. Against. They are adopted. Part 4, Minister, Articles 29 to 34.

2.5 Senator A.J.H. Maclean:

I would like to take parts 4 and 5, if I may.

The Greffier of the States (in the Chair):

Yes. Articles 29 to 38

Senator A.J.H. Maclean:

That is right, Articles 29 to 38. Parts 4 and 5 deal with the priority of competing interests and collateral and the position of purchasers. Article 29 sets out the residual priority rules applicable where none of the specific rules which follow applies. These residual rules are that a perfected security interest has priority over an unperfected security interest where both interests are unperfected, priority is determined by the order of attachment. As between 2 or more perfected security interests, priority goes to the security interest in relation to which any of the following events first occurred; (a) a financing statement was registered, (b) the secured party took possession or control of the collateral, or (c) the security interest was temporarily perfected under the law. Articles 30 and 31 deal with special priority rules concerning the priority of conflicting security interests in the same certificated investment security, the same securities account or the same deposit account and where a security interest is transferred. Under Article 32 priorities may be

varied by a subordination agreement between the holders of a competing interest. This provision protects the transferee of the subordinated security interest from being led into thinking but is still the senior security interest by putting the transferee on notice of the subordination in some way in order for him to be bound by it. Article 32(3) provides 3 means by which notice may be given. Article 33 ensures that a security interest has the same priority as regards all advances whether existing or future advances whether made pursuant to a contractual obligation or voluntarily and whether made with or without notice or a subsequent security interest. Article 34 gives special priority in given to purchase money security interests. This is in essence a security interest taken to secure repayment of an advance of the purchase price of the collateral to the grantor. The reason for giving this priority is to prevent the first financier from using its security interest over future property to obtain a monopoly over the grantor's financing and a windfall addition to its security of an asset purchased with a second financier's money. The priority rule previously discussed deal with competing security interests in the same security. Part 5 of the law which is Articles 35 to 38 includes some parties whose interests do not only rank in priority to an earlier security interest but extinguish it altogether. Article 35 insures that one who acquires the collateral for value takes free of an unperfected security interest unless it was created or provided for by a transaction to which the person who acquired the collateral was a party. Article 36 provides that a creditor receiving payment through an obligor-initiated payment takes free of any security interest perfected or unperfected in the funds paid. Article 37 reserves the rights of the holder in due course of a negotiable instrument are preserved. Under the applicable negotiable instruments law such a holder takes free from any defect in the title of his transferor and thus from any security interests given over the instrument and perfected by registration. Article 38 provides that a person giving value for a certificated investment security and taking possession of the certificate takes free, even of a perfected security interest of which he knows, unless he also knows the dispossession to him was in breach of the security agreement. There are certain exceptions including the transfer of securities to a new account, the rationale of this protected purchaser rule is the importance of avoiding impediments to the transferability of investment securities which are certificated or held with an intermediary. I propose parts 4 and 5 covering Articles 29 to 38.

The Greffier of the States (in the Chair):

Are those articles seconded? [**Seconded**] Does anyone wish to speak on any of those articles?
Deputy Le Hérisssier?

2.5.1 Deputy R.G. Le Hérisssier:

In terms of 38(4) it says the person knows that the disposition would be in breach. How is that provable? Does the person simply say at the time: "I knew it was in breach"? How is it provable?

The Greffier of the States (in the Chair):

I call on the Minister to reply.

2.5.2 Senator A.J.H. Maclean:

I think I would get a clear definition from the Attorney General with regard to this matter and I thank Deputy Le Hérisssier for his continued interest.

The Greffier of the States (in the Chair):

Are you able to assist, Mr Attorney?

The Attorney General:

Yes, the matter of whether something is provable of course is simply a matter of evidence before the court in the event that someone will wish to avail themselves of the protection under this particular article and the other person were to wish to say: "No, you are not entitled to the protection", it will be a matter to be resolved before the courts based on the evidence available as to whether or not one can prove that the individual knew it would be a breach of the security interest.

The Greffier of the States (in the Chair):

Very well, all those in favour of adopting Articles 29 to 38, kindly show? Against? They are adopted. Do you wish to proceed with 6 or further parts, Minister?

[12:00]

2.6 Senator A.J.H. Maclean:

Part 6, that is Articles 39-41.

The Greffier of the States (in the Chair):

Yes.

Senator A.J.H. Maclean:

Just briefly. Part 6 deals with assignments of receivables. The effect of Article 39 is that where a contract contains a provision prohibiting or restricting assignments, such provision is ineffective against the assignee. The assignment is valid and simply exposes the assignor to a claim for damages for the breach of contract. The purpose of this provision has removed what would otherwise be a serious impediment to receivables financing. Where there are a continuous flow of receivables from an assignor to an assignee as under a factoring agreement for example, it is impractical for the assignee to check the individual contracts to see if these prohibit or restrict assignment. So Article 39 reflects a policy embodied in Article 9 and that is 406(d) of the American Uniform Commercial Code and in several international conventions that freedom of commerce should be given the priority over freedom of contract. Under Article 40 an account debtor is obliged to pay the assignee only after receipt of notice in writing by or with the authority of the assignor identifying the countersigned and requiring the account debtor to pay the assignee. Under Article 41, the account debtor is entitled to assert against the assignee any defences he would have had against the assignor and is also entitled to assert against the assignee rights have set off. So I propose part 6, that is Articles 39 to 41.

The Greffier of the States (in the Chair):

Are those articles seconded? [**Seconded**] Does anyone wish to speak? All those in favour of adopting Articles 39 to 41 kindly show. Against. They are adopted. Do you want part 7, Minister?

2.7 Senator A.J.H. Maclean:

Part 7 deals with enforcement of security interests. Part 7 of the new law provides a range of default remedies therefore I propose that part 7, which includes Articles 42 to 59 will go together. Under the 1983 Act the creditors only remedy for default is sale in contrast part 7 of the new law provides a range of default remedies. Article 43 includes the primary remedies of apportionment of sale of the collateral. These are supported by various ancillary remedies contained in Articles 43(2)(c). On the default of secured party may appropriate the collateral or proceeds that is apply the collateral or proceeds towards satisfaction of the secured obligations. Under Article 44 the secured party is however under a duty to give not less than 14 days prior notice to interested parties. Prior notice to interested parties is not required where the collateral consists of a quoted investment security or in certain other cases, such as by agreement in writing between interested parties. This enables the secured party to sell shares that are falling in price to ensure that the best possible price is obtained. It offers perfection for the grantor as well as the secured party. Article 45 sets out the methods of sale if that option is chosen. Article 46 provides important protections, the secured party must take all commercially reasonable steps to determine the fair market value of the collateral. This protects the grantor at the security interest. Also under Article 46 the secured party must act in other respects in a commercially reasonable manner, in relation to the sale or apportionment. The effect of Article 47 is that ownership of the appropriated collateral or proceeds vests in the secured party free from other lower ranking security interests. Article 48 insures that the grantor receives a statement of the costs of sale so that they are aware of

the transparent manner of what the collateral was sold for and the costs of such. This is relevant for the purpose of determining whether the net value of what is appropriated leaves a deficiency recoverable from the grantor or a surplus payable by the secured party as provided by Article 49. Article 59 defines what a surplus is from the realisation of the collateral. Article 52 grants the court extensive powers to make orders to facilitate exercise of the secured parties remedies. Articles 54 and 55 protects the grantor by enabling him to redeem the collateral at any time before the appropriation or entry by the secured party into a contract of sale or other irrevocable step in relation to collateral. Articles 56 to 59 ensure that on the bankruptcy of the debtor, the secured party can act in the same manner in relation to the collateral as he would or could prior to bankruptcy. This replicates the existing 1983 law. I propose Articles 42 to 59.

The Greffier of the States (in the Chair):

Are those articles seconded? **[Seconded]** Does any Member wish to speak on any Articles 42 to 59? Would all Members in favour of adopting those articles kindly show. Against. They are adopted. We come to part 8, Minister, 60 to 84.

2.8 Senator A.J.H. Maclean:

Yes, thank you. Part 8 concerns the creation of security interests register. The register will be a public register searchable online. I propose to take Articles 60 to 84 together which is part 8. I have to draw Members attention to certain key articles. Under Article 60 the Registrar of Companies shall be the security interest's registrar. The registry will be held and run by the J.F.S.C. (Jersey Financial Services Commission) who have great experience of such matters while reducing costs by not creating additional quangos. Article 61 states that the register will contain financing statements and such other matters as required by the law to be entered or registered. Article 64 provides that the registration system will be based on the concept of notice filing. Notice filing has advantages including saving space by not involving the filing of a copy of the security agreement. Instead, the secured party or intending secured party registered a financing statement stating that it has acquired a security interest in an identified item of collateral or a given description of collateral. The function of the financing statement is to give notice to third parties of basic information such as the existence of security agreement, the identity of parties and a description of the items or classes of collateral. Online registration enables the system to record the precise time registration takes place if all the elements of perfection are in place priority goes back to the time of registration of the financing statement. Under Article 66(1) an omission, error or irregularity in a registration will not invalidate the registration unless the omission, error or irregularity is seriously misleading. Article 67 states the period of registration that is specified in the financing statement. Article 68 enables the registrations to be renewed by registering a financing change statement at any time while the earlier registration is effective. Article 74 enables the secured party to amend or discharge the registration. Article 75 gives the grantor the rights to demand that a secured party discharges or amends the registration where the obligations under the security agreement be performed. Article 79 provides that the registration system will be wholly automated, registrations may be affected, searches made and searched certificates issued online without the need for human intervention at the registry, that is covered in Article 79. Under Article 83 the public will be entitled to make searches of the register and obtain written reports setting out the information in the register relevant to those searches. This is common in registers across the world and complies with data protection principals, a fundamental reason for the register is to enable a proper record to be kept and searched in order to ascertain whether an asset is free from security. The registrar is given significant powers to correct errors on the register under Article 82 as well as removing data that is frivolous or vexatious. Under Article 80 the registrar is therefore an important gatekeeper in this regard. I propose Part 8 which covers Articles 60 to 84.

The Greffier of the States (in the Chair):

Are those articles seconded? **[Seconded]** Does anyone wish to speak? Deputy Le Hérissier?

2.8.1 Deputy R.G. Le Hérissier:

More a general question. I wonder if the Minister could indicate, there is an enormous amount of detail here and of course if the law has to be changed we have the usual ponderous process. Why is so much put into the main law and not when it comes to the administrative detail put into subordinate legislation?

2.8.2 Senator B.E. Shenton:

Article 66 states: "Registration is invalid only if seriously misleading." Is the differential between misleading and seriously misleading purely subjective and if so who decides?

2.8.3 Senator F. du H. Le Gresley:

I was just inquiring whether the register will give any indication of the initial amount of debt or borrowings incurred by somebody whose details have been put on the register?

The Greffier of the States (in the Chair):

If no one wishes to speak I will call on the Minister to reply.

2.8.4 Senator A.J.H. Maclean:

Deputy Le Hérissier; the detail as to why so much is contained within the law as it owes to subordinate legislation. That, quite simply, was the advice and I take his point but nevertheless these are important matters and I think it is important that it is dealt with in this way. Indeed in future one can consider whether or not it is revised and done with a more appropriate way that the Assembly here might think is appropriate. But this is the way the advice was given. As far as Senator Shenton is concerned, under Article 66 seriously misleading or misleading, it is in many respects a subjective view but nevertheless I suspect it will be dealt with by the courts in due course if that were the case. The Attorney General may indeed like to give some further comments if he feels there is anything else that needs to be said, but I think he is satisfied, and as far as Senator Le Gresley is concerned, the register, as far as I am aware, does not detail the amount of debt and I do not think we necessarily expect it to do so. I maintain part 8 and the Articles 60 to 83.

Senator B.E. Shenton:

Could I ask the A.G. (Attorney General) to say who arbitrates on whether something is misleading or seriously misleading?

The Attorney General:

I think initially that is likely to be the Registrar when it is registration, but ultimately, as the Minister has indicated, I think it is likely to be the court to determine whether something is misleading in the sense that it is potential that someone has been misled in perhaps a non-material respect, or seriously misleading when they may have been misled in a very material respect. I use those as not terms of art and without trying to define what is misleading or seriously misleading, but ultimately I think it would be a matter for the court.

The Greffier of the States (in the Chair):

Very well, all Members in favour of adopting Articles 60 to 84 kindly show. Against. They are adopted. We come finally, Minister, to part 9, Articles 85 to 96 and the 2 schedules, I think, together.

2.9 Senator A.J.H. Maclean:

Yes. Part 9 deals with the miscellaneous provisions and schedules 1 and 2 deal with consequential matters such as what happened concerning security interests already created under the 1983 law. I will take part 9, that is Articles 85 to 96 and schedules 1 and 2 together and I will pick out the highlights as I do that. Article 85 applies if the security interest is not overall the intangible movable property or all the movable property of the grantor. The security party can be required by

the grantor to provide a copy of the security agreement, a statement in writing of the indebtedness and list of the property indicating which items are classed as collateral. This enables the grantor to show the amount of property that is not encumbered and subject to a security interest at any one time. Articles 86 to 88 grant the Royal Court powers in respect of Article 85 rights. Articles 91 and 92 give the power to make rules of court in respect of this law and the Minister the power to make orders relating to the register and other ancillary matters. Schedule 1 provides for consequential amendments including amending the definition of security interests and the Bankruptcy (Désastre) (Jersey) Law 1990 among other laws. Schedule 2 amends the 1983 law so as to be limiting to existing and continuing security interests. That is security interests created in accordance with the 1983 law and which are still in existence when the new law comes into force. Paragraph 2 of schedule 2 enables parties to agree that in their relations with each other, the new law will apply to a continuing security interest though perfection and priorities remain governed by the prior law. Also paragraph 4 provides that a continuing security interest which the prior law applies will be governed by the new law, not by the prior law, if it is amended after the new law comes into force. The security interest so amended is treated as a new security interest. I propose part 9, Articles 85 to 96 and the 2 Schedules to the law.

The Greffier of the States (in the Chair):

All those articles and schedules seconded? **[Seconded]** Does anyone wish to speak on any of those articles or schedules?

2.9.1 Deputy J.B. Fox:

Just a question on 92. What are the fees published by the Jersey Financial Services Commission, what sort of range are they at, just for interest, thank you?

2.9.2 The Deputy of St. Martin:

I would refer the Minister to page 82 and paragraph 7, Limited Liability Partnership (Jersey) Law 1997. Those Members who were in the House will remember how stormy a passage that was where certain Members were able, possibly, to use their influence to get this piece of legislation moved up the drafting. Can the Minister inform Members how the ...

The Greffier of the States (in the Chair):

Let us not go back there, we have had a Committee of Inquiry, I think we have ...

[12:15]

The Deputy of St. Martin:

Well okay. Maybe I will rephrase it. Where this particular legislation was able to somehow jump or go up the law drafting system, but anyway, that is in the past but it still sticks in some people's memories. Can I ask the Minister how this particular piece of legislation fits into - I am talking about Limited Liability Partnership - how that fits into this piece of legislation we have before us and also how successful has Limited Liability Partnership been. How many people, for instance, have signed up to it?

Deputy R.G. Le Hérissier:

Where it says "access to the register" under 83(2), it talks about ...

The Greffier of the States (in the Chair):

We have adopted 83(2), Deputy.

Deputy R.G. Le Hérissier:

My apologies.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

2.9.3 Senator A.J.H. Maclean:

Deputy Fox asked about costs. The costs will be determined by the cost of administering the law as such. It is anticipated that equivalent regimes, for example, are around £10 for registration and £2 for a search. The Deputy and Members might be interested that the development of the register and the law is expected to cost about £300,000 and it is expected that it will generate around £100,000 in fees per annum. So we do expect it to pay for itself within 3 years. The Deputy of St. Martin asked about the Partnership Law, so going back a little bit into history. As far as I am aware, it has not been used. It was not competitive and I know there are issues about it and I think he is well aware of many of the issues, which is probably why he raised it. But, nevertheless, it is mentioned in good order in this Law, as is appropriate. I maintain part 9, Articles 85 to 96, and the 2 Schedules to the Law.

The Greffier of the States (in the Chair):

All those in favour of adopting those articles and schedules kindly show. Any against? The law is adopted in Second Reading. Do you propose the law in Third Reading, Minister?

2.10 Senator A.J.H. Maclean:

Yes, Sir.

The Greffier of the States (in the Chair):

Seconded? [**Seconded**] Does any Member wish to speak?

2.10.1 Senator P.F.C. Ozouf:

Just very briefly; I know that sometimes in Third Readings and at the conclusion of a Bill there is a bit of back-slapping but we do need to recognise the Minister and his department for bringing something to a conclusion which has been going on for many, many years. This is extremely important to the domestic economy. It also is massively important to Jersey as an international finance centre. We have lost business because of the improvements that needed to be made in this. I wanted to do this when I was Minister for Economic Development. I did not do it. There has been a huge amount of work with the Law Society, consultative groups and, I am sure the Minister will say, his own resources. But he needs to be congratulated or finally bringing this to the Assembly.

2.10.2 Senator S.C. Ferguson:

Just a small point; quite a number of Members of this House are not or have not worked in the finance industry or have little connection with it and it seems to me that it would have been an advantage to have a little more expansion, in one place rather than scattered throughout the document, of the types of transactions that are under consideration. I wonder if this could be noted for any further similarly complicated pieces of legislation.

2.10.3 Deputy A.E. Jeune:

Just following on from Senator's Ferguson's comment there; a briefing was arranged last Friday and some of us did attend, which was very helpful.

2.10.4 Senator F. du H. Le Gresley:

Rather sadly, I can remember the drafting of the 1983 Law. In fact, I was one of the consultants in the office where I was working at the time on that law and I have to say that the 1983 law was very simple. This new law is highly complicated, longer than 60 pages of legislation. My question to

the Minister: will part 2 be any simpler or will it be able to be added on to the bulk of this document or will we have another 60-odd pages of legislation, because I do believe the people operating in the finance industry will need a lot of legal advice to make sure that their own documentation complies with the legislation. I wondered whether his department will offer assistance to these financial institutions to perfect their documentation, because I do recall, going back to the 1983 law, there was very little assistance. I was working in a bank at the time and we had to draft our own documents in the hope that they were complying with the legislation, but this is a far more complicated piece of legislation and I would ask the Minister if he intends to provide assistance to those financial institutions.

2.10.5 The Deputy of St. Martin:

Just a very short comment, but it is really to pick up on Senator Ozouf's comments and joining in in complimenting everyone concerned in getting this legislation through. But he did say how long it has taken and this is a concern I have, and I think it was raised yesterday when Deputy Jeune asked a question about the Licensing Law. I know I was part of that way back in 1995. I carried out a review of the Licensing Law and nothing is happening. We have just had the instance now where my proposition was suggested 8 years ago and nothing happened. Is the Minister able to tell us why this particular piece of legislation has taken so long? Indeed, we have lost business by it. So why was it held up and can we do better?

The Greffier of the States (in the Chair):

I call on the Minister to reply.

2.10.6 Senator A.J.H. Maclean:

Dealing with these various questions that have been raised in no particular order; Senator Ferguson asked about the detail and whether or not there would be a greater deal of briefing. I think Deputy Jeune raised the point that we did organise a briefing session and I thank Members who came along to it. I hope they found it useful. Always in these briefing sessions we would like to see more Members attending. It is an opportunity for officers to be there, to ask the question that you want to ask. Deputy Le Hérisier today has asked a lot of questions and, again, I think some of them he would have found quite useful if he could have been available to attend. I know we all have busy schedules and I know the Deputy has been very busy but, nevertheless, it is helpful. Certainly, as a department, we do try and offer options for briefing sessions, numbers of dates, to try and accommodate as many Members as we can. But that is the way we can deal with what is essentially very complex law and this is a complex piece of law, which has been alluded to by Senator Le Gresley. Senator Le Gresley made the point that not only was he around in 1983, I think the years have been very kind in the interim period - not that I need to try and solicit votes at this stage - but, nevertheless, he was right. The 1983 law was simple but, then again, the world's finances were very much simpler in those days. They are very much more complex today and that is the reason, sadly, why this law has had to be made in the way that it has been, in a complex way, to ensure that we meet necessary international standards and, more importantly, we allow both local businesses and international businesses the safety, security and comfort that Jersey has modern, up-to-date laws and they are, unfortunately, more complex. We have made it as simple as we can but, nevertheless, it needs to include quite a degree of detail. I can perhaps give Senator Le Gresley one piece of comfort and that is with regard to assistance to the financial institutions. The department has been working on a standard template for the industry, which I think should perhaps help to simplify matters in that particular regard. I can also tell the Senator that part 2 of this law, which hopefully will be 12 months or less before it is brought before the Assembly, will address the rest of the matters that are important, but also it will be added on to this particular law. It will be an addition which, hopefully, will make the final document clear and as simple as is possible. The Deputy of St. Martin has asked why it has taken so long. We progressed, in the last 3 years, quite quickly with moving this forward. It is complex. It does take time and I am afraid one of the issues

and areas of greatest concern that I have is speed to market with all legislation, particularly financial services-related legislation. We have made steps in order to improve the passage of legislation because it is key for our financial services industry that speed to market ensures that we can compete with other jurisdictions in the very competitive world that we are now in and progress, I am pleased to say, is being made. I hope that in future the Deputy will not be in a position to raise such points. I would, finally, just like to thank Senator Ozouf for his kind words. I know he was involved, as my predecessor, in this matter and was keen to have progressed it. I would also like to pay my thanks to the Law Officers' Department that, I think, have put together an extremely good law. They have also prepared a fantastic piece of documentation with a great deal of detail, which I am sure Members have found very useful; probably the reason that I had as few questions as I did, because it is so comprehensive. So I think the Law Officers' Department have done an exceptional job and, indeed, so have my staff at Economic Development, who have put a lot of effort into bringing this forward. So to all of them it is very much a team effort and they do deserve congratulations. **[Approbation]** As well as the Law Officers, of course, the law draftsmen should not be forgotten; their effort is also greatly appreciated in this process. I maintain the proposition and thank Members for their contribution.

The Greffier of the States (in the Chair):

The appel is called for. The vote is for or against the draft law in Third Reading. If Members are in their seats I will ask the Greffier to open the voting.

POUR: 41		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator B.E. Shenton				
Senator F.E. Cohen				
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 Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
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 of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				

Deputy I.J. Gorst (C)				
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 D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

3. Draft Medicines (Amendment No. 3) (Jersey) Law 201- (P.94/2011)

The Greffier of the States (in the Chair):

We come now to the Draft Medicines (Amendment No. 3) (Jersey) Law, P.94, in the name of the Minister for Health and Social Services and I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Medicines (Amendment No. 3) (Jersey) Law: a law to amend further the Medicines (Jersey) Law 1995. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

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

I hope this is a simple law. I bring before you today a draft amendment to the Medicines (Jersey) Law. This amendment seeks to enable registered nurses, midwives, pharmacists and other health care professionals to be authorised as appropriate practitioners to undertake independent prescribing of medicines, working within their professional scopes of practice. This is called non-medical prescribing. Currently, only doctors, dentists and veterinary surgeons are able to prescribe medicines in Jersey. I thank those Members who took the time to come to the presentation by my officers last week. Jersey, similar to other westernised health care systems, is facing continuing challenges in terms of delivering safe, cost-effective care. Medicines management is an integral component to this and many of our most experienced and highly-qualified staff are well placed and would be able to provide this aspect of care. Jersey, as an Island community, has unique challenges due to its geographical location. In addition, there are difficulties in attracting middle-grade expertise. Non-medical prescribing was successfully introduced in the United Kingdom some 15 years ago and has also been introduced in Guernsey and the Isle of Man. During this time, several studies have been undertaken to measure the impact of healthcare outcome. There is now a substantive body of evidence which demonstrates that non-medical prescribers provide not only safe care, which is paramount, but their practice provides highly cost-effective and quality outcome to their client group. This law amendment removes existing barriers, which will enable our appropriate healthcare professionals, other than doctors, dentists and veterinary surgeons, to prescribe medicines. It is envisaged that this will not only enhance patient care but will utilise more effectively the current knowledge and skills of our most experienced specialist staff. In addition, the law amendment provides an improved governance framework. It is enhanced by the strict professional standards and regulation pertaining to their prescribing practice. It is important to stress that the primary legislation of this amendment we debate today will enable non-medical prescribing to be considered. Extensive work will then follow and the next steps will then include the development of a detailed information strategy that will involve all stakeholders Island-wide.

[12:30]

This will include primary, secondary and third sector care providers where non-medical prescribers may be applicable. Secondary legislation in the form of ministerial orders will then be developed to embed the strict legal, professional and regulated components, thus ensuring that robust

governance and monitoring of practice ensures patient safety and that our non-medical prescribing practitioners are fit for practice. The professional regulation that will underpin the ministerial orders for the selection, education and continuing practice of all future non-medical prescribers are some of the most rigorous and monitored of all areas of practice. To exemplify this, practitioners applying to become non-medical prescribers will have to demonstrate a proven track record of practice experience and continued education at under and post-graduate level. The selection process for undertaking a programme of study is similarly rigorous and requires specific and regulated criteria, which must be fulfilled before a programme of study can be even be considered. The education programme follows strict national and international standards and is rigorously regulated by the professional body concerned. For example, for nurses and midwives, this will be the Nursing Midwifery Council and, for pharmacists, the General Pharmaceutical Council. Assessments on the programme consist of theoretical, numerical, pharmacology and observed structural clinical examination where holistic assessment and diagnostic skills are assessed. While undertaking the course, practice is similarly checked and formally assessed by speciality-specific senior medical staff who must be assured that practitioners reach the highest of standards. Once practitioners have successfully completed and qualified as non-medical prescribers, their progress and continued professional development is similarly regulated, assessed and monitored. This is going to be reviewed annually to ensure that competency and standards are maintained and that safety is absolutely paramount. Practitioners will be expected to demonstrate that their practice is of the highest level and their right to prescribe will require a formal process to evaluate this in order to qualify each year. Non-specialist practitioners we seek to recruit here in Jersey view non-medical prescribing as an important and rewarding part of their role. The amendment to the current legislation will clearly, therefore, make working in Jersey a more attractive option where we are currently competing nationally and internationally to attract the right people with the right skill set. We know the job market for this highly-qualified staff is becoming increasingly more competitive. Recent research has indicated that the added value of a non-medical prescriber for existing local practitioners is that it will enhance job satisfaction, improve the patient experience and, consequently, positively impact on staff retention rates. High quality education is already delivered by a committed team of experienced practitioners at both under and post-graduate level in association with leading university institutions within the National Education Centre here on the Island. The proposed non-medical prescribing programme can thus be facilitated locally by existing clinicians and educationalists. Their local knowledge and experience will allow the construction of a bespoke educational programme, which would specifically address the needs of Jersey people into the future. It is envisaged that the Island has current expertise to deliver such a programme locally. In summary, the introduction of this draft amendment to the Medicines (Jersey) Law 2011 will update and improve upon the provision required for effective medicines management for our Island community. The introduction of non-medical prescribing will secure the future in providing comprehensive healthcare by providing a platform for newer models of healthcare delivery which will be fit for purpose. I make the amendment.

The Deputy Bailiff:

The principles are proposed. Are they seconded? **[Seconded]** They are now open for debate.

3.1.1 Deputy A.E. Jeune:

I thank the Minister for bringing this proposition. It is very welcome. As always, Jersey seems to take for ever to bring forward modern practices which are already embedded in law in other jurisdictions. We seem to have pen-pushers who play the “jobs worthy” bit. We wonder why we have problems recruiting and the length of time it has taken for this law to come before us has not helped. Why would, for example, a nurse, who was a recognised, competent, accredited nurse prescriber, currently come here to work when she knew that she would be deskilled in 6 months? It is not only nurses. What about our pharmacists; highly competent, highly trained professionals?

We should be embracing their abilities, too. Not a day too soon. I certainly hope all Members are going to support this long overdue legislation.

3.1.2 Deputy R.G. Le Hérisier:

It is a no-brainer. I think long, long overdue, as Deputy Jeune said, and it is against the backcloth that there is undoubtedly a division opening up in society between people who go to G.P.s (general practitioners), who do offer a good service here because of the relationship, but there is no doubt, as the Health Department is finding out by the alleged misuse of its Accident and Emergency Service, that it is becoming a major issue. As Deputy Jeune said, other practices have got practice nurses. They deal with this. They do it within a framework of proper training, proper validation and so forth. The Minister did outline all sorts of precautionary matters that will be put in place and which, of course, have to be and are put in place for G.P.s. and we know that sometimes they stray. We have had examples of mis-prescribing and ill-prescribing and we have even had some sad cases of G.P.s being addicts and prescribing for themselves. So this is an issue that cuts across the whole medical profession and I have no doubt that these people will be, in general, as responsible as others. It is long, long overdue. It is against the backcloth, I think, that there is going to have to be a major, major review, which I know has been already, in a sense, instigated by the Minister for Social Security and the Minister for Health and Social Services, of how we deliver G.P. services on this Island. There is a cost issue rapidly growing in that area, which is why the Minister's Accident and Emergency Service is being used in the way it is being used. Long overdue and I look forward very much to, I hope, its quick implementation, despite the immense list of precautions that the Minister outlined.

3.1.3 Senator S.C. Ferguson:

Just a word of warning, though: this should not be viewed as a cheap alternative to employing doctors. It must be viewed as a corollary and should not be used as a purely cost-saving measure by Health and Social Services. There are, however, opportunities for improving the operation of primary care, but it is essential that the primary care procedures are updated and perhaps the Minister can indicate how this will be effected. I am, in fact, aware of local nurses who are qualified as nurse practitioners and who are currently frustrated by the outdated primary care protocols but, with those words of caution, I will support this proposition.

3.1.4 Deputy D.J. De Sousa:

Members will be pleased to know I will be brief as a lot of what I wanted to say was said by previous speakers. I just want to reiterate the fact that currently most of our nurses come from the U.K. and a lot of them are already able to do this and they are currently being deskilled, which cannot be a good move. We know that we are looking at our long-term care strategy and that we are looking to keep people in their own homes. Family Nursing and Home Care provide a lot of nurses to work in the community, again, that are not able to do this even though they are qualified to do so. Also, there will be very strict controls and safeguards in place. So I welcome this and hope all Members will support it.

3.1.5 Deputy P.V.F. Le Claire:

Similarly, I would like to congratulate the Minister and echo the views of herself and the others in relation to the welcome legislation. May I ask, please, in plain English, what procedures will be in place to ensure that the prescribed medicine being given to the patients has sufficient oversight? Recently, I was asked to look into a situation where one of the consultants was facing some disciplinary issues and one of the strands of the disciplinary issue was the fact that, when he was prescribing, the nurse was overlooking the actual amount of medication that was going to be administered. I am just wondering if there are going to be 4 pairs of eyes on the actual administration of the medicine. It is all very well to empower the nurses but I am just wondering,

as has been pointed out by Senator Ferguson and others, what actual checks and balances will be in place to ensure that mistakes are not made.

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

It is only appropriate, I think, that I stand and congratulate my colleague for bringing this forward. It is one of a package. Members will be aware that later in this sitting we have also got the Draft Medical Practitioners (Registration) Law and I will very shortly, I hope, be lodging - which will mean we will have to debate it in September - changes to the Health Insurance Fund Law. It all comes arising from the decision that we, as an Assembly, made in 2010 to transform the way that primary care is delivered in our community for many reasons. This is one of those pieces of legislation which needs to be amended to allow nurses to prescribe, be it in the hospital or be it in a primary care practice, and to allow other medical practitioners to be able to prescribe as well. Of course, Health, as well, are doing their Green Paper and this sits perfectly in the new model of health delivery that we believe that we need to provide the very best, most effective, efficient and, we hope, slightly cheaper, in some regards, care to members of our community. So I welcome this law and I ask that Members support the Minister for Health and Social Services, as with the other piece of legislation that we will be debating later as well.

The Deputy Bailiff:

Well, it is 12.45 p.m. I am not sure if Members wish to adjourn at this stage.

Deputy P.V.F. Le Claire:

I propose the adjournment.

The Deputy Bailiff:

The adjournment is proposed.

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

Sir, can we not finish this debate?

The Deputy Bailiff:

At the moment there is only one more to speak, but I am in the hands of the Members.

Senator P.F.C. Ozouf:

I suggest that we continue and finish this.

The Deputy Bailiff:

That seems to be the opinion of Members. Yes, very well.

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

I am only going to be brief; just to personally thank the Minister and her officers on behalf of myself and many people who find themselves in the position that I do, where they have to continuously take drugs for a particular illness and they have learned to manage it within their own regime, independently. This is a great move forward into the 21st century and I am very grateful for this coming forward.

The Deputy Bailiff:

If no other Member wishes to speak, I call on the Minister to reply.

3.1.8 The Deputy of Trinity:

I thank all those who have spoken. I totally agree with those who have thanked the staff and thanked the nurses in particular because they do a good job and they should be thanked. **[Approbation]** Just to pick up a couple of points. Yes, from Deputy Jeune, it is not a day too soon

and I would agree with that. Even though I have been in place for 2 years, I would like to think things have moved. I have kept my word to P.37, I think, it was, that Deputy Gorst mentioned and brought back several changes for this master debate to changing primary care. From Deputy Le Hérissier, again it is his third sector, the community. This includes the community, providing that those nurses wish to be skilled and provided that they meet all the checks and balances.

[12:45]

This definitely has a place for that, especially in primary care with practice nurses because they will have that close interaction with their patients and will know them exceptionally well. That needs to be enhanced and also it will be quicker because if they need to change a certain drug or the patient needs to change a certain drug or change dose or whatever but nurses can do it right there and then, rather than waiting to see a doctor. So that is a very good plus point too. Senator Ferguson; it is not a cheap alternative, it is a way of using our nurses to their full potential and it is not to take away from the doctors, it is to complement the doctors. The nurses have very close, as I said, affinity with their patients because they have that closer liaison at times and so it is to complement them. All the nurses, if they meet the criteria to get on to the programme, it is checks and balances and I have outlined that in my speech so I will not across that again, but it is highly regulated, not only here but also with the university that will check the training programme and it is also with the 2 Royal Colleges of Nurses and Midwives and the Pharmaceutical College. Deputy De Sousa is quite right with the nurses, and nurses have been deskilled. If they cannot use their practice within 6 months, they have to go back, more or less, to square one and that is a waste of their talents. Deputy Le Claire, an oversight; yes, it is oversight, because it is part of every nurse's continuous professional development too, that they have to make sure that they are well governed and they are responsible for their own actions. Four pairs of eyes will only apply, as it applies now, if they need to do controlled drugs but it is a very tough training programme that they have to go through and they have to meet the criteria. I mentioned Deputy Gorst and I thank Deputy Vallois for her comments. I maintain the proposition and ask for the appel.

The Deputy Bailiff:

The principles are proposed and the appel is called for. I invite Members to return to their seats and ask the Greffier to open the voting.

POUR: 41		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F.C. Ozouf				
Senator B.E. Shenton				
Senator F.E. Cohen				
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 Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
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 J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
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 A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Chairman of the Health, Social Security and Housing Scrutiny Panel; do you wish to scrutinise this piece of legislation?

Connétable D.W. Mezbourian of St. Lawrence (Deputy Chairman, Health, Social Security and Housing Scrutiny Panel):

No, thank you.

The Deputy Bailiff:

It is now in the hands of Members.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

The adjournment is proposed. The States will stand adjourned until 2.15 p.m.

LUNCHEON ADJOURNMENT

[14:15]

The Deputy Bailiff:

I am not sure if we are quite quorate. We now are. The States resumes debate on P.94, the Draft Medicines (Amendment No. 3) (Jersey) 2011, if all is adopted. I call on the Minister to propose the articles.

3.2 The Deputy of Trinity:

I would like to propose the articles and I will be brave and take them all in one go, if that is acceptable for Members. Article 1 changes the definition of doctors and dentists to “appropriate practitioner” as specified in Article 57(1)(b): “Doctors, dentists, veterinary surgeons as are registered nurses, certified midwives and other practitioners or other persons being persons the Minister decides as appropriate practitioners.” Articles 2 and 3 changes the definition to

“appropriate practitioners” as detailed in Article 1. Article 4, section (b)(i), (ii) and (A) changes the definition to “appropriate practitioners” as detailed in Article 1. Articles 5, 6, 7, 8 and 9; the words “a practitioner” shall be substituted for the words “an appropriate practitioner”. In Article 10, this names a draft law, specifies when it will come into force and ensures details relating to the transition arrangements that will be needed will be in place after the law is changed. I make the article.

The Deputy Bailiff:

Is the article seconded? **[Seconded]** Does any Member wish to speak? Would those Members in favour of adopting the articles kindly show? Those Members against? The articles are adopted. Do you propose the Bill in the Third Reading, Minister?

3.3 The Deputy of Trinity:

Yes.

The Deputy Bailiff:

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

3.3.1 Deputy R.G. Le Hérissier:

Very quickly, has the Minister set a time target; when will this be implemented?

The Deputy Bailiff:

Does any other Member wish to speak? I call on the Minister to reply.

3.3.2 The Deputy of Trinity:

I hope as soon as possible but unfortunately it will take about 18 months. We hope to start the first cohort towards the end of next year, because of all those regulations and making sure that the nurses who wish to apply have got the right criteria to reply on the Masters course. So, unfortunately it will take time but this is an important step.

The Deputy Bailiff:

The Bill is proposed in Third Reading. Would those Members in favour kindly show? The appel is called for. I would like Members to return to their seats. The vote is on whether or not to adopt the Medicines (Amendment No. 3) (Jersey) Law in Third Reading and I ask the Greffier to open the voting.

POUR: 36		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator A. Breckon				
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
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 of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

4. Draft Public Finances (Amendment No. 3) (Jersey) Law 201- (P.97/2011)

The Deputy Bailiff:

The next item of business is P.97/2011, the Draft Public Finances (Amendment No. 3) (Jersey) Law and I ask the Greffier to read the citation of it.

The Greffier of the States:

Draft Public Finances (Amendment No. 3) (Jersey) Law; a law to amend further the Public Finances (Jersey) Law 2005; the States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

The Deputy Bailiff:

Minister, do you wish to propose the principles?

4.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

I am extremely pleased to be able to present this draft law to the Assembly, making important changes to the Public Finances Law. The main purpose of this amendment is to establish a Medium Term Financial Planning process and, although not directly linked with that, also the opportunity to bring forward changes already approved by the States to extend the remit of the Comptroller and Auditor General. For a number of years the States have made it clear, in my view, that they wanted to embrace a longer-term financial planning system, not least in the Comprehensive Spending Review which covers a 3-year timeframe. The need and justification for longer-term financial planning by the States has been made in this place on a number of occasions by the Council of Ministers, by Scrutiny, by the Public Accounts Committee, and indeed many Members. The last Annual Business Plan which the Council presented also indicated that we would be trying to set spending limits for a longer period than just simply the next year ahead but we would need legislation in order to support this change. The States have been criticised on numerous occasions by, as I say, the Public Accounts Committee, the C. and A.G. (Comptroller and Auditor General), external groups, lobby groups, business interest groups and indeed others, in the Assembly's inability to control expenditure and to stick to overall limits of expenditure which have been indicated but not put on a statutory basis. These changes, which the Assembly is being asked to approve today, will deal with many of the criticisms from many quarters in terms of the

improvements necessary in terms of our public finances. Moving towards a medium-term financial process supported by improvements which have been made to financial management within the Treasury, will enable more efficient working within departments. It will also make it easier to deliver the savings in the Comprehensive Spending Review. During the course of preparing this amending law, both I and the Treasurer of the States have held meetings at briefings and presentations with many Members of the Assembly and I am extremely grateful for all of those who have attended. I think, in fact, we have covered nearly every Member of the Assembly in the briefings that we have made and I am very grateful for the time that Members have taken in understanding that. We have certainly in the consultation process listened and taken on board a number of the issues that Members raised, especially those in relation to the allocations for growth and contingency, which we will come on to discuss in greater detail in a few moments. The comments from Members have enabled us to strengthen the draft law that is before Members and improve the piece of legislation that the Assembly is asked to pass. The States' existing annual improvement process focuses decision-making on the short-term. It is extremely time-consuming for both this Assembly and departments and Ministers and their finance departments and their officers. The amendments proposed encourage a Medium Term Financial Planning process and pave the way for even longer-term financial planning going forward. Currently there is no provision for unforeseen expenditure and this has resulted in the Assembly having to consider a number of proposals under the current Article 11(8) funding requests. Departments in future will be set challenging spending limits and will be expected to work effectively within them. The Treasury will expect departments to deal with the vast majority of their unforeseen expenditure. But of course we know that there are occasions when this is not possible and therefore we are proposing to introduce for the first time statutory contingency provisions in the proposed law. The upheaval in the global financial position has seen Islanders reviewing their own financial priorities. I think that they also are expecting the States to put the same rigour in terms of our scrutiny of our spending priorities and this law will achieve just that. These proposals will give the public greater certainty in terms of the amount of money that the Assembly is going to propose and give certainty in terms of the amount of tax that we will need to raise in order to pay for our spending. I appreciate that the law amendments themselves are quite technical and detailed and I hope the briefings that Members have had have assisted them in dealing with some of the detail. I will very briefly just cover the main principles of what is proposed, dealing first of all with the concept of a Medium Term Financial Plan. We are proposing that the Annual Business Plan and budget processes are replaced with an initial major debate on a Medium Term Financial Plan, which will determine the States' tax and spending envelope for a 3-year period reflecting the life-span of the current envisaged and indeed the next States Assembly. The States will be required to debate and approve the Medium Term Financial Plan by 1st November in any year before the first year of plan. The law intentionally makes no reference to the lodging period for this document. It is proposed that such procedural matters are rightly included in Standing Orders but Members will be aware that there is an amendment or a proposal by Deputy Southern, which will be debated in September, and I recognise the importance of that, although that it is not part of the statutory articles that are being presented today. The Medium Term Financial Plan will ask the States to approve total States spending limits for each 3-year period, departmental spending limits for each of the 3 years, it will create an annual central allocation for growth and an annual central allocation for contingency, and annual allocations for capital. The overall aim of this new process is to provide better and greater control and improved value for money for States' spending over a 3-year period, while at the same time providing certainty for departments in their annual expenditure allocations. These new proposals allow for flexibility within total spending limits with the introduction of new central allocations for those contingencies in growth. The introduction of these should enable the States to manage emerging pressures and of course changing political priorities within the overall preset spending envelope. The issue of contingency is not, perhaps, a new initiative. The States have agreed this year to an allocation of a contingency sum within our own Treasury and Resources cash limit. The proposed draft law amendment proposes to formalise this approach while at the same

time introduce tight controls around the use and reporting arrangements for these contingency potential allocations. The purpose of the central contingency is to provide essential flexibility to enable the Minister for Treasury and Resources following, importantly, consultation with the relevant Ministers to manage unforeseen and unexpected items but within the overall spending limits as part of the Medium Term Financial Plan. The law requires that the Minister for Treasury and Resources presents proposals for the use of the contingency to the States as part of the Medium Term Financial Plan document and that the Minister reports to the States on a minimal of a 6-monthly basis of how funds have been allocated from this contingency. Throughout the consultation and drafting process, we have been extremely conscious of the need to ensure that there is some ability for the States Assembly annually to deal with emerging spending or political pressures within a 3-year period. I believe the introduction of the growth funding arrangements go some way to meet Members' quite legitimate expectations that political priorities do occur within a 3-year plan and there should be some element of possibility of allocating new money to political priorities as they emerge. The amount of funding available for this growth will be decided by this Assembly. Growth may be allocated to new capital projects on a one-off basis or new service initiatives which may have a recurring annual expenditure. The Minister for Treasury and Resources will continue to prepare and bring forward an annual budget. The first part of the budget will concentrate on income and will propose, as is currently the case, the individual tax funding and any borrowing proposals. The Minister for Treasury and Resources will also, having consulted with the Council of Ministers, set out proposals for allocations from growth for the following year. This will provide an opportunity for any States Member to influence the allocation of funding to those emerging pressures or priorities within the overall spending limit. The law does not specify the amount, of course, which will be allocated to growth. This will be a decision which the Assembly will take when considering the annual Medium Term Financial Plan. During the budget debate the Minister will also propose allocations to individual capital projects, as is the current practice, out of an annual allocation which has been previously agreed in the first Medium Term Financial Plan. We have also taken the opportunity, as I referred to, to bring forward the changes already agreed by the Assembly to extend the remit of the Comptroller and Auditor General. Under the proposals before Members today, the C. and A.G. will be able to consider and report on the effectiveness of internal financial controls and the internal auditing of those controls, and also economy, efficiency and effective use of resources by companies that are wholly-owned or majority-owned by the States of Jersey, for the first time. This will bring the Comptroller and Auditor-General's powers in relation to these owned entities in line with those powers that he has for oversight for all States departmental expenditure.

[14:30]

This is not the end of the process in strengthening our financial management; we should not underestimate the amount of work that lies ahead in approving a 3-year plan. I believe that these important law changes are an important first step in further strengthening Jersey's public financial management. The amendments themselves, of course, do not produce the answers; they merely offer the process and the conduit through which this Assembly and working with the Council of Ministers and the Minister for Treasury will work in future. During the early part of 2012, if the Assembly passes this legislation - and I hope it will - Members need to work with the Council of Ministers to produce that first Medium Term Financial Plan which will be for 2013 to 2015. I have previously spoken about the need for the Island's leaders to have the courage and foresight to make the right decisions to secure our future prosperity. I think that Jersey has a fantastic track record in prudent, appropriate financial management. Indeed, our financial Public Finances Law is held up as a model increasingly for other small jurisdictions and I am proud that our Public Finances Law is being examined by some other small jurisdictions in the world as a model, but there are always improvements to be made and, in my view, the concept of moving to a 3-year financial plan will put Jersey in an even stronger position in terms of its law underpinning prudent, sensible financial

management. I hope Members will agree that all of these issues, together with the improvement of financial management which has been undergoing in the Treasury now for 2 and a half years, and particularly under the stewardship of the new Treasurer of the States, will ensure that we have the appropriate law and good financial management across the States. This is also the first stage of a 2-part process in improving and changing the Public Finances Law. The chairman of the Corporate Services Scrutiny Panel and the chairman of P.A.C. (Public Accounts Committee) have got a number of other issues which they wish to be considered as part of the second tranche of the Public Finances Law; these are being put before the Assembly to ensure that the changes to a 3-year plan can be part of the new Council of Ministers in its process in terms of its decision-making, in terms of the Strategic Plan, and its decisions next year, and hence the decision to place this before Members today. I am very proud of this law; I hope that Members are going to agree it and I urge Members to support the preamble.

The Deputy Bailiff:

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

4.1.1 Senator P.F. Routier:

I certainly do welcome this new legislation and I think it puts in place a sound mechanism for ensuring that we are using our funds wisely and the way we plan for things. What I would like to ask the Minister is if he can give some indication about the ability to continue to work with the third sector in a positive way so that they are also able to plan medium-term because it can be a bit of a roller-coaster ride for voluntary organisations who do rely on funds so that they can plan effectively for their future. I would like to have some confirmation from the Senator that departments will follow that through.

4.1.2 Deputy T.A. Vallois:

I think the Minister will know that I welcome this with certain caution and I would like to ask if he can advise the Assembly as to what will happen if this does get agreed with regards to Article 11(8) of the Public Finance Law; how that would work or whether it will be repealed going forward with regards to having a contingency fund for following States Council of Ministers and States Assemblies?

4.1.3 Senator S.C. Ferguson:

The Fiscal Policy Panel recommended a more strategic approach to planning States financing. If I quote correctly: "... longer than the current 3 to 4-year outlook as specified in the legislation." I wonder what the Minister's definition of medium-term is. Is it limited to the 3 to 4 years, because I would have hoped that it was, in fact, longer than 3 to 4 years? I would have looked at 5 to 10. The other thing I am very pleased to see in this legislation is the extension of the powers of the Comptroller and Auditor General. This is long overdue and very welcome.

4.1.4 Deputy J.A. Martin:

Myself, a bit like Deputy Vallois, I welcome this if for the fact that we will not have every year a massive, massive, long Business Plan, and some people will totally disagree with that because we spend many, many days and we do not change very much. My question to the Minister is on the appendix really and then there is a financial question. On the appendix, it says the new Council of Ministers: "... will develop a Strategic Plan and draft the M.T.F.P. (Medium Term Financial Plan) in January." So, in January we are starting to draft the M.T.F.P. The Strategic Plan, which is what the overall - I did call the last one woolly and now I would call it even woollier and woollier and woollier because we have gone further and further away with a lot of the promises in it - will the Strategic Plan, again as Article 11(8), be brought back to be for the 3 or 4 years, instead of the 5 years and also will there be any reference - I know it says "Strategic High Level" - of what it will cost? We then go on in February and March to lodge a Strategic Plan in accordance with the States of Jersey Law as it stands now. That is not beyond rocket science again ... we are now in the third

Strategic Plan. I do not think that works particularly well when it is lodged ... it is very quick and everything else and, as I say, it promises a lot, it promises something to everybody and does not really deliver too much, again not costed. Is this going to be the same? Then, in September - I did bring this up in a couple of debates with the new Treasurer who I respect very much - we lodge the Medium Term Financial Plan and in October debate it. In the middle of this I have a question which says Article 9 - I am not just going to refer to the article - it explains the consequences of the States approving a financial plan; broadly once a financial plan is approved, States expenditure for the years to which it relates cannot exceed that amount approved in the plan. I fully understand that but in the debate can anybody bring any amendment? The Minister for Treasury maybe, let us put a sum on it, £155 million and there will be wants and wants in it from other States Members that bring that up to £170 million before the debate. Although it says it is very nice, you have to find it from somewhere else; nobody ever does that. My main question, and I put this to the Treasurer of the States - who is another woman - why do we have the spending plan before we know what we have got coming in, and we are still in that cycle? I think that this does not go far enough. Those are my comments on the principles. I totally agree that planning for year to year with what we have ... we start thinking about it January, talk about it June or July, and then it is always the next year before the money is going to be there. So, I totally agree in principle but I do have some real concerns about whether this could have gone further; we are still doing things the wrong way around and where is the discipline? I might be one of these people, I have a fantastic idea and I want to improve the envelope of the Medium Term Financial Plan and I might carry the House with me but it can be amended then, can it, but it cannot be amended after? That is all I ask so I look forward to the Minister's answer.

4.1.5 Senator A. Breckon:

I notice the Minister said in his speech that the amendments are a process, and that is right because I have been a member of the Public Accounts Committee off and on and there have been some concerns about some of the issues. I think it is a question of trying to get the balance, because if the Minister for Treasury and Resources gets too heavy-handed, then it gets a few boos and then if he does something right he gets 2 cheers or something like that but sometimes he is between a rock and a hard place in trying to do this; impose some disciplines and then having to do that. The other thing that has emerged from some of the issues with the Public Finances Law is who is accountable to whom and for what? We have had some issues with this and what we found out with public accounts is, well, nobody is really, because this is the structure, this is the framework but if something goes wrong well ... the hedging of the euro on the incinerator, for example. Who was accountable? Well, nobody was really; we just have to take a hit. So, in the public finances there is certainly work to be done. The Minister mentioned the next phase as well and I think all of us should welcome the 3-year provision that has been proposed but there is a caveat with that because how this is split must be a matter of some discussion and debate, not a closed shop saying: "Well, this is what has been discussed by a few people and this is what is good for you and this is what is going to happen." There has to be, within that structure, some way of influencing that at a stage before minds have been made up. I think that is important because over the years we have said: "Oh, well, we have got this Strategic Plan, we have got this Business Plan," but Members, I know we have had some fairly intense stuff over the last 6 weeks or so but a Business Plan debate we had not long ago; we were discussing words on page 98 of somebody's amendment. That is how far we got into the detail and it is all: "Wait until the Business Plan comes out, it is going to cure everything, it does everything." Well, it does not and it is not these things, these strategic things about sunny days and white Christmases are not the easiest things to amend to mean anything and then say: "Well, it does not mean that." We need to move on with the Public Finances Law and the other things, the Business Plan and the Strategic Plan but they need to make sense. If we look back at stuff ... I looked at one from 1994 the other day and it talked about the purchase of St. James, securing the building and use for the public. There is a scaffold around it if anybody wants to go and have a look. That was in a Strategic Plan in 1994, would you believe? So, it needs to make

sense. The other thing is, as I say, I think the inclusivity is a thing, because when the Business Plan as now has been lodged, then some people are going to have a Scrutiny summer. What you do with it - and I know I have had a few - you cannot really do much with it. Ministers are unavailable, you cannot get information off officers, you want more detail; the Business Plan is a bit of a non-event, it has been over-played and overdone so we need to move on. I think the first Chief Minister said with the Strategic Plan and the Business Plan: "Well, it is still a learning curve, we will get better." I am not sure we have but this should do that because otherwise it is not progress. I can well understand the 3-year planning or indeed the 4-year planning, if that is the life of the House but then, as I said, it must be inclusive. If the money is there and it is a set sum then how is it allocated? We must have some discussion and debate over that, even if it is in an informal way so that people ... we used to have this with things like decision conferencing where things were given priority for different things, which was not possibly the best method but it did involve more people and I think we need to do that. The other thing is that, of course, phase 2 as the Minister touched on, is important and maybe the chairman of the Public Accounts Committee and the Corporate Scrutiny Panel might have something to say about that as it moves on because that is very important. The Public Accounts Committee has asked the question of the former Chief Executive: "What exactly is your role?" "Well, it has changed since I had a job description." I think that is what we were told but a bit more than that. It is the same as the Treasurer of the States, Comptroller of Income Tax; what is their role? They said: "Well, in places we advise the politicians but of course it went to the States and we have not done anything that was not approved by the States." So then, perhaps we have been bumbling through here where we need some robust test and I think this is part of a good process that will take us forward but it must be, I would say, inclusive.

4.1.6 Deputy P.V.F. Le Claire:

I think the Minister for Treasury and Resources and his team are going in the right direction in regards to fiscal management and they are to be applauded for their enterprise. I think it is recognised that we all have a never-ending game of chasing our tail in this Assembly in regards to trying to prepare for budgets, business plans, strategic reviews and Christmas speeches with a few elections thrown in between.

[14:45]

I think, given the change in global economies that we are likely to see in relation to our financial markets within the next 6 to 8 months potentially over the next 2 years, we are going to see some significant challenges. Challenges represent opportunities so it may be that we might be able to learn to do something better, it may be that we might be able to learn to do something with greater value, but I just would hope that we would be able to start to do things also more cheaply if possible and wherever possible not do them at all. I will take one example; last year or the year before we spent £300,000 on advertising with the *Jersey Evening Post*. Now, I am going to ask again in the next few weeks what last year's spend was and let us compare that cost and see what we have done in relation to that. There is a heads-up for the media and also for the Minister for Treasury and Resources. Let us look at some of the costs in relation to the spend in relation to telecommunications within departments. We have got new I.T. (information technology) infrastructure that should have seen reductions in those. I asked some questions about those a few years ago. Along with some of these legislative changes that bring about a more mature fiscal approach, let us start to see some results for the public, because I am going to give my support to this today, to the Minister for Treasury and Resources, while applauding him and his colleagues and the department for their work. I am also going to say that I would like to hope that, whether it is myself or some other Deputy in the future as a Back-Bench Member, comes to this Assembly and they are going to be able to have a real opportunity to translate electoral support - if they have it obviously, they would if they were here - for some of their ideas and manifest them into reality

and real, meaningful ways of that to be achieved. Otherwise, what I fear is that we are going to have a transition from one debate a year when we have very little influence, to one debate every 3 years where we have even less influence. I recognise the amount of work that goes into preparing reports, putting on presentations and everything else and I have always been against those sorts of things because it basically means we end up employing people to, for ever more and a day, never stop doing anything but updating reports, updating positions and that is just not constructive. We need to be setting our people in this Island that are employed by the States of Jersey at looking at ways of reducing costs and getting out of things that we should not be involved in. If we look at, for example, the compost structure and the activities that have been ongoing there for a number of years - I am going to update those soon as well - we have seen enormous amounts of expenditure over the period of 10 years. We have probably spent somewhere in the region of about £25 million or £30 million, when we could have outsourced the whole service at a fraction of that cost. I just think that unless we start to see some real examples of reduction in costs and greater value for the public, we are not going to be able to convince them and future Members that we are doing the right thing. I am convinced that this is the right step and I am convinced that the Minister for Treasury and Resources is doing the right job but I would like to be convinced - I am afraid that this is the question for him - how is a politician going to come back to this Assembly and have a greater translation of his or her votes if, instead of being involved once a year, they are involved once every 3?

4.1.7 The Deputy of St. Mary:

On the whole I welcome this plan, in particular the separation out of the different pots, if you like, because I think that might lead to greater clarity. I want to make some remarks about growth and then contingency and then the overall envelope. I suppose the first question on growth is will the new plan and the accounts that flow from it help to avoid some of the misinformation that we have been subjected to around growth expenditure from the Public Accounts Committee and possibly others; certainly the Public Accounts Committee who should know better. The confusion does partly exist because we are not clear on these different kinds of growth. I am not sure that this new plan separates out the different kinds of growth and I would like the Minister to comment on this. For instance, to my mind there is growth, which is basically an obligation. If more cancer patients come through the door in the hospital you do not turn them away; you have to deal with them and if the cancer rates are going up, which they are in certain types of cancer, then you have de facto a growth in expenditure and you have to meet that. That is what I call reactive growth. Another example is vetting and barring. I read in the *J.E.P.*, and I take it that it is accurate - I think it corresponded to the figures we were given as well - around £1 million was the cost of setting up the vetting and barring process because there were legal implications; people had to be represented, there were very difficult issues to resolve. So, you were looking at a bill of £1 million which was growth; it was not within the existing expenditure of the States and yet it was basically an obligation within the U.K. framework and so on. We had to go there, we had to find that £1 million. To call those expenditures on more cancer patients or on vetting and borrowing some kind of crazy, the States are out of control, which has been said, frankly, those expenditures have been rolled into growth in States expenditure and castigated whereas, in fact, they are absolutely unavoidable. Under this growth plan I think they would come out of the growth pot; a 3-year pot which is allocated over each year as a separate tranche out of the growth pot. So, there is some growth expenditure which will come to us from departments to which is going to be very, very difficult to say no. Then there is other growth which is discretionary, if you like, and that is what worries me; that the amount we allow for the discretionary growth will simply not be enough. This Assembly has been very good at making assertions, making statements. "We are going to do this" and then it does not happen. The reason it does not happen is that the money is not there. I would like to see sufficient in the growth fund for Ministers and departments to be more creative and more assertive about their plans so that they would be preparing business cases with the benefits over time and not necessarily the benefits over time just in their own department, for instance, if T.T.S.

bring forward a case for spending more on the S.T.P. (Sustainable Transport Policy), they would point to benefits across all kinds of departments and that would be taken into account. My worry is that there simply will not be enough in that pot for departments to really work to enjoy that creative tension and to come forward with good proposals for spending to save. I would call it investment growth and I am not convinced that there is enough provision within these proposals. I would like the Minister to comment on maybe a future development of the 3-year plan whereby that kind of new investment could be taken on board and there are just a few examples. Obesity; we are facing huge costs if we do not tackle effectively the issue of obesity, and that cuts right across different agencies who are going to have to get to grips with personal counselling and awareness, they are going to have to get to grips with active travel, with active lifestyles and it will need to be fully funded across the board. So, how will that be funded within this framework or are we going to proceed like the Titanic and sail on through the fog until we hit the rock, because these future costs are huge and we have to try and avoid them. Road safety; the same comment on slightly smaller money, if you like ... well, not actually, £18 million is the cost of road accidents and again, will we be able to find sufficient investment monies for T.T.S. to really do the job properly. I notice they are going to start work in September on their road safety in order to bring to the States at the turn of the year their road safety target for reducing accidents and how they are going to do it and how they have justified that target. But my fear is they are going to rock back on their heels and say: "We cannot afford it." We cannot afford to save £18 million, because we have not got half a million now. That is just another example. The Sustainable Transport Policy of course; huge benefits in health, in the space allocated to better uses and a more active population. Are we going to see it or is that, too, going to be strangled for lack of growth funding and energy-efficiency. The Minister for Planning and Environment has so often sung the praises of his energy efficiency programme and he is quite right to. You spend £10 now, you save £20 later and it is absolutely established that that is so but the problem is that he has reached a fraction of the eligible population, whereas that programme should be rolled out across the board and try to reach everyone. In order to do that you need funding up front in order to save a lot of money later; both public money and money belonging to other individuals. It just concerns me whether the reactive growth is not going to swamp the investment-type growth. I have just a few comments on contingency. The Minister has pointed out that in the new framework I think, again, we will be allocating a contingency for the 3 years. Correct me if I am wrong but I think it is a single contingency for 3 years. My question is what happens if that is exceeded? Now, by its definition, contingency cannot be predicted; that is the whole point about contingency. So, one obviously takes a stab on the basis of running averages over the last 10 years or something but if we are in the unfortunate position of contingency being exceeded, where does the top-up come from? If you look at the Minister's report, he says that the most likely source, reading between the lines, is the growth pot. So, the growth pot will be raided to make up the contingency pot, in the event that contingency is over-subscribed. That worries me too because, as I have said, the pressure on the growth pot is going to be intense from reactive growth anyway. The second point about contingency is the reporting about it. At present we have section 11(8) debates about contingency and that means that is completely transparent and I just want to know exactly how the Minister is going to report on contingency expenditures. Finally the tax and spending envelope; we are told that again that will be set over a 3-year period. What happens when that, too, is exceeded when something comes along like a recession and suddenly we have to find £44 million? I think the answer is in the report but I would like the Minister to put on the record what exactly happens when the spending envelope is, again, oversubscribed.

4.1.8 Senator F.E. Cohen:

The Island has an international reputation for the most prudent of our public finances. This is largely the result of this Assembly and its efforts over many years, combined with the individual efforts of former Senator Walker, the present Chief Minister and the present Minister for Treasury and Resources. We are now engaging directly with many of our partner jurisdictions and I can assure Members that our financial management is held in the highest regard and is the envy of

many jurisdictions many, many times our size. Giving our finances the certainty of a 3-year plan is a very positive move indeed and it will further enhance our reputation both domestically and internationally. We are now much sought after as a jurisdiction to advise other jurisdictions on the management of their finances and the Treasury are now directly involved in providing assistance to other jurisdictions. Having well-managed finances is a key to our reputation as one of the leading financial jurisdictions but it needs to be complemented with a strong regulatory environment and certainly we have that. Furthermore, as we progress our international profile, having sound finances at home will be the foundation stone for our efforts. I commend the proposition and I urge all Members to follow suit.

[15:00]

4.1.9 Deputy J.M. Maçon:

I will not be supporting this proposition. I do not believe that the departments will spend less. I believe that if you give a department some money they will spend it and given the Minister's ability in allocating spend, in an election year any savings will most likely be spent. Prescriptions, education and nursery childcare; do they ring any bells? This also removes the ability of States Members - as I understand the proposals - to delete or reduce spending once agreed, thus it does not allow non Executive Members to change the levels between different departments. Of course, the powers between Ministers to give and accept different spending levels will still be there. So, all that the States Members will be able to influence is the growth spending now, provided that there is any, and I thank the Deputy of St. Mary for what was already said; how in many cases this growth spending will already be allocated. So I do ask, what exactly will non Executive States Members be able to influence? I think that this further centralises power into fewer hands and reduces the influence of non Executive Members. I believe that as a States Member all of us are elected into this House to be able to influence the budgets as well as the legislation passed by this Assembly. I believe that if this is adopted, our abilities as States Members will be reduced and I stood on a platform of not centralising power but decentralising it. It can be argued that Members can influence beforehand, when it is all originally proposed, but I ask Members, what is the track record of the Council of Ministers for including other Members when these plans and visions are set out? Meat on the bones, promises, categorical assurances; I am not one to be taken in by such empty gestures. I will not be supporting this proposition; I am not convinced.

4.1.10 Deputy E.J. Noel of St. Lawrence:

I stand here as both the Assistance Minister for Treasury and Resources and Assistant Minister for Health and Social Services and really to give my assurances to Senator Routier that as Health and Social Services, I would probably have the largest interaction with the third sector and have the most significant S.L.A. (Service Level Agreement) agreements with the third sector, that we do embrace the idea of giving them certainty as well, when we get certain ourselves with 3-year budgets.

4.1.11 Deputy G.P. Southern:

This, as has been mentioned by Deputy Le Claire, gives a tremendous amount of increased power to the Minister for Treasury and Resources and to the Council of Ministers and takes power away from this House. There can be absolutely no doubt about it. I believe the expression that he used was we get an Annual Business Plan, spending plans that we can barely influence once a year and now we are going to get the bare influence once every 3 years. That, in fact, is the reality. It is also, while to be commended in terms of looking slightly longer term and therefore allowing individual departments to manage their budgets better, it is also a recipe for driving through spending cuts, rather than assessing what needs to be done and spending properly as any

government should do, if it is to serve the best interests of its residents. By way of example, we only have to look at the Business Plan as proposed now. States expenditure £592 million in 2011, £584 million in 2012, £577 ... what do you know about that additional loss of £7 million pounds between 2012 and 2013? Does anybody in this room know much about that? Perhaps the Minister for Treasury and Resources knows exactly what that is about but nobody else here does, and yet in 2 months' time we will be debating this as a package and those figures will be there. In future they will be the overall package that you are not allowed to mess with. £577 million and then in 2014 it goes back up again to £602. Again, by way of example, will we know what is going on? Well, let us take a look at what is happening with the current Annual Business Plan. It contains £7 million for potential pay rises. Somewhere, in a different column, is a calculated spending review. We are going to take £7 million in 2012 out of terms and conditions from our public sector employees. So, we might get the £7 million and take it back in terms and conditions by giving them less there for their overtime rate, their Sunday working and their night working. Those sorts of terms that we can claw that back or we might not be able to negotiate any major changes to terms and conditions, in which case that £7 million allocated for a pay rise will become a pay freeze, and we will certainly get the £7 million through not paying any cost of living increase. So that could be happening and for 2013 there is no £7 million allocated as yet. That is the sort of thing that we will see coming through. While we are talking about comprehensive spending reviews, then let us just take a look at some of the proposals that we are already facing this year. Again, I ask the question of Members; how much do you know about these, because certainly, on my particular Scrutiny Panel, we thought it was a wonderful opportunity this year. We had 6 months while the C.S.R. took shape. It was supposed to be due, to have something concrete that we could analyse and say: "Let us have a look at the cost benefits of each of these cuts or each of these savings or each of these user-pays proposals and see if they make sense." The reality was that in March we got a circular around from Health and Social Services with a big red light on it that said: "The staff in charge of C.S.R. have left, progress has stopped. Will contact you later when we get something more concrete." That is the reality; at the last minute we have seen some analysis of what is going on but not a great deal and lo and behold what have we got to do to do something about that? How long have we got? We have got about 13 working days before August hits us and officers are not there or Ministers are not there or the officer you need who has done all the calculations, he is not there and then when he is there you are not there so nothing gets done. Come 25th September we might be making some amendments to the Annual Business Plan and if we were, just think, to the 3-year spending plan, spending envelope - that is the latest word, "envelope" - it defies belief that we should put ourselves in that position. Now, I know this is dealt with in my proposition which will come in in September but the Minister mentioned it; if we are to give 3-year control over budgets and spending to the Minister for Treasury and Resources, we must have at least sufficient time to properly scrutinise what it means, because 9 times out of 10 in the Annual Business Plan and the Medium Term Financial Plan, as will be happening, we are acting blind in at least 90 per cent of the time. For example, let us take some of those savings and I will focus on the user-pays that I have just seen again this week, because it arrived in the Annual Business Plan, patient transport - oh, the old favourite. Let us charge for patient transport. You are sick and you need to go to hospital; we will charge you for it - it beggars belief - £46,000. How is that going to operate, how is it going to work? Introduce an accident and emergency charging mechanism. Now, that is a nice one, is it not? £94,000 is to be generated from that. Already I have seen in the paper people involved with A. and E. (Accident and Emergency) are saying: "Who is going to do that? Are you asking a doctor to say this case must be paid for, we are going to charge this person, this case is not a proper emergency?" How do you start making that judgment? The answer is with great difficulty. Then we have got HSS-UP4 *Review of Thresholds for Travel to the U.K. for Elective Surgery*. It sounds nice and bland; elective surgery does not mean cosmetic surgery, it means planned surgery: "We know we need to operate on you to do this and we are going to organise it and in 2 months' time we will send you to the U.K. and we will get the operation you need done because you need it." Now, review the threshold for that travel, that is, charge people more for having essential surgical work

done. So there are lot of things in here where, I believe, Members of the House, and this is with a one year planning system and we do not know the first end of it. We have got no analysis, no cost benefit, no risk analysis of any of the changes that we will vote through, by and large, I know because I tried it last year; I brought individually and collectively as part as scrutiny, something like, I think it was, 8 or 9 amendments, not a single one got close. Not a single one. That was bulldozed through by this current Minister for Treasury and Resources. Now we are going to bulldoze through his cutting plans to make sure we get away with spending as little as we can because that is what the process is. Instead of looking at what the need is and spending appropriately, he is going to get away with 3-year plans and we are going to be none the wiser. None the wiser at all. It is abandonment of responsibility from Members of this House giving that much power away to the Minister for Treasury and Resources.

4.1.12 Senator B.I. Le Marquand:

The main purposes of this law are to provide for money for departments for 3 or 4 years to enable proper planning. This has been a great problem historically in States departments having only annual sums of money and yet sometimes needing to do projects over a number of years. Secondly, to achieve a better estimation of expenditure over the 3 or 4 year cycle and, thirdly, to assist in a more disciplined approach by this Assembly to growth in expenditure. Unfortunately, the figures shows that the past track record of the Assembly has not been good in setting figures and targets and then keeping to them. Having said those things, when I first saw the law my first and main concern was was there enough flexibility to deal with the sort of unexpected events which occur from time to time, like the historic abuse inquiry, influenza epidemic or things of that nature. So I was fortunate enough to be able to meet with the lady Treasurer to discuss that very issue and to look at the law in some detail. I am satisfied that there is, there is a combination of things here. Firstly there is Article 20 which deals with situations where there is a real genuine emergency and then gives flexibility for the Treasurer to, as it were, take extra money to that which has been voted within the overall system. Secondly, there is a system of contingency funds by which there will be contingency funds built in to the estimations for the 3-year period. They will not necessarily be spent but they will be available for overruns in expenditure of different types. Thirdly, there is in Article 9(2) hidden away a very helpful provision by which the Council of Ministers, if certain trigger events occur, can come back with a variation to the Medium Term Financial Plan. There is a fourth mechanism for doing this and that is, in fact, by sacking the Council of Ministers because if the Council of Ministers goes then you get a new financial plan. I am not recommending that necessarily as a method but it also exists there. In addition to that there is, of course, the ability, which is often overlooked by Members of this Assembly of individual Ministers, to move money around internally within their own departments, to assess priorities between departments within their own organisation, and thereby to ensure that the money is available wherever it is needed. So having looked at those provisions I am satisfied that there is sufficient flexibility in this, there is the ability to deal with the emergency situations that I am talking about. But the effect of this proposition is going to be to make one debate in the cycle of the States very, very important indeed and that is going to be the debate which happens in the September - assuming it is still going to be September - of the first year, as it were. In the case of the next States, September 2012.

[15:15]

It will be very important indeed because we will have there to deal with 2013, 2014 and 2015 expenditure. By my calculations, assuming the States does not change its mind again about having a 4-year term for elections when we get to September 2015, we will be looking at 2016, 2017, 2018 and 2019. Those debates are going to be extremely important, very, very important indeed. It is going to be absolutely key that the States make the right decisions in relation to the overall envelope of expenditure. In so doing, as the Deputy of St. Mary highlighted before, there will be a couple of key issues. He has highlighted one of them, which was the size of the growth pot. That

is absolutely right, the size of the growth pot is going to be very key to ensuring that we have sufficient monies and the planning will have to be done so we know what we are doing. But, the second important issue is going to be the size of the contingency funds. I am satisfied that if the States are wise in the way that we deal with these matters on these occasions, there is no reason whatsoever why we cannot come up with sensible sizes for both of those which will make a proper provision for legitimate growth within the cycle while maintaining overall discipline in terms of overall expenditure. So I welcome this amendment and I congratulate the Minister for Treasury and Resources on bringing it to this Assembly.

4.1.13 Senator A. Breckon:

There is an issue that I would like to bring to your attention that I ask you give some sort of ruling on. While Senator Le Marquand was speaking he brought our attention to a number of articles and in one of those articles on page 24(d) on that page says: "Following the appointment of a Council of Ministers otherwise and following an ordinary election for Deputies." I am not sure that is the right term, it should probably be for Members but it is not something to address now but it looks as if it needs to be looked at.

The Deputy Bailiff:

You have given notice to the Minister for Treasury and Resources and no doubt he will deal with that when we come to debate the individual articles if the Bill is adopted in principle.

4.1.14 The Connétable of St. Saviour:

We must be prudent with our financial management and we must plan ahead. Yes, we must be careful as a House when we are examining the plan, we have got to hold the Minister for Treasury and Resources to account, but that does not change the issue to be responsible we have got to plan over a longer period than we do now. We will do it with our own finances, I really do not see why this House cannot act in the same prudent way.

The Deputy Bailiff:

Does any other Member wish to speak? If not, then I will call on the Minister for Treasury and Resources to respond.

4.1.15 Senator P.F.C. Ozouf:

I am grateful for all Members who have spoken. Perhaps it is to Deputy Southern and Maçon that I need to be commanding most of the reply because I think that irrespective of our political differences of views, I am not sure where Deputy Maçon is but I know that Deputy Southern would like to see a greater expenditure. I want to convince him that this plan, if he was ever standing as Minister for Treasury and Resources and proposing a 3-year plan it would meet his requirements too because, as has been pointed out earlier, it is the process, the regulatory financial environment that sets it out. The only reason why Members would want to vote against this is if they did not want to plan over a 3-year period. It could plan for growth. There could be a proposal in the first year of a financial plan of an expansionist Council of Ministers, a Council of Ministers to increase public expenditure massively over a 3-year period of investment in public services. You could set out that plan. So I do not understand if a Council of Ministers - and it is this Assembly of course that makes the decisions on allocations, the Minister for Treasury and Resources and the Council of Ministers only proposes, it is the Assembly that decides. That is the function of this Assembly, passing legislation and approving expenditure. If it was to be a spending Council of Ministers and a spending Minister for Treasury and Resources, and of course Deputy Southern stood for the position of Minister for Treasury and Resources, then of course this law would allow him to do so, and would give the spending Minister for Treasury and Resources the certainty of the envelope of money. So he has no reason not to vote for this. The only reason why he would not want to vote for it is if he did not want to have a Medium Term Financial Planning environment. I would regret that that would be the message that he would be sending out. A number of Members have raised

some important issues, which I will run through in turn. Senator Routier asked about the relationship with the third sector and other organisations that receive States grants. This is going to mean that departments can sit down with organisations and be certain about their 3 year, and indeed as Senator Le Marquand quite rightly says, eventually their 4, perhaps even a 5-year plan if we move to a coalition style process of having a 5-year term, it will mean certainty in terms of their service level agreements and their contracts with those departments in a way that has not been the case in the past. The Minister for Health and Social Services, the Minister for Planning and Environment with the Energy Trust, which I think is a grant-funded body, the Minister for Social Security cannot sit down with bodies and give those bodies any certainty one year ahead in terms of their grant. That changes all of that and that is one of the really fantastic things about giving a medium-term arrangement and a 3-year budget. It also gives significant planning ability for departments. Gone will be the days when simply departments can only plan one year ahead. I see the Minister for Education, Sport and Culture nodding and he does not always nod at me but he is saying that is a good thing for his schools. It is the right thing for his schools because of course schools is one of those areas where you must have much longer term financial planning and it is going to mean a revolution in terms of certainty about budgeting and the certainty of also from the Treasury in allowing departments to roll forward unallocated expenditure. I have been criticised in giving departments their underspends back, subject to the consultation with the Council of Ministers. I wanted to send a clear message that if departments live within their budget there is an incentive for them to underspend because they can roll forward that expenditure. My view is that we should be having one debate at the start of a 3-year term in order to allocate budgets and this going to change and revolutionise relationship between the Treasury and departments and all grant funded bodies. Deputy Vallois, who has been a healthy sceptic and she has been a tough questioner, together with the Corporate Affairs Scrutiny Panel ... I always call it Corporate Affairs but it is Corporate Services. When she was on Corporate Services she was a healthy sceptic about some of the aspects of financial management and the chairman and the other members of Corporate Services have been very helpful in the ongoing challenging of what we should do. I would say to her that, of course, these articles, as set out, as we will come to debate in turn, replace all of the Articles 11 to 20 of the existing law. They put in place a whole new framework to that. Article 9, we will go into the detail of this; effectively it is going to be pretty difficult to bring forward an Article 11(8) request. The first call for an unforeseen expenditure is going to be the contingency. The second call will be if the contingency is exhausted then the Minister for Treasury and Resources will go shopping in relation to the existing heads of expenditure for other departments and it is only under the extreme events that are set out, which we will go on to debate, I think it is in Article 20 and Article 9 of the issue of a potential state of emergency. That is the only ability to amend the Medium Term Financial Plan and we will come on to discuss how that Medium Term Financial Plan will be capable of amendment. Senator Le Marquand has already indicated that it is if the Council of Ministers fall in other eventualities. But we will come on to do that, if I may, in the articles. Senator Ferguson asked the also very important question of what is medium term. She asked me to say what I think medium term is. Well, I will answer. Short term is one year, medium term is 3 to 5 years, long term is more than 5 years. What we are doing here is we are setting a framework of expenditure for that medium-term life of the Assembly. She is absolutely right that we need to be going further than just simply the medium term and we need to be also focusing on long-term planning and that is exactly what we are doing. My Assistant Ministers and I met last night to see the first draft of the long term capital project, which will, to the pleasure of the Deputy of St. John, deal with all of the infrastructure requirements of the Island for 25 years. We are going to be publishing our indications of where we think that is going to be going forward. I agree with Deputy Martin when she criticises to some extent some of the aspects of the Strategic Plan. When we started this process we also considered whether or not with the Chief Minister we would make changes to the States of Jersey Law to effectively move away from a States debate on a woolly Strategic Plan, which to many Members would be motherhood and apple pie and everything else that we do. Obviously the States of Jersey law is not being amended and we have pulled back from

that suggestion. We are just simply focusing on the Public Finances Law changes. For what it is worth, my own view is that the Strategic Plan should be what we plan to do differently over the period of time of an Assembly. It should be almost like a 3-year Queen's speech in terms of the things that you are going to change. Maybe the reform of the health service, maybe the reform of the education system following a White Paper, maybe drafting of a certain area of reform within Government, maybe strengthening our international relations. Maybe those are the features of it. I certainly agree with her that it should not be a detail in terms of everything that we continue to do. The real focus of the next Assembly's time, and Members are absolutely right to say there is going to be a huge importance in getting the Medium Term Financial Plan right and for this to be subjected to proper scrutiny and to proper examination by both Members in individual departments and also Corporate Services in the future. I think it is going to mean that this Assembly's time is directed more efficiently on the things that matter. Amendments to the Medium Term Financial Plan of course are going to be possible and it will be up to the Assembly to vote on the allocations for net revenue expenditure in total and also the 3-year cash limits. Deputy Southern said nobody knows what is in the breakdown of the Business Plan allocation for 2013. Well, I am not sure whether or not he has been to all of the briefings but I am happy to meet with him. But there is no point under the current law in asking the States to approve a theoretical spending allocation per department for 2013 and 2014. It has absolutely no statutory effect whatsoever and frankly experience has shown that we are wasting the Assembly's time on something that can be changed subsequently. This Assembly, I think, has had enough of repeating issues and particularly presenting. So I make no apology for it, I have not proposed departmental allocations for 2013 in the Business Plan. We are asking Members in part whatever it is of that proposition to indicate the net revenue expenditure. I would say to Deputy Martin that there is going to be considerable latitude for Members to, at the start of the electoral term, at the start of the 3 years, to have a good debate and a good argument in terms of what the overall element should be. Whatever views one comes at public finances in this Assembly Members are going to have the ultimate say in where that spending is going to be and it can be amended. But of course once the plan is approved, subject to the issues of growth, which is definitely the area of focus of the Assembly in future, and if I may say rather than almost the fiction of an annual zero-based budget of which we go through almost a pretence every year that we are rebuilding budgets from scratch when we are not, we will be focusing the Assembly's attention on the new money that is going to be made available for growth. I would have thought that that is a far better use of States Members' time getting the plan right on year one and then focusing Member's attention, and indeed intense scrutiny of where that additional money is going to go. I would think that that sends out also ... Deputy Martin also raised issues, I think, in relation to future tax rises and all of that. Well, if we set out a spending envelope for a 3 or 4-year term, we are also going to be able to give people certainty and Islanders certainty that we will not have to come back within the financial period, within the life of the Assembly of having to make difficult issues of spending in terms of taxation consequences. This is going to give stability and it is going to give certainty, and I think that whatever Members would want to be in terms of spending, that is the right thing; to signal at the start of an Assembly where taxes are likely to go. Senator Ferguson, I think she also spoke whether or not this was compliant with the F.P.P. The F.P.P. are, if I may say, grading us at the very highest level of financial control, they do not compare us with imprudent jurisdictions, they compare us with the very best.

[15:30]

They are constantly pushing us to be even better than we already are and this is entirely compliant with their own recommendations of a medium-term plan, which is what she has also been asking us to do. In terms of stability and certainty, I have said that. I thank Senator Breckon for his remarks and, of course, there is a trade-off. On the one hand there is going to be less flexibility within each year. The Deputy of St. Mary, I think, wants perhaps to live in an uncertain world. He wants to live in a world where you can make changes within a 3-year cycle. I would argue that it is far

better to be clear from the start that there is a trade off in terms of effectively we are going to be boxing ourselves in to some extent but we are going to be focusing our attention on a 3-year plan. He also spoke about the accountability of officials and there are going to be changes made to the Public Finances Law in the second wave of the plan. I thank Senator Cohen for his remarks. He is absolutely right, we are already well regarded, I think that this is going to mean that we are even better regarded in the longer term. I really want to convince Deputy Maçon that this is the right thing to do. I did not hear anything in his remarks as to the reasons why he does not want to approve this. He was concerned that it is a weakening of this Assembly's ability. He said that it was a concentration, I think, of power in terms of the Council of Ministers and the Minister for Treasury and Resources. Yes, the Minister for Treasury and Resources is going to get some additional powers to allocate contingencies and to guide and direct but I would say to Deputy Maçon that it is this Assembly that makes decisions ultimately on spending. The Assembly appoints Ministers, Ministers that are clear about what they are going to do when they are in office, but ultimately it is this Assembly that decides on expenditure. I did not understand what he was saying. If he does not believe in medium planning and in certainty for his constituents then vote against it, but I think that he should be voting it irrespective of his political views on spending and his attention as a Back-Bencher, if he continues as a Back-Bencher, is going to be focused on the really important issues which is about where growth goes in the future. I would ask him to reconsider in his vote coming up because this is an improvement and I think many other Members have said so. I thank Senator Le Marquand for his remarks. He has also been scrutinising this legislation and he is right when he says that there is an appropriate balance of flexibility in this plan in terms of the individual articles that we will go through shortly. So I think I have answered all Members' questions. I believe that this is a significant further improvement in our public finances and is going to give our Island community certainty and stability and also give departments certainty and stability in terms of their own spending. If the right decisions are made at the start of the 3-year term, that is good for everybody, irrespective of one's political views on spending. I urge Members to support the preamble.

The Deputy Bailiff:

The preamble is proposed, the appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the preamble to the draft Public Finances (Amendment No. 3) (Jersey) Law and I ask the Greffier to open the voting.

POUR: 45		CONTRE: 3		ABSTAIN: 2
Senator T.A. Le Sueur		Deputy G.P. Southern (H)		Deputy M. Tadier (B)
Senator P.F. Routier		Deputy T.M. Pitman (H)		Deputy of St. Mary
Senator P.F.C. Ozouf		Deputy J.M. Maçon (S)		
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
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 Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				

Connétable of St. Clement				
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 Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
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 D.J. De Sousa (H)				

The Deputy Bailiff:

Minister, do you wish to take the individual articles?

4.2 Senator P.F.C. Ozouf:

The articles are fairly lumpy. I propose probably to take Articles 1 and 2 and then Article 3 and the rest of them. Article 3 is certainly the main meat of the proposition but I need to take, I think, as one single article.

The Deputy Bailiff:

Article 3 you certainly need to take as one article, yes.

Senator P.F.C. Ozouf:

So if I may just start with Articles 1 and 2. Articles 1 and 2 purely technical amendments to the existing legislation, no substantial effect. I move Articles 1 and 2.

The Deputy Bailiff:

Seconded. [Seconded] Does any Member wish to speak on Articles 1 and 2? No Member wishes to speak. All those in favour of adopting Articles 1 and 2 kindly show? Those against? Articles 1 and 2 are adopted. Article 3.

4.3 Senator P.F.C. Ozouf:

I will draw Member's attention to those areas where there are important changes ...

The Deputy Bailiff:

Minister, I am so sorry, it is entirely my fault, before we go any further I should have asked Senator Ferguson if she wished this legislation referred to her? It was not too late, it probably was for Articles 1 and 2.

Senator P.F.C. Ozouf:

I was momentarily worried there. I was saying that I will draw Members' attention to the important changes. Article 3 effectively replaces Article 7 to 20 of the existing law. New Article 7 sets the parameters for the new financial planning process requiring the Council of Ministers, which have been appointed to office following an ordinary election and that is an election, I will go on to explain that there is no issue in terms of the Deputy's election. I am advised that that is the appropriate ordinary election and it is the trigger for effectively a new Council of Ministers to be appointed following an election and that is the appropriate wording for that. Effectively it will mean that the new Council of Ministers appointed in November 2011 will prepare a plan, as we have said for 2013, 2014 and 2015. The Minister for Treasury and Resources will still be required to prepare a budget for each financial year although this will cover somewhat different areas that is currently the place. Article 8 is the preparation and lodging of the Medium Term Financial Plan. The requirement is for the Council to lodge the plan and for it to be debated not less than 2 months before the start of every year that it relates to. The financial plan for 2013 to 2015 would have to therefore be debated and approved before 1st November 2012. As previously stated, there is nothing in these amendments which refer to minimum lodging periods. That will be debated under Standing Orders and I have conceded certainly that there can be improvement on that which was originally envisaged. I have amended Deputy Southern's proposition. Paragraph 2 of Article 8 is one of the very major changes to the process. It requires that States expenditure limits are approved for a period of years and not just the next financial year as is currently the case. It specifies the income and expenditure which the Assembly must approve for each of the years of the plan. The States will be asked to agree a total amount of States expenditure for each year and this will be made up of 4 items, revenue expenditure head for each department, meaning that will not have the problem that Deputy Southern has of just an overall aggregate amount but there will be an allocation for each department. A total amount available for capital, an amount for contingency expenditure and a maximum amount to be available for growth. The law does not specify how much will be allocated to all of these headings, it will be within the Medium Term Financial Plan for the Council of Ministers to make its recommendations and for this Assembly to vote on them. So importantly, once these figures are fixed there will only be limited circumstances, which I will refer to where changes can be made. This will address the issue of the concerns that net revenue expenditure of the States, as pointed out so graphically by the Comptroller and Auditor General, rose year on year. Paragraphs 3 and 4 retain the existing arrangements for revenue expenditures of the States Assembly, nothing compromises the ability and the different way in which the States Assembly is being held. Paragraph 5 describes the financial information that is to be included in the report which accompanies the plan. The Minister for Treasury and Resources will be required to present a statement indicating the purposes for which he or she intends to use the amount appropriated to contingency expenditure. In order to ensure that the States lives within its means and fully considers the implications of its spending proposals, paragraph 6 prevents the Council from lodging a draft medium financial plan that will result in the Consolidated Fund being in deficit. I think that is one of the very important requirements of the ability of this Assembly and the message that goes on for financial stability in this Island. Paragraph 7 preserves the existing arrangements for the revenue expenditure of the non ministerial bodies. New Article 9 refers to the restriction of an amendment to this plan as we have already discussed in brief. This article is the approval of effectively what the financial plan means. In overall terms, once a plan is approved States expenditure for the year in which it relates cannot be exceeded by only the amounts that have been approved. The amounts approved may only be varied on a proposition lodged by the Council of Ministers in very limited circumstances. Deputy Vallois may want to particularly revisit what those circumstances are if a state of emergency has been declared, if the Council is satisfied that a

serious threat to safety of all or any Islander, if the Council of Ministers is appointed midterm, if there is a newer Council of Ministers put in place, it is only right that a new Council of Ministers would be able to present a revised medium-term plan. Finally, if the States have approved a financial plan that would result in the Consolidated Fund being in deficit that is a case in which a proposition must propose new ways of dealing with the deficit. New Article 10 is dealing with the preparation and lodging of the draft budget. Under this article the Minister has to prepare the annual budget in time for it to be debated and approved before the financial year commences. This debate will usually, as is currently the place, happen in December, however, there is nothing preventing this from happening earlier. There is also the possibility that the States could be asked to approve this document at the same time as the Medium Term Financial Plan itself, which is something that we are looking at to bring the parallel debate together. I think one Member raised the issue of whether or not we should be dealing with spending versus taxation first; I think it was Deputy Martin and certainly I would envisage that there is an opportunity of bringing both of these parallel debates at the same time. It is perhaps chicken and egg. We have wrestled with this issue of whether or not you set tax versus spending later but ultimately probably prudence means that you allocate spending first and then you can tax it. The law requires that the Minister must consult the Council of Ministers when preparing the budget. In the budget it is proposed the States approves, as continuing to be the case, amounts raised by tax, any proposed borrowing and the amounts allocated to growth, which is going to be, I think, the important exciting part in the future of the annual budget. The allocation is also to be allocated to individual capital projects which will be part of the budget and any transfers between the consolidated fund and other States funds, as is currently the case. There will be no revisiting of amounts allocated to departments for their revenue budgets and, therefore, the Medium Term Financial Plan - I think it is fair to be able to summarise - to say that the allocations given over a 3-year period will be the amounts that departments get and they will be the minimum amounts because there is only the opportunity of improving them by allocation of growth so there will be absolute certainty for departments. New Article 11 deals with growth expenditure. This article is of particular significance as it is the area which deals with how that whole growth area of expenditure is going to be dealt with. The Minister will propose an amount for growth expenditure and will also provide details of how he or she intends to use this money and these proposals could include allocation to departmental revenue expenditure or capital or contingency expenditure. The amount available for growth, however, cannot exceed the maximum amount already approved in the Medium Term Financial Plan. There is absolutely nothing to stop any Member from lodging their own proposals of how this money could of course be allocated. However, they must ensure that any proposal does not exceed the total net revenue available. I think that it is important to point out that if there is an expenditure proposal that would be re-occurring, an annual funding requirement in subsequent years, then the proposal could seek States approval to the allocation of growth for a subsequent year; all of these are possible within this article. Once funding for growth has been approved the decisions, however, cannot be withdrawn. However, there are circumstances where growth funding could be no longer required for the purpose that it was originally envisaged and then, in those circumstances, the money is returned and could be re-available for reallocation. This will assist the process and ensure that States resources are spent wisely to ensure that Members have the opportunity of meeting their priorities within the money available. New Article 12 relates to the amendments to the draft budget; basically a reiteration of the existing law but prevents an amendment from altering the amount available for growth to a higher amount, as approved in the plan. New Article 13 is an administrative issue which requires that amendments are approved within the appropriate reports and must be updated to reflect them; 14 deals with lodging of taxation draft; 15, the immediate effect of taxation drafts as reflected in the existing law; 16 authorises expenditure, simply a re-issue of what is in the existing law and 17 deals with the revised strengthened arrangements for contingency expenditure; the States will set the amount for contingency in the Medium Term Financial Plan. It will be the responsibility of the Minister to decide what will be transferred from this allocation and in order to ensure openness and transparency the procedures are that the

allocations must be presented to the States also within a report within 6 months but I would imagine that there is going to be an immediate requirement, in exceptional circumstances, to announce where contingency money has been spent.

[15:45]

Many Members will recall of course the old general reserve which was allowed to build up a balance. The amount of the contingency will be continually reviewed and any underspent funds can be returned to the Consolidated Fund. I should say that, having had the experience, both the Chief Minister and I were on Finance and Economics when we had the general reserve; we do not want to turn back to the general reserve; this is not a general reserve in any other name. It is a completely different concept and it is one which is approved by organisations, such as the I.M.F. (International Monetary Fund), in terms of having an appropriate amount available for the unforeseen expenditure, if I may say to the Deputy of St. Mary, which are clear there are contingencies which are real unforeseens and there are those issues which can be planned. Most issues, we would argue, can be planned; it is a bird pandemic flu, perhaps a foot and mouth, perhaps an ash cloud problem that is the really big unforeseen items. Most issues within departments, as difficult as it is to say, can be managed within a department and if the Health Department has a particular priority in one area of its service expenditure then it should be, for the first call, to reconsider how to reallocate. Other Ministers have particular other problems and we have developed the overall concept of A.M.E.s (Annually Managed Expenditure) and D.E.L.s (Department Expenditure Level) in order to deal with those issues. New Article 18 permits variations of heads of expenditure and this is in order to ensure improved financial discipline and accountability; there will be fairly limited ability to move funds around. This article highlights where transfers can be made. Article 19 adjusts for variations in income; this is a slightly amended re-issue of the provisions of the existing law. Finally, Article 20 deals with emergency expenditure; this is a re-enactment of the existing arrangement which enables the Minister to approve spend, for which no funding has been previously agreed, in very limited circumstances highlighted by the article. The only difference being that if subsequent approval for spend is not achieved the Council of Ministers could be under a duty to find a way of meeting that expenditure within existing heads of expenditure. I move Article 3.

The Deputy Bailiff:

Article 3, which substitutes Articles 7 to 20 of the existing law have been moved. Are they seconded? **[Seconded]** Does any Member wish to speak? I have it in the wrong place.

4.3.1 Deputy J.A. Martin:

Yes, it is just a question on 9; restrictions again of the amendment to Medium Term Financial Plan approved and it may have been that the Minister for Treasury and Resources was ... and I think it a very good explanation of most of the articles but on my reading and what the Minister said, and it was covered in the principles: "Once the Medium Term Financial Plan has been approved by the States (a) the total amount of net States expenditure approved for the financial year may only be varied on a proposition lodged in accordance with 2", which is a Council of Ministers lodging and the reason why. I think he did say: "To amend the financial envelope for the 3 years only the Minister could lodge a proposition." I can think of 3 off the top of my head which are all Back-Benchers and they were not foreseeable - I would not say they were foreseeable - was the Electoral Roll Commission which is about £250,000, the Haut de la Garenne inquiry and Reg's Skips; these all would be outside the envelope. Does this mean a Back-Bencher cannot now bring a proposition in 3 years? It is quite simple; either yes, they can or no, they cannot. My reading and my interpretation of that part 9 and the speech from the Minister, I would say: "No, they cannot." I would like that confirmed; it would depend on which way I vote, just that one article. Thank you.

4.3.2 Deputy T.A. Vallois:

On the principles I did say that I welcomed this law with caution and the reason why I said that was particularly in relation to Article 17 where it states “contingency expenditure”, and the Minister is very much aware of my concerns with regards to this fund and that it may be used for, as he stated, the general reserve that was in place at F. and E. (Finance and Economics) in previous years. I am glad to see that the Minister will have to make a statement as to the procedures for the approval of transfers. I did, in an amendment to the Business Plan I think it was last year, request Treasury to provide this House with the procedures and the rules as to this contingency funding because we have put contingency funding in place for this year and we will be putting contingency funding in place for next year. That was my concern when I requested the removal of £12 million from that contingency fund in order for us to understand exactly how it was going to be used and why it was going to be used to ensure that there was not any taking money out where it is seen appropriate just for any reason. I am looking forward to seeing the statement coming forward from the Minister. I would also like to ask a question on Article 18 with the permitted variations of heads of expenditure; I was just wondering whether these would be signed off as ministerial decisions and, if so, would they be signed off as 2 separate ministerial decisions when there is a permitted move of money from one head to another?

4.3.3 Deputy R.G. Le Hérissier:

Yes, I wanted Article 18 but initially I moved to 14(4). Could the Minister give us an example where it would be necessary to move a taxation draft outside of the restricted period, which Article 14(4) allows? Under heads of expenditure - I was not able to attend the briefing, I must apologise - I am quite amazed at what appear to be quite considerable powers, given what I was saying yesterday about the creation, for example, of a third sector co-ordinator, rather suddenly. I wonder if the Minister could indicate why this law has given the Minister 6 months in order to report this because there is no doubt that moves have occurred; 6 months is an awful lot of time to allow the righteous indignation, such as I expressed yesterday, to disappear, so I wonder why it is 6 months. Under 5: “The Minister may authorise a States-funded body that has disposed of an asset.” Obviously if a department, for example, is selling a car, does that give the Minister for Treasury and Resources the right to sort of divert the funds from the selling of that car to an object which he himself defines?

4.3.4 Deputy M. Tadier:

Deputy Martin has covered some of the concerns that I have but I think part of the problem is, if we look on page 23, about making amendments once the Medium Term Financial Plan has been approved by the States, 9(2) I think could be slightly clearer. It says: “The Council of Ministers may only lodge a proposition for amendments” but what it really means, I think, is that only the Council of Ministers may lodge a proposition. Of course that means both but that is essentially part of the problem, which led to me having to abstain because what we seem to have here, and it would be interesting to hear the Minister’s response, is more power being taken away from Back-Benchers and other bodies and being given to the Council of Ministers. While I am supportive clearly of the 4-year cycle that needs to be supported it is at a trade-off, meaning that Members, it may be an individual Member who highlights an issue which they think is of serious threat to the economic or environmental or social wellbeing of the Island but it may well be that the Council of Ministers are not of that opinion. It may well be that the Council of Ministers have not had that brought to their attention. It may well be that the Committee of the Connétables have had something brought to their attention and that the Council of Ministers do not agree. It may well be that a Scrutiny Panel, hypothetically because of course they will not exist in a few years time, will come out with a proposition or some findings which say: “We think that this is a matter which the States needs to decide on.” There is a tension here because ultimately the States has to remain sovereign in that sense. It has to be the body which makes the ultimate democratic decision but we have a restriction in place because it is only the Council of Ministers who can flag up what they think is an issue and it has to come to their attention and it means that the remainder, the 42 of us or however many there

will be, do not have a say on that. We are essentially saying that the Council of Ministers have to be able to pick up on everything; they are the only ones who can make any kind of amendments at all to put them on the table, even though it is the States which make the ultimate decision. That is a Council of Ministers which has not been elected with a party political mandate; it is one that has been elected in the States here by individuals so they are one step further removed from the public. I am very uneasy about this and I think other Members should because this article itself, Article 9 in particular, is the one which is taking away the autonomy of independent States Members who have been elected here in various ways in different constituencies. I am very uneasy about this and I do not think I am going to be able to support it, unless the Minister can give ... I will not ask him to give categorical assurances, clearly that is not what can be counted on, but some kind of assurance.

4.3.5 Deputy P.V.F. Le Claire:

I do not know if my speech on the principles was lacking in plaudits but it did not get any comments. I did ask a couple of questions in relation to the step of faith or leap of faith that we are taking. I too obviously have grave reservations about making such a change but I did say that I thought rather than concentrating on the negatives we should be focusing on the opportunities, and I do want to support this. I am just a little concerned that what I was trying to outline in my principles speech, which I now address to Article 9 and the other articles here, is that although we are going to be faced with challenges I wondered if we were going to be able to pick up on the opportunities. It is not just an increased expenditure but I think the public are quite keen to see us cutting back in areas as well, and I would like to be able to think that those areas perhaps were, for example, composting; I have mentioned a clear case there where perhaps we might be able to say: "It would make greater sense in 3 years to spend £15 million, for example, and outsource the entire operation." In my view that would be a much better thing to do. We would get a much better end-grade product and we would completely do away with that ongoing increasing expenditure. I would like to know, while the Minister is addressing the questions of Deputy Tadier, if I can piggy back on the back of those concerns that have been expressed and ask whether or not we are also going to be able to take opportunities in the interim periods to bring propositions that will allow us to represent potential ideas, at least, to cut back in areas of expenditure where we feel there is a need, because I am certain the public is quite keen for us to see not only how we allocate growth expenditure but where we can stop spending money.

4.3.6 Deputy G.P. Southern:

Just briefly, and it is to follow on from the remarks of Deputy Tadier who pointed out the extreme nature of 9(2), paragraphs (a) and (b), which talk about a state of emergency with emergency panels declared, a serious threat to the economic, environmental or social wellbeing of Jersey which requires an immediate response and all of those rely on the Council of Ministers satisfying themselves that those extremes are in fact the case which leaves only (d): "Following the appointment of a Council of Ministers otherwise than following an ordinary election for Deputies." This Article 9 is an open invitation for Members to use the motion of no confidence as the only way to get variation in the 4-year masterplan that we are signing up for.

4.3.7 The Deputy of St. Mary:

Just briefly on Article 17, page 31, which other people have also commented on and it gives the Minister total power, as far as I can see, over the contingency fund. I just remind Members that the Minister said in his closing remarks on the preamble: "It is this Assembly that decides on expenditure." It is this Assembly that decides on expenditure and yet we see in paragraph (2) of Article 17: "The Minister is authorised to approve the transfer from contingency to heads of expenditure of amounts ..." and then it says: "Up to the total amount in the contingency for that year." If contingency has not been spent and there have not been any pandemic flu then the Minister is completely empowered to spend it how he likes and yet it is this Assembly that decides on expenditure. I would not mind if the Minister could explain how those 2 things can be put

together. In paragraph (6): “If, at the end of a financial year, the whole of the amount available for contingency has not been transferred he may approve transfers of all or any of the balance.” Yet the States decides.

[16:00]

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

According to what I heard and what the Minister for Treasury and Resources said - and I apologise if I have misheard him because I am having major hearing problems at the moment and I am only picking up part of the debate - it appears that we are imposing a straitjacket on the States in that the 4-year plan eliminates the Consolidated Fund from going into deficit and the States having to borrow. Borrowing, as we all know, has got a bad name at the moment throughout the world and no one is suggesting that we borrow on an excessive scale but it seems to me to be stupid to eliminate borrowing as an additional policy measure should it become necessary. We should not limit the flexibility that we should have in dealing with the problems that this Assembly may face in the future. I would like the Minister for Treasury and Resources to explain his position and the position on borrowing, please.

The Deputy Bailiff:

Does any other Member wish to speak? No, then I call on the Minister for Treasury and Resources to reply.

4.3.9 Senator P.F.C. Ozouf:

I will start by apologising to Deputy Le Claire because I am sorry that my page on his notes I moved over and I did not respond to him, and I apologise for that, but his comments are absolutely relevant to the articles that we are debating and so I will deal with him first. I accept that there are significant challenges in public finances with many jurisdictions around the world and we are in an uncertain world in terms of how some economies are going to be affected by problems in terms of debt, et cetera. But what I would say - and I am not sure that he was there for the Business Plan presentations last week - we are setting out a picture in terms of our public finances in the Business Plan of a Government, of an Island, that has got considerable strength in terms of having dealt with the financial crisis. We are almost unique in setting out a proposal that has balanced budgets after the worst financial crisis since the Second World War and we are not a petrol economy and that is of great credit to this Assembly. If Members and he are concerned about this law and its ability to deal with uncertain times then I think that there is a requirement to have a cushion for dealing with uncertainty. That is why certainty, in terms of a Medium Term Financial Plan, should give that. We should set out with the best information, with the best independent scrutiny, the best estimates of income that we have and then we should cut our cloth accordingly and that is exactly what this Assembly has done. That is why this Assembly will end its period of office sending out a message of stability and confidence and strength of public finances, which we have inherited from all the other Members of this Assembly that have made decisions in the past. He is right to say that is this going to mean a law which is going to be able to drive appropriate decisions and the right decisions about saving expenditure? I believe it will. I believe that we will be focusing our attention, and that Ministers will be focusing their attention, on how the money is spent. There will be more time to allocate with the huge saving of time; if I may say it is not a charade but almost the Annual Business Plan. I have sat with Presidents of committees in the past, R.J. and H.S. (Royal Jersey Agricultural and Horticultural Society), going through almost a process of allocating expenditure which really, at the end of the process, we could say: “Have we really rebuilt our budgets?” No, we have not. This is going to be the release of time of Members of this Assembly, release of times of Ministers and releasing time of officials to concentrate on how the money is spent after you have allocated budgets. He is right to say about whether or not we should be continuing to spend money in the *J.E.P., Gazette*. There is an online world. We need to challenge how the right place it is to

communicate with our community and increased ability, more time allocated by Members in scrutinising expenditure, in officials running their departments properly rather than responding to the Treasury's annual demands of expenditure is going to open up, I think, a whole new world of efficiency and economy but also a world in which there is going to be certainty in that 3-year plan. I am full of optimism that this is going to deliver what Members want, each side of the political spectrum and also is going to mean that Members have the ability to influence. Deputy Tadier speaks of the issue of the power of this Assembly versus Ministers and also a number of other Members have dealt with this issue of the power of the Minister for Treasury and Resources. This Assembly elects a Minister for Treasury and Resources to do a job and to lead in terms of public finances and, on occasion, to make decisions within agreed budgets. This Assembly needs, if it wants prudent financial management, to appoint tough Ministers for Treasury and Resources that are going to be difficult with departments and they are going to be difficult to convince. It is not just the Minister for Treasury and Resources that makes these decisions. The Minister for Treasury and Resources is served by a Treasurer of the States, is scrutinised by a Public Accounts Committee and a Corporate Services Panel, has to deal with all the transparency requirements of a small place that put in place more information. The U.K. Prime Minister said he was in favour of publishing more information to get the armchair auditors across the U.K. at work. That is not a pejorative, that statement for auditors; that is because if the public knows where spending is made then there is increased scrutiny on it and there is pressure to think about whether spending is being made in the right place. I say to Deputy Tadier that this Assembly remains sovereign and remains absolute supreme in terms of allocating money; that is the job of this Assembly at passing legislation, et cetera, and it is holding members of the Executive to account. But what it is not is a grand Committee of Government at making every single expenditure decision; that is not how Government works. I would argue that the segregation of duties of some Members being elected to make decisions, subjecting themselves to decisions of this Assembly in total, is the better way of delivering economy and efficiency and I think Article 9 delivers all of that. I will say, in terms of contingencies to Deputy Vallois, who is remaining a healthy sceptic in terms of contingencies; yes, she is right, we need to make a statement of how the contingencies will be allocated. Yes, we should be reporting them by ministerial decisions in terms of variation of expenditure and I think there should be a public ministerial decision when an allocation of a contingency is made. I am not sure whether or not it might have not been looked at or whether or not we have not done it but if we have done it I will make sure it is done. This year we had £9 million of contingencies, £2 million for A.M.E., £2 million for D.E.L., £5 million for one-off; so far we have allocated £500,000 for the requirements of the S.E.B. (States Employment Board) in dealing with a teachers' pay issue for, I think, the extension of hours, of non-contact hours. That is the only allocation that has been made; if she requires any indication of toughness that this is not just a self-service buffet in terms of Ministers coming shopping for contingency. In future we are indicating that on the I.M.F. advice of what the percentage of allocation of money should be, this is not a debate about what the level is but just to indicate what is in our mind because it is important that Members should have a ... of what we are thinking in terms of what an appropriate contingency is, the Business Plan has a further £9 million in contingencies, £5 million for the emergency one-off items and £2 million again for A.M.E. and D.E.L. To respond to Deputy Martin's question, there is going to be the ability for Members to bring forward propositions for their spending priorities. The Council of Ministers currently and in future will be subjected to propositions, rightly so, that this Assembly will say: "We want the Council of Ministers to include this in terms of the Medium Term Financial Plan ahead of time and within the 3 years." To also give, perhaps, some Members some indications of what the growth allocation could be; in 2014 we have pencilled in for the first time, and announced last week, that £10 million recurring money should be available for growth. That is £10 million, which we think is affordable within all of the decisions that we are making against the backdrop of delivering the Comprehensive Spending Review. I would have thought that that is the right amount of money for this Assembly to have a proper good argument and a proper debate about political priorities. There will be the significant ability of Members to influence and

ultimately decide where that money is spent in terms of growth. I think I have answered Deputy Le Hérisier; yes, it is a 6-monthly report but there should be certainly ministerial decisions much earlier than that in terms of the actual allocations from contingencies, unless there is a very good commercial reason not to do so. Indeed next year I would say that this Assembly has required the Council of Ministers to do a Committee of Inquiry; it has required us to come forward with freedom of information. We also have a pressure which we know about in terms of legal aid. There are issues which are both urgent and unforeseen and require political priority and it is the subtle combination of allocation of contingency and growth which is going to deal with all of that. I would say to Deputy Higgins that I am sorry that he might not have picked up some of these issues and I am sorry that he perhaps has not been able to attend some of the briefings. This does not mean that we cannot borrow and I am not against borrowing; I have never said that I was against borrowing per se. I am against borrowing where there cannot be an income stream and indeed if there would have been, for example, an income stream from the incinerator I have said before that that is a perfectly good example of a capital project where you could borrow and you could match the income over the lifetime of the incinerator in terms of paying it off, but there was not an income stream and that is why really it needed to be dealt with in terms of capital. What this law does is it means that the consolidated funds cannot be overdrawn. The Assembly must approve any borrowing arrangements that the Minister for Treasury and Resources would propose. It does not stop it; it requires States approval for it but I would argue that borrowing needs to be very carefully dealt with and indeed the discussion that I had with my Assistant Ministers for Treasury and Resources last night and Finance directors from a number of departments indicated that there are going to be some challenging issues in terms of capital spend. There is the Minister for Transport and Technical Services, long-term requirements of his sewage works; they are not his but they are under his department, that is going to have to be tackled. We have, without question, some big issues in terms of the hospital and what we do in terms of its replacement or otherwise. We are going to need to be creative and we are going to need to be long-sighted in terms of our thinking on that capital but I am confident that this law gives us the flexibility that we need in order to make those decisions in the future. I think I dealt with all of the issues that Members had on articles, unless Members indicate otherwise, and I move Article 3.

Deputy P.V.F. Le Claire:

May I ask the Attorney General for a question on clarification, please? Article 9 has given some concern to Members and questions were put quite clearly to the Minister for Treasury and Resources. Rather than trying to seek further points of clarification I would like to seek a clear point of clarification from yourself. As you read it, can I ask, Article 9 seems to prohibit or introduce a new rigour of standing among individual Members from bringing proposals that might influence States expenditure outside of a Medium Term Financial Plan process other than if they were brought by the Council of Ministers. That seems to me to be suggesting, as has been alluded to by Deputy Tadier, Deputy Martin and myself and others who have expressed concerns, that the age long process of Back-Bench Members being able to bring proposals during the course of the lifetime of an Assembly are going to now change inasmuch as that will not be possible unless it is within the new ambit under Article 9 of a medium plan process, as I say, supported and influenced by the Council of Ministers. If that is the case, if I am reading that correctly, that is the first question. Then I would like to ask if we voted against this article would we retain our existing rights and would that affect this law in any detrimental way?

The Deputy Bailiff:

Deputy, can I make it plain that you are not having a vote on Article 9 by itself. The vote is on Article 3 which substitutes the whole of the new part 3 and therefore Article 9 with new Articles 7 to 20 stands as it was.

Deputy P.V.F. Le Claire:

In that case I had better be a little bit more careful. In what way can we still preserve the traditional powers of Back-Bench Members to bring proposals by voting in this next stage of this debate? At the moment it seems to me that we are about to go along *en bloc* with a new proposal that does not necessarily guarantee our historical positions. If we are not able to vote independently because these measures are replacing a whole raft of existing pieces of legislation and we are going to do away with that, what remedy is there? Is there then a reference back opportunity or is it just a case of you go with it or you do not?

The Deputy Bailiff:

Attorney, would you like to assist the Assembly with an answer to that question which may involve looking again at what a Medium Term Financial Plan is?

The Attorney General:

As I understand, Article 9 of the proposed amendments indicates that once the Medium Term Financial Plan has been approved by the States the total amount of next States expenditure, for the financial year to which the plan relates, may only be varied by a proposition lodged in accordance with paragraph (2).

[16:15]

It seems to me that that is quite clear in its terms and those are the only mechanism by which the Medium Term Financial Plan can be changed. The Assembly has already heard of the categories of circumstances which can give rise to an amendment under paragraph (2) and they all derive from a proposition brought by the Council of Ministers. That, I think, is the circumstance that relates to the Medium Term Financial Plan. There is, however, an annual budget within each of the years and, as I understand it, the ability to bring amendments to the budget is unrestricted provided that the overall umbrella of expenditure does not exceed that provided for by the Medium Term Financial Plan. May I add, if ...

Deputy P.V.F. Le Claire:

Sorry, Sir, I do not mean to be rude; that is very helpful. I did ask as well though, now that that has been ... I have understood it quite clearly. Her Majesty's Attorney General has now pointed out that the remedy is in a proposition to each annual budget but what I was going to ask was if we are not satisfied with that as an alternative, or a new way of doing things and we are not happy with what is proposed - basically the Council of Ministers is bringing the changes and not Back-Bench Members - is there any other remedy, apart from voting against this entire article and if we did vote that entire article out would that sabotage this in such a way that it might be better to have a reference back?

The Deputy Bailiff:

I do not think, Deputy, that is a proper question for the Attorney General. He can advise on what the draft law says but I do not think he should advise Members of tactics ...

Deputy P.V.F. Le Claire:

Is that for you, Sir? Is that a question for you then, Sir, as a point of order?

The Deputy Bailiff:

It is not a point of order either, as far as I am concerned. I think ...

Senator P.F.C. Ozouf:

I will respond to his question. I am going to try not to get frustrated because we have been through so much work and so much consultation with Members about this whole important issue of getting an ability for Members of this Assembly to influence and to pressurise for their political priorities. There is an incredible subtlety in this law that does that. It is a little bit frustrating but of course I will go and explain it again because this is not a legal question; this is really a political question. The Deputy, if I may say so, is wrong to say that there is no ability for Members to influence growth; there absolutely is and that is why we have incorporated this ability for Members to allocate on an annual basis a growth amount of money, which will be signalled in advance in the start of the 3-year financial plan. The restriction is currently that a Member cannot bring a proposition under the current Public Finances Law to spend £3 million on a new treatment at Health. They cannot do that at the moment; it must be within the Annual Business Plan. That is the rollover in the new arrangements. The growth requests that Members will bring freely with it to this Assembly must be only within the amount that is allocated for net revenue expenditure. It is limited to that extent but that is also a decision that is not just a unilateral ‘Caesar’ decision of the Minister for Treasury and Resources. The Medium Term Financial Plan sets out what the net revenue expenditure will be for 3 years. The Deputy, if he is in this place, will agree what that net revenue expenditure maximum is. He has agreed the individual departmental agreements and he will also agree an amount of money available for growth that will be allocated. I have indicated, to try to be helpful, that I would indicate that in 2014 the amount would be £10 million. That is an enormous amount of money for new political priorities, for new issues which would be on a recurring basis.

The Deputy Bailiff:

Deputy Duhamel, your light is showing; you did not speak in the debate. You are entitled to ask the Minister to clarify anything he has said.

Deputy R.C. Duhamel of St. Saviour:

I was going to ask if we could take Article 18 separately, please, Sir.

The Deputy Bailiff:

No, I am afraid you cannot do that because the vote is on Article 3 of the amendment which is 7 to 20 as well.

Deputy M. Tadier:

Can I just seek advice? I accept what you have said but I think this may be something that the P.P.C. need to look at. It seems like a procedural absurdity that some of us have issues with the contentious articles that are being amended, which are 9 and 17 and maybe others and it seems unfortunate that we have to reject the whole lot simply because the 2 parts which we disagree with cannot procedurally be voted on separately.

The Deputy Bailiff:

The article is being put before you as a package of measures which stand and fall together; that is the way in which the draft law has been put forward. Very well, all Members in favour of adopting ... the appel is called for. The vote is on Article 3 of the amendment law and I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 30		CONTRE: 8		ABSTAIN: 1
Senator T.A. Le Sueur		Senator A. Breckon		Deputy J.A. Martin (H)
Senator P.F.C. Ozouf		Deputy R.C. Duhamel (S)		
Senator T.J. Le Main		Deputy G.P. Southern (H)		
Senator B.E. Shenton		Deputy P.V.F. Le Claire (H)		
Senator F.E. Cohen		Deputy M. Tadier (B)		
Senator S.C. Ferguson		Deputy T.M. Pitman (H)		

Senator A.J.H. Maclean		Deputy M.R. Higgins (H)		
Senator B.I. Le Marquand		Deputy J.M. Maçon (S)		
Senator F. du H. Le Gresley				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Mary				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy D.J. De Sousa (H)				

The Deputy Bailiff:

Minister, are you now going to propose Article 4?

4.4 Senator P.F.C. Ozouf:

I think I will propose Articles 4 to 11 *en bloc*. They are not complicated articles; if I may? Article 4 basically relocates existing procedural matters relating to the supply of estimates; 5 and 6 are consequential amendments to reflect the plan that the Annual Business Plan will be replaced by the Medium Term Financial Plan; 7 is a technical issue; 8 is consequential; 9 is an amendment not connected with the Medium Term Financial Plan and the budget and it reflects the States agreement decision in 2009 to extend the C. and A.G.'s powers to have the effect of enabling the C. and A.G. to consider reporting on companies that are wholly-owned or majority-owned by the States of Jersey. His remit will include effectiveness of their internal financial controls, internal auditing of these controls and economy efficiency and effectiveness of use of resources by those entities. This brings, as I said previously, the C. and A.G.'s torchlight into all States-owned entities in a way that I think has been very positive and beneficial to the oversight and scrutiny of public finances. Article 10 is administrative and Article 11 is the usual article to enable the law to be brought into effect. I move Articles 4 to 11.

The Deputy Bailiff:

Are these articles seconded? [**Seconded**] Does any Member wish to speak on Articles 4 to 11? All those Members in favour of adopting Articles 4 to 11, kindly show. Those against. The articles are adopted. Do you move the Bill in Third Reading, Minister?

4.5 Senator P.F.C. Ozouf:

Yes, Sir.

The Deputy Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak on the Bill in Third Reading? Deputy Le Claire.

4.5.1 Deputy P.V.F. Le Claire:

Obviously it is difficult to have leaps of faith when you are not jumping the entire distance. I have been a little surprised at the way that the articles have not been allowed to be taken to allow us to vote on those particular issues. I think there has been certainly some disquiet among Members privately. They may not have exercised that just quite publicly today because they may have wanted to go along with the support that we all have for the Minister and his department. But I think that there is certainly, in approving this law today, the need for us, in Third Reading, to dwell for a moment upon the fact that we might need to revisit this in a very short period of time as to who and how amendments can be brought. At the moment, in my view and I was going to make this point anyway at this stage, I am no longer satisfied in approving carte blanche, and I was not satisfied in a yearly process approving carte blanche business plans and proposals that were brought in a never ending swirl of activity and I often voted against them. If you look at my record for the Business Plan last year I voted against it and I certainly probably would be voting against 3-year business plans as well. I think the Council of Ministers needs to take ownership of its budgets and I think there needs to be a better process in the future whereby it is a Council of Ministers' budget, so that if the Council of Ministers are presenting expenditure and they are managing the economy then the public can hold those Ministers to account at election time rather than blaming the entire States Assembly for poor fiscal management or the non-delivery of what they consider to be essential issues and services. I certainly am not satisfied. I may be the only States Member in here but I am certainly not the only member of the public in Jersey that is dissatisfied with the way that things have been occurring and are planning to be going on with at the moment; it seems every bit of bad news it is the States and every bit of good news it is the Council of Ministers. I think it needs to be a more mature system. We have ministerial government; if it is going to be advised that we continue with this progressive way - this conservative liberal progression - then I really do think we need to try to extrapolate ourselves as Back-Bench Members away from the Council of Ministers' budgets, business plans and tax plans, like we would do in a political party because then they can have ownership of them and they can have proud ownership of them if they deliver and they can have total responsibility of them if they fail because I am certainly not of the belief that after 11 years of being involved with budgets, business plans, strategic plans and criticised for not being at one business plan presentation there; I do not know if you were there, Deputy. I have been to a million of these departmental meetings. I attended one of the meetings for this law when the Minister for Treasury and Resources was talking about doing away with the Strategic Plan. I did attend one of the briefings on this law; I do not know how many there were, I certainly attended one of them. I am not satisfied. I would like to ask other Members as well, if they are not satisfied and if they are concerned that they have lost something this afternoon, to discuss this with me afterwards because I think we are not going to do ourselves or the Island any favours at all in just fielding a few quiet disquiets in the lobby. I think in the future we should disown ourselves from this collective where we are taking full responsibility for budgets that we have nothing to do with; we have no real activity and we have no real control over. People ask me when they talk to me about: "Why is it that the States are failing? What are you doing about it?" This is my budget, okay? I get a laptop and remuneration; that is my budget, that is my manpower, okay? I do not want to take responsibility or accountability for something I cannot genuinely influence. I am considerably concerned that we have lost a significant ... maybe I am wrong and I would be delighted to talk to the Minister for Treasury and Resources about this, if I am completely wrong, but there certainly has been some concern that that is the case. I do not consider the opportunity to influence a 3-year Business Plan during a one-year opportunity of a Business Plan amendment; it is unrealistic. I am hoping that I got it so wrong that the Minister for Treasury and Resources will be able to tell me in summing up that I still have the opportunity to bring amendments, propositions, requests for expenditure, requests for increased expenditure, requests for decreased expenditure throughout the course of the year. If I got it wrong I am sure it is not, as Members will agree, the first I got wrong but if I am right then we have lost something today as Back-Bench Members and I am standing up perhaps talking for too long a period of time but I want Members to focus on this

for a second because if we have lost this this afternoon we need to completely disconnect ourselves, cut the umbilical cord and give the entire package to them. Give them the powers, give them responsibility, give them the ownership and give them the accountability.

4.5.2 Deputy M. Tadier:

We have before us a proposition which has been passed but it has not been passed unanimously and it has not been passed with the unanimous backing of the Council of Ministers even in its entire form. This is what we have; we do have serious concerns insomuch as that even one of the Ministers cannot seem to back the whole of the proposition, as we have just seen in the last vote, which I think is healthy for democracy and long may this absence of group-think in its entirety prevail. I echo Deputy Le Claire's concerns about the way we were not able to vote on the articles; I think that is partly the way it is presented and I think that is something that P.P.C. needs to look at. It is a sheer technicality and it is a procedural absurdity that the parts which caused difficulty for many Members, due to a procedural device, were not able to be voted on because I suspect most of the law, the vast majority of it, is something that we could have all supported while wanting to just highlight the parts which were perhaps imperfect.

[16:30]

It is these points; the unintended consequences and the unforeseen consequences which may come out of this, which I think many of us have quite rightly been concerned about. Focusing again on what the implications are of what we have passed in Article 9, we are saying that only the Council of Ministers are able to bring something to the House and the fact that the wording of something which has serious threats to economic, environmental or social wellbeing of Jersey, that can only now be judged by 10 individuals in the House. The rest of us, if we think that in the meantime something has changed, for example, it could be to do with taxation and many of us think that G.S.T. (Goods and Services Tax) is a serious threat to economic, environmental and social wellbeing of Jersey and many individuals herein. It could well be that circumstances change and we find that there is more of a deepening of an economic crisis. A Back-Bencher, a group of States Members working together, as I have said at Scrutiny Panel working together, could say: "We are not the Council of Ministers but we believe that we could convince the States, if we had a debate, to change the policies or to reallocate funding to make changes in the way the budget has been allocated for this year." You, I and they will not be able to do that. Of course what would normally happen, you could argue, is that if the Council of Ministers could be approached by the individual and if they were not willing to do that they could face a vote of no confidence because if they were not doing things which the majority of the House wanted to do that would necessarily constitute a vote of no confidence. But of course we know in reality that unless you can bring something to a debate to make your point and to get the backing of the majority of your colleagues, irrespective of whether you are a Minister or not, that ability has now been taken away from us. That is going to be the reality of what we will see. I am just very concerned that my colleagues, such as Deputy Martin, and others who have spoken in this vein are words that are going to be ringing true, I am sad to say, in the next few years as we come to these Annual Business Plans and the medium term plan. I think the adage is be careful what you wish for because we will see our rights as independent Back-Benchers constrained. I think that only makes me even more resolute in my belief that in the long term, if Jersey is to be successful both in terms of a Legislature and as an Island, we have to be delivering group joined-up policies via individuals who are linked which will have to be party.

4.5.3 Deputy R.G. Le Hérissier:

I did vote for it and the reason I did is it is totally counter-intuitive but I do not think you can run budgets with 53 individual people and you cannot run it, I have to say, with the kind of political pressures we are facing. When I go out there, as Deputy Le Claire said, people are constantly full

of rhetoric that the States is disorganised, it is a spendthrift organisation, it cannot be disciplined in the way it carries out finance, et cetera. Quite frankly, unless somebody does come up with political parties, and even though that seemed to be what Deputy Tadier was going through, we are not on the brink of political parties. We are not on the brink of organising ourselves that way, which is how virtually every other Legislature in the western world organises itself; we do not. We saw it, for example, when Senator Shenton pushed for free T.V. (television) licences. He normally is a custodian of prudent spending and he constantly assails us with his comments on how irresponsible we are but that was an example; we can all do that. We can all come up with our favourites. Of course none of us are going to win elections on a platform of cutbacks or on a platform of cutting back social services, health and so on, even though Deputy Southern is about to tell us how. None of us are going to do that and we know that and that is the kind of political pressures that are around. But I know constantly I receive this rhetoric that we are ill-disciplined and we cannot organise ourselves and, which I agree totally with Deputy Tadier, we should have a different sense of priorities. That means people getting together and coming up with viable alternative budgets rather than picking on a whole lot of fragmented things and pushing them through in a very disjointed disorganised way. The other thing that I think came out of this debate, which we discussed many times, is I think we do need Scrutiny. I think time after time, and it came across this morning and it came across now, it would be so good if we had an analysis of what this was about. We were aware that this was, in some people's eyes, a raid on Back-Bench autonomy but had there been a paper, not necessarily article by article, that would have said: "This is where this law is going at, these are the pros and cons of this law, this is what it is doing" I think it would have given Members a background and, referring to a discussion which took place at lunchtime, there would have been the possibility of intervening at a meaningful stage, whereas constantly we come to these debates, frustration builds up very quickly, anomalies are spotted which, in a way, should have been spotted a lot earlier and it is essentially the train is out of the station; the train is moving along and it is very, very hard to turn it at that point. Thank you.

4.5.4 Deputy J.A. Martin:

I will be brief and I did abstain; that is the first time I have abstained in 11 years and that was because I do not understand, that will be to say it is a procedural matter and we cannot vote separately. But I asked a direct not a flappy question to the Minister for Treasury and Resources and the same question was asked by Deputy Le Claire to the Attorney General. The Attorney General interpreted Article 9 as law and it is exactly how I read it; it will be the Council of Ministers who can only change the Medium Term Financial Plan as being approved by the States. The Minister for Treasury and Resources said it was political and we can ... I am sorry, I take the word of the Attorney General on that one. Also, Deputy Le Claire said: "Give it all to them, give it all to them"; exactly, Deputy, we have just done that. For anyone who does not understand, what we just did is every 3 years we will define the envelope. We will say basically within departments what that money is for in departments. We already know in departments that they can move their monies wherever they want. Then, if there is some more money needed spending in a department there is a contingency plan that can only be accessed by the Council of Ministers or through the Minister for Treasury and Resources. Worse than that if then the contingency is dry the Minister for Treasury and Resources goes raiding other departments; without consulting us, it is through the Minister for Treasury and Resources, around the table of Ministers, so do not be illusioned. We already have given the whole 3-year plan to the Council through the Minister for Treasury and Resources **[Interruption]** ... 3-year planning but we do not have the back ups ... Sir, the Deputy has already spoken; I really do not want to be interrupted. I have basically finished. I know exactly what we have approved. I am under no illusion that we do need 3 years but be under no illusion that we will not be able to move that envelope any bigger, which is maybe a right thing; I am not having a debate on that. It might be the right thing. In law, Article 9 says we cannot do it; that is why I abstained. I am quite clear with what we have done this afternoon; some good things but some not very good things. It will also depend on, as the Minister for Treasury and Resources said

in his earlier speech, what if next time we do get a spending Minister for Treasury Resources? Your envelope might be the bigger one that you can buy at the post office; the biggest one you can get. Where are we then? I think we are in an envelope or we should be. Thank you.

4.5.5 Deputy T.A. Vallois:

I think it is appropriate for me to stand and make a reason why I supported this. There are many reasons why I supported this because being on Corporate Services Scrutiny Panel for 2 and a bit years before going to Education there were a large amount of reviews that we did which identified problems with the financial management. It was continuous frustration by many Members of this Assembly and by many members of the public about the way we were spending monies. In particular, Members have a problem with Article 9 and I understand the concern and the caution that is being said across the Chamber. However, I think we have to realise our positions in this States Assembly and understand that we are entitled to bring whatever we wish to bring to the Assembly in terms of whether we want to prioritise, for example, more money for A. and E. against more money for business grants at E.D. (Economic Development). If we decided that that is something that we wanted to do and we needed to know how much money that required, then we could easily go and speak to the Minister for Health and Social Services and identify what further fundings we would need for that priority and take that money, subject to the Minister for Economic Development's funding that has been agreed by this House as a net revenue expenditure overall funding, which we agreed last year. If Members remember back to the Business Plan we debated last year I stated that in actual fact the Minister for Treasury and Resources and the Chief Minister had moved £17 million from heads of expenditure by ministerial decision. It was not by approval of this House; it was by approval of 2 Ministers, the movement of expenditure. So in actual fact all we have ever done is agree the overall net envelope expenditure. Members in this States Assembly can reprioritise if they wish to do so, so if for that A. and E. funding they wanted more money then they come to this Assembly with a separate proposition at any point in the 3-year term and request this Assembly to approve that increase in funding for A. and E. by taking the money from Economic Development. Alternatively, it would be up to the Council of Ministers to then go and find the money if they can and then they would have to ... and why I asked the question on Article 18 on permitted variations of heads of expenditure was so that you could identify that money under a ministerial decision through transparency and people could question it as well between the heads of expenditure. I do not think this ties our hands in any way. It may cause concern from many Members, and I am willing to listen further, but I think this is a step forward. I think it is more encouraging for the Assembly to be working together in this way. I do not think it ties our hands because, like I say, any Member can continue to bring whichever proposition they wish in future as long as it is within the net revenue expenditure. The central contingency will provide for £10 million or more if the States approves, but £10 million at the moment of growth expenditure which on average has been identified as growth expenditure over the last, I think it is 5 years or something like that. That will be at the moment the average, so in future the next Council of Ministers may wish that they want £20 million in the contingency for growth funding but that is up to this States Assembly to decide that and that will be set in the overall envelope of the States net revenue expenditure. So if a proposition comes forward that in actual fact somebody wants a Foreign Affairs Department or something along those lines and they need an extra £5 million and obviously do not want to take money from any other department to do so then they request that money from the central contingency for growth expenditure. I believe that is my understanding of this amendment to the Public Finances Law. If I am wrong then I hope the Minister for Treasury and Resources can explain to me exactly what it is about, but that is my understanding.

4.5.6 Deputy G.P. Southern:

I am very pleased that the Minister has given us the little sweetener when he says there will be a whole big sum of £10 million in the growth fund which you can lobby for and you could spend. £10 million; it sounds an enormous amount. £10 million out of a £600 million budget does not

sound so much, does it? 1.6 per cent or thereabouts of the total budget. Why? Even I can remember, with a little help from a ring-binder, spending £10 million in one fell swoop. It is called a town park, which had been waiting for 13 years but let that rest. I am looking forward to proving that there is an immediate threat to the health or safety of any or all of the inhabitants of Jersey, or indeed that there is a serious threat to the economic, environmental or social wellbeing of Jersey which requires an immediate response. That threat exists. It is the Council of Ministers and their political philosophy.

[16:45]

It is a serious threat but the problem with this Article 9(2) is that I have to persuade the Council of Ministers themselves that they are the threat to the health and wellbeing of Jersey. Bit of a difficult task that.

4.5.7 Deputy R.C. Duhamel:

I did not speak earlier and generally I have been in favour of medium-term financial planning but I did have strong reservations about Article 18 which itemises occasions where permitted variations of heads of expenditure might be undertaken outside of what was agreed by this House at the outset of an electoral period. I had hoped that the articles would have been taken individually to give me, and perhaps other Members, the opportunity to vote on that particular article separately. You did, Sir, however make a ruling and I would like to ask a point of order, if not clarification, under the Standing Orders. Standing Orders paragraph 2 defines each provision as being capable of being interpreted as an individual article or regulation or schedule, if any. Article 74(4) states that such schedules or articles or regulations may be voted on separately and Article 74(5) states that any States Member may request that any provision be voted on separately. I find myself still scratching my head that, notwithstanding what we have in the Standing Orders, you have indeed ruled, Sir, that under 3 all Articles 7 to 20 be taken together which seems to me at odds with the Standing Orders. I would like a clarification, if I may.

The Deputy Bailiff:

Very well, Deputy, I will explain the Standing Order to you. It is Standing Order 74. As you correctly say, 74(2) says that: "When the second reading of a draft law is to continue the Presiding Officer shall invite the proposer to propose each provision, that is a provision of the draft law, being each article or regulation and each schedule, if any, in turn." So the word "provision" is defined as being the article or regulation of the draft law or draft regulation.

Deputy R.C. Duhamel:

Individually?

The Deputy Bailiff:

Each article of the draft law and the draft regulation. When you look at Article 3 of this law that is an article of the draft law. It substitutes 13 articles in a different law and those substituted articles are not an article of the draft law and therefore it is absolutely plain that those articles are not separate provisions which can be taken and voted upon separately. Article 74, paragraph 5 of Standing Orders makes it plain that the provisions which can be voted upon separately are the articles of the draft law. That is absolutely plain and my ruling is accordingly. I add that it is possible for a draftsman to draft articles of an amending law in a different way. That is not what was done here, no doubt - and it will be for the Minister to explain - my guess would be because it is a package of measures that is being put forward. It would be perfectly possible for a draftsman to propose a set of different articles which dealt with the substituted articles in the Public Finances Law separately. That is not what was done. Equally, it would be perfectly possible for Members to come forward with amendments to the detailed articles, which would be substituted. That was not

done so in the circumstances I did not have any option but to take the article as one article to be voted on as a block.

4.5.8 Senator S.C. Ferguson:

There were 2 things mentioned in the speeches that I felt I had to follow up on. As we go round the Island and as I frequent the cheese counter of a well known supermarket the outstanding public concern is the level of public spending. This amendment will provide more discipline, both for the Council of Ministers and this Assembly. The Corporate Services review of State spending discovered, based on the evidence, that the biggest problem with State spending is this Assembly and more discipline is required. We are the ones who end up spending more money, so that must stop. The other item, Deputy Le Hérisier said you cannot win an election on a programme of cutbacks. I hate to contradict him but the research is that if you are absolutely straightforward with the electorate and you say what you are doing and why you are doing it in fact the evidence is that straight talking and cutbacks result in re-election.

4.5.9 Senator T.A. Le Sueur:

I was just going to say that it would be a shame to close this meeting on a feeling of sour grapes when, as you rightly say, Members had every opportunity to bring amendments. I was going to point out that in fact I have had discussions with the relevant Scrutiny Panel over the best part of 2 years now on the way in which some of the imperfections of the previous business plan process could be eradicated. I believe that working with them and using the outcomes from their reviews the Minister for Treasury has come up with a very good amendment to the law which I believe will make future financial planning a lot better and a lot more beneficial to the public who will know where they stand. Indeed, by keeping spending under control it has the additional merit of being able to keep taxation increases under control. But I stand really to congratulate the Minister for Treasury, his officers and the law draftsman on achieving what I believe is a significant improvement and one which I think augurs well for the future. The old business plan process was a new way of doing things and like any change it is always capable of improvement. This, I believe, is a significant improvement in the right way and I commend the Minister for Treasury and the Treasurer absolutely for the way this has been done.

The Deputy Bailiff:

If no other Member wishes to speak I call on the Minister to reply.

4.5.10 Senator P.F.C. Ozouf:

A debate on a Third Reading I think is supposed to be confined to the draft as adopted in the Second Reading but we have had a further wide-ranging debate and perhaps that is the right thing to do because this is one of the important laws that this Assembly passes. I have to say that I am disappointed, if not a little frustrated, with a couple of Members' comments. I say frustrated because we have over the last few weeks, I think, gone further than virtually any other Minister, certainly in the last 2 years. I have encouraged, cajoled, motivated, emailed, petitioned, invited, re-invited and invited again, followed up and telephone-called Members on this Bill, both in terms of its draft and its intention. I have a tick box in my office which has got every single Member down of whether or not they have been contacted, whether or not they have been followed up, whether they responded to emails, and when they did not respond I telephoned and emailed them since, because I really wanted Members to be engaged in this issue well in advance, if I may say, with the ability to make amendments. The Deputy of St. Mary is not here. He asked something of the former Minister for Planning and Environment when the Minister for Planning and Environment said the full force of the Planning Department was available to help Members in terms of amendments. We did exactly the same thing. I responded to that, as the Treasury always does in serving Members independently of this Assembly in what they did. The Deputy of St. Mary came in and saw the Treasurer and I know that the Treasurer and other members of my Treasury staff

saw other people and my 2 Assistant Ministers also briefed Members separately. I have to say to Members we did an enormous amount to ensure that when we came to a decision today Members understood. If I may be very delicate in saying I do not think some Members have understood some of the flexibility and the ability of Members that they have in this. There is a trade-off. There is a trade-off in terms of setting a departmental net revenue expenditure for this Assembly. I think that is what the public wants. I think that is what the public wants in terms of certainty and stability but there is. We have responded and we have changed and we have flexed the ability of this Assembly to make decisions and I regret the message that may go out that this Assembly in terms of its membership is unable to effect the financial decisions of the States. Far from the case and if Members were unhappy then they were invited to make amendments. I was delighted that there were not amendments because I thought we had convinced everybody that there was something in this for everybody in terms of decision-making. Deputy Tadier spoke a rallying call, in advance of the elections no doubt, of political parties. Actually political parties would disenfranchise Members of this Assembly against the very issue that Deputy Le Claire and others want. A political party in a majority would ram through an ability to make decisions of this Assembly and would mean that this Assembly would not be able to make decisions on an annual basis. It would mean that this Assembly would not be able to make decisions which would mean something to the Council of Ministers in terms of asking for a request for looking at expenditure. This Assembly has an assembly of individuals. Yes, we have an Executive but Members and Back-Benchers have enormous power to influence and ultimately decide on expending and quite rightly so. I think the reason why this Island is so successful is that there is such an ability to influence by Back-Benchers and there is not a steamroller of a Council of Ministers that has to submit itself for approval. So I deeply regret the message that may go out that Members have been disenfranchised, because they have not. They have been empowered because they are going to be able to make decisions on the really important issue of the allocation of growth. Deputy Vallois, I was delighted to hear that she supported this because, as I have said, she has been a healthy sceptic of this. I am not sure if I may say that the Foreign Affairs Minister or Assistant Chief Minister is going to have a budget of £5 million. I am not sure that is going to happen but certainly the point is well made in terms of the ability for a Member and a Back-Bencher to bring forward a proposal in order to allocate money. This is a package of measures and it is a package of measures, a subtle package of measures, including net revenue expenditure limits for 3 years growth and contingencies. While I regret that Members could not vote individually, the package of measures was the right package and needed to hang together and could not really have been voted on any other way without an amendment. So I would respectfully ask Members to consider that when they vote for the Third Reading. Senator Ferguson said about winning elections, and this is not an election speech because it does not need to be, about cuts and whether or not you can win elections on cuts. I think that the public of the Island wants to make sure the States is delivering services efficiently and effectively and that we have proper processes to do that. That is what the Comprehensive Spending Review - and Value Jersey is the label we are going to use for all of the over 220 savings initiatives - is about but it is also about being realistic. It is about being realistic that you cannot take just a simple view that is taken sometimes by business interests that simply you can reduce expenditure. We are elected to serve the public of the Island, to put in place services which people, whether they are sick or whether they have got children or whether they want safety, whether they need that, and it is up to this Assembly to guide. I believe it is a combination of making, in the next few years, savings in terms of what we do but allocating reasonable growth for the service priorities that our Island wants and this law gives us the ability to do just that. It is a combination of being harsh on spending, delivering efficiency but also putting the flexibility of where we need new money, but it is this Assembly that makes those decisions and this law allows us to do that. So, on balance, I am sorry that Members may have come to the party late in terms of discussing this law but it has been the subject of huge debate, huge discussion. It is a better law because of the contributions of Members of this Assembly when they met us and improving on it. I ask Members to vote in favour of the law in the Third Reading and I ask for the appel.

The Deputy Bailiff:

The appel is called for on the Draft Public Finances (Amendment No. 3) (Jersey) Law. I invite Members to return to their seats and I ask the Greffier to open the voting.

[17:00]

POUR: 41		CONTRE: 7		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator P.F.C. Ozouf		Deputy P.V.F. Le Claire (H)		
Senator T.J. Le Main		Deputy M. Tadier (B)		
Senator B.E. Shenton		Deputy T.M. Pitman (H)		
Senator F.E. Cohen		Deputy M.R. Higgins (H)		
Senator S.C. Ferguson		Deputy J.M. Maçon (S)		
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 Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
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 of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
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 D.J. De Sousa (H)				

Senator P.F.C. Ozouf:

May I just record my thanks to the Treasury staff, the law draftsman and the Law Officers who have given a great deal of assistance in helping me bring that law to the Assembly.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

The Deputy Bailiff:

The chairman of the Policing of Beaches and Parks Scrutiny Sub-Panel has given notice that he wishes to make a statement in relation to the recent report and it would seem this might be a convenient time to do it.

5. The Chairman of the Policing of Beaches and Parks Scrutiny Sub-Panel will make a statement on the Education and Home Affairs Scrutiny Panel's Policing of Beaches and Parks report

5.1 Deputy J.M. Maçon (Chairman, Policing of Beaches and Parks Scrutiny Sub-Panel):

Members will by now have received their copy of the Education and Home Affairs Scrutiny Panel's report *Policing of Beaches and Parks*. The report follows a review undertaken by the Policing of Beaches and Parks Sub-Panel on the issue, during which particular consideration was given to examining the promotion of public awareness in relation to littering and drinking in public spaces, the enforcement and policing of anti-social and littering laws and regulations and the consumption of alcohol in public spaces. I would like to begin by thanking other members of the sub-panel, my vice-chair, the Constable of St. Helier, Deputy Tadier and Deputy De Sousa, for their hard work, considered opinions and the experience that they brought to the Scrutiny review. **[Approbation]** Members will see that the sub-panel found that the existing Policing of Beaches (Jersey) Regulations 1959 and the Policing of Parks (Jersey) Regulations 2005 represent a sound legislative framework and do not, in our judgment, require amendment. Nevertheless, with littering given lower social priority than crimes such as vandalism or theft and consequently given lower policing priority, our evidence highlighted that there were a significant proportion of the public who object to continued anti-social behaviour and want action taken to remedy those problems. One such method in which the sub-panel found considerable merit is the use of fixed penalties, on-the-spot fines. In other jurisdictions these have proved an effective way of dealing with minor offences and the sub-panel has recommended that the Minister for Home Affairs consider introducing fixed penalties for littering, including dog fouling. However, we believe that such a scheme should only be introduced after a lead-in period of media awareness and public warning of the change in enforcement. The sub-panel has suggested that an allocation of the proceeds from fixed penalties would be usefully reinvested into ongoing education and awareness campaigns. Additionally, we have identified a number of initiatives that we recommend should be pursued by the relevant Ministers, including that the Minister for Home Affairs should work with the police and Parishes to establish a dog warden role and that the Minister for Planning and Environment, together with the Minister for Transport and Technical Services, looks into installing multi-compartment bins in public areas to target "on the go" recycling. Such new initiatives would complement some of the laudable schemes that the States departments are presently engaged in, notably the Youth Service initiatives aimed at reducing, preventing and responding to anti-social behaviour and the Eco-Active programme being developed in schools and other organisations. Ultimately, however, while education about the adverse effects of anti-social behaviour is important, it is not enough on its own. A multi-pronged approach is key, with specific community initiatives and continued, even increased, enforcement of the legislation required. Finally and crucially, the sub-panel recognises that if people were more conscious of their environment and felt greater ownership of their community they would be less likely to litter and indulge in anti-social behaviour. As such, there is further work to be done to engage with the wider public as a whole in order to develop a community-focused approach. We thank all those who have contributed to this review and commend our report to the Assembly. **[Approbation]**

The Deputy Bailiff:

The statement being made, it is now open to questions.

5.1.1 The Connétable of St. Mary:

The rapporteur has highlighted the report's focus on anti-social behaviour, including littering, especially dog fouling, and the report details the health concerns concerning this latter incidence. Will the rapporteur advise me whether he would put as much emphasis on another anti-social aspect, namely spitting in public places, and whether he considers that this should be dealt with just as severely?

Deputy J.M. Maçon:

The panel would advise that all elements of anti-social behaviour be taken seriously, whatever they are.

5.1.2 Deputy P.V.F. Le Claire:

I would like to congratulate the panel on an excellent piece of work. Can I ask the chairman, in relation to the penultimate sentence it says: "There is further work to be done to engage with the wider public." I have concerns about dogs off leads in town, which is illegal, and also dogs off leads around the reservoirs and the dogs around the reservoirs going into the water. Obviously these are not necessarily policing of parks and beaches but I am wondering ...

The Deputy Bailiff:

The sub-panel is not therefore responsible for this.

Deputy P.V.F. Le Claire:

No, Sir, so I am wondering whether or not further work might look into these areas.

Deputy J.M. Maçon:

Indeed, further work might look into these areas.

5.1.3 Deputy T.M. Pitman:

Can I congratulate the chairman on his panel, which I did not participate in. Did the panel investigate whether Deputy Le Claire's previous interest in dog mess might be worth developing, so a Member might have special interest, special responsibility for such matters?

Deputy J.M. Maçon:

While the panel did not recommend that a specific Member should have a responsibility for such things, the issue of dog fouling was brought up within our review. It was a concern to members of the public for the health issues which we have touched on. This is why the panel is recommending possibly the establishment of a dog warden role, who would be able to consider the implications of such things.

5.1.4 Deputy J.B. Fox:

The Parish of St. Helier, and probably other Parishes as well in popular areas, had a very successful park warden scheme, which was very effective in law and order and covering many of the things that are covered in this report. Was this discussed at the sub-panel with a view to reintroducing such a scheme which could incorporate many of the things that are being suggested at the moment here?

Deputy J.M. Maçon:

Under the existing legislation there are provisions where authorised persons within parks can be given certain powers to deal with such things. In fact, our report does discuss the way in which such roles could implement further powers such as the fixed penalties. So, yes, they were discussed at the panel and there are subsequent recommendations.

5.1.5 Senator F. du H. Le Gresley:

I would like to congratulate the chairman and the panel on their report. I am a little bit disappointed though that they did not go further with their discussions around the idea of designating beaches specifically for dogs, along the Guernsey model, and I would like to ask the chairman why they did not take that any further.

Deputy J.M. Maçon:

That issue was discussed by the panel and in fact we received many public submissions on this matter, although we received contrasting views in that some people wanted to go down the Guernsey model, others did not. We asked the relevant authorities and the issue that we always came back to was what is the most practical way in order to enforce things, and the issue we always came across was, while that might be effective for responsible dog owners, the issue we always deal with is how do we react and respond to irresponsible dog owners and the panel did not have enough evidence to be able to make that recommendation.

5.1.6 Deputy T.M. Pitman:

Taking on from Senator Le Gresley, as someone who has taken in a dog since the death of a friend, it just seems bizarre to me that with rain beating down heavily anyone who wants to exercise their dog and not annoying anyone is breaking the law. Did those discussions get enlarged upon to see whether this could be a more practical approach if we cannot go the Guernsey route? Were there views expressed on can we have a practical solution. We do not all want to break the law but who are you hurting if you are walking a dog on a beach with no one else there?

Deputy J.M. Maçon:

Yes, I believe this was briefly touched on by the panel, the issue of the restriction on dog beaches and things like that. However, the panel received no evidence to provide any further recommendation.

5.1.7 Deputy K.C. Lewis:

I am a dog owner and a particular bugbear of mine is people who do not pick up after their dogs. It is completely unfair to children, senior citizens, wheelchair users and people who may be partially sighted. Does the chairman think that a dog warden would be a step too far? I am in favour of heavy fines but is a dog warden a step too far?

Deputy J.M. Maçon:

It is, of course, a recommendation and a consideration which would have to go out to consultation. I would agree with the points made by Deputy Lewis, the discomfort that such behaviour does leave many within our community. However, is the dog warden role too far? The issues that we found were that, given the level of responsibility and priority that this was given, the States of Jersey Police did not rank it very highly and the panel thought that possibly by introducing a new role or extending existing roles through other officers that that might be a way in order to combat this particular area and that is why we have made that recommendation.

5.1.8 The Connétable of St. Brelade:

Given that in the 1771 Code, I noted that the Connétables or the Centeniers could issue a fine *sur-le-champ* on the spot for those who languished in cemeteries during the time of Divine Service, [Laughter] could the Chairman just indicate to me how practical he thinks it would be to issue on the spot fines these days?

Deputy J.M. Maçon:

We did not decide to go down on-the-spot fines as such. We decided to extend the existing fixed penalty regime because we have found on surveying various jurisdictions such as England and Singapore that because those jurisdictions had a programme of different initiatives that they used,

in particular fixed penalties or on-the-spot fines, that is why we brought that recommendation forward as it seemed to prove effective in other jurisdictions and it could possibly be used here.

5.1.9 The Connétable of Grouville:

On reading your report, which I did, I noticed that you advocated bringing in a £50 fine for dog infractions. Are you aware there is already a fine in place under the Dogs (Jersey) Law for £500?

Deputy J.M. Maçon:

Yes, again it is down to the whole issue of how can we do this proportionally and more practically because the evidence that the panel received was asking different questions about how many times the police and the States had brought these charges forward and the response that we got back was none in living memory and therefore we thought that if we had a more standardised approach, it might be more effective.

5.1.10 Senator F. du H. Le Gresley:

I would like to ask the chairman if he or his panel were surprised when they learned from the police that since 2004, they had only received 4 calls from the public concerning littering during that time. Does he perhaps think that the reason people do not report it is because nothing is ever done about it?

Deputy J.M. Maçon:

I thank the Senator for his question; he has been most helpful in asking it. Indeed, he is quite right. Many of the public submissions that we received were based on that level of apathy in that when they do report things, either, yes, they do not feel that action has been taken or it is not being taken seriously enough, and that indeed was verified by the information received from the States of Jersey Police. Nevertheless, because we received so many submissions, the panel is able to state that we do believe it is an issue which the community takes seriously.

5.1.11 Connétable J.L.S. Gallichan of Trinity:

On dog wardens, did the panel consider using the countryside rangers that we have employed to police the paths along the coast?

Deputy J.M. Maçon:

No, we did not specifically look at that particular role. However, in discussion, we do make the point that these powers could be introduced to other roles and there would be nothing barring that.

The Deputy Bailiff:

Well, Chairman, that brings the dogged questioning to an end. [Laughter]

PUBLIC BUSINESS - resumption

6. Draft Fire and Rescue Service (Jersey) Law 201- (P.98/2011)

The Deputy Bailiff:

We now come to P.98, which is the Draft Fire and Rescue Service lodged by the Minister for Home Affairs and I ask the Greffier to read the citation of the draft.

The Greffier of the States:

Draft Fire and Rescue Service (Jersey) Law, a law to replace the Fire Service (Jersey) Law 1959, to continue to provide for the States of Jersey Fire and Rescue Service; to provide for the better protection of life, property and the environment against fire and emergencies arising from other

causes, and for related matters. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

[17:15]

The Deputy Bailiff:

Minister, do you wish to propose this?

6.1 Senator B.I. Le Marquand (The Minister for Home Affairs):

The Fire and Rescue Service is an excellent service which is well led and consists of a very professional and motivated and enthusiastic team. However, their legislation needs to be updated. The current legislation, which is to be replaced hopefully by this law, is the Fire Service (Jersey) Law 1959. Quite a number of the provisions in that law are now being re-enacted in this law and improved. That law, when originally passed, also covered the Airport Fire Service but that is no longer the case and, in fact, therefore, has been amended a number of times and, frankly, it is not now fit for purpose. Since the 1959 law, there have been a number of other areas which have become core activities of the Fire and Rescue Service such as the promotion of Fire Safety Education for information, advice and training for the public; rescuing people who are trapped in vehicles as a result of road traffic accidents and protecting the area round and making it safe and rescuing people from dangerous places such as cliffs or high buildings. In addition to this, the Service has taken on a number of other public safety areas such as inshore rescue of people from rocks, dealing with white powder incidents involving a possible dangerous substance, dealing with the spillage of fuel or toxic chemicals and pumping out flooded premises when there is a danger to life and, indeed, tackling, in conjunction with the Guernsey Fire and Rescue Service and currently financed from the U.K., fires on vessels at sea. In addition to this, the Service sometimes provides humanitarian services such as pumping out premises where there is no threat to life or rescuing animals or helping people to get into premises. Now, the way in which the main part of this law is structured is firstly to widen the definition of core services and, secondly, to make it possible for the Minister to widen even further what are core services but without them being built permanently into the law and, thirdly, to deal with issues like humanitarian services. So the first purpose of the law is to expand the list of core services to make provision for further services to be treated as core services and to make statutory provision for humanitarian services. The second purpose of the law is to make various provisions in order to ensure that the Service has the necessary resources, powers and access to water to enable it to function effectively. The third purpose of the law is to make provision for the constitution of the Service and the Chief Fire Officer. The fourth purpose of the law is to make more detailed provisions in relation to the circumstances in which the Service can charge for non-core services and with safeguards being built in in relation to this and rates of charge. The fifth purpose of the law is to improve the provisions in relation to criminal offences in this area. The sixth purpose of the law is to make consequential alterations to other laws. The law has been subject to a satisfactory Human Rights audit and the Chief Minister, during my absence on holiday because my Assistant Minister could not do this, lodged the law and signed the necessary declaration on my behalf. I am not going to deal in great detail at this point with human rights because most of the issues which arise are in relation to what are called qualified rights where an interference with these can be justified if, in accordance with law, it is necessary in a democratic society for the protection of public safety, for the protection of public health or for the prevention of crime and disorder. Now, clearly, in relation to almost all of these provisions, it is very clearly necessary for the protection of public safety and the protection of public health. I will deal with other human rights issues as they arise under particular articles. As the law is bringing the situation up to date in terms of what the Service is already doing, there are no additional financial or manpower implications. I therefore commend this law to the Assembly and move the principles of the law.

The Deputy Bailiff:

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

6.1.1 Deputy A.E. Jeune:

I attended a very good presentation of the role of the Fire Service given by the Chief Officer of the Fire Service and members of his service. This should not be just about updating legislation; it should be about updating organisational and cultural behaviour. Like with the Police Force, it is important we develop our local personnel and more emphasis should be given on secondment opportunities which would be 2-way, as Jersey has rescue capabilities which are not necessarily available at U.K. service providers, for example, and could therefore be very attractive. It is not difficult to arrange and it could be immensely beneficial to all.

The Deputy Bailiff:

Does any other Member wish to speak? If not, I call on the Minister to reply.

6.1.2 Senator B.I. Le Marquand:

I am very conscious of the need in relation to a whole host of departments under the auspices of Home Affairs for developmental training. I am well aware that there have been failures in the past. They were highlighted in relation to the police by an excellent report from my Scrutiny Panel and it is clearly an area that we have to do better in the future. But I have previously, when commenting on this, indicated that it will cost money in terms of better training and so on but we have to develop our good and capable officers for the future. I call for the appel.

The Deputy Bailiff:

The appel is called for. The vote is on the principles of the Draft Fire and Rescue Service (Jersey) Law and I ask Members to return to their seats and I ask the Greffier to open the voting.

POUR: 37		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
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. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisser (S)				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				

Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
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 A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

Deputy Le Hérisier, do you or your panel wish to scrutinise this piece of legislation?

Deputy R.G. Le Hérisier (Chairman, Education and Home Affairs Scrutiny Panel):

We have in fact done a short scrutiny, which was mentioned in September 2010, and we were well pleased.

The Deputy Bailiff:

All right, thank you. Minister, how do you wish to proceed?

6.2 Senator B.I. Le Marquand:

Starting with parts 1 and 2, Articles 1 to 5. Article 1 contains definitions. The important definitions are that of emergency and humanitarian services and technical fire safety advice. I will deal with those in greater detail if issues arise under particular articles. Article 2 simply states that the Minister for Home Affairs administers the law. Article 3 deals with the constitution of the Fire and Rescue Service; Article 4 with the Chief Fire Officer and Article 5 with the appointment of an Acting Chief Fire Officer if that is necessary. So I move parts 1 and 2.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak on parts 1 and 2? All Members in favour of adopting parts 1 and 2, kindly show? Those against? Parts 1 and 2, Articles 1 to 5 are adopted. Yes, Minister?

6.3 Senator B.I. Le Marquand:

I propose to move next Articles 6 to 14, which is the first half of part 3. Article 6 deals with the promotion of fire safety and with various different categories in relation to that. I have to say that promotion of fire safety has become a very, very important part of the job because prevention is better than dealing with the problems, and issues like education of the public in relation to various different areas is a very, very important aspect of this. Article 6 puts a duty upon the Minister to promote fire safety. Article 7 puts a duty upon the Minister to make a provision in terms of extinguishing fires and protecting life and property. Article 8 puts a duty upon the Minister in terms of road traffic accidents and I have already outlined the 2 aspects of that. Article 9 puts a duty upon the Minister in terms of provision for the purpose of rescuing people from dangerous places. Article 10 allows the Minister by order to add in other types of emergency which would then become core activities although, of course, because they were by order, if there was a change, they could subsequently be removed and that is where the definition of emergency comes in which is in Article 1. Emergency means an event or situation that causes or is likely to cause a person to die, to be seriously injured or to become seriously ill; an event or situation that causes or is likely to cause serious damage to property or an event or situation that causes or is likely to cause serious harm to the environment. It may surprise Members to see that we have put in a provision there in relation to environmental issues but because when it comes to dealing with toxic chemicals and things of that nature, it is, in fact, the Fire and Rescue Service have the necessary safety equipment

and so on very often to deal with these sorts of things. Article 11 enables the Minister to make provision in respect of humanitarian services other than those which arise under the previous Articles 7 to 10 and, again, that can be done by order and I have already specified the sorts of categories of things that we might find in relation to that. Article 12 effectively puts a duty upon the Minister to ensure that there is a proper provision of personnel, training, et cetera. Article 12(f) is slightly different because it puts also a duty upon the Minister to ensure that in delivering the services, reasonable steps are taken to prevent or limit damage to property resulting from that. Article 13 gives the power to the Chief Fire Officer to get involved in helping in other situations if that were so required, even beyond the ambit of those set out in the law and in orders. Article 14 deals with reinforcement schemes. Reinforcement schemes are basically agreements between our local service and other services to help each other as and when required so that if we have some terrible disaster that we could not cope with ourselves, we could call upon colleagues from Guernsey or from the U.K., other British services, to help us and vice versa. We could give assistance in that sort of way and it deals with that. So I move those Articles 6 to 14.

The Deputy Bailiff:

Are those articles seconded? [**Seconded**] Does any Member wish to speak?

6.3.1 Deputy K.C. Lewis:

Just a brief query. Under part 3, 13: “Other Events and Situations. The Chief Officer may take any action he or she considers appropriate in response to ...” under (3)(c) as the Minister has just mentioned: “Outside Jersey in support of a reinforcement scheme made by the Minister under Article 14” and 14 stipulates British Islands. If there was a reciprocal agreement with other British Islands, does this limit the Fire Service to British territorial waters? I am thinking if there was, say, a merchant ship on fire outside of Jersey territorial waters, would the Fire Service be prevented from assisting?

6.3.2 Senator P.F. Routier:

Article 12(d) makes reference to making arrangements for securing the co-operation of the Airport, Rescue and Fire Fighting Service when required. I really would just like to confirm that the Airport Fire Service is very prepared to do that. I think in recognition of that, the Minister may take note that we are very happy to do that and that when we have things that are going on in the Harbour, for instance, in regard to changing responsibilities down there and that we need to co-operate also in that area.

6.3.3 Deputy R.C. Duhamel:

Just a quick semi-technical question for the Minister. Item 13 part 3 defines an action to be taken by the Chief Fire Officer in relation to safeguarding personal lives, damage to property or harm to the environment. It defines an action to be any action that may be undertaken under paragraph 1 for a purpose even though that purpose is not mentioned in any of the Articles 7 to 11, which specifically define reasons for the Chief Fire Officer to act. I am just a little bit curious as to why it appears to be worded very openly to allow the Chief Fire Officer, it would appear, to do anything he wishes and whether or not that would pose any problems with any other departmental responsibilities or, indeed, legal responsibilities?

[17:30]

6.3.4 Deputy R.G. Le Hérissier:

It came up in Scrutiny, number 9, Rescue from Dangerous Places. I wonder if the Minister could address the issue of where the R.N.L.I. (Royal National Lifeboat Institution) lifeboats operate and where the Fire Service inshore craft operate? I am sure there is a lot of co-operation as we thought there was. Under 12, Delivery of Services, this has arisen since our Scrutiny and I have been in active correspondence with the Minister. Could he identify whether this embraces succession

planning at the higher levels of the Fire Service which Deputy Jeune, of course, raised and has given us cause for worry? Under 14, Reinforcement Schemes, we did discuss on the panel the fact that the Fire Service's role in Britain might well change and they might follow their French counterparts who, as we know, are first responders in terms of medical assistance as well as fire fighters. Has he been in contact with the neighbouring French services in order to obtain help from them aside from - I am not sure where it is covered - whether the extension of the role of the fire fighter which was discussed in Scrutiny has been taken any further?

6.3.5 The Connétable of Grouville:

I may be missing something here but under paragraph 7(2), the Minister's duty under paragraph 1 is to do in respect of fire occurring in Jersey above the low water mark and yet in several other paragraphs, including 14, he seems to have complete freedom to go as and where he wishes. I just wonder why that low water mark clause is in there when really it does not obviously seem to apply?

6.3.6 The Deputy of St. John:

Likewise, the low water mark one surprised me, given that historically I am aware that exercises have been held with vessels at sea with the Emergency Services. Given the accident we had 10 years ago, I suppose, with the St. Malo vessel, a lot of work was done with the Inshore Lifeboat and the Lifeboat and the Fire Service but also how is this covered when they work alongside other organisations, whether it is the CROSSCO or CROSSMA or the Channel Islands Air Search, an area obviously which having been a former chairman of, I have got concerns because I want to see everything dovetailed together so the minimum of time is lost at any incident in getting there and therefore surely they have got it covered. But how is it covered within the law, please, Minister, because that is an area that if we are going to have a problem is to make sure that we are working alongside our Guernsey, our French, our British counterparts with any scenario that might take place out at sea. I would like to know how that is all covered, please.

The Deputy Bailiff:

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

6.3.7 Senator B.I. Le Marquand:

Some of the questions overlap with each other. If I start with the question in relation to a fire at sea, that is covered certainly under 13(3)(b), an action in an area of the sea. It also, I believe, could be covered in relation to other emergencies under paragraph 10, an order-making power. As I explained before, the intention was to create a list of core activities, ones which we were going to be committed to and then to be able to graft on others which might come in and out. There is a particular problem which we are potentially facing at the moment in relation to tackling fires at sea because, together with Guernsey, we operate as a unit which has been financed by U.K. Coastguard effectively. Now, some plans have recently been floated to stop the financing of that and to change that and there are issues that could arise so I did not want to build into the permanent tasks things which we might need to deliver in a different way at a different time but instead have built in, both in Article 10 and Article 13, the ability to get involved in relation to those things. The next point I have got was a question in relation to Article 12(d) and, of course, the fact is that the Airport Rescue and Fire Fighting Service has certain particular equipment and particular skills, particularly in relation to fighting oil fires so it is well known that if we had a major oil fire, we might need to call upon their services and there are plans to do that if necessary though we are well aware that if we had to do that, it might close the airport in an extreme case. Nevertheless, there are contingency plans as part of emergency planning in relation to that *in extremis*. There was a question in relation to whether there were any limits on the issues in Article 13. Well, the limit, in my view, is Article 13(1) because the actions referred to under 13(3) must refer back to an action under Article 13(1) and that is limited to an event or a situation that causes or is likely to cause a person to die, to be injured or to become ill, an event or a situation that causes or is likely to cause damage to

property or an event or situation that causes or is likely to cause harm to the environment. So under 13, most certainly the Chief Fire Officer cannot go off and just do anything he likes; it has to be limited within the ambit of those areas. I am very pleased that the issue of the R.N.L.I. was raised because this gives me a chance to say yet again what I have said on many occasions and there is a misunderstanding among some Members in this Assembly. What we have in the Fire and Rescue Service is the ability to take very fast by road to a beach a vehicle which then is suited to rescue people inshore from off the rocks. Now, the fact is that we can get there much faster to whole swathes of the Island than could a lifeboat. The fact is also that we have a boat designed to go very close in and to deliver and although there is a similar boat which the R.N.L.I. have, it will take them much longer to get there. In practice, the decision as to who goes was historically made by Jersey Radio, now, I think, rebranded as Jersey Coastguard and they will decide who to call upon. In fact, in practice, it is in fact our people who are called upon. Its staff were there ready and waiting and I have been at Fire Headquarters on an occasion when suddenly the alarm has gone and within a matter of seconds, just as would happen with going to a fire engine, the staff have turned up and they have gone into the thing that pulls the boat, they have gone there and they are in it and they are away straight away and it is very, very fast indeed in terms of that. We are not trying to take away from the role of the R.N.L.I. but their role is primarily out at sea and, as I said, there are whole swathes. If you think about it, if the R.N.L.I. are going to launch, they have got to call people in from work, they have got to get in there, they have got to dress, they have got to get into the boat, they have got to get out in the boat whereas our people are ready to go very fast in a vehicle and there are whole swathes of the Island, including places like Grève de Lecq and so on up in those areas, St. Brelade and so on, St. Clement, Grouville. There is no question we can get there faster and if a person is stuck on a rising tide on a rock, minutes can be absolutely vital. The additional costs of providing the service are not great because with their equipment and their training and so on, it is existing people who are there and it is a very important service. We are not in competition with the R.N.L.I. It is complementary but I cannot emphasise how vital it is. In fact, when I met with staff of the Association, they were very concerned about any prospect of a cut there because they genuinely believe that lives would be put at risk. The issue of succession planning is not built into this; there is nothing specifically in the law on that but I have already commented on that. The issue about reinforcement scheme, yes, you have rightly spotted that it does not include the French in such a scheme. This is a scheme with the British but, in fact, the nature of the scheme is such that if we have entered into such an agreement and people come over, then they will effectively be treated as our fire fighters. Now, this does not, of course, exclude the possibility of co-operation with other services but they are trained in a different way; they have slightly different functionalities. Our whole scheme of training and operation is very much along the U.K. model and that is why this law has stuck to that. The interplay of Article 7(2) and Article 14; I think this is the low water mark issue. The point is here that we had to define in some way what was going to be the ambit of this under 7(2) because 7(2) is part of the core activities and in this is fire fighting capability and for the same reasons I have said before, we did not want to build in, as a permanent requirement, a fire-fighting capacity at sea in case the system in which that was delivered changed although, at the moment, we are doing that. We have the capability alongside Guernsey but, as I say, the system may change but that is dealt with under Article 10 and potentially under Article 13. Yes, we are very keen to work in co-operation with other organisations as our particular areas of skill and equipment allow us to do that. I move Articles 6 to 14.

The Deputy Bailiff:

Articles 6 to 14 are proposed. All Members in favour of adopting those articles, kindly show. Those against. The articles are adopted.

6.4 Senator B.I. Le Marquand:

I propose to move next Articles 15 to 20, which is the second half of part 3. It starts with Article 15, which relates to an ability to charge. Now, I need to explain that there is already a system in place under the existing legislation which allows charging in certain circumstances and that was under the 1959 law initially. What we have done here is built in a whole number of safeguards in relation to the process of charging and firstly, Members will see that there cannot be charging for any of the core activities in terms of Articles 7, 8, 9 or 10. Those are the real emergency type of activities. There simply cannot be charging for that. The only areas where there can be charging is in relation to the provision of technical fire safety advice which is 6(d). We had a situation in the past where, when people have been designing building and things of that nature, very often the Fire Service has been doing a great deal of work for free in relation to this. We do not consider that this is right; if people are designing new buildings, it is quite appropriate, if they want to seek technical advice on that, that they receive it but we should be charging for that because there is no reason why developers should be getting free advice in relation to those sorts of areas. Article 11 is within the ambit of charging. That is humanitarian services and that is why we structured the articles in that sort of way. That is the rescue of persons, assistance of persons to gain access to places and provision of medical aid to persons otherwise than in cases of emergency and also includes the rescue of animals. So these are really very fringe type activities. I will give you an example of the sort of thing which arises. There is a sort of situation in which there has been flooding of premises but there is no risk. The electrics are turned off; there is no risk to individuals. Now, frankly, if we go along and start pumping out these premises, then all we are really doing is reducing the cost eventually to the insurance company because if we make a reasonable charge for services, those people will recover that from their insurance company and so on. So it is perfectly reasonable that in such circumstances that there be charges that can be made. But there are a number of safeguards built in in relation to charging. Firstly, as I say, it is only in limited circumstances which are non-emergency. Secondly, an order has to be made to deal with rates of charge and also with exemptions from charge and the human rights advice that I have received is that charges should not extend beyond purely recovery of costs. It would not be proper for them to exceed that. Under paragraph 5, no charge can be made unless the person to be charged has been informed before the action is taken of the charge which may be made if the action is taken. So effectively the person would know and be agreeing to this activity taking place and to them being charged in relation to this. The Minister can also waive any charges and this acts as a kind of appeal system against charges because the Minister has a right to waive them if he thinks there should not be a charge in a particular case and a decision of the Minister to waive or not to waive is one that would be subject to judicial review.

[17:45]

There is already in existence a detailed policy document on charging, which already occurs in many of these cases and it is proposed that the principles of that document will continue to be followed. Human rights advice is that charging is okay if it is not in relation either to emergencies or the extinguishing of fires and, as this is structured, that has been safeguarded. That is Article 15. Article 16 is technical and specifies who has charge and control of operations in relation to the extinguishing of a fire. Article 17 gives various powers to fire fighters, including members of the Airport Rescue and Fire Fighting Service and, indeed, police officers, to take various actions which they may believe necessary if they genuinely believe a fire has broken out. Now, this emergency type situation gives special powers to these various different people to take whatever action is necessary to deal with the fire and also to safeguard the public and there are a number of details in relation to that as to the sorts of things which may occur. But because of concerns expressed to me by Deputy Duhamel in relation to the effect of this Article 17, we have built in paragraph 4 in order to make it clear that in doing whatever the Fire and Rescue Service may do in relation to these things, that they are not exempted from responsibility and potential liability, such as criminal liability, under the Water Pollution Law. We have not changed the position there so they have to

consider issues of pollution as part of the process of deciding what they may or may not do. Article 18 deals with powers of fire fighters to obtain information and conduct investigations and this includes issues of access to premises. Under 18, access to premises is limited to only with consent of people and there are various details there. Article 19 deals with the situation where there would be a necessity of access to premises. I am talking about access to premises for the purposes perhaps of investigating why a fire has taken place or things of that nature. Under Article 19, there is a power to obtain a warrant and there are safeguards there in the normal way in relation to obtaining a warrant to obtain access. Article 20 is a general paragraph giving additional powers to a fire fighter in respect to what they are doing. I therefore move those articles.

The Deputy Bailiff:

Articles 15 to 20 are moved. Is that seconded? [**Seconded**]

6.4.1 The Deputy of St. John:

It is the charging. I think I heard the Minister say that the U.K. pay for certain things out at sea and they were talking about reviewing this. I am not sure if the Minister is aware but north of the median line is the responsibility of the U.K. and south is the responsibility of France and we fall in the French sector when it comes to rescue and anything to do with affairs at sea. I do stand to be corrected but I am 99 per cent sure that is correct. That being the case, I can understand why the U.K. would want to put charges in place, but that said, we have a very good working relationship with our French cousins, whether it is with their helicopters or with our air search aircraft or with our lifeboats and their French fixed wing aircraft or helicopters. If the Minister has not already opened dialogue with the French on that, he needs to because if the U.K. are going to be pulling the plug on something, we need to be working very closely with our French cousins in making sure that we are covered because if we attend outside our territorial waters, which is covered by the French, and I am sure we would do everything we can but if at the end of the day there is a lot of cost involved, I think we need to make sure our back is covered. Another item under Article 15, the Minister mentioned pumping out at the time of a flood or whatever might happen. I sincerely hope that because to the family concerned, whether it is a flood that goes through the house and does extensive damage, that is as important to them as somebody who has a fire in the roof of their house because we would deal with one and the way the Minister spoke, the other one would have to claim off his insurance. I can understand within reason but both of them would be claimable from the insurance either way but we would still go and put the fire out and not charge them yet we are talking about charging them for a pump out in the event of serious damage to a property. It does not seem to sit well in my mind that we can charge for one and not the other, and they are both equally as serious to that particular family. Yes, if it is a property that continually floods, then obviously the owners need to take the necessary remedial action to make sure it does not keep on occurring but on one-offs, I would like to hear the Minister's view how he is going to handle that, please.

6.4.2 Deputy K.C. Lewis:

Again, a minor query, ability to charge. The Chief Fire Officer may charge a person under 15(2)(d) responding to an automatic fire alarm where it operates because of a malfunction and there is not an emergency at that place concerned. But under (5), it says the Chief Fire Officer may not impose a charge on a person in relation to the taking of an action unless the person has been informed before the taking of this action. I am presuming if there was an automatic alarm malfunction that the owner is then warned so any subsequent visit they may be charged?

6.4.3 Deputy S. Power:

I would like some clarification on 20(2)(c), (d), (e) and (f). The reference to the word "fire fighter" I take it must mean also the reference to a senior fire fighter or the Chief Fire Officer in carrying out inspections of samples, dismantling an article or taking possession of an article. To what extent

can the Minister say that the Chief Fire Officer or the fire fighter stays in charge until such time in a major incident such as possible loss of life or arson where he calls in other forces such as the States of Jersey Police and who stays in charge of that investigation at that time?

6.4.4 Deputy D.J. De Sousa:

I too want to follow up on the Deputy of St. John's point about the fact that if a house floods and it is not seen to be an emergency as in the electrics are a danger or whatever, this will not be a deterrent for people calling because obviously insurance, if something is neglected and left, would not pay up either so if the Minister can clarify on that as well?

6.4.5 Deputy J.B. Fox:

I just wanted to clarify with the Minister; we were talking about appeals. He said that the appeal was to the Minister and then I understand to the Royal Court. Most places nowadays have appeals that have an independent element in them as well. If he has not got such an independent element, i.e. an independent person within the appeals process, would he consider one for such events because most people in things like this get very upset, especially with fire and flooding?

The Deputy Bailiff:

Does any other Member wish to speak? If not, then I call on the Minister to reply.

6.4.6 Senator B.I. Le Marquand:

This issue in relation to working together with the French. What I need to explain, of course, is we are a Fire and Rescue Service. We are not the R.N.L.I. and the only boat that we have is an inshore boat so we are not going to be going out and about in our boat trying to rescue people out at sea. What we do have is a fire fighting capacity, together with Guernsey, on larger boats and that requires delivery of the firemen by something like a helicopter. So it does require working together with others in that sort of way and, yes, at the moment we have that capacity but it is being financed from the U.K. If it is not, then I am well aware that we are going to have to continue to make some sort of provision and I or my successor are going to have to make some difficult decisions on that but I hope it will continue to be financed from the U.K., as it is at the moment. The issue in relation to floods pumping out. Yes, if there is a continuing danger to life or electrics or whatever, that is something that will happen but the fact is in other circumstances that if we are going to have a fire engine with its pumping equipment staying in situ for a number of hours, then there is a cost in relation to that because that is being taken up and that will probably then mean that we have to bring in reservists to cover, we have to bring in other officers to cover, so that we have got the number of people that we require. Now, my view in relation to that, this will depend upon the circumstances and this is why there is a discretion as to whether or not to charge. In the eventuality, if there is going to be a charge, then people have got to be told that we are going to be charging for this. There are other companies, private companies, which have pumps and the ability to pump out, so I do not think one can say we should never be charging in relation to what is not really a rescue service as such. It is an ancillary humanitarian service to try and help the people out and the reality is that there is a cost to us in doing these things and I think there will be occasions when it is right to charge but the Minister still has the right to waive the charge in appropriate cases. The point about 15(2)(d) and 15(5); yes, the idea here is this, that if there was an automatic fire alarm that kept on going off, there would come a point at which the Fire Service would say to the people: "Look, the next time that your alarm goes off, we are not going to respond to it unless you agree that if we do attend, that we will make a charge." That is perfectly proper and the trouble is otherwise that you have got no incentive on people to put right their alarms and make sure they are not defective and so on. So it is applying a little gentle discipline here to people if necessary. The issue in relation to Article 20(2)(c) to (f) was a question who is in charge. Well, this is a situation in which a fire fighter will have exercised a power under Article 18 and that is a power to obtain information and to conduct investigations. It seems to me that in reality, this is going to be a

situation where a fire has taken place and where the fire fighters are being asked to go in and investigate. In fact, very often it is in a situation where there might be a suspicion of arson or something of that nature and the police will be asking them to do that so that in any eventuality, they will be working in conjunction with them. But this gives them the powers to do that and insofar as they are doing that, they will be responsible for what they do in relation to that. The issue in relation to appeals. The fact is that the rates of charge will have been set by order. The rates of charge will be limited to cost recovery and the person will have agreed effectively to pay in relation to this. So the only basis of appeal really is going to be a situation where the Minister is saying: "I do not think we should really be charging for pumping out in these circumstances" or something of that nature and therefore I think that is perfectly sufficient as a process. It is unlikely, frankly, that someone would use judicial review but it exists if necessary. So I maintain Articles 15 to 20.

[18:00]

The Deputy Bailiff:

Articles 15 to 20 are proposed. The appel is called for. I invite Members to return to their seats and I will ask the Greffier to open the voting.

POUR: 42		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
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. John				
Connétable of St. Saviour				
Connétable of St. Clement				
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 Hérisier (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 P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
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 T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

Deputy R.G. Le Hérissier:

I do not wish to pressurise the Minister. Are the remaining articles uncontentious or will they require further explanations? If they are, we may have to wait till the morning.

Senator B.I. Le Marquand:

I do not think they are going to be contentious but this could be famous last words, of course. I do not anticipate they will be contentious.

The Deputy Bailiff:

Sensing the mood of the Assembly, I wonder whether you might propose them *en bloc* in very short form and see what questions arise?

6.5 Senator B.I. Le Marquand:

What a good idea. Yes, I propose Articles 21-35.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak on Articles 21 to 35?

6.5.1 The Deputy of St. John:

Historically, before the Fire Service was paid for by the Government, they used to have to have a plate, which I have still got on one of my properties, a fire plate supplied by the insurance company. Is this the start where we are going to have to with time have to have a plate on our properties yet again or on our possessions because that property will have been insured and we have paid so much in tax or whatever it may be towards the Treasury so as we can say well those properties are insured and therefore we can go and deal with those fires at no additional cost to that household because that is the way it appears to be going with charges.

6.5.2 Senator F. du H. Le Gresley:

I wonder if the Minister could explain to me Article 30, fires that are not accidental. The reason why I would like an explanation is were these penalties in the 1959 law or similar penalties as I find them rather strange appearing in a law which is about the Fire and Rescue Service. I would have thought they would come under other legislation but not in this particular piece of new law.

6.5.3 Deputy K.C. Lewis:

Just a very quick inquiry, under 29, false alarms. If someone knowingly summons the Fire Service and it is malicious, it is an offence liable to imprisonment of a term of 3 months and a fine of level 3. Could the Minister say what level 3 fine is, please?

The Deputy Bailiff:

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

6.5.4 Senator B.I. Le Marquand:

I am not quite clear as to how the Deputy of St. John's question arises from these articles but nevertheless he clearly does not want to go back to the days of insurance plates and that is not the

intention, but there will be situations where people do have insurance and it is perfectly reasonable to make a charge. In relation to Article 30, this was, of course, in the 1959 law and this is substantially the same as in the 1959 law and so we had to re-enact it otherwise these offences would have ceased to exist. In relation to Article 29, level 3 is £2,000. I maintain those articles and the schedule.

The Deputy Bailiff:

Articles 21 to 35 and the schedule are proposed. All those Members in favour of adopting, kindly show. Those Members against. Those articles are adopted. Do you propose the Bill in Third Reading, Minister?

6.6 Senator B.I. Le Marquand:

I do indeed, yes.

The Deputy Bailiff:

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

6.6.1 Deputy R.C. Duhamel:

Just a quick one. I notice that notwithstanding clauses 17 and 13 conferring powers upon the Fire Fighting Services to offset any damage that might be caused to a particular property in relation to damping down of adjoining properties, does this law absolve the Fire Fighting Department and indeed the States from any liability for damage caused by that damping down process and if not, does it constitute an equitable law? Is it fair that perhaps damage that might be caused to adjoining properties to save another one in the middle which might represent unfair opportunities for claim through insurance or in terms of charging and hold over no opportunities to those persons involved to claim off the States?

6.6.2 Deputy P.V.F. Le Claire:

Just very briefly. I am very pleased to support the Minister in this legislation and I would like to congratulate him and his Assistant Minister and offer my personal thanks - other Members can say their own - to the Fire and Rescue Service who received my support in this legislation and payment for the work that they do for us all in Jersey.

The Deputy Bailiff:

Does any other Member wish to speak on Third Reading? Then I call on the Minister to reply.

6.6.3 Senator B.I. Le Marquand:

There are 2 safeguards in relation to the Fire Service not acting reasonably in terms of the way in which they were using water or whatever. The first is a general one in Article 12(f), which I pointed out before which is that the Minister must make arrangements to ensure that reasonable steps are taken so as to prevent or limit damage to property. That is included. The powers under Article 17 and others as indeed all these powers would, of course, be subject to human rights considerations and that means that anything that is done must be necessary and proportionate for the purpose or else it could give rise to a right of action. So if there was negligence in relation to such behaviour, that could definitely give rise to a cause of action and so there is a protection there. I move the Bill in Third Reading.

The Deputy Bailiff:

The Bill is moved in Third Reading. The appel is called for. I invite all Members to return to their seats. The vote is on whether to adopt the Draft Fire and Rescue Service (Jersey) Law in Third Reading and I ask the Greffier to open the voting.

POUR: 45		CONTRE: 0		ABSTAIN: 0
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Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
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 Grouville				
Connétable of St. Brelade				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
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 Hérisier (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 P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
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 D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

Can I also just give notice to Members - it may have happened earlier - but I give notice that R.87, Income Support Review of the Interaction between Income Support and Employment prepared by the International Centre for Public and Social Policy has been presented by the Minister for Social Security.

Deputy R.G. Le Hérisier:

I wonder if we could adjourn and if the chairman of P.P.C. could talk either now or tomorrow morning about “progress to date”.

The Deputy Bailiff:

Chairman, do you wish address Members on that now?

The Connétable of St. Mary:

Very briefly. Progress is slow; prognosis is poor. **[Laughter]** **[Aside]** We have really tackled a very few items of business so there are some very big items coming up in the next few days. If we do not smarten up our act, we will not finish and that is a simple statement of fact.

The Deputy Bailiff:

Well, I am sure Members will take that to heart and confine their speeches to things which need to be said and the States now stand adjourned until 9.00 a.m. tomorrow morning.

ADJOURNMENT

[18:09]