

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 4th MAY 2011

<b>PUBLIC BUSINESS – RESUMPTION .....</b>	<b>4</b>
<b>COMMUNICATIONS BY THE PRESIDING OFFICER.....</b>	<b>4</b>
<b>1. Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Article 19.....</b>	<b>4</b>
1.1 Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):	4
1.1.1 Deputy P.V.F. Le Claire of St. Helier: .....	4
1.1.2 Deputy R.G. Le Hérissier of St. Saviour: .....	5
1.1.3 Deputy M. Tadier of St. Brelade: .....	5
Mr. H. Sharp Q.C., H.M. Solicitor General: .....	5
1.1.4 The Connétable of St. Mary: .....	5
<b>1.2 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Part 6 and Schedule 26</b>	
1.2.1 The Connétable of St. Mary:.....	6
1.2.2 Deputy J.A.N. Le Fondré of St. Lawrence: .....	6
1.2.3 Deputy D.J. De Sousa of St. Helier: .....	7
1.2.4 Deputy D.J.A. Wimberley of St. Mary:.....	7
1.2.5 Deputy M. Tadier: .....	7
1.2.6 Deputy R.G. Le Hérissier: .....	8
1.2.7 Deputy F.J. Hill of St. Martin: .....	8
1.2.8 Senator P.F.C. Ozouf: .....	9
The Solicitor General:.....	10
1.2.9 Deputy T.M. Pitman of St. Helier: .....	10
1.2.10 Deputy P.V.F. Le Claire:.....	10
The Solicitor General:.....	13
<b>1.3. Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Suspension of debate     on Part 6 and 7, Schedule 2 and Third Reading .....</b>	<b>14</b>
1.3.1 Deputy R.C. Duhamel: .....	14
1.3.2 The Connétable of St. Mary:.....	16
The Solicitor General:.....	17
1.3.3 Deputy J.A. Martin of St. Helier: .....	17
1.3.4 Deputy M. Tadier: .....	18
1.3.5 Deputy G.P. Southern of St. Helier: .....	20
1.3.6 Deputy R.G. Le Hérissier: .....	20
1.3.7 Connétable P.F.M. Hanning of St. Saviour: .....	20
1.3.8 Deputy J.B. Fox of St. Helier:.....	20
1.3.9 The Deputy of St. Mary:.....	21
1.3.10 Deputy P.V.F. Le Claire:.....	21
1.3.11 Connétable K.P. Vibert of St. Ouen:.....	21
1.3.12 The Deputy of St. Martin: .....	22
1.3.13 Deputy I.J. Gorst of St. Clement:.....	22

1.3.14 Deputy R.C. Duhamel: .....	22
<b>1.4 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Part 6 and Schedule 2</b> .....	<b>24</b>
1.4.1 The Connétable of St. Mary: .....	24
The Solicitor General: .....	25
Deputy R.G. Le Hérisssier: .....	26
Deputy M. Tadier: .....	26
Deputy J.A.N. Le Fondré: .....	26
1.4.2 The Deputy Bailiff: .....	27
<b>1.5 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Part 7.....</b>	<b>29</b>
1.5 The Connétable of St. Mary: .....	29
<b>1.6 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Third Reading .....</b>	<b>30</b>
<b>2. Freedom of Information: Implementation Plan (P.41/2011) .....</b>	<b>31</b>
2.1 Deputy R.G. Le Hérisssier: .....	31
2.1.1 Senator T.A. Le Sueur: .....	33
2.1.2 Deputy T.M. Pitman: .....	33
2.1.3 The Deputy of St. Mary: .....	34
2.1.4 Connétable M.K. Jackson of St. Brelade: .....	37
2.1.5 The Deputy of St. Ouen: .....	37
2.1.6 Deputy P.J. Rondel of St. John: .....	37
The Solicitor General: .....	38
2.1.7 Deputy M.R. Higgins of St. Helier: .....	38
2.1.8 The Deputy of St. Martin: .....	38
2.1.9 Senator P.F.C. Ozouf: .....	39
2.1.10 Deputy M. Tadier: .....	39
2.1.11 Deputy P.V.F. Le Claire: .....	40
2.1.12 The Connétable of St. Mary: .....	41
2.1.13 Deputy R.G. Le Hérisssier: .....	42
<b>STATEMENTS ON MATTERS OF OFFICIAL RESPONSIBILITY .....</b>	<b>43</b>
<b>3. Statement by the Chairman of the Education and Home Affairs Scrutiny Panel</b> <b>regarding the panel's review into school examination results .....</b>	<b>43</b>
3.1 Deputy R.G. Le Hérisssier: .....	43
3.1.1 Deputy D.J. De Sousa: .....	44
3.1.2 Deputy G.P. Southern: .....	44
3.1.3 The Deputy of St. Mary: .....	45
3.1.4 Senator J.L. Perchard: .....	45
3.1.5 Deputy I.J. Gorst: .....	45
3.1.6 Senator A. Breckon: .....	45
3.1.7 The Deputy of St. Ouen: .....	46
3.1.8 Deputy M. Tadier: .....	46
3.1.9 Deputy T.A. Vallois of St. Saviour: .....	46
3.1.10 Senator P.F.C. Ozouf: .....	46
<b>PUBLIC BUSINESS .....</b>	<b>47</b>
<b>4. Health and Safety Appeal Tribunal: appointment of members (P.46/2011).....</b>	<b>47</b>
4.1 Deputy I.J. Gorst (The Minister for Social Security): .....	47

<b>5. Planning Applications Panel: appointment of Members (P.50/2011).....</b>	<b>48</b>
5.1 The Deputy of St. Peter (Assistant Minister for Planning and Environment): .....	48
5.1.1 Deputy J.A. Martin: .....	48
5.1.2 Senator A. Breckon: .....	48
5.1.3 Deputy D.J. De Sousa:.....	49
5.1.4 Deputy M. Tadier: .....	49
5.1.5 Senator P.F.C. Ozouf:.....	49
5.1.6 Senator J.L. Percharde:.....	49
5.1.7 The Deputy of St. Peter: .....	49
<b>LUNCHEON ADJOURNMENT PROPOSED.....</b>	<b>50</b>
The Deputy of St. John: .....	51
<b>LUNCHEON ADJOURNMENT.....</b>	<b>51</b>
The Deputy of St. Peter:.....	51
<b>6. Draft Christmas Bonus (Jersey) Law 201- (P.43/2011).....</b>	<b>51</b>
6.1 Deputy I.J. Gorst (The Minister for Social Security): .....	52
<b>7. Constitution for Jersey (P.52/2011) .....</b>	<b>53</b>
7.1 Deputy P.V.F. Le Claire: .....	53
7.1.1 Deputy J.M. Maçon: .....	56
7.1.2 Deputy R.G. Le Hérisier: .....	56
The Solicitor General:.....	56
7.1.3 Senator P.F.C. Ozouf:.....	56
7.1.4 Deputy S. Power of St. Brelade: .....	58
7.1.5 Senator T.A. Le Sueur: .....	58
7.1.6 Deputy R.C. Duhamel: .....	59
7.1.7 The Deputy of St. Mary: .....	60
7.1.8 Deputy M. Tadier: .....	61
7.1.9 The Deputy of St. John: .....	63
7.1.10 Senator B.I. Le Marquand: .....	64
7.1.11 Deputy P.V.F. Le Claire:.....	65
<b>ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS .....</b>	<b>68</b>
8. The Connétable of St. Mary:.....	68
<b>ADJOURNMENT.....</b>	<b>68</b>

[09:30]

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

**PUBLIC BUSINESS – RESUMPTION**

**COMMUNICATIONS BY THE PRESIDING OFFICER**

**The Deputy Bailiff:**

When the Bailiff spoke yesterday about former Deputies Wavell and Baker, we were not aware in the Bailiff's Chambers that another former member of this Assembly, Graeme Rabet, had also unfortunately passed away recently. Graeme Rabet was born in Jersey in 1939 and attended St. Luke's School and De La Salle College. After leaving school, he joined the tourism industry and later became Managing Director of Falles Hire Cars which, especially prior to the introduction of drive on/drive off ferries, was a vital service business in tourism. Indeed, he was passionate about tourism and was President of the Battle of Flowers Association. He was first elected as Deputy of St. Helier No. 1 in 1987 and re-elected in 1990. Although he was defeated when he stood as Deputy of Grouville in 1993, he returned to the States as Deputy for St. Helier No. 3 in 1996 leaving office at the end of his term in 1999. He was, at one time, President of the Tourism and Gambling Control Committees and he also sat on a wide variety of committees as a member of the Housing; Agriculture and Fisheries; Sport, Leisure and Recreation; Harbours and Airport and Public Services Committees. Graeme Rabet was, according to those who knew him well, a quiet unassuming man who valued the Island's traditions and our way of life. In particular, while on the Housing Committee, he demonstrated his care and feeling for all Islanders. On behalf of all Members, I offer sympathy to his widow Christine and their 2 sons and families and I ask Members to stand and show their appreciation in the usual way. Mr. Vice-Dean, it is impossible of course to fill the Dean's shoes but for the last month while the Dean has been on sabbatical, you have valiantly performed all the duties that he regularly attends to in this Assembly and on behalf of all Members, I would like to thank you very much indeed [**Approbation**]. Your excitement no longer can be contained, Chairman. Article 19?

**1. Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Article 19**

**1.1 Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):**

The time has come and I would reassure Members that, hopefully, the end is in sight. Article 19 states that certain categories of exempt information must be supplied if it has been held by the authority for more than 30 years and, in other cases, the time limit is 100 years. However, this is subject to amendment by regulation and I move Article 19.

**The Deputy Bailiff:**

Is Article 19 seconded? [**Seconded**]. Does any Member wish to speak on Article 19?

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

Just generally to ask for clarification, if I may, maybe from the Solicitor General. Yesterday when we spoke about exempt items, we voted in isolation on a number of the preceding Articles because we were concerned about having access to the information that we would like to have access to as States Members to do our duties, especially in the area of policy formation. The Constable of St. Mary said and reminded us that it is a public Freedom of Information Law and it would not therefore really apply to States Members in getting that kind of information. I would just to know does the Law apply to States Members and can States Members be turned down from getting access to policy information documents, as I have slept on it and considered that, possibly, we are going to be no better off than the public in the future?

**The Deputy Bailiff:**

Does any other Member wish to speak on Article 19?

**1.1.2 Deputy R.G. Le Hérissier of St. Saviour:**

I was rather chastened when the Chairman said she does not deal with hypothetical issues which I thought was rather unfortunate. Of course, it strikes me Members have to ponder on what may happen and if what may happen is hypothetical, then so be it. That is what our job is. What I wondered about is why have we just automatically accepted 30 years? We know it has been the period of choice in the U.K. (United Kingdom) for a long time and we get these annual reports I think in April ... well, quite soon saying everything is being revealed about Mr. Profumo everything is being revealed about what happened here and so forth and the juicy scandals gradually get fed into the public domain. But why 30 years, given that secrecy is taking on a much different light, as I say yesterday with, for example, this massive release of WikiLeaks documents of late which, when they came out in - and they were diplomatic documents - most people were underwhelmed in terms of what was said about individuals in diplomatic cables and so forth and I wonder why we stick to 30 years and whether that was examined hypothetically.

**The Deputy Bailiff:**

Does any other Member wish to speak? If no other Member has questions on that ...

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

If I can speak. I think it is just on a philosophical point, one has to question why if, after 30 or 100 years, information is able to come out, potentially be controversial and have an impact. Of course, as Deputy Le Hérissier has mentioned, most of the information that is released after a long period of time is non-consequential or has very little impact but there can be occasions on which scandals can be released. He referred to Profumo, there are lots of other examples that can be given and the question is if information is of such importance ... and I know we have obviously discussed what information should be released and when that should be the case, but clearly, after 30 or 100 years, the information is not going to have an impact. If information is important and if it is controversial, why should it not be released at the time when it can have an impact either politically, socially or whatever rather than simply having to wait for 30 or 100 years' time. The question is - and perhaps the Chairman would like to answer this - the figures 30 or 100 do seem to be arbitrary and why were those figures arrived at? Why not 15 years? Why not 150 years? What considerations were given to the fact that Jersey is a small island community? Should that change anything? So those questions I think would be helpful to be answered.

**The Deputy Bailiff:**

Does any other Member wish to speak on this Article? Solicitor General, are you able to deal with Deputy Le Claire's query?

**Mr. H. Sharp Q.C., H.M. Solicitor General:**

Yes, Sir. There is nothing in the Law itself, as proposed, which would preclude a Member from seeking to avail themselves of the provisions of the Freedom of Information Law. That said, having read the proposition in its entirety, it is clearly the intention that this Law will be used by the public and there would be a separate system for States Members but that is really a matter for the States Assembly to reach a view about.

**The Deputy Bailiff:**

Very well. Chairman.

**1.1.4 The Connétable of St. Mary:**

Firstly, to do with the fact that I do not deal with hypothetical questions, I think what I said was I do not deal particularly well with hypothetical questions and I would challenge anybody to deal particularly well with a teapot made from rare bones of penguins. Why 30 years was the question,

basically - and this was something that Deputy Tadier alluded to - the Committee took great pains to make sure that this Law was the right law for Jersey and there are indeed particular considerations to be borne in mind when there is a close island community. We are in a situation where many people know many other people. In fact, the whole community is well-known.

[9:45]

There may be things which would be more damaging here after 30 years still than in other places. We took a view on what other legislations had for similar releases of old information and the Committee view was indeed 30 years was the right level for the first blanket release and in the second category of information, that 100 years would be the correct limit. Having said that, I move the Article.

**The Deputy Bailiff:**

Article 19 is moved. All Members in favour of adopting it, kindly show. Those against? Article 19 is adopted. Chairman, so you now wish to propose Part 6 and Schedule 2.

**1.2 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Part 6 and Schedule 2**

**1.2.1 The Connétable of St. Mary:**

Yes, indeed I do. Part 6 contains Articles 43 to 48 and the second schedule. Article 43 sets out the general functions of the Information Commissioner. It is the Commissioner's responsibility to encourage public authorities to follow good practice in their implementation of the Law and the supply of information as well as to inform the public about the legislation. The Information Commissioner is expected to prepare an annual report dealing with the activities under the Law to be presented to the States. The facility is available under Article 44 for the Information Commissioner to be required by regulation to issue a code of practice. This requirement has not been included in the current draft of the regulations, although this does not preclude the Commissioner from producing a code. Provision has been included in the Law at Article 45 which brings into effect the second schedule to enable the Information Commissioner to enter premises to require the supply of information and to inspect the information. This provision was included in the Law following consultation with the Data Protection Commissioner and it was agreed that the Information Commissioner should be able to require the supply of information, if necessary. Article 46 sets out the process of appeals to the Information Commissioner. It deals with the grounds on which an appeal can be made and the grounds on which the Information Commissioner can decide not to determine an appeal. Upon determination of the appeal, the Information Commissioner must inform the authority and the applicant of the decision and of the right of appeal to the Royal Court. Appeals to the Royal Court are dealt with under Article 47. Under this Article, a person can appeal to the Royal Court against the decision of the Information Commissioner within 28 days on the grounds that the decision was unreasonable. The decision of the Royal Court in these cases is final and in cases where the appeal relates to a decision of the Information Commissioner not to decide the appeal, the Royal Court can direct the Commissioner to do so. If a public authority fails to comply with a notice served by the Information Commissioner, this can be referred to the Royal Court in accordance with Article 48 of the Law and the public authority will be dealt with as if it had committed a contempt of court. I move Articles 43 and 48 and the second schedule.

**The Deputy Bailiff:**

Are the Articles seconded? [**Seconded**]. Does any Member wish to speak on Article 43 to 48 and the second schedule?

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

Deputy De Sousa flashed first but, okay, thank you - if that is the right expression [**Laughter**]. Very quickly, in relation to Article 47, Part 6, the very last part of the sentence there which is about

appeals, obviously, it says: “Such representative being an advocate of the Royal Court or such other persons the Royal Court may by rules prescribe” which I presume is a reference to the Royal Court Rules. Can the Chairman indicate either whether those rules have been amended or whether there is any intention to amend them so that representation in respect of an appeal does not need to be with an advocate? The reason I ask is this has come up under the third party appeals situation as well so if there is a risk of an advocate having to represent an individual in an appeal, there is obviously a perceived and significant barrier in terms of cost. I suppose the scenario I would be interested in is what is the position - and this is purely a lack of knowledge as I will be supporting the Article, it is just flagging it up for consideration for the future - if an individual brings an appeal to the Information Commissioner which is effectively upheld and then, for example, a government department decides to appeal that to the Royal Court? What is the position of the person who brought the original appeal to the Information Commissioner in terms of their exposure to costs if the Royal Court overturn the whole thing? I will stop there, thank you.

### **1.2.3 Deputy D.J. De Sousa of St. Helier:**

I just wonder if the proposer can expand a little bit on Articles 45 and 46 for me. Is this purely to do with States departments and Parishes or would it be to do with the public at all?

### **1.2.4 Deputy D.J.A. Wimberley of St. Mary:**

In related vein to Deputy Le Fondré, I am concerned with the costs and I just want clarification from the proposer to confirm that the cost of an appeal to the Information Commissioner is zero and, if not, what would be the cost borne by an applicant? Also of course with the appeals to the Royal Court, would that be eligible for Legal Aid? Does it get covered by other provisions elsewhere because it is not mentioned here about costs of different kinds of appeals through the system presumably to the department and to the Minister and so on? It is all just done in the normal course of the day’s work for whoever it is. So when the appeal goes as far as the Information Commissioner and then when it goes to the Royal Court, if it does, what are the costs involved please?

### **1.2.5 Deputy M. Tadier:**

In addition to the question of costs, which I think is important, it is okay to have courses of remedy but if they are unaffordable to the average person, then that is clearly an issue. I know that the P.P.C. (Privileges and Procedures Committee) have been mindful of that when they have been working on it. The elephant in the room of course - and I shall not be popular for saying this but I think it does need to be said and I hope that there will be other Members who perhaps share my opinion - is that there is a problem of course, in my opinion, that the Royal Court is the final court of appeal. Now, clearly, it has to go to the Royal Court if one wants to appeal over and above the Commissioner but there is a conflict issue here again. Now often the advice that may be being sought could be of a political nature, it could be an email, it could be legal advice that was being given and that will have been given either, in many circumstances, by Law Officers, by the Solicitor General and by the Attorney General. In other circumstances, we know that the Chair, whoever that may be at the time, or the Bailiff, does give advice on which propositions can be accepted or otherwise. Now we know that also legal advice is qualified so that that does not need to be given out so there could be very many instances where either politicians or members of the public want to have information released. They want to know perhaps why certain advice was given and why certain propositions, *et cetera*, were or were not brought forward and on which basis that was done. It seems strange that the Royal Court, who are intertwined in all this political and legal advice, if not decision-making, should be the final backstop. I am sure that at least on a superficial and perceptual level, many members of the public would quite rightly be slightly uneasy about that and it would remiss if that point were not relayed today here in the States Chamber while we debate that. So I will be asking for the point of Article 47 to be taken separately on a separate vote and I would encourage those Members who are also slightly uneasy about this fact to vote

against Article 47. That said, I do not know what the easy solution is. I appreciate that it is not easy. It is a Jersey Freedom of Information law and to start to have to appeal perhaps beyond Jersey to the U.K. or to Europe would not be appropriate in this particular context so I am not saying that there is an easy solution. Clearly, the whole broader issue of perceived conflicts of interest, the separation of the judiciary and the legislature is being looked at so I completely appreciate that at the moment but this is just a necessary perhaps contradiction that we are having to deal with at the moment which will not necessarily always be the case historically. So that is why I have raised this issue and I will ask, as I have said, for the appel on Article 47 for this to be taken separately.

### **The Deputy Bailiff:**

The Chairman will no doubt respond to that in due course but, Solicitor General, at some point, I would like you to respond on the Royal Court's practice in relation to conflicts. I call on Deputy Le Hérissier.

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

Having sat on the Committee of Inquiry into third party appeals and not, quite frankly, reached a terribly satisfactory conclusion for potential appellants, I see the ghost of that committee here. The issue there was the Royal Court, we felt, in terms of a cost issue - forget for the moment the issues raised by Deputy Tadier - it struck us it had been very generous in the role it had taken. We were aware that it was trying to play the role of a tribunal, that appellants were being informed that it was highly, highly likely they would not have to bear the costs burden but a complete guarantee could not be given to them and this was undoubtedly dissuading people from going forward. But it was also obvious - and it is not clear from these comments - that these particular lessons were taken onboard. It was obvious that the Royal Court was bending over backwards to set out what one might term an informal process or, as the former Deputy Gerry Baudains said, one where you could appear in your tee-shirt which was a slightly odd metaphor, so to speak, but I remember that is how it was described. In other words, very informal. Obviously, people had a double-take on this because they could not conceive of the Royal Court moving to that particular role so that is why I am very worried. There is a lot of ambiguity, it strikes me, in phrase 8.25 of Article 47. Will there or will there not be costs and on what grounds will the issue of pre-emptive costs affect people? There is talk of means testing and so forth. I thought, in terms of third party appeals, the Royal Court had gone far further than this. It was not satisfactory the extent to which it had gone but I thought it had gone far further than the ambiguous statement in Article 47 and either the Chairman or the Solicitor General may wish to comment on that because I think, although one hopes there will not be a stream of appeals, clearly, at the beginning, there will be testing of the system and of the Law. I do not want to see what has happened with third party appeals where a lot of people are deterred. They take them onboard and they have been very well handled by the Judicial Greffe in terms of the way the procedure has been explained to them and the risks have been put to them and so forth but there is, at heart, a fear of getting engaged with the process.

### **1.2.7 Deputy F.J. Hill of St. Martin:**

I too raise the issue of the cost of justice and what I am concerned about is that we bring in laws, we are told there may well be a cost to the person who was aggrieved and I will cite something that just happened to me recently whereby ... the High Hedges Law. There was a case there where we were told there may well be a fee that someone may have to pay for administration to see justice being done. It turns out now that the person cannot afford the £350 deposit to go to the Planning Department for them to pursue their case. It seems rather sad that these people are put to a tremendous amount of inconvenience by obviously an offence that the trees are taking the light out and the people cannot afford to see justice being done. I am concerned again here because if one initially looks at Article 48(2)(a), it says: "A fee payable by virtue of Article 15 and 16(2)" *et cetera* and then you go to 15(2) on page 148, we will see there an undeclared cost. We do not

know what it is going to be so we are going to be voting in something today which we will know what the cost will be and what I do not know what is, again, to have law which will take it out of the reach of the ordinary person in the street who has a grievance but cannot afford to see that grievance through. Again, Deputy Tadier quite rightly mentioned about the need to or the only way one can go to court is having an advocate. I believe, again, justice should be there for everyone and it should not be according to how much money you have in your purse before you can seek that justice. Really, I would like some assurance from the Chairman of some indication of what the cost will be and will it be coming to the States for approval so the States can decide whether in fact the fee that is being sought is a generous one or a genuine one? I welcome hearing from the Chairman in summing-up. Thank you.

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

I was not going to speak in this debate but I am moved to speak after hearing Deputy Tadier who, once again, uses his privileged position as a Member of this Assembly to cast aspersions on our court system and the people who serve within it.

[10:00]

Sometimes, Members of this Assembly need to stand up and defend our court system and the people that serve in it because I do not subscribe for one moment to the comments that Deputy Tadier makes. I am happy to defend the court system. We do have a situation whereby we are a small jurisdiction, I am not a lawyer and I am not a constitutional expert but I know simply that our Royal Court is used as the clearing house, as the institution in which we hear all sorts of final appeals. I was involved in the setting-up of the planning appeal system whereby that was ... because we were not going to set-up yet another system and another tribunal with all of the costs, we used the court system in order to hear planning applications. To deal directly with the Deputy of St. Martin's point, the court, in my experience, showed itself to be extremely adaptable in terms of being able to hear planning appeals allowing litigants in person; we changed rules in this Assembly to allow individuals and other experts to appear before it, and I have had 2 experiences where the court has shown itself to be extremely flexible in terms of hearing cases and allowing the important issue of costs, because legal advice and lawyers are expensive... but the court has shown itself to be extremely flexible. But the real reason why I was going to stand - and I am not the expert and you, Sir, have asked the Solicitor General to address the Assembly on the issue of conflict - and I will be corrected if I am wrong, but Deputy Tadier makes, I think, points or is casting aspersions or is saying things about the commissioners and perhaps the Bailiff or the Deputy Bailiff. Of course, our Jurats are the judges of fact, they are the ones, and I would not want any message to go out from this Assembly that this Assembly and the Island has anything else apart from admiration, support and confidence in the decisions that our Jurats make in these issues and I would be grateful for **[Approbation]** ... because they, of course, serve this Island with distinction and on an honorary basis. They do huge amounts of work on behalf of this Island in their capacity and I would not want negative issues to be sent out there. I think I have made my point, I think the right decision has been made in the construct of this Law in terms of using the Royal Court, it is the right decision; there is no other body with greater hold, other institution with attendant bureaucracy and cost, and the court has the flexibility, has the ability of appointing commissioners, has the ability of making its own rules in terms of court procedures, *et cetera*, and we can have confidence that this is the final appellate rule that will work and will be fair and will be just.

#### **Deputy M. Tadier:**

Can I respond to that on a point of order? Because I believe that Senator Ozouf has imputed improper motives to me. Just 2 points to clarify: first of all, by no means have I cast any aspersions on any member involved in the judiciary, and I made that very clear during my speech, and, secondly, I have not abused my position of privilege, I simply said that this was an issue that many Islanders, rightly or wrongly, felt strongly about, there was a perception issue and as an elected

Member representative of the people, it was incumbent on me to make that point in the States. Members can either decide to take that or leave that, there were no aspersions cast.

**The Deputy Bailiff:**

Deputy, you have made your point of order now, it is not going to become a second speech. Solicitor General, is that a convenient time to answer the question I asked you to deal with?

**The Solicitor General:**

Yes, Sir. The position, of course, is that the Royal Court, should it ever have to hear one of these cases, would be constituted by 3 members of the court: that would be a judge and 2 Jurats. Of course, the judge could be the Bailiff, but does not have to be because, at any given time, either the Bailiff, the Deputy Bailiff or a commissioner - be it a Jersey commissioner or an English commissioner - can sit as the judge. So insofar as there could be a situation where, for example, the Bailiff's advice was the subject of the litigation, then it would be open to the Bailiff - as I understand is his practice - to not sit and perhaps a commissioner would sit who had no relationship or prior involvement with the information that is being sought. Of course, as has already been pointed out, it is the Jurats who reach decisions on the facts, it would be the Jurats who would decide what was reasonable and what was not reasonable. Just finally this, please, the Attorney General had cause to comment on the topic of conflict when he answered a written question a few weeks ago and when one considers conflict, one is looking at what the fair-minded observer would conclude. May I just add this, this is what the Attorney General had to say: "A fair-minded observer is not unduly sensitive or suspicious. The assumptions that the complainer makes are not to be attributed to the fair-minded observer unless they can be justified objectively. The fair-minded observer is able to put whatever he has read or seen into its overall social, political or geographical context. He is fair-minded, so he will appreciate that the context forms an important part of the material which he must consider before passing judgment." Sir, I hope that assists.

**1.2.9 Deputy T.M. Pitman of St. Helier:**

I do not really need to say much, Deputy Tadier has made his point. I was very disappointed to hear the Minister for Treasury and Resources scoring points; I think, just because a Member raises issues that might be uncomfortable, to try and make out that that Member is casting aspersions on someone is very disappointing and it does, I am afraid, happen a lot from certain sides of the House, and I was just a bit sad about that.

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

I would like to request under Standing Order 79 it is referred to Scrutiny, for the reasons I will give, and that the States pause on this for reflection from Scrutiny. There has been a consideration in the last section of this debate, and that is why I did not want to refer it back - because obviously a reference back cannot reflect upon an item that has already been voted upon - that there be rights and exemptions. I raised this morning with Her Majesty's Solicitor General whether or not to challenge the assertion of the proposer, the Chairman of the Privileges and Procedures Committee, that Members need not worry about accessing policy information, for example, and other issues, because this is a law that has really been made for the public. As I said, it dawned on me this morning that there is no law for the public that the States cannot be cognisant of, or their departments or their Ministries, in carrying out their functions. There may well be exemptions that are allowable within law to prohibit access to legal advice, *et cetera*, but what I think is important is the ability - especially for the Back-Bench element of this Assembly - to hold to account the elected Council of Ministers who steer the direction of this Island. We know in the future the Strategic Plan, a key document that sets population limits and everything else, is going to be an in committee debate and it is going to be something that is being driven by Treasury. It is going to be something where the Council of Ministers moves towards a more stitched-up form of government, in my view. It certainly has not been in the last years an experience of more openness and more transparency, it

has been an experience of close-down and shut-down, withdrawal, power to the centre and exclude, wherever possible, propositions. If Members bring propositions, even if Members bring amendments these days on propositions, they are accused of electioneering; it is absolutely ridiculous. What we have here at the moment in this section of the Law is the consideration of whether or not the Data Protection Administrator should set down procedures as to how these laws operate in terms of access to information and, perhaps, codes and practices. It would then become beholden upon the States, as per advice given from Her Majesty's Solicitor General this morning, that we set about deciding upon what kind of structures we want in place for us to have access to that information. I know now we have all been in the Assembly for longer than just a couple of years, we have all had experience for the main part of being Back-Benchers at one stage or another, and I am sure that we have all had experience of trying to get information out from departments; it is not normally forthcoming. Yesterday we heard £1.6 million had been spent on compost, which was not mentioned just a few weeks earlier in a lengthy debate, a protracted debate, on charging for a commercial green waste operation, and I was criticised for the process because I should have submitted written questions and then waited a couple of weeks and asked oral questions. What is wrong with the process is that 2, 3 or 4 weeks before I even learnt about the expansion, the Minister should have been making that quite clear and plain to Members, when the debate on commercial charges and the cost of the commercial operation for La Collette was occurring, because his department certainly would have known about those upcoming costs; you do not just go out the next day and spend £1.6 million on a whim: it is planned. What is happening in this Freedom of Information Law is we are, as the Commissioner says, giving with one hand and taking away with another, but we are certainly taking away with both hands the power for the Back-Bench Members of this Assembly to scrutinise effectively the Executive, the Council of Ministers and the systems and procedures in place that we have had the privilege of doing in the past, in my view. It can be argued that I am wrong and that is fine; if I am wrong, it will not be the first time but if I am right it also will not be the first time. I think it is important that Members support a reference to Scrutiny on this issue because it has not been scrutinised, and we are doing it on the floor of this Assembly; it is absolutely wrong. There has been an issue and there has been an argument about cost. Setting aside cost, £1.7 million for the first 2 years in the Cayman Islands: "Okay, that is a consideration. Put that to one side, we want to rush it through because it has been taking for ever." "It is election year, let us get Freedom of Information in there, that will look good on the front page"; it will look a lot better than last night's headlines, that is for sure. But what is going to happen, we will be in a position where we will not be able to access, because of the laws we are agreeing to today, the information we have historically been able to access. The departments, I am sorry to say, from practice, will turn around and say: "Sorry, that is exempt, and I am not even going to tell you why it is exempt and if you have got a problem with that why do you not speak to my Minister?" Well, we do not get much chance to speak to Ministers these days. I want it referred to Scrutiny for this issue in the main: that we have from Scrutiny an assurance that there will be a considered process involving all States Members. It was pointed out in the speech of the Deputy of St. Martin just a couple of minutes ago that he wanted all States Members to be involved in a process. Well, we should all set up a process of access to information about these issues and to agree to have this go through today just to tick the box, I am afraid is going to do us a disservice. We will then have to rely upon representation to the Data Protection Commissioner who will take on board our views, however raggedly they appear, and weigh those up against the considered view of the Council of Ministers and the considered view of the Privileges and Procedures Committee, which is made up of Back-Benchers and Council of Ministers Members.

### **The Deputy Bailiff:**

Deputy, forgive me for interrupting you, please sit down. Standing Order 79 says 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 to consider having the proposition referred to it." Now, the States have already approved a large part of this draft Law and it does not seem to me to

be clear that it is open to a Scrutiny Panel to scrutinise something that the States have already approved. I concede that your proposition is perfectly able to be made in relation to Part 6 and Schedule 2 and Part 7, which is what we are on at the moment, and I just want to be clear with you that that is the basis upon which you are proposing this motion.

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

Yes, Sir. Yes, I realise ... I am trying my best to learn - as you have been watching over the last decade - the processes, Sir, and I have considered before jumping to my feet to suggest this that we have agreed ... as I said, you cannot reference back on issues that we have agreed, we have already got to the stage ... and it was not until this morning that I realised this is what I should have been saying yesterday about the exempt issues. But it certainly is at this stage that I can just catch it in the eleventh hour and say that if the Data Protection ... I am being passed a note from the Chairman of Privileges and Procedures to say I have misunderstood: "There is an enhanced access for States Members, this does not detract from that."

[10:15]

I am not satisfied that an enhanced access sets out in law my rights and privileges as a States Member to access the information that I would like to access when it may be information that might become uncomfortable for the Council of Ministers and their departments if I access that. It may not be desirable. I know it is a bit of a patch job, and I am sorry to do this to Members, but I do think it is of concern. I would like it referred to Scrutiny on those issues. I would like them to come back and I would like them to tell us whether or not there is a concern that they agree with and whether or not they need to scrutinise how this is going to come about and whether or not our rights and privileges as Back-Bench Members are safeguarded in the Law as drafted. If they are then fine, we can move on, but I am certainly concerned at this stage of it, so I am going to propose, if I may, and ask for somebody to second it.

**The Deputy Bailiff:**

The proposition before Members is to suspend the debate on Part 6 and Schedule 2 in order that those Articles in Part 6 and Schedule 2 can be referred to Scrutiny. That is the proposition.

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

The proposition was to suspend the debate so that these Articles which allow consideration of that can be taken into consideration, but it certainly was not just to suspend these Articles.

**The Deputy Bailiff:**

It is not clear to me, Deputy, that it is open to a Scrutiny Panel to scrutinise matters which the States have already adopted. That is why I put the proposition in the way I have to you. Is that the proposition you wish to make?

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

Well, I am not the learned one here, Sir, certainly. Maybe I can take some direction from the Chairman of P.P.C. because I certainly have thought in the past we were able to do this.

**The Deputy Bailiff:**

We can take directions from the Chair, as far as I am concerned ...

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

Sir, would it be helpful, perhaps, if Deputy Le Claire perhaps considered a suspension on the basis of Standing Order 72 instead?

**The Deputy Bailiff:**

I think, Deputy, we have passed that stage; that is at the moment of the principles having been adopted.

**The Connétable of St. Mary:**

Sir, I wonder if it might just be helpful if the Solicitor General might be able to refresh Members' memories on advice we have previously been given on States Members' access to information, which I know the Committee has already had discussions on and has already requested that the Attorney General, in due course, provides up-to-date guidelines, especially for the new Assembly, on exactly how Members may address that?

**The Deputy Bailiff:**

Deputy Le Claire, would you find that helpful for the Solicitor General to give that advice; it is your proposition and, no doubt ...

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

Yes, Sir. It would be helpful. Thank you.

**The Deputy Bailiff:**

All right. Solicitor General?

**The Solicitor General:**

Yes. The Freedom of Information Law, if passed, will put a greater onus on the public authority to disclose information than exists as we speak now. Moreover, the Freedom of Information Law provides better and more effective rights of appeal in the event that a public authority decides not to disclose information. So insofar as it is suggested that the Freedom of Information Law is not an improvement on existing rights of States Members, then I respectfully disagree with that. It is quite clear, if one goes back to Article 9 that we were looking at yesterday, that in most cases there will be an onus on the public authority to disclose and that duty to disclose will only be effective if the weighing public interest considerations are such that disclosure is felt inappropriate. At the moment, there is no balancing exercise; it is simply whether or not something is exempt so, in that respect, the Freedom of Information Law marks a substantial change in a person's right to gain access to information. So, as I say, the Law provides greater rights and, of course, greater rights of appeal. I do not know whether that assists or whether further advice is sought on a particular point.

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

Could I ask one further piece of advice, Sir? Where the concern is particularly lying is in, in my experience, trying to get to the bottom of what is being considered before the policy approaches to the Assembly was introduced. One of the exempt items yesterday was policy information. So it seems to me that there is now a new law that says: "If you want information about policy, it is exempt" and although there is a greater onus ...

**The Solicitor General:**

That is certainly true, it is certainly one of the qualified exempt categories but one has to look at those categories in the context of Article 9 which, as I read out yesterday: "A scheduled public authority must supply qualified exempt information" so the words are "must supply", which is a huge change from the existing codes of practice in relation to disclosure; that is quite clearly in legal terms a significant shift of emphasis. If one looks at Article 9(2), the only circumstances in which disclosure should not take place is if, when weighing the countervailing public interest argument, it is felt that it is not in the public interest overall to disclose. So if you introduce this Law you are more likely to get the information than if you continue with the present Code of Practice; that is the basic position, is it not?

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

What an excellent job the Solicitor General is doing this morning. Sir, I will withdraw that suggestion that it be referred to for Scrutiny [**Approbation**] and I thank him for making what was unclear crystal clear.

**The Deputy Bailiff:**

Very well. Deputy Duhamel?

**Deputy R.C. Duhamel:**

There is still a point that needs to be resolved, I feel, Sir, and that is ...

**The Deputy Bailiff:**

I am sorry, are you speaking on Part 6 or Schedule 2 or are you raising some other procedural motion?

**Deputy R.C. Duhamel:**

I am hoping to speak on the issue at hand in relation to some other advice that was given earlier that might well be relevant to the particular consideration.

**The Deputy Bailiff:**

But what is the issue at hand? Deputy Le Claire has withdrawn his proposition so at the moment the issue at hand is Part 6 and Schedule 2, unless you want to raise any other procedural motion.

**Deputy R.C. Duhamel:**

It might still be open, Sir, for any other States Member to bring forward the same request.

**The Deputy Bailiff:**

It is open to you to bring forward the same request, if that is what you wish to do, but I want to be clear what the issue at hand is. Is that what you are proposing?

**Deputy R.C. Duhamel:**

Yes.

**The Deputy Bailiff:**

Yes, it is?

**Deputy R.C. Duhamel:**

I think it is, Sir. You can be the judge. You are the judge.

**The Deputy Bailiff:**

Well, I would rather know where we are going before we set out [**Laughter**] so that we can focus on where we are going on this piece.

### **1.3. Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Suspension of debate on Part 6 and 7, Schedule 2 and Third Reading**

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

Okay. Perhaps, Sir, if I could ask the question and then you can decide whether or not it is out of order. Specifically, we heard some advice from the Solicitor General this morning in relation to a question asked by Deputy Le Claire as to whether or not this whole Law gave special rights to States Members and, in the definitions that were referred to by the Solicitor General, he did indeed specifically state that it referred to persons and it was up to the House, the States Assembly, to decide whether or not specific exemptions could be made to States Members. At the moment, the Law specifically does not include clauses which define special privileges to this House, it is cast in terms of a person, it is the general nature of the definition of the word "person" which says that,

specifically, States Members are not anything different to an ordinary person. So if that is indeed - and this was the question I would wish to clarify - the case, can either the Chairman of the P.P.C. tell us specifically which clauses give specific rights and privileges to States Members to access to the information that we are talking about or, specifically, can the Solicitor General tell us again the same question: which clauses allow States Members to not be classified as a general person?

**The Deputy Bailiff:**

The Solicitor General's advice was perfectly clear. As I understood it, he said that States Members, effectively, are individually members of the public, so they have the legal rights which this law creates, but that is quite separate from the political rights which the Assembly may determine from time to time.

**Deputy R.C. Duhamel:**

That is the case in point, Sir. So there is nothing specifically in this Freedom of Information Law that grants specific rights to States Members not to be bound in the same terms as an ordinary member of the public.

**The Deputy Bailiff:**

Solicitor General, does the Law distinguish between States Members and ordinary members of the public?

**The Solicitor General:**

No. There is no distinction made. The Law is equally applicable to a member of the public. A States Member can equally rely upon the law, should it be passed. Obviously, a States Member may well have additional rights of access to information because of their position as a States Member, but that is for the States to decide on a separate occasion. But any States Member can avail themselves of the provisions of this Law.

**The Deputy Bailiff:**

Deputy, in the light of that, is there some procedural motion that you wish to put forward?

**Deputy R.C. Duhamel:**

I think there is a case for calling for scrutiny, particularly a legislative-type scrutiny, a general legislative-type scrutiny on this particular issue, and I think it is something I must ask for.

**The Deputy Bailiff:**

On what? I am sorry, I cannot hear you. On what?

**Deputy R.C. Duhamel:**

I would like to ask for a suspension to enable the relevant Scrutiny Panel to consider the legal points as to whether or not the Law is fit for purpose in allowing certain privileges that have been enjoyed by States Members to continue to operate into the future should this Law be agreed.

**The Deputy Bailiff:**

So your proposition is under Standing Order 79?

**Deputy R.C. Duhamel:**

Yes, I feel that Standing Order 79 is applicable because when it was couched in the terms that it has been couched in, it specifically states that any Member of the States - at any time, presumably - may propose without notice that a debate on any proposition be suspended. So there is nothing in there that suggests that a call for a suspension without notice has to take place at a specific point within the debate. Under 72, for legislation, there is a mechanism for calling for legislative scrutiny after the principle has been agreed, but I think I would prefer to use 79 at this stage.

**The Deputy Bailiff:**

Well, if I may say so, I think you are too late for Standing Order 72 but in relation to Standing Order 79 it is open to you to propose that the debate be suspended and the States request the Scrutiny Panel to consider having the proposition referred to it, and the proposition means, in this context, Part 6 and Schedule 2. I think you could add to it propositions to come in relation to Part 7 and a proposition to adopt the Law in Third Reading. So that would be the extent of what would be potentially referred to a Scrutiny Panel.

**Deputy R.C. Duhamel:**

I think that is fine, Sir.

**The Deputy Bailiff:**

That is what you wish to have referred?

**Deputy R.C. Duhamel:**

Yes. The catch-all provision would be to get consideration before a decision was made in Third Reading which would enable the Scrutiny Panel in question to determine all of the clauses, as they should do, properly.

**The Deputy Bailiff:**

Very well. Have you said all you want to say on that proposition?

**Deputy R.C. Duhamel:**

Yes.

**The Deputy Bailiff:**

Is that proposition seconded? **[Seconded]** Very well. Does any other Member wish to speak? Chairman, do you wish to speak on that?

**1.3.2 The Connétable of St. Mary:**

Just to say that we seem to be going round in circles. I am at a loss as to this; we understand this Law is a law which will give rights to the public. States Members will also be able to use this Law. But we have heard from the Solicitor General, Sir, that the States Members also enjoy other privileges as from time to time the Assembly may consider. I wonder, could I ask the Solicitor General perhaps to address this one more time? We have discussed, on Committee, parliamentary access to information for States Members and I know that this matter has been given due consideration, Sir and I wonder if the Solicitor General could expand on it?

**The Deputy Bailiff:**

Members do not need the Solicitor General to give them the same advice again, Chairman. Is there any particular point which you want him to address?

**The Connétable of St. Mary:**

The question I have specifically is that my understanding is that through convention, through opinions already given by previous Attorneys General, States Members enjoy an enhanced access to information.

[10:30]

My understanding is, further, that this Law does not adversely detract from that enhanced access that States Members currently enjoy and I would be grateful if the Solicitor General could confirm whether I am correct on that, Sir.

**The Deputy Bailiff:**

Solicitor General, does this Law detract from the access that States Members have?

**The Solicitor General:**

No, it does not.

**The Deputy Bailiff:**

Very well. Does any other Member wish to speak? Deputy Martin?

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

I do think we are getting ourselves in a right “reds under the beds” situation here. I have sat with my Chairman and many other Members and we had a whole meeting on would this take away any privilege a States Member already has and the answer is absolutely not. But, as Deputy Le Claire seems ... a Back-Bencher cannot get hold of policy information at the moment unless they are on a Scrutiny Panel, and it is confidential, and that will stay the same. I do think some States Members... I sat with Deputy Higgins on the Freedom of Information and he seemed to think if this Law had been in place when the incinerator contract was going through, all States Members and the whole of the public would have had a right to see it, but it would be covered under “commercial”. We have had every expert over from the U.K. and, as the Solicitor General said, this Law is applicant-blind and it absolutely gives you ... if you do have a problem after your States Member privilege, if you want to go through the Law, you will have the back up of a law behind you. I can hear Deputy Duhamel and Deputy Tadier going back to the china teapot made of an extinct penguin. I mean, I really do not know. I sympathise with them and I vote a lot of ways ... many times the same way as they do, but this is something that will absolutely give them more rights, it does not take away any States Member’s privilege. We have discussed this around Health, I have discussed this with one of the new managers there, and if you think that this would affect any of your written or oral questions, you get much more than anybody can get through the Freedom of Information just putting in a question. None of that will be taken away, it is not in here. You will still have your problems if you are not in the inner sanctum with the policy information and access to it, that has always been the same since we went to the Ministerial system, but to absolutely think this will not help you ... As you say, when you read Article 9 with the qualified exempt ... and there would have to be a very good reason for somebody not to release that information to either the public or especially a States Member. These are things that need to be worked out about if you as a States Member - Back-Bencher - are taking on a Minister through the Commission and through the Royal Court, these are the things that we have discussed about who can afford what. But it can sit in tribunal mode ... and I have to disagree with Deputy Le Hérissier there as well, the last third-party appeal I and Deputy Trevor Pitman went to for our constituents, they had 2½ hours in tribunal mode representing themselves with a very good outcome, and it was not very expensive. So I really would like to lay to rest the views of these few people who seem to think this Law will take away any rights. As I say, if they think that I for one, or anyone else, is trying to pull the wool over their eyes, they are very much mistaken. If anything, as the Solicitor General has said, I think 3 times now: “We will give you a law to back it up.” Many States Members will not need it, you will still get the information; if it is on Scrutiny, unfortunately, a lot of it will be confidential but if you want to appeal that you will have the law to do it, you have no law at the moment. So I really cannot support this going to Scrutiny. This is not 8 years, I think the Deputy Greffier has been working on this for something like 18 to 20 years and if you do not think this has been scrutinised I am very sorry; as I say, we had a whole, what, 2 or 3 hours, making sure that States Members’ privileges would in no way be affected, undermined or taken away by this Law, and only enhanced.

**Senator S.C. Ferguson:**

*[Speech deleted in accordance with a ruling from the Chair - see 1.4.2 below]*

**The Deputy Bailiff:**

No doubt, your panel would have to reconsider the matter if the States vote in favour of the proposition. [Laughter] Deputy Tadier?

**1.3.4 Deputy M. Tadier:**

I think we are getting bogged down and we are not debating the proposition that is before us at the moment: the proposition is to refer this to Scrutiny. This is not a reference back, a reference back you would need one reason in particular that you thought was deficient, and Deputy Le Claire, and in particular Deputy Duhamel, seem to think that this Law would affect their privilege. Now, clearly, I think the case has been given by Deputy Martin that that is not the case; that does not mean that there are not other issues which would merit scrutiny of such a large piece of legislation. First of all I think, just to readdress the issue, I think there is an issue about access to information for States Members, and that is being convoluted. There is a perception that certain States Members have difficulty getting access to information. That is partly because, probably, the rules which cover States Members' access to information are not robust enough, but that is an argument to be had, that is separate, and so I think that Deputy Martin is quite correct. But, quite simply, I think there is a very good argument to be had that such a big piece of legislation should be referred to Scrutiny. It is inconceivable, I would say, that any other similar piece of legislation, let us take for example the Home Affairs ...

**The Deputy Bailiff:**

Deputy, would you sit down, please? The proposition is to ask a Scrutiny Panel to consider having the proposition referred to it and suspend the debate. The debate in its current form is only on Part 6 and Schedule 2. I am prepared to agree that it could extend to those parts of the law which we have not yet debated, that is to say Part 7, and it could extend to anything which is not in the Law at all which would be relevant to a debate on adopting the Law in Third Reading. But what it does not permit, in my view, is the reopening of debates which the States have already had on Parts 1 to 5 [Approbation] because those debates have been concluded.

**Deputy M. Tadier:**

I think you have said it yourself that the Third Reading is something that could be looked at. Now, the point of a Third Reading is that it looks at the whole of the law, that is the point of a Third Reading, and Third Readings do not just simply happen on the floor of the House as a rubberstamp, in other jurisdictions, in Westminster, a Third Reading is a very long process where it looks at the whole law as a whole and it looks for flaws of the whole thing. So I think you have confirmed that we can ask for the whole thing to be looked at in a Third Reading, it would cover the Third Reading...

**The Deputy Bailiff:**

Not the individual Articles.

**Deputy M. Tadier:**

... and that is why I am talking of the proposition as a whole, the principle of the proposition. I think that there are quite good reasons, I mean, Members quite clearly have to decide, perhaps tactically as well, whether they think that this is a good thing to do, whether it is best just to get a Freedom of Information Law through at any cost and then worry about the detail, worry about paying for it later, or if it is best to give Scrutiny a job to do, that is what they are there for. As I have said, it would be inconceivable for such a large piece of legislation to come in either the areas of Home Affairs or Education without our Scrutiny Panel wanting to look at it. Now, I know the argument has been put over that P.P.C. is a broad church, there have been 6 or 7 people at any one time looking at this Law - in fact, usually it is 4 because when I was there, certainly, it was very difficult to get the full committee together. But we know that this has been looked at over a number of years, but that is even more reason, I would suggest, for this at this late stage to be pulled for Scrutiny because, in relative terms, it is going to take a very short time for Scrutiny to

look over it, to make their recommendations; surely, that is what Scrutiny is there for. Now, we have heard there is another issue which says that the relevant Scrutiny Panel neither probably have the time nor the inclination to look at it, that is an issue to do with Scrutiny and to do with the health of Scrutiny and to do with another issue. But I think the point remains that there are good reasons for this to be referred to Scrutiny. I will just give 2 reasons, and it does relate to the whole thing that we are passing here: first of all, it has been pointed out that we do not have the money to pass this Law; that is perhaps peripheral. But there are a couple of issues which, I think ... the bottom line is, if we are honest, most States Members have not read this as thoroughly as they should have and that is probably because we have got other pressures. Most States Members have been concentrating on the Island Plan. We have seen that there have been a remarkable number of amendments to the Island Plan, 30-odd, and certainly there have been no amendments to the draft Freedom of Information Law, which you would have expected in other circumstances could have easily had as many amendments put to it. I know, certainly, the whole issue of legal advice, for example, very controversial; when that came to Scrutiny, there was robust debate around that. As I have said, we had interventions from the Law Officers, from the Crown Officers, putting robust arguments, none of that has been had in the Chamber. This is something that Scrutiny should be looking at in the round. We have got this paradoxical situation now where court files cannot be looked at, we have commissioned a Committee of Inquiry which we said will have access right across the board to look at cases, to look at how they were handled, but they can have access to legal advice if it were to take place while this Law were in, but they could not have access automatically to court files of the relevant cases because they would be absolutely exempt; of course, they could be released, but nonetheless they could be withheld without any recourse to that because they are absolutely exempt. We have got another scenario where we have been told this week that debates which happen in camera must remain in camera and that is the way they happen, but we have just agreed, under Article 19 that, after 30 years, anything that has happened in camera can be released, so I am not sure how Members feel about that. There are lots of issues right across the board which I think merit a short amount of scrutiny; surely a month or 2 to wait for this Law to make sure that it is robust, it has gone through Scrutiny, is sufficient considering we have waited 15 or 18 years for this Law. I think that is the case that needs to be put forward. I think Deputy Martin is quite right in rebutting the fact that this only enhances Members' - at least it does not detract from Members' - access to information that they have already. The point is we know that we have to use the code if we want to get any information often out of Ministers, as we have seen on the Education and Home Affairs Scrutiny Panel we cannot get the information ourselves, we have to rely on a member of the public to make an application through the code. So it would be useful to have a Freedom of Information Act because, if nothing else, we could get a member of the public to make an application for us or do it ourselves because, as we know, the Freedom of Information Law is applicant-blind. So I think there is merit for Scrutiny to look at it; whether they want to or not, that is another issue, whether Scrutiny is going to be around in 2 weeks' time is another issue anyway, so it is academic in that sense. But certainly academically it does merit scrutiny.

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

As a point of clarification, the Deputy has suggested that the panel asked for information that they were not provided and yet another person was. Could the Deputy confirm whether or not he officially requested the data that was provided to a third party?

**Deputy M. Tadier:**

This argument has been rehearsed, I do not think it is directly relevant to this debate. Certainly, we did ask [**Members: Oh!**] ... I am happy to answer that: certainly, we did ask for information, whether it was officially done or not, there was an implicit response that the department was unwilling to give us that information and I think if we had asked for the information we would not have got it as quick as the member of the public did.

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

That is conjecture.

[10:45]

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

I have spent 6 years now - it feels like 60 years - on Scrutiny and I have done all the legal arguments with you yourself, Chair, and I have time and time again, week in week out, chased various Ministers for background information that I feel is relevant to a particular decision being made or not made on Scrutiny. Now, we have a move towards greater access to information and it will not transform anything overnight; custom and practice will start tomorrow - or in 6 months' time when this is enacted - exactly where it is now. The extra freedoms and the extra information will be hard fought, not only by Members in this change in the line, saying: "Where is the line of public interest? Where does it stand?" it will be pushed slowly, inch by inch, towards greater information. That will be helped by individual voters out there saying: "I feel I need for my interest, the public interest, to know a particular piece of information", the background papers that we find hard to get and are only given in confidence, but the people ought to know. If there are 6 tenders, some of which have a wide variety of ranges for bids for the incinerator contract, then everybody ought to know that. The fact is that it will not change anything overnight; the proof of the pudding will be in the eating and the work that goes into slowly moving the barrier that says: "In the public interest, it is appropriate that we know this, that the public knows this particular set of information." The fact is that referring this to Scrutiny will add not one jot of value for what we are doing. **[Approbation]** What will add value to what we are doing today is the individual efforts that we make and the public make to push that barrier beyond where it is now to say: "This is in the public interest, you should be giving this information so that people can make up their mind and this House can make up its mind with information" instead of voting blind and trusting the Minister, as it has done for centuries now.

#### **1.3.6 Deputy R.G. Le Hérisser:**

Yes. I support the view it should not be referred to Scrutiny but, having said that, I do agree with Deputy Tadier's view: we made a mistake, we should have scrutinised it overall, but that time has passed, unfortunately.

#### **1.3.7 Connétable P.F.M. Hanning of St. Saviour:**

There are 2 points: firstly, you have clarified things for us. I think we are forgetting that there has been consultation on this, there have been briefings, there have been meetings. We have had no questions and no amendments on this at all. The other thing is that we are discussing whether a Member has rights or access to information. We are informed that a Member of the States is entitled to have States information that he or she needs to discharge their functions as a Member of the States. This in no way weakens their rights. As Deputy Southern has said, members of the public are now going to be able to access more information. States Members will still be entitled to access the information they require to carry out their duties.

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

I would just like to remind us of what has already been said in some form, but just to reiterate that this is public access information and Members have, as a matter of right, enhanced access. P.P.C. have also received opinion from the Attorney General at his last meeting and he has agreed to undertake and provide guidelines on Members' access, updated, that includes account of Ministerial government, and this will be available by the end of the year, so things are moving forward. This is something that has been a long and very arduous process but we are at the stage that we are near the implementation. The cost factor, obviously, is still there but we need to move this forward for it to be able to work and alleviate some of the concerns that have been expressed this morning.

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

I will be brief. My overall position is that this is, on balance, a good law, it is a very big step forward from where we have been and so I will not be supporting it going back to Scrutiny, and also there have been processes of engagement with States Members that have been better than average. But I think there are 2 issues underlying this reference back that need to be just very quickly looked at .... well, the request to Scrutiny to look at it. One is the whole way that we look at legislation. We have been here before, we have passed laws in connection particularly with the finance industry, which fewer have read than have read this. I think most of us probably have engaged with this to some extent, but there are laws that come to this House that do not get scrutinised, they basically do not get looked at, they get processed by the bringing department and they consult with the particular stakeholders or even have the laws asked for by particular stakeholders - in finance industry legislation often the legislation is asked for by stakeholders - and when it comes to this House we do not have a process that is adequate to scrutinise that legislation. So I think that that is partly where this request is coming from, there is an underlying feeling that maybe we are not looking at this closely enough. The process certainly on the floor of the House over the last few hours has not been ideal, there have been 3 or 4 of us who are really concerned with the detailed issues around costs and around some of the exemptions and some of the ways that we feel that departments might use loopholes that appear to be there, and we are concerned about those issues but most of us, frankly, are happy with the general thrust and we are going to vote - and we have already voted - for the principles. So there is an issue around how we tackle legislation, how we look it Article by Article, going through it, which we are doing now and it is not very conducive to good government and to the effective use of our time. So I think that is partly why this motion is being brought. The other issue beyond that, the bigger issue, is how would we have the time, 53 of us, to scrutinise all the legislation of a jurisdiction, we are a small nation. I repeat the view that 53 of us cannot do it, so we have to find a way of doing this better. I do not know what the way is but hopefully P.P.C. will put this on their agenda because the way we are doing business now is really not quite adequate. With those remarks, I sit down.

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

First of all, I would like to begin by apologising for kicking this off in the wrong direction. But, nevertheless, just following on from the Deputy of St. Mary, this process that we are undertaking and we have seen today, which no doubt will be commented upon favourably by the media, has been occurring at least for a decade and we have not got it sorted out yet. It is something I now realise we need to talk about and take up with P.P.C., it is not a Scrutiny issue. If there are concerns about access for Members to information within the States framework, then we need to go through P.P.C. I was confused until Her Majesty's Solicitor General explained it quite clearly to me. I think the concern that Deputy Tadier and Deputy Duhamel have are legitimate concerns but I think the direction in which I kicked it into in reference to Scrutiny was the wrong direction; in actual fact, concerns about access to information should be brought up within the forum of P.P.C. So I will not be able to support this now, Her Majesty's Solicitor General was crystal clear and I thank him for that advice. I was not as prepared for this debate as I might have been had I had that advice prior to suggesting it.

### **The Deputy Bailiff:**

Can I suggest to Members that we should not allow this debate to descend into a debate about how we do business. **[Approbation]** The debate is a focused debate, or should be, about whether or not the debate on Part 6, Schedule 2 and Part 7, and in Third Reading, should be suspended. The Connétable of St. Ouen.

### **1.3.11 Connétable K.P. Vibert of St. Ouen:**

It cannot be of any surprise to anyone that the public have lost confidence in the way we run our business. **[Approbation]** I know that a week is a long time in politics but here we have a day

being a long time in politics. Yesterday, everyone in the House bar 2 Members was hell-bent on going forward with this proposition regardless of the fact that we had not identified funding for it, regardless of anything else and here we are, 24 hours on, and Members are now finding all sorts of excuses why we should not go forward with it, why it has to be referred to somebody else, why we can avoid making the decision. This is not the way to run an Assembly, we are supposed to be professional politicians, we are not proving to be such. **[Approbation]**

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

Yes. I do not mean to say a lot but I can fully understand the rationale behind the issue from Deputies Duhamel and Tadier, and I think it is borne out of frustration, and one can understand that. As someone who regularly tries to get information from various Ministers, I know how that frustration can build up simply because one is termed as a nuisance when one wants to get to the truth and get to the bottom of an issue. So I can fully understand where the 2 Deputies come from, but one should also bear in mind that on page 3 this particular Law is supposed to be Human Rights-compliant, and I would bet any amount of money that no one has scrutinised it to see whether it is Human Rights-compliant, even though there is a statement here. This is the issue we have, and I think what we have is a bigger picture here: that the States as a whole has got to make a decision how it looks at laws *per se*, not just today. Some time ago, maybe 18 months ago, I brought a proposition asking the States to agree to set up a Human Rights Committee so we could be looking at issues and every law. So again, I think it is right the 2 Deputies have brought it; I will not be supporting it. Like the Connétable of St. Ouen said, I think we ought to move on now; we are so close to the end. If we need to bring amendments, bring amendments, but I do not think we should be delaying it any further and regretfully - and I generally do support the 2 Deputies, we are very much alike - at the end, I cannot support this one.

### **The Deputy Bailiff:**

Does any Member wish to speak on the subject of this proposition?

### **1.3.13 Deputy I.J. Gorst of St. Clement:**

I quite simply rise to correct something that the previous speaker said. I have no doubts whatever that a Human Rights audit was undertaken on this piece of legislation and the Chairman would have signed in light of that audit and the Law Officers would have provided that advice. If the Deputy wishes, I see no reason why he himself does not ask the Law Officers for advice along those lines. It is absolutely incredible that he would make such a statement in this Assembly.

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

On a point of order, my point was: was this carried out by the P.P.C?

### **The Deputy Bailiff:**

That is not a point of order, Deputy. Please sit down. Does any other Member wish to speak? Then, Deputy Duhamel, do you wish to reply?

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

Yes, Sir, briefly. Just to correct a couple of statements which you normally get in debate but must be countered, nonetheless. The Constable of St. Ouen said that the primary reason for bringing this forward or suggesting it was to avoid making a decision, and let me make it quite clear that I am in support of the Freedom of Information Bill but there is no point in making quick decisions which come back to bite us at a later stage, and we suddenly find out that we voted for something because we did not have the time or take the trouble and effort to look at things properly and we have given away rights that we thought we had. Now, it is quite clear from the comments that have been made that this Law is applicant-blind. If it is applicant-blind, it means that States Members will be treated, in exactly the same way as members of the public. Now, for some Members they may think that is fine; personally, as a States Member, I think there should be a specific clause outlining

the special privileges that we all think we have got in this Chamber to be given access to information that we have heard from some Members in their comments that they still find difficult to get, notwithstanding the fact that they are States Members. We heard from Deputy Martin that if you are not a member of the inner sanctum, you still have problems in getting information. We have heard from Deputy Southern suggesting that he still asks for background information as to how decisions have been come to by Ministers or others or those in a decision-making capacity, and he has not been given it, and this is because we all share in having greater powers of access and I am telling you now, we do not have them. This Freedom of Information Law I think is going to take us to a new low which takes away the powers that we even think that we have got and all I am doing is asking this House, acting as a legislative Assembly - which we have already decided generally by the comments that have been expressed that we do not do particularly well, but we should do, if that is the only job function we have got left as States Members - to scrutinise legislation properly.

[11:00]

We have heard from Deputy Le Hérissier saying that the time has passed to scrutinise. Well, in my book, it is never too late to do anything and if you can add quality to the decisions that you are going to make by taking the time out to look at something properly then we should do it, because it will bring forward better laws which give greater clarity to the decision-making process if indeed that is something we wish to be involved with. But I am afraid the way things are going it looks as if we are all abdicating our responsibility for making decisions in terms of policy-setting, strategy-setting or, indeed, perhaps even law-making, and it is absolutely ridiculous. We are going to get to the stage, I feel, in the not too distant future where we do not need 53 members, we need 10. Anyway, Sir, you did state that as part of the request for a reference to Scrutiny there was an opportunity for our Scrutiny Panel, whichever panel it is, to take the opportunity to look before the Third Reading as to whether or not there were any items that had been missed. It is certainly in that context that I am making the request to this House to suspend the debate for that to be done. I think the bit that has been missed is that there, in my mind, is not a specific recognition of the rights and privileges of States Members, Back-Benchers or whatever, States Members generally and the powers of this House, this Assembly, to request specifically for information in a special format without recourse to the Royal Court and expenditure of huge sums of money in order to get lawyers or Jurats or anybody else connected with the legal profession to make the decisions for us. Freedom of information means exactly that. As I said, it is not just a matter of accepting things in blind faith or trust. It is about having the ability to look at the documents upfront and to come to our own conclusions and this I feel has not been looked at enough. So I would beg the indulgence of the House to go with the proposition. There will not be interminable delays because the specifics of the request are very clear. So I make the proposition and ask for the appel.

### **The Deputy Bailiff:**

The appel has been called for. The vote is on whether to suspend the debate on Part 6 and Schedule 2, and as to come Part 7, and the debate in Third Reading, and request the relevant Scrutiny Panel to consider having those propositions referred to it. I ask Members to return to their seats and the Greffier to open the voting.

#### **POUR: 1**

Deputy R.C. Duhamel (S)

#### **CONTRE: 45**

Senator T.A. Le Sueur  
Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator T.J. Le Main  
Senator B.E. Shenton  
Senator J.L. Perchard  
Senator A. Breckon  
Senator A.J.H. Maclean  
Senator B.I. Le Marquand

#### **ABSTAIN: 1**

Deputy M. Tadier (B)

Senator F. du H. Le Gresley  
Connétable of St. Ouen  
Connétable of Trinity  
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 of St. Martin  
Deputy R.G. Le Hérisssier (S)  
Deputy J.B. Fox (H)  
Deputy J.A. Martin (H)  
Deputy G.P. Southern (H)  
Deputy of St. Ouen  
Deputy of Grouville  
Deputy of St. Peter  
Deputy J.A. Hilton (H)  
Deputy P.V.F. Le Claire (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy of Trinity  
Deputy S.S.P.A. Power (B)  
Deputy S. Pitman (H)  
Deputy K.C. Lewis (S)  
Deputy I.J. Gorst (C)  
Deputy of St. John  
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)

#### **1.4 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Part 6 and Schedule 2**

##### **The Deputy Bailiff:**

We return to the debate on Part 6 and Schedule 2. Does any other Member wish to speak? No other Member wishes to speak. I ask the Chairman to reply.

##### **1.4.1 The Connétable of St. Mary:**

I will do my best to remember what has been raised. Firstly, Deputy Le Fondré asked about the Rules of Court. The Rules of Court have not yet been made. The Rules of Court are, of course, for the court to make and there is an article later on, Article 54 I believe, which gives provision for Rules of Court to be prepared. On appeals generally and the costs I would like to stress that the Committee did take an awful lot of consultation and look at an awful lot of matters when we recommended that the Law be with the Royal Court as the last stage of appeal. Particularly of importance is what would be the appeal at the last stage if it was not the Royal Court. As Senator Ozouf mentioned, if we do not use the Royal Court we effectively are saying we will set up some other body specifically for this. When we looked at this, one of the prime reasons for going with the Royal Court is the success in the parallel system of the data protection appeals where the Data Protection Commissioner is a point of appeal, then there is a Data Protection Tribunal, and the fact

that when we looked at the law the tribunal had never been required to meet because of the success of mediation that the Data Protection Commissioner has in dealing with appeals. The great hope is that the Information Commissioner likewise will be able to deal with the vast majority of appeals at that mediation stage. To go with another question that was asked, there is no cost for the appeal to the Information Commissioner. Having said that, there is a right of appeal to the Royal Court. The hope is that appeals will be as informal as possible and that wherever possible pre-emptive orders as to cost can be made to give the applicant - and of course both parties will be involved - some guidance as to what level of cost they could expect and perhaps in certain cases the pre-emptive order would be that in the event that the appellant loses they only pay their costs and they do not pay the costs of the department. There are all sorts of ways to look at it but we have been very hopeful that the Royal Court tribunal would be as cost-effective as possible and that everything would be done for appeals to be settled before that stage was reached. That is the most important thing. We are looking at the history of what happened in data protection to hopefully mean that we have the right system in place where the majority of appeals will not go to the Royal Court. The Deputy of St. Martin raised some questions about Article 15. I think he was a little confused as to the costs of applications as opposed to the costs of appeals. Article 15 deals with the costs of applications. The costs of applications will be dealt with by regulation. We have given draft Regulations for consideration by the Assembly as a guideline of what might come out in the fullness of time but of course Regulations will come back to this Assembly to be set and so the Deputy need have no grounds on that score. He will have the chance to put his opinions through in that debate when it happens. The matter of conflict I think has been successfully dealt with. I think I have addressed in general terms all of the questions that were raised and I would move the article and the schedule.

**The Deputy of St. Mary:**

Could I ask for a point of clarification? I did ask about whether appeals to the Information Commissioner and appeals to the Royal Court thereafter would both incur a cost to the applicant, whether they would be covered by legal aid and so on. I am not sure I heard the answer to that.

**The Connétable of St. Mary:**

Yes, I did answer that. Appeals to the Information Commissioner do not have a charge. Appeals to the Royal Court would be down to Royal Court Rules and, as I have suggested, there would most likely be a recourse to pre-emptive orders as to costs. The costs would be borne but hopefully they would be limited, they would be as low as possible, and pre-emptive orders would assess what part of the cost the applicant and the respondent would have to bear.

**The Deputy of St. Mary:**

Do they come under legal aid?

**The Connétable of St. Mary:**

I have no technical knowledge of legal aid. Perhaps the Solicitor General could let me know.

**The Solicitor General:**

A person no doubt could apply for legal aid and no doubt they would be assessed using the usual legal aid criteria, which crudely speaking relates to their means and wealth. If I may say while I am on my feet, if one looks at Article 47(6) of the proposed Law it seems to me, if I may say so, there are 3 possibilities: one, that the person will appear in person; secondly, the person might be represented by another professional; and then, thirdly, an advocate might be appointed by that person. That seems to me to reflect almost a grading or a tiering of the complexity of the case that might come before the Royal Court. So in relatively straightforward matters maybe the person can represent themselves. If it is slightly more complicated perhaps a professional will assist that person. Then finally, perhaps in the rare cases which are rather complicated, an advocate will be needed. So in that way there is almost a cost protection for the person bringing the appeal.

**The Connétable of St. Mary:**

I would like to thank the Solicitor General for that very comprehensive answer.

**Deputy R.G. Le Hérisier:**

I wonder if I can raise some points following on with the Solicitor General. First of all, could he explain to us what a pre-emptive order is, just so that we get it totally clear? Secondly, while I am impressed that Deputies Martin and Pitman had a good experience with third party appeals, I do not think that precludes the fact that the system itself may need examination. I wonder if he could tell us if somebody appears at court, for example a States department with legal firepower, how will equality of arms be guaranteed? Will it be done on the complexity of the case or on the strength of the opposition's resources, so to speak?

**The Solicitor General:**

Equality of arms is not do you have as many lawyers as the opposition but it is whether you have sufficient representation to properly put your case forward. So, coming back to the tiered approach I was discussing, if it is a relatively straightforward issue it may be that the person in person can properly represent their interests. Obviously the more complicated the case becomes it may become necessary for an advocate to be appointed. Returning to your first point, which is what is a pre-emptive order, normally in court proceedings the starting point is that whoever wins gets their costs as a general principle. The purpose of a pre-emptive order is, because there is an element of public interest here, it gives the court a discretion to move away from that principle, so a court can decide at an early stage and can even give a ruling that in fact costs will not follow the event, even if the applicant is unsuccessful, but that is at the discretion of the court.

**Deputy M. Tadier:**

The Chairman suggested that she hoped that the court would be as informal as possible. She also suggested that if someone who is appealing lost their case that they would just have to pay their own costs and not the costs of the department. Could the Solicitor General confirm if either of those 2 hopes are likely and if there is anything in the Law which would make those facts the case?

**The Solicitor General:**

As I think I have already said, the power of the courts to use pre-emptive orders gives a certain degree of protection to an applicant going through the court process but ultimately the court is going to assess each case on its own facts. In some cases the applicant may get their costs paid for. It just depends what happened and how reasonable the conduct of each party was that caused the litigation in the first place.

**Deputy M. Tadier:**

Just to confirm, I thought I heard the Solicitor General earlier say that whoever wins gets their costs. So presumably if the department wins, and presumably in austere times as well, and if it has already been to the Information Commissioner and they have rejected the appeal it may well be that the court would award costs to the department rather than making the department pay their own costs seeing as they had won the case.

**The Solicitor General:**

What I said was that ordinarily in litigation there is a starting principle that whoever wins gets their costs but, as I also went on to say, the purpose of pre-emptive costs at the discretion of the court is to move away from that principle because in these appeal processes there is a public interest element to them and therefore it is at the court's discretion to protect the applicant from adverse costs orders even if they are ultimately unsuccessful, but that is at the discretion of the court and will be decided on a case-by-case basis.

**Deputy J.A.N. Le Fondré:**

The Solicitor General made reference to a representative possibly being a professional person other than the appellant in person, I think it is, or an advocate. I think the query is is there provision in the Royal Court Rules already for a professional to appear in respect of this Law or will that require a change to the Royal Court Rules to be made?

**The Solicitor General:**

As I understand the position, the Royal Court Rules have not yet been finalised and therefore not introduced. I suppose what I had in mind was the planning appeal process where there is what is called a modified process which is intended for relatively straightforward appeals which can be conducted by someone with legal qualifications who is not necessarily an advocate. I suppose I had that in my mind when I was giving the advice.

**Deputy M. Tadier:**

The last point was not answered but that is probably because we were concentrating on the more important question. There was also a hope expressed that the court would be as informal as possible. Is there any suggestion from this Law that the set-up of the court would be any more informal than it would be under normal circumstances? Could I turn up, for example, without a tie or could I turn up before the judge without a jacket on and just in a tee-shirt?

[11:15]

**The Solicitor General:**

I think there is a difference, is there not, between assisting a litigant in person, which a court would ordinarily do, and a litigant in person dressing in something other than a suit and tie? I do not comment on how people should dress but one would normally expect someone to be properly attired. In cases where there is a litigant in person who is not represented by an advocate then it is fairly standard court practice for the court to assist that person to the extent that the court can.

**1.4.2 The Deputy Bailiff:**

Before we come to the vote, Deputy “Hawkeye” Lewis has drawn my attention, through the Greffier, to a default on the part of the Chair, and I apologise to Members for this. We have unfortunately had to listen to a person who is not here, Senator Ferguson, and she has also voted on the last vote that was taken and so I am going to order the correction of the vote, which will now be from 46 to one, one, to 45 to one, one. Members may wish also to ask whether or not the défaut on Senator Ferguson should be raised. Members are in favour. The défaut is raised.

**Deputy M. Tadier:**

On a point of order, seeing as the vote was erased for Senator Ferguson will her speech be erased in Hansard, seeing as that presumably is not legitimate either?

**The Deputy Bailiff:**

Greffier, can I order Hansard to be amended by striking out Senator Ferguson’s speech? I think it is right that her speech never happened. For those who listened to it in the members of the public you did not really hear Senator Ferguson at all and Hansard will reflect that she did not speak. **[Laughter]** The vote is on whether to adopt Part 6 and Schedule 2. Deputy Tadier asked for the vote to be taken separately in relation to Article 47. Chairman, do you wish to take each article separately or shall we take Articles 43 to 48 and Schedule 2 but not including Article 47?

**The Connétable of St. Mary:**

Yes, Sir, I think that is sensible.

**The Deputy Bailiff:**

The vote is on Articles 43 to 48, but not including Article 47, and Schedule 2. All Members in favour of adopting those articles and schedule kindly show. The appel is called for. I ask Members

to return to their seats. The vote is on Articles 43, 44, 45, 46 and 48 and Schedule 2 and I ask the Greffier to open the voting.

**POUR: 47**

**CONTRE: 0**

**ABSTAIN: 0**

Senator T.A. Le Sueur  
Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator T.J. Le Main  
Senator B.E. Shenton  
Senator J.L. Perchard  
Senator A. Breckon  
Senator S.C. Ferguson  
Senator A.J.H. Maclean  
Senator B.I. Le Marquand  
Senator F. du H. Le Gresley  
Connétable of St. Helier  
Connétable of Trinity  
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 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 J.A.N. Le Fondré (L)  
Deputy of Trinity  
Deputy S.S.P.A. Power (B)  
Deputy S. Pitman (H)  
Deputy K.C. Lewis (S)  
Deputy I.J. Gorst (C)  
Deputy of St. John  
Deputy M. Tadier (B)  
Deputy of St. Mary  
Deputy A.T. Dupré (C)  
Deputy E.J. Noel (L)  
Deputy T.A. Vallois (S)  
Deputy M.R. Higgins (H)  
Deputy A.K.F. Green (H)  
Deputy D.J. De Sousa (H)  
Deputy J.M. Maçon (S)

**The Deputy Bailiff:**

We now come to Article 47. Do you ask for the appel, Deputy? The appel is called for on Article 47 of the draft Law. I ask the Greffier to open the voting.

**POUR: 46**

**CONTRE: 1**

**ABSTAIN: 0**

Senator T.A. Le Sueur

Deputy M. Tadier (B)

Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator T.J. Le Main  
Senator B.E. Shenton  
Senator J.L. Perchard  
Senator A. Breckon  
Senator S.C. Ferguson  
Senator A.J.H. Maclean  
Senator B.I. Le Marquand  
Senator F. du H. Le Gresley  
Connétable of St. Helier  
Connétable of Trinity  
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 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 J.A.N. Le Fondré (L)  
Deputy of Trinity  
Deputy S.S.P.A. Power (B)  
Deputy S. Pitman (H)  
Deputy K.C. Lewis (S)  
Deputy I.J. Gorst (C)  
Deputy of St. John  
Deputy of St. Mary  
Deputy A.T. Dupré (C)  
Deputy E.J. Noel (L)  
Deputy T.A. Vallois (S)  
Deputy M.R. Higgins (H)  
Deputy A.K.F. Green (H)  
Deputy D.J. De Sousa (H)  
Deputy J.M. Maçon (S)

## **1.5 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Part 7**

### **1.5 The Connétable of St. Mary:**

Part 7. These are the miscellaneous and supplemental provisions. Article 49 makes it an offence to alter records with the intention of preventing the disclosure of information. A person who is found guilty of so doing will be liable to a fine. If an authority supplies an applicant with information supplied by a third person which is defamatory, Article 50 establishes that the defamatory material is privileged unless the publication can be shown to have been made maliciously. Under Article 51

of the Law each administration of the States will be treated as a separate person but this does not allow an administration to claim that the disclosure of information would constitute a breach of confidence actionable by another administration. Article 52 exempts the following public authorities from criminal liability under the Law: the States Assembly, including the States Greffe, a committee or body established by the States, an administration of the States, the Judicial Greffe and the Viscount's Department. A possible draft of the Regulations referred to under Article 53 of the Law is attached at Appendix G of the report accompanying the proposition. The power to make Rules of Court governing the practice and procedure on matters relating to Royal Court procedures under the law is included at Article 54. Article 55 deals with certain necessary amendments to the Public Records (Jersey) Law. Article 56 deals with the citation. Article 57 deals with the commencement. If adopted, the Law will be brought into force by an Appointed Day Act. It is not, however, for the Privileges and Procedures Committee to bring forward the Appointed Day Act. Once this Law has been approved it will be a matter for the Chief Minister's Department to implement. The Privileges and Procedures Committee would recommend implementation in 2012, although it recognises that a lead-in period as long as 5 years has been suggested in order to ensure the smooth and effective operation of the legislation from the moment that it comes into force. I move Part 7.

**The Deputy Bailiff:**

Part 7 is proposed. Is it seconded? **[Seconded]** Does any Member wish to speak on Part7? No Member wishes to speak. All Members in favour of adopting Part7 kindly show? Those against? Part 7 is adopted. Do you wish to propose the Bill in Third Reading?

**1.6 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Third Reading**

**The Connétable of St. Mary:**

I do, and I would like to take this opportunity, if I may, to thank all of the myriad officers, clerks and law draftsmen who have worked on this project over the years. I must now, though, single out the Deputy Greffier who has given, in my view, quite exceptional service to the Committee, above and beyond the call of duty. She has given service both to the Committee generally and to me in particular in my preparation for this debate and I thank her most sincerely. **[Approbation]** With that I move the Bill in Third Reading.

**The Deputy Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak? The appel is called for on whether to adopt the Freedom of Information (Jersey) Law 201- in Third Reading. I ask Members to return to their seats and I ask the Greffier to open the voting.

**POUR: 46**

Senator T.A. Le Sueur  
Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator T.J. Le Main  
Senator B.E. Shenton  
Senator J.L. Perchard  
Senator A. Breckon  
Senator S.C. Ferguson  
Senator A.J.H. Maclean  
Senator B.I. Le Marquand  
Senator F.du H. Le Gresley  
Connétable of St. Ouen  
Connétable of St. Helier  
Connétable of Trinity

**CONTRE: 0**

**ABSTAIN: 1**

Deputy R.C. Duhamel (S)

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 of St. Martin  
Deputy R.G. Le Hérisssier (S)  
Deputy J.B. Fox (H)  
Deputy J.A. Martin (H)  
Deputy of Grouville  
Deputy of St. Peter  
Deputy J.A. Hilton (H)  
Deputy P.V.F. Le Claire (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy S.S.P.A. Power (B)  
Deputy S. Pitman (H)  
Deputy K.C. Lewis (S)  
Deputy I.J. Gorst (C)  
Deputy of St. John  
Deputy M. Tadier (B)  
Deputy of St. Mary  
Deputy T.M. Pitman (H)  
Deputy A.T. Dupré (C)  
Deputy E.J. Noel (L)  
Deputy T.A. Vallois (S)  
Deputy M.R. Higgins (H)  
Deputy A.K.F. Green (H)  
Deputy D.J. De Sousa (H)  
Deputy J.M. Maçon (S)

### **The Deputy Bailiff:**

With all the goings on this morning I omitted to draw Members' attention to the fact that there is a typographical error in Article 53, which says: "The State may make Regulations." It clearly means the States may make Regulations and I am assuming that all Members will be content if the formal copy of this Bill is so amended when it goes up for Royal Assent. Thank you very much.

## **2. Freedom of Information: Implementation Plan (P.41/2011)**

### **The Deputy Bailiff:**

We now come to P.41 - Freedom of Information: Implementation Plan - lodged by Deputy Le Hérisssier, and I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of the opinion to request the Chief Minister to present to the States before 30th June 2011 an implementation plan to ensure that the Draft Freedom of Information (Jersey) Law 201- (P.39/2011) is fully implemented by the end of 2015.

### **2.1 Deputy R.G. Le Hérisssier:**

Be careful of what you wish for. I asked for an implementation plan but never did I realise it would be the kiss of death and that, of course, is a reflection of a comment I make where I do say there has

been no enthusiasm from the Executive side. It was for this reason that I asked for one and fair dos to them they did produce it and they produced it at speed so I do congratulate the Council of Ministers, even though it obviously is intended to undermine enthusiasm for the Law, I think would be the polite way of putting it. All I asked for was for the plan. I have had the plan and I suppose I should shut up at this point but, due to the enthusiasm and request of the Constable of St. Ouen, I will say a few words. **[Laughter]** First of all, is it designed, I am afraid, to kill off the Law? The sums at face value, in my view, are quite horrendous, £5.6 million and then a possible £1.3 million, I think, per annum in the early years. I do not think any of us can, at face value, take those figures as they stand. It is interesting to note that there have been other reports on implementation. As I understand it, and I have not been able to find it, I thought the previous reports had come up with 2 columns: what we need to have and what is nice to have. Of course, we have ended up with the nice to have report and somehow the need to have report or column has mysteriously disappeared in the morphing of one to the other. The other thing is, of course, this report wraps-in an awful lot of old issues to do partly with, as the Chief Minister mentioned yesterday, the Public Records (Jersey) Law. All those old issues have been wrapped-up and what it embraces is a massive, and of course highly desirable, reform of the whole of the public records system, which raises the issue that the now present extant Senator Ferguson raised yesterday: why were not all these things being gradually and incrementally implemented, given the incredible lead-in time that has occurred for the Freedom of Information (Jersey) Law? Why was there not a tidying-up in some cases, radical reform in other cases? Why were not all these systems gradually being put into place so that, as somebody mentioned with a very little example yesterday, when emails are issued they are classified according to their status in the information hierarchy and it becomes second nature to civil servants when these things are issued? Why were not these kinds of steps put in place gradually, given the incredible lead-in time? There are also major assumptions, which rather like our court costs issue have been left dangling. Will it be self- or partial-financing? We know it is going to be only partial-financing but where the line is drawn is obviously a major issue in terms of you have worthy requests but they are going to be very costly to research versus unworthy requests which you can perhaps classify as vexatious and so forth. There is a real issue there and real judgment calls have to be made which will impact on financing. There are issues about the rate of requests. I noticed the Minister for Health and Social Services said that a big spike had occurred in the D.H.S.S. (Department of Health and Social Security) and then the Assistant Minister said that this had continued, not at the same rapid rate I should add, because some of us were rather sceptical about this particular figure because it was obviously meant to say that the whole system will be on the verge of collapse if requests come in at this increasing rate, but they never came in at the increasingly phenomenal rate that they did for the first year. But what is the rate of requests and, of course, equally, what is the nature of requests? Are they for massively complex things like how many sandwiches of civil servants contain mayonnaise, for example, which would be dismissed, hopefully, as opposed to very routine requests where you can, as we all dream of, press that computer button and the information can be aggregated for you very quickly because it is there in an accessible format? That was not answered either. Notice how all the gloom and doom was spread about a system on the possible verge of collapse. So I would have said we need to look - and I have given a long time span and I was glad to see the Chairman mention this - to 2015.

[11:30]

But I think we are open to negotiation within a year or 2 of that. We are not obsessional about 2015 but I thought it was a reasonable time span. On that basis, I think we can look at staggered introduction. Given, quite frankly, what may be construed as scare tactics, I think probably there has to be a joint group because again I was a bit worried about P.P.C.'s sentiment that: "Well, implementation is not our responsibility, it is the Executive's" so I wanted to pin it down and they have responded. But I think in the spirit of this Law and given the kind of concerns that have been expressed about the role of the Royal Court and the access of States Members to information, I think probably at the very least we need something like a joint P.P.C./Executive working group to

hammer at these figures to see how realistic they are, to look at other small jurisdictions - and we have already heard very interestingly from the Cayman Islands - and to say: "This in the light of financial circumstances is a viable plan." Because there is no way ... given that the States has made so many promises over the last couple of years to move away from Rolls Royce solutions to everything, I think we need people who can take a sceptical view but remain faithful to the spirit of the legislation in order that an acceptable implementation plan can be brought forward. But in terms of my proposition, I have the implementation plan but be careful of that for which you dream, because we must not allow it just to go ahead uncritically. As I said, P.P.C. and the Executive need to sit down and hammer it out in more detail because it is not, quite frankly, acceptable as it stands.

### **The Deputy Bailiff:**

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

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

Yes, just to respond briefly on a couple of the points raised by the proposer, first, of course, the plan contains 2 elements, really. One is the plan itself and the order of doing things and what needs to be done in order to implement Freedom of Information, and the second is the question of the costs. I accept that the cost is at the moment to some extent a finger-in-the-air situation, but I think probably not an unrealistic one. The majority of the costs, I suspect, are not strictly speaking to do with Freedom of Information so much as bringing the Public Records Law up to date. I think when we passed the Public Records Law back in 2002, I think it was, we were somewhat naïve in nodding it through thinking it was a simple beast. When you come to read it, as I took a glance at it some weeks ago, you find that every little handwritten note and post-it note and so on constitutes a public record and in theory has to be properly recorded. It may well be that we could reduce these costs by simplifying the Public Records Law, but I shudder to think about doing that when we have spent so long trying to produce a Freedom of Information Law. I do think that the Public Records Law is part of the problems which create both the cost and the time delay. If one reads the reports about the Jersey archive system and the fact they are something like 24 years behind in their record-keeping and analysis of that, and the need for that department to be properly resourced to bring the existing information up to date, until that information is up to date clearly Freedom of Information can be implemented but there are going to be significant delays from time to time in trying to retrieve the information when it is not properly catalogued. So I think we have to be realistic in this and the report which is available from SOCitm does set out all those details. The timescale I think is a realistic one given some of the Public Records Law implications. I would be happy to work - speaking on behalf of the Council of Ministers - with P.P.C. or anybody else that might want to implement this. Clearly, from a resourcing situation there are going to be resources and it will have to be the Council of Ministers in the course of the Business Plan that puts forward that request for the resources. But in terms of the implementation plan I am quite prepared to work with other people in order to achieve that in a satisfactory way. The report, as the Deputy says, has been presented. There is an implementation plan between pages 38 and 46 which I think gives enough detail at the present time to go forward. So I believe from that point of view we have achieved what the proposer was seeking in his proposition and to that extent I may be able to sit down and get on with the next item. Then the ultimate problem is going to come in September when we agree just how much we do next year and how much we defer until the year after. Tempting as it may sound to say: "Well, 4 years is a long time. We can spread it until the year after the year after that", I just warn Members that we do that at the expense of delaying implementation of a law we have just passed unanimously. So with those few words, I think we have agreed we have discharged the obligation and we now see how we can work to implement both the Freedom of Information Law and the Public Records Law.

#### **2.1.2 Deputy T.M. Pitman:**

A very few words. I cannot help thinking that most of the costs highlighted up are basically for things that we should have done already. I know it is very easy to say hindsight is a great thing, but that is the reality. I think it also has to be said that if this was directly related to finance then we would not hear half the objections and half the costs and it could be done in half the time. I think it is a matter largely about our political will and I hope the vote we have had today shows that that will is now there. My feeling is if we cannot get this in place, something in place, by 2015, then really you almost give up. It has been such a long time coming. It is time to bite the bullet and work together on this, which I think we all agree has to be in place. Let us just get on with it now. I think the public are really quite jaundiced and disappointed with the way this has taken on such a long rambling saga. It is something that is fundamental to democracy and I think the time to make excuses has long passed. We have to finally bite that bullet and get this done.

**The Deputy Bailiff:** Does any other Member wish to speak?

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

Yes. It does look as if there is not any opposition to this, implementing what we have decided is the right thing to do. But, of course, there is the worry of this famous report that has these amazing figures in it. It does suggest what our esteemed local paper said in its leader I think last night that that report suggests an unwillingness to go to this particular place in certain quarters. I think that is reflective of a general lack of ambition. Goodness me, if we cannot allow our citizens to have access to the information generated on their behalf, then it is a great shame. It is something we must be ashamed of. I notice in their comments talk about that there is not any money and that will have to take its place and in the Business Plan there will be bitter battles over this versus incubators for babies and so on. We have been there before. In fact, where there is a need, and I think Deputy Fox put it yesterday very well, we have to go here and if there are costs - and I will come on, of course, to costs - then they have to be found. There are other parallel issues like the sad dereliction of Fort Regent. It is a good facility but it could be so much better and so much more positive. The basic problem is the lack of ambition. I do think we should raise our game. I think we should be more positive about these things, and Freedom of Information is part of a civilised society. It is a right of individuals to have this information and we should be glad about it and do a sensible job, as the Chief Minister said, of making sure that we do not classify post-it notes as information and so on but that we do do this job. I just want to make one comment, really, on the costs aspect. When Mr. Frankel - who I think is the Director of the Freedom of Information campaign in the U.K. - came and talked to us, he gave a figure which I noted down and I hope I noted it down right. It seems very high. In the U.K. in 2007 there were 100,000 Freedom of Information requests - that is to all levels of government - and to central government 33,000. Then he suggested that in Jersey there would be far, far fewer. I think we know from the existing requests under the Code of Practice that there will be requests and there may be a spike when the door is opened, but there will be in absolute numbers very few requests. How many will be the subject of litigation is obviously open to conjecture, but will it really justify what we read in the SOCitm report? On page 18, and I have just skimmed it because we only had 3 or 4 days to look at this ... and I understand that the proposer of this proposition asked for this implementation plan but, in fact, it could have been produced earlier, as I said in the last debate. I find it extraordinary that we get this 3 or 4 days before the debate on the main Freedom of Information legislation. But on page 18, paragraph 3.6.4 for the record, the SOCitm consultants write: "It is anticipated that the Law Officers' Department will require 2 full-time equivalent Legal Adviser grade" - so we are talking presumably £100,000 or so - "staff plus a dedicated Legal Secretary to support the implementation of the legislation. This budget does not include an allocation for the provision of legal advice to the Information Commissioner. This is an unknown quantity until the law is enacted." Two full-time legal advisers and a legal secretary is what SOCitm estimate would be required by this Law, and that is the kind of figures that are buried in this amazing £5.6 million estimate for the implementation cost, let alone the running costs. Frankly, as the proposer said, it is simply incredible that we are being given figures like that. I would ask Members to consider this question: is our information at the

moment so chaotic that it will cost £5.5 million to find it? Because if it is that chaotic, then there is something badly, badly wrong with the way our departments are running the Island and the way we are responsible for running the Island. It cannot be that bad, or is it that bad? If it is that bad, then it is time we spent the money so that departments and Ministers and States Members and the public can find that information. It really cannot be that bad. Now a few words on the benefits. What this proposition is about, it is about whether we implement the Law in a timescale, i.e. by 2015. It is in a sense putting some juice in the car rather than just letting it drag on. The first point is that applications for information will be applicant-blind, so there will not be any consideration of who is making the application. The test is can this information be disclosed to the public? Is it right that it should become public information? As I have said before, the public have paid for it anyway. So is it right for this information to be disclosed? Because that hangs over every department and every civil servant when they are managing information, that will itself induce a culture change. It will induce the fact that the information has to be managed properly, and that will create a requirement for training in the management of information. But as I have said, the information must be being managed already. There must be systems in departments to collate and make registers of information so that people working can find it. So that is the culture change. It is going to be a valuable exercise and the fear of exposure will itself lead to savings and it will lead to honesty where that might be lacking in certain quarters. I am not saying it does, but the fact is it will impose honesty requirements.

[11:45]

Mr. Frankel gave some very pertinent examples about the value. Not just the moral value, if you like, or the wellbeing value, but also the financial value of the building of trust and the openness with information. I would just like to quote a couple of examples because people have not referred to what Mr. Frankel said in this debate. He said some very, very interesting things. One thing he told the people who attended his presentation was the result of a public survey - I think it was 2005; I am not sure the date of the survey - of the public in the U.K. Who do you trust to tell the truth? Doctors were at the top with 91 per cent, which is nice for them, and then teachers at 85 per cent, clergy at 80 per cent. The one that I want to focus on is the police. The police: 59 per cent said they would trust the police to tell the truth. He then pointed out what that meant in practice. He said that in practice that means that when you have a jury, 5 out of the 12 do not believe or will not take the evidence of the police necessarily to be the truth. That immediately has practical implications and you can imagine that in other spheres of government. If departments are telling the public that X and Y is the case and if we have those sort of levels of trust, then you have an impact on the cost of government. You have an impact on whether the public accept what they are being told in consultation documents and so on. He goes on to give trust figures for Ministers: 20 per cent. Not ministers of the cloth but political Ministers: 20 per cent. This is Ministers in the U.K., so present Ministers excepted, of course. Journalists, one has to add this, at 13 per cent, just for the benefit of the media present, so I have not won any friends there. Nevertheless, it is worth dwelling on those figures because this essentially is about building an atmosphere of trust so that information is shared. It does have real consequences, as I pointed out, with jurors who cannot be trusted to believe what the police are telling them. He gave another example ...

**The Deputy of St. Peter:**

Sir, if I may just interrupt for a second, I am a little uncertain as to what this has to do with the proposition as the implementation plan.

**The Deputy of St. Mary:**

Absolutely it has everything to do with it because what we are talking about is whether we do what we have just voted ...

**The Deputy Bailiff:**

Deputy, the question is to me rather than to you. The answer, Deputy of St. Peter, is that the proposition is about the implementation of the draft Freedom of Information Law, and much as the Chair might think we had already debated the Freedom of Information Law already and there was not anything to add to it, I think it is inevitable that there can be a full debate on the Freedom of Information Law as to why it should be implemented and by when and if Members want to spend their time doing this there is nothing the Chair can do to stop it.

**The Deputy of St. Peter:**

Thank you. I am saddened by your advice.

**The Deputy of St. Mary:**

Well, I am sad that the Deputy of St. Peter is sad. Because it is one thing for this Assembly to vote through policies and it is another to vote through the implementation of the policy, to say: "We are going to do it by 2015 and it is important enough to do that." There was general consensus with F.O.I. (Freedom of Information) is a good thing, so there was not a big debate on the principles and I kept my speech then very short because it was not necessary to go into any sort of detail. But now we are being asked to say: "By 2015 and by June 2011 there will be an implementation plan which we can take forward to get this thing working and in force." It is very, very important so I am afraid the Members will ... well, I just think that it is essential to back up the good proposer and to make sure that this does not disappear down a cul-de-sac as certain might wish it to. The other example that Mr. Frankel gave, which was really quite startling and also bore straight into this question of cost and the savings that Freedom of Information will bring us, who do you trust to tell the truth on G.M. (genetically modified) food? This again was an opinion poll in the U.K. University scientists, 67 per cent; environmental group scientists, 62 per cent; government scientists - in other words the consultation document that we issue as a parliament - 37 per cent. If you have trust levels running at just over a third, you are going to have mistrust, you are going to have arguments over nothing, you are going to have much, much time wasted in consultation that gets muddled-up in an atmosphere of mistrust. There is a cost there and I will give a local example: M.M.R. (measles, mumps and rubella), the vaccine programme run by the Medical Officer of Health. If she is not trusted because she is a government scientist, there will be lower take-up. That is the importance of trust in government. There are many examples of mavericks taking on the government, saying things that are totally unscientific but because of the general atmosphere around the lack of trust of government, those mavericks get far more credibility than they should have. So there are real costs in not doing this and there are real benefits morally in terms of the way society runs, but also financially in doing it. I think that is a very important point. Openness changes the attitude within departments and the changed attitudes will lead to more responsive decisions. I think I will go on to mention another thing that Mr. Frankel said about whether this emphasis on Freedom of Information... whether complying with Freedom of Information was a distraction. The Deputy Chief Constable of Hampshire in front of the U.K. Select Committee looking at this issue was asked whether Freedom of Information distracted from his work. His reply was: "No, not being secretive is good." That was his operational view. That was because he knew that being driven to be open and accountable was good for the force that he was running. So I think with those remarks I just want to end with one comparison. We are talking about £5.6 million, which itself is an absurd figure, and a running cost of £1.3 million for doing things the department should be doing anyway. There is, of course, the Commissioners themselves and their office; that is a cost and that will have to be borne. But Members should just remember that in this time of financial stringency we are being faced with a bill for the liquid waste strategy, which is because it has been put off and put off and put off, of £200 million. That is £10 million a year for 20 years. Here we are talking about well under a million per annum as a running cost. So I think we have to get things in perspective. Things have been put off until a time of recession, things that had to be done years and years ago, this is one of them, and we should not be misled by this siren call that times are so hard that we cannot afford to do things that are right.

#### **2.1.4 Connétable M.K. Jackson of St. Brelade:**

Just briefly, I think to elaborate on the costs in detail would be perhaps a waste of Members' time, but I would just like to sum it up by saying that I see that it is impossible to see how the resources can be allocated in this current fiscal plan without either increases in taxation or further service cuts. That really is the nub of the matter and I think Members need to be aware of that.

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

I stand in support of this proposition as a good way forward. However, it would be remiss of me not to identify some of the issues that we as the Council of Ministers and, indeed, the States will be required to consider in June as we determine the plan. That is the resource implications. I am not here to argue whether or not it is £5.6 million, £1.3 million, £4.2 million or anything else besides. I do think we need to get a far better handle on the costs and be able to demonstrate with evidence what the likely implications will be. Because the Public Records Law (Jersey) 2002 represents an example of a law that was introduced without adequate resources. This has caused difficulties both for the provision of information to individuals and States Members but, more importantly, to how we manage those records. Indeed, the archive in particular is a real practical example of how a facility not properly resourced simply cannot manage dealing and meeting the obligations contained within the Public Records Law. This is going to be further increased by the introduction of the Freedom of Information Law and I believe that whatever happens this will need to be dealt with. We have currently a backlog of some 20 years and I am certainly aware that not all departments and other public authorities have deposited their material at the archive. This is not because the archive does not provide the services that they should; it is simply because they are under-resourced. That is where the challenge will come. It is how do we provide for those additional resources at a time when pressure is already being placed on departments to save money, to reduce cost, to manage at a limited level. I would just like to raise that point with Members and leave it with Members as we look forward that we will have to properly resource this Law as others and provide for it both now and in the future.

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

I must reiterate what the previous 2 speakers have said: if we are going to do the job we have to do it properly. Because currently we now have obviously our Ministerial system, which only records the actions of the Ministers, not the actual minutes of every meeting that is taking place, so it is going to be far more difficult for the public to get the information that they may be seeking, because it will be held in different ways, some of it obviously electronically but some of the paperwork ... and we know in a certain inquiry a year or 2 ago paperwork is not generally kept after a meeting. It can be destroyed. So it might be very difficult to get some of this information and it will be very costly. I do have one or 2 concerns and I note in the report of the proposer here is where we have ... and I would like the Solicitor General maybe to answer this particular query. When we have an agency, i.e. a quango, owned in part by the States, and it may be our electricity company, who set up smaller companies within their own remit of which the States of Jersey are in part small shareholders, will the public, Mr. Solicitor General, be entitled to have access to see exactly what is going on within those companies because we have a minority shareholding, say, of 49 per cent? Could the Attorney General answer that one for me?

#### **The Deputy Bailiff:**

Deputy, how is that information relevant to an implementation plan?

#### **The Deputy of St. John:**

Because there is a cost implication, Sir. If somebody goes in and asks for information on the Jersey Electricity Company, for instance, which is a majority shareholding of the Island, and then they go down into the minutiae and find that one of their subsidiary companies, which the States have quite a large investment in but less than 49 per cent, will the public be entitled to go into that part of the

company's books, for want of a better word, and get the information for the public? Does that satisfy you, Sir?

**The Solicitor General:**

A shareholder does not have the same rights of access as one might find under the Freedom of Information Law. A shareholder is entitled to limited information.

[12:00]

Insofar as the Deputy wishes to extend the Freedom of Information Law to those particular entities, then the way to do it is to add to the public authorities defined in Schedule 1 of the law.

**The Deputy of St. John:**

Thank you, that is useful; at another time. The other thing that I do have concerns with, historically - and it has been mentioned I think by the Deputy of St. Mary - the amount of files, *et cetera*, being held in various places by various departments over many years, and given some of these departments would have changed names over the years, whether it be T.T.S. (Transport and Technical Services) in the days when it was Public Works, or the Sewerage Board or whatever it may be called, how far back would our files go if somebody is researching in this area? I can recall myself some years ago when I was doing some research in that area the president of the committee of the day, being the late Senator Carter, in fact said: "Help yourself, it is all in those tea chests" and I had to go through about 20 tea chests to get the information I required. All that information obviously is stored somewhere going back in part in some generations and it does worry me that we are going to be asking our officers, *et cetera*, to be compiling files. All this historical data will be held somewhere or is somewhere in some tea chest somewhere and I think we will have to double or triple the size of our archive centre to hold all these documents at some time. To expect this to be all in place by 2015 I believe is a wish list and I think it could be a bridge too far for the funding of this Island.

**2.1.7 Deputy M.R. Higgins of St. Helier:**

Just very, very briefly, I was just listening to the last comments about archives and data storage. The truth of the matter is that if the States can finally get their document management systems... electronic or whatever, they will save a fortune and it should be part of the Comprehensive Spending Review that they should be looking at these things anyway. Think of the amount of time that is being wasted while people look for documents because they cannot find them, or going to retrieval centres to get documents: absolutely ridiculous. These figures are highly misleading in terms of the cost of doing this. There are an awful lot of items which can be challenged, I think, quite reasonably. What I would say is that if they go about this the right way they can do it for much less and in the long run it will lead to greater savings for the States.

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

Just again a very short speech I want to make. Last night I received an email thanking the States for agreeing to the Freedom of Information Law. I think it is a general expectation that the Law is going to come in as soon as it has gone through the Privy Council process, so even within 12 months. I got back to the email writer to say: "Look, there is no chance of this coming at all. In fact, if we do not support Deputy Le Hérissier, it might not even get there until 2015" and the person was aghast. They felt, why are we taking so much time. I am reminded way back in 1999 when the States approved the Human Rights Law. That took 6 years before it became implemented, again because there was no implementation plan. I think if we are going to spend all day discussing something which is so obvious, if our States are so inefficient that it cannot get itself ready by 2015, we might just as well go home. I think we are going to spend so much time here on something which is so trivial. I would hope that we could spend little time now and ask Deputy Le Hérissier to sum up because I think we are going to waste our time here.

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

Very briefly, I just want to say 2 things. First of all to Deputy Higgins who says that a more efficient document management system will save money, I agree with him, but we have already committed to deliver £65 million worth of savings across departments and departments are going to have to reinvent and are reinventing and all Ministers and their Assistant Ministers are well aware of the challenges that departments are currently having to deal with in terms of dealing with their cost saving reduction. I sometimes get a little frustrated in this Assembly because sometimes Members want it both ways. They do not want tax increases, they want savings but they have to be found somewhere else. We have a problem. I fully support Freedom of Information. Yes, I support strong document management systems, but we are going to have to find the money to pay for that and there is going to be ... inevitably the Chief Minister will be making without question ... we have 2 meetings in the next month at the Council of Ministers discussing the Business Plan. We have departments that are now finalising their proposals coming forward with lots of constructive issues and we have to deal with some remaining issues of growth and in some cases, some C.S.R. (Comprehensive Spending Review) issues which are proving, as was expected, difficult to deliver. We are now going to have to find ... if this is the will of the States and I certainly do not think the States is saying that we are going to have a plan to do it into 2015. The Council of Ministers was asked to bring forward an implementation plan and we have done that straight away, we have done the implementation plan. But it is going to be for the Business Plan to reconcile, obviously on the Chief Minister's proposal... to find where the money is going to come from. We are going to have to find this money if we want the Freedom of Information Law brought in. That is an inevitable consequence. That means that money is going to have to be taken from other projects or there is going to have to be increased income and those Members who are looking at me in a negative way, there is no third way. It is either going to be finding savings over and above, which I think are going to be very difficult. I think over the period of time we have agreed the £65 million schedule of savings. I think that is deliverable but I think it is going to be difficult so there is no easy solution in trying to find £1.4 million of additional savings next year. The other alternative is going to have to be to look at paring-back some growth in some departments but that has already being looked at and as I look at the Deputy of St. John, there are challenging issues in relation to capital which need to be dealt with, which we are now dealing with, with the strength in Treasury. We are looking out but I have to say that everything that I am seeing at the moment indicates to me that we are going to have to put more and plan to put more in infrastructure and we can cope with that. So where is the £1.4 million next year and the ongoing costs on an annual basis going to come from? That will be discussed at the Council of Ministers. We will come forward with a recommendation to do it but it ultimately is going to be for Members to decide. But it is not going to be easy. It is going to be extremely challenging to do that and we should be under no illusion of what we are going to do in bringing this Freedom of Information Law which many Members, including myself, support.

### **2.1.10 Deputy M. Tadier:**

Senator Ozouf, of course, is correct. The States knew that the Freedom of Information Law was coming forward. Essentially we have been working on it for years and years. The question has to be first of all why was provision not made for that. I am not saying that should lie solely with Senator Ozouf or the Council of Ministers. It is a problem that the whole Assembly has to accept but my conclusion of it is not that we should not have a Freedom of Information Law. The conclusion is that the States of Jersey was wrong when it decided to make cuts of £65 million to its budget which we cannot afford to do, either socially or politically, because we know that we have got lots of legislation such as the Freedom of Information Law which are essential in a democracy and a community in the modern age. We have also lots of other essential things like the Maternity Law, the very much watered-down potential to what it could be Maternity Law, the Discrimination Law, of course, which we talk about all the time which have been put on the back-burner. It is unfortunate that we have not seen that come forward. Personally I would prefer to have a robust

Discrimination Law in place rather than a Freedom of Information Law if I had to make the choice of it. Unfortunately that is not on the table. We are supporting Freedom of Information so at least people can find out information about how they are being discriminated against and not being able to do anything about it rather than not being discriminated against in the first place but at least that information will be there for them in the future. So the bottom line is of course this money does need to be found so I would say to Senator Ozouf, yes, the money needs to be found and go where the money is, look where the money is. There are lots of taxes that we can introduce which will change behaviour. We know that we have got a massive housing issue. We are not here to talk about housing but that is one of the possible areas. Look at land speculation. Look at property taxes on second homes. You only need one home to live in. Any other homes that you have got are presumably for speculation or investment purposes and why not look at those, kill 2 birds with one stone so that we can get money into the coffers for the Minister for Treasury and Resources. At the same time, we can avoid people hoarding property when other people cannot even get on to - what I do not like use - the "property ladder" because I have said in the past we should not be talking about property as a ladder. We should be talking about homes for people to live in rather than favouring businesses which for a long time have been making money hand over fist and paying very little in taxes and revenue to run the society from which they benefit. So clearly there are issues to do with funding. The States has made the mistake with proposing cuts of £65 million which it cannot afford to do at the best of times, certainly not when it is proposing to bring forward legislation which is going to have an ongoing cost. We have to learn from our mistakes. Those of us who supported those cuts have to say: "Yes, we are completely stupid in doing that when we at the same time are bringing forward legislation which we cannot afford." Those are the contradictions of the majority in the States. The money does need to be raised and it should not be done on the back of those who can least afford it. There are many people in Jersey who love living here, of all categories of income, and we know that those who are most wealthy I am sure would be happy to pay a bit more so that this kind of law could go through. A really interesting idea. Why not have 1(1)(k)s adopt a piece of legislation so when they come in, they have to pay for a bit of legislation to go through and implement it. So why do we not have one of the conditions for 1(1)(k)s they have to sponsor the Discrimination Law and they have to pay for that every year and that is all? They can have their house. They can jump the housing queue and they can pay perhaps for the Freedom of Information Law every year. They do not have any other liability or maybe we can just sponsor legislation by Coca Cola and McDonalds as worryingly seems to be the case in Malta with all their street signs seem to be sponsored by H.S.B.C. (Hong Kong and Shanghai Banking Corporation). It sounds comical but these are the decisions that have to be taken. They are difficult but funding does need to be found for this kind of legislation. Senator Ozouf is quite right. He is on the other side but those in the middle need to decide which side their bread is buttered on politically so that they can make tough decisions but also have the economic wherewithal to pay for those decisions.

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

The costs outlined by the Council of Ministers have given people some concern as to the value perhaps of having a law and whether or not it is going to be found from savings within the Assembly or new taxes. I do not think we have looked at that opportunity that better, more free access to information may in some instances result in some savings and some stops in excessive spending that otherwise might occur. But it does not necessarily mean that just because we have a Freedom of Information Law that the information is going to suddenly leap out of the departments into our laps. We are going to have to devise systems and processes whereby not only the public but also the States of Jersey through the Back-Bench Members and Scrutiny processes can have better access and better use of that information so as to avoid potentially bad policies being made concurrently costing millions of pounds. I go back to compost again. We have had over the years millions and millions of pounds spent on this product. We have had on an ongoing basis £800,000 a year being spent on that. We have had a debate recently as I have said to change that commercial

aspect into a paid for aspect. We have now been told this week it is £1.6 million added on just controlling mainly the odours of that operation without even the costs of charging for it, and we have heard from the Minister - and I do not know how much there is because we have to ask this later - that he has got a fund from within the Solid Waste Strategy or what was set aside for the in-vessel composting element. I think at the time it was something like £3.8 million or £4.2 million set aside for that. I may be wildly out here but certainly he did say yesterday that there was an amount of money that he may have to return to the centre. We have seen recently as well aspects of the Minister for Social Security's budget being transferred over to the Health and Social Services Ministry because they have a surplus and Health and Social Services Ministry has a real need for that money, so a bit better joined-up thinking.

[12:15]

We also know although it was my suggestion that we merge those Ministries, bad idea because that is your idea, let us do it when it is our idea. Now the Minister for Social Security thinks it is the right thing to do which is interesting but the Council led by Senator Ozouf thinks that anything I bring is to be put off until they can bring it back. We do have implementation costs in terms of evidence, which is always a good thing to look at. When you look at the Cayman Islands - and I am glad Senator Ozouf is smiling because I was pulling his leg there - the inception of the costs of law for the Cayman Islands, in the slides that we were issued at that very helpful presentation, for the first 2 years were £1.721 million and those top 5 expenses were £973,000 for the bottom line implementation, £313,000 for the salaries, £102,000 for professional fees, £73,000 for the tracking system, £43,000 for fixed asset acquisition, £42,000 for premises and £175,000 for the implementation of a national archive. It went on in these slides to talk about the role of the Commissioner and we heard from her first-hand about her experience in bringing these things about and how also during the first year they had over 800 requests for records and they opened 28 appeals, a majority of which closed through mediation and only 4 progressed to a formal hearing. So we get some sort of flavour as to what might be happening in the first year whenever that first year is. So I would just say to the Council of Ministers and the people in control of the money - Senator Ozouf especially - it may not necessarily mean that we have to raise new taxes or stop services that are in need. It may mean that if we have systems in place for us all to have a better grasp of what is the right policy, we might stop funding money in the wrong direction. We might adopt a better policy and therefore with access to that information, we may come up with savings in ways that we have not thought of before and changes in policies that more than pay for these costs and I would say, with the greatest of respect, although they are estimates, I think they are on the high side. Given the evidence of the Cayman Islands, I think it is correct to assume they are going to be more than £3 million but to say they are going to £5.6 million ... well they may be £5.6 million if we put it off for 7 years. If we put it off for 5 years, it might well be £5.6 million because everything gets more expensive.

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

Just on a point of clarification on something the Deputy said just now with regard to the returning of funds to the Treasury to which I referred yesterday. I would just like to make the point that the funding originally directed of some £2 million towards an in-vessel composter will be redirected towards asbestos disposal predominantly in Part B of the Liquid Waste Strategy.

### **2.1.12 The Connétable of St. Mary:**

Just very briefly, because I have no intention of repeating what I said in the previous debate when I raised my concerns except to say it is essential, I believe, to identify the "nice to haves" from the "must haves". Whatever happens, we will be left with a cost. P.P.C. acknowledge that but our costs, of course, was at great variance to the Council of Ministers. What has come out of the SOCitm report in black and white for all to see is the extent to which the Public Records Law has been under-funded and it is essential that if nothing else, we stop the rot and we say this is it and we

make sure by hook or by crook that the situation does not get any worse because freedom of information is now coming. It is not coming as quickly as I would hope but it is coming and we understand the responsibilities that other Members have on the Council to point out the difficulties in funding. I am sure every Member here understands the difficulties we have but what is essential is that we have got to plan now to take advantage of every quick win that we can. Everything that we can do, that will make the costs less, we have to take advantage of. That is where the SOCitm report can be useful in identifying the quick wins. Fundamentally we have to instil, in my belief, that culture of change that every document that we create is created with the principles of Freedom of Information at its core so that we can make sure that when we have the funds to implement this, we can implement it as smoothly as possible, that we will be compliant with the Public Records Law and the Freedom of Information Law. I want this law to come in as smoothly as possible. We have got the possibility of phased implementation. We have to look at that very carefully. There are initial start-up costs but after that we can hopefully add more things over time with minimum additional cost to government. I am realistic about this but it is something that is coming and knowing that it is coming, we now, for the very first time, have the chance to plan for this at every financial debate that we have and it is our responsibility as a government to take things in the round and to prioritise where we can to make sure that we comply with the laws that we have introduced.

**The Deputy Bailiff:**

Does any other Member wish to speak? I ask the proposer to reply.

**2.1.13 Deputy R.G. Le Hérissier:**

I will not go through everyone's remarks. It has obviously exposed some of the divisions between those who think the place could be managed better and money could be found and those who think that the place is run so tightly in terms of finances that it is going to take a Herculean effort to find the funding. I think we will find a middle way. A compromise has been put forward, a staggered introduction, as the Chairman said to 2015, and I was pleased to hear the Chief Minister say at the very beginning - and I do not know if the Chairman of P.P.C. was here - that he would work with a joint body of P.P.C. and the Council. I think it has to be done that way. This is a law that by its very nature has a tension at its heart and the tension is between Back-Benchers often wishing to get information from a reluctant Executive. That is how it is phrased so let them get together, get in a room and really work out a realistic implementation plan. We have approved the principle of a plan. I do not think we have approved the SOCitm plan with those quite frightening figures. People are going to work on that. They are going to try and reduce those figures, as the Chairman said - and as Deputy Wimberley said - by setting up a culture, you may be quite surprised at how much is introduced ... just by the process of change, how much gets introduced. So I do not think those who are gloomy about it need be so. It is a good time. There is going to be a joint committee at work. I forgot to mention when all the praise was given, I think we forgot to mention the former Deputy Bridge who for several years led the political side of freedom of information and had got it - what she thought was - legislative-ready. That was 2005. Obviously we have spent rather a long time looking at the legislation since then but I think that is one other person that should have been mentioned. On that happy note, I move the proposition and ask for the appel.

**The Deputy Bailiff:**

The appel is called for on P.41/2011. I invite Members to return to their seats and I ask the Greffier to open the voting.

**POUR: 46**

Senator T.A. Le Sueur  
Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator T.J. Le Main  
Senator J.L. Perchard

**CONTRE: 3**

Connétable of Trinity  
Connétable of St. Brelade  
Deputy E.J. Noel (L)

**ABSTAIN: 0**

Senator A. Breckon  
Senator S.C. Ferguson  
Senator A.J.H. Maclean  
Senator B.I. Le Marquand  
Senator F. du H. Le Gresley  
Connétable of St. Ouen  
Connétable of St. Helier  
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 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 J.A.N. Le Fondré (L)  
Deputy of Trinity  
Deputy S.S.P.A. Power (B)  
Deputy S. Pitman (H)  
Deputy K.C. Lewis (S)  
Deputy I.J. Gorst (C)  
Deputy of St. John  
Deputy M. Tadier (B)  
Deputy of St. Mary  
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)

## **STATEMENTS ON MATTERS OF OFFICIAL RESPONSIBILITY**

### **3. Statement by the Chairman of the Education and Home Affairs Scrutiny Panel regarding the panel's review into school examination results**

#### **The Deputy Bailiff:**

Now so I say to the Chairman of the Education and Home Affairs Scrutiny Panel if he is listening, Deputy Hérissier, I am wondering whether it would be convenient now for you to make the statement which was put off from yesterday.

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

I will not get into who asked who about results. Members have yesterday received their copy of the Education and Home Affairs Scrutiny Panel's Report, School Exam Results. The report follows our review of the question of whether the Island's school exam statistics should be published. I am

sure Members do not need to be reminded of the very public debate on this issue which occurred in the pages of the *Jersey Evening Post* in February and March. The purpose of our review was to consider the policy of the Minister for Education, Sport and Culture on the publication of exam statistics and to assess whether any changes to the policy might be necessary. We commend our report to the Assembly and encourage Members to read it. Essentially we have found that the Minister's policy on this matter should be amended. While we recognise that the Minister has noble and laudable intentions to protect the Island's schools from undue pressure, his current policy is at odds with the age of information and accountability in which we now live. It is not possible to withhold the exam statistics, which until recently were not published, and the Minister must accept that there needs to be more openness when reporting school performance. We therefore encourage the Minister to develop a formal policy of reporting school performance that takes into account other performance measures used by the Minister's Department and not merely exam statistics, and which ensures sufficient public access to the information concerned. We on the panel are not naïve enough to think that there are not challenges involved in amending the policy and placing more information on school performance in the public domain. However, the Minister must lead on this issue and meet these challenges head-on. If he does this and presents the relevant information clearly and comprehensively, the risks of any misunderstanding or misinterpretation will be reduced. It should then be possible for school performance to be discussed reasonably and on an informed basis without entrenched views developing on any side of the debate. The Minister is soon to publish a Green Paper on the future of education in the Island. We agree that there needs to be a proper debate on the matter including for instance the structure and objectives of the secondary school system. We trust the Minister will take our conclusions into account during that consultation process.

**The Deputy Bailiff:**

Do any Members have questions?

**3.1.1 Deputy D.J. De Sousa:**

Did the panel have the use of an independent adviser and if not why not?

**Deputy R.G. Le Hérissier:**

No, we did not use an independent adviser because we were not investigating the manner in which schools should be measured, whether league tables were a good or a bad thing. This was an enormously lengthy subject and we did not include that within our remit. We felt we were well able to look into the issue which we, of course, just discussed for the last several hours: the whole issue of accountability and the sharing of information and what impact it has on how policy is developed.

**3.1.2 Deputy G.P. Southern:**

Why were no professionals involved in education interviewed in the course of this debate? Is there any philosophical reason why head teachers or teachers should not be interviewed in terms of the impact on schools of different publications? **[Approbation]**

**Deputy R.G. Le Hérissier:**

There is absolutely no reason why they should not be interviewed but they were not interviewed because we chose to take ... in order to get the report out quickly and because we were aware that very, very shortly there was to be a Green Paper on secondary school structure which would lead to a full debate and if Scrutiny was still in operation over the summer period, that would then be the time in order to bring the professionals in. But we looked at the somewhat narrower issue of whether these results should be published or not, whether measurements of school performance should be published or not and that was the issue we concentrated on. But certainly we see no reason - in fact quite the opposite - why professionals should not be involved in the bigger debate.

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

I think it is a very interesting statement - and the report as well - because what it showed was that the Minister's initial tack was not to publish some information. We have just been talking about information and now he has to or has published it and we have a debate on whether ... maybe there should be more information, there should be other indicators, because exam results are not the only indicators, especially when they are completely unqualified ...

#### **The Deputy Bailiff:**

This is Question Time, Deputy.

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

Well my understanding, Sir, of the way that the new Code of Practice on Scrutiny works in terms of bringing reports to the States is that when the Chairman makes a statement, that it is legitimate to make comments as well as questions.

#### **The Deputy Bailiff:**

It is a question to the Chairman. It is not a debating matter.

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

Well, Sir, would the Chairman not agree that this is an absolute case study in how information works? That because the Minister can no longer hide the information about league tables with regard to one narrow indicator, which is exam results, he now is forced to bring more data into the public domain about other aspects of education - what our targets really are in schools - that will inform the debate better, we will have a better debate and better outcomes in the future.

#### **Deputy R.G. Le Hérissier:**

Yes, I agree. [Laughter]

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

The Chairman said that the panel's findings were based on the requirement for transparency and openness in this area. The Minister for Education, Sport and Culture appointed independent inspectors to review the value for money provided to the Jersey taxpayer by the large fee-paying schools. Does the Chairman consider that these reports should also be placed in the public domain in order to provide transparency and openness in this area?

[12:30]

#### **Deputy R.G. Le Hérissier:**

Yes.

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

I must just give a conflict that I am a Governor of a State school. How can the Chairman expect either the Assembly or the Minister to take seriously their recommendations when they did not interview or take evidence from any of the State schools that he is referring to?

#### **Deputy R.G. Le Hérissier:**

For the very simple reason we were under pressure to get a very quick report out, and the second thing is we were not at this stage looking into the whole structure and objectives of secondary education. Were we to do that, then a whole range of witnesses would clearly have to be involved.

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

The Chairman has mentioned reading the report and obviously we have only had it a short time but there does appear to be some tension in that there was a witness and there was a Minister and the

panel have said at 4.9: “We are unable to verify either argument in the time available for our review.” Can the Chairman explain how he can make recommendations when they were not able to verify the argument?

**Deputy R.G. Le Hérisier:**

As the speaker will note, we did not make recommendations on the future structure of Jersey education because quite clearly in the time available that would not have been possible. What we did was, as I said, look at the issue of whether or not exam results, whether or not information about school performance, is a matter where there should be much greater openness and accountability and on that basis, we felt we had enough information to make recommendations.

**3.1.7 The Deputy of St. Ouen:**

Could I ask what analysis did the panel undertake of the 300 pages of data which was provided to them by the department that they requested?

**Deputy R.G. Le Hérisier:**

Again for the very reason I have mentioned, the analysis we undertook was to look at the nature of the information, to look at whether it was user-friendly and even though there were many, many pages, ironically it was we felt to a great extent user-friendly. But it was not our job to analyse that information and to reach a conclusion which of the schools was performing effectively or not performing effectively as the case may be. Our job was to say we felt that that information had to be out in the public domain so there could be a further scrutiny of that information and because by withholding it, it was quite likely that it was spreading despondency and fear which was ultimately irrational. It had to be there in an open fashion. That was the recommendation we were seeking to make.

**3.1.8 Deputy M. Tadier:**

Can the Chairman confirm that the panel did receive information from professionals through the unions who had a representative that made a submission to the panel?

**Deputy R.G. Le Hérisier:**

Yes, there were people who wrote to us even though we did not make a full public call, as has been mentioned, for evidence. There were people who did write to us but the main focus of the scrutiny was to look at the comparative views of the person who had placed this information in the public domain and wished a public debate to follow as a result of placing that. Also to look at the views of the Minister as to how this information had been handled historically and ascertain his views as to how it should be handled in the future.

**3.1.9 Deputy T.A. Vallois of St. Saviour:**

Can the Chairman explain why he does not believe that access to this information via the actual schools themselves is not in the public domain?

**Deputy R.G. Le Hérisier:**

We believe that that would be a controlled management of information that was wrong because we believe all parents would want to see what the information was from the different schools. Yes, admittedly, there might be a degree of school shopping involved but that occurs already and our view is if it was out there, that could lead to a much more informed public debate instead of a debate based on rumour-mongering, scaremongering and all the sorts of irrational ways in which these debates can proceed unless we are prepared to say we have got a system, there are things wrong with this system, there are things right with this system, let us start talking about it in a professional and intelligent fashion. Let us not try to put blinkers on the debate.

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

I have not read the panel's report but I understand the real concern about the publication results was the fact that some schools would be stigmatised in a way that is quite unfair to the parents and to the pupils. **[Approbation]** Can he comment on that and does he accept that it is not just examination results that judges a school in the round?

**Deputy R.G. Le Hérissier:**

I have already, to the frustration of some Members, mentioned that we took a fairly narrow remit but the panel were well aware that if you are going to comment on the performance of schools, you have to take a rounded view and you have to put into the public domain all the discussions about issues like value-added. We were totally aware of that but the panel's view was on an information management viewpoint that you need to put the information out there and while there might be an initial stigmatisation, while there might be the kind of things that we have seen occurred, basically you will end up with a far healthier debate and you will start getting to the bottom of issues of, for example, fee-paying schools versus non-fee-paying schools, the role of Special Needs units in schools and how they impact and so forth. So the logic of the Minister's argument that somehow you have to control information to prevent stigmatisation is in our view wrong.

**The Deputy Bailiff:**

The 10 minutes has now elapsed for the questions. I give notice to Members that P.69/2011 has been lodged - Standing Orders: Publication of Register of Members' Interests - lodged by the Deputy of St. Martin. The next item on the agenda would be P.43/2011. Minister, I am wondering whether it would be convenient to do P.46/2011 before lunch?

**PUBLIC BUSINESS**

**4. Health and Safety Appeal Tribunal: appointment of members (P.46/2011)**

**Deputy I.J. Gorst:**

I am quite satisfied to do that, Sir.

**The Deputy Bailiff:**

I suggest that we come to P.46/2011, Health and Safety Appeal Tribunal: appointment of members, and I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to appoint the under-mentioned as members of the Health and Safety Appeal Tribunal, in pursuance of Article 17 of the Health and Safety at Work (Jersey) Law 1989 and the Health and Safety at Work (Appeal Tribunal) (Jersey) Regulations 1989 for a period of 3 years commencing 1st May 2011: Mr. Philip William Syvret L.L.B (Lond), Solicitor, Chairman, Dr. Gwyn Llewelin, M.B., B.S., M.R.C.S., L.R.C.P., M.R.C.G.P.

**4.1 Deputy I.J. Gorst (The Minister for Social Security):**

Yes, it gives me pleasure to ask for the reappointment of these 2 members. Mr. Syvret has volunteered to become the Chairman of the tribunal and Dr. Llewelin will serve a further term. Perhaps I should also thank Advocate Thacker who has been acting as Chairman since 2005 and has in fact served on the tribunal since 1989 so I wish to put my thanks to him on record and ask that the States approve the appointment of Mr. Syvret as Chairman and Dr. Llewelin for a further term.

**The Deputy Bailiff:**

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

## **The Deputy of St. Peter:**

Perhaps you could take P.50/2011 as well?

## **5. Planning Applications Panel: appointment of Members (P.50/2011)**

### **The Deputy Bailiff:**

Assistant Minister, if it is convenient to do so, then I ask the Greffier to read the proposition, Planning Applications Panel: appointment of members.

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

The States are asked to decide whether they are of opinion (a) to appoint in accordance with Article 9A(2) of the Planning and Building (Jersey) Law 2002, Senator Francis du Heaume Le Gresley M.B.E. as a member of the Planning Applications Panel with immediate effect and for a term expiring on 31st December 2011; (b) to reappoint in accordance with Article 9A(2) of the Planning and Building (Jersey) Law 2002 the following persons as Members of the Planning Applications Panel with immediate effect and for a term expiring 31st December 2011: The Connétable of Trinity, the Connétable of St. Saviour, the Connétable of St. Mary, the Connétable of St. John, Deputy Paul Vincent Francis Le Claire of St. Helier and Deputy Jeremy Martin Maçon of St. Saviour.

### **5.1 The Deputy of St. Peter (Assistant Minister for Planning and Environment):**

As the Assistant Minister for Planning and Environment, I am making this proposition on behalf of the Minister for Planning and Environment who is currently away. The proposition before the Assembly is seeking the appointment of the Planning Applications members as per the requirements of Planning and Building (Jersey) Law 2002. Following my appointment as the Assistant Minister of the Planning and Build Environment, there is a post to fill in the panel so the Minister is therefore delighted to nominate Senator Le Gresley as a new Member of the panel. In so doing, I would also like to propose the reappointment of the existing membership of the panel until the end of 2011. The existing Members of the panel have already been put forward in the proposition. In so doing, I would like to thank those Members who have served on the panel for the last 3 years. They have done an absolutely excellent job. It is time-committing. It is a 2-day exercise each time they do it and they have done tremendous work so I thank them and I make the proposition.

### **The Deputy Bailiff:**

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

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

There are up to 9 States Members on the panel. It is a 2-part question. How many have to sit when they are sitting as a panel to determine an application and if a States Member is contacted by a constituent or which could conflict them in the future, are they allowed to stand down from that panel decision? Is it automatic that just because you are a Member of the Planning Panel if there is a problem in your area or Island-wide that you want to get into, can you then not sit on the panel when this is determined?

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

I wonder if the Assistant Minister would like to comment on why there is not more Ministers or Assistant Ministers on this? If we are going to have inclusive government, why is this not shared out fairly? I do not think there is anything within the Planning and Building (Jersey) Law 2002... because Ministerial government was not in place then, so why is this done from non-Executive Members in the main rather than the Executive? Why is it not shared out?

### **5.1.3 Deputy D.J. De Sousa:**

Along similar lines, I notice there is only one female on this panel. Is there any reason for this?

### **5.1.4 Deputy M. Tadier:**

The first question is if something comes to the States on a planning matter which is likely subsequently to come to the Planning Applications Panel, would the normal protocol be for the Members to declare an interest and not take part in that debate? That brings me to the next point then that I remember during a debate in the Business Plan - I think it was in 2009 - to do with whether or not a piece of land in Le Clos des Sables should be removed from the Business Plan and not be sold to a member of the public by the Jersey Property Holdings. I remember that all of the panel was present in the Assembly and I also remember that they voted against my proposition so that it should be ... I think unanimously. Then subsequently when it came to the Planning Panel's because it did go to the Planning Panel because it was controversial and received objections, all of the panel convened and they had already made a decision there and then and then they made a subsequent decision. So I would like to know from the rapporteur whether that was the correct procedure to have followed and whether that was ideal.

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

Very quickly, I just think for the point of good order, the Assistant Minister might just want to say that in terms of some of the appointments that have been made, there was an issue which should have been probably brought to the Assembly before in terms of their appointment and that has been put into the public domain and some of them were ... this is also correct that there is an issue that they are re-appointed properly in terms of their panel. I just think for the points of openness that that should be made clear that some of them should have been re-appointed a short time ago.

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

I support the nomination of these 6 members and ask the Assistant Minister to send down the message that the States expects them to encourage the Minister to refrain from determining certain applications himself. The panel is there to do a job and should be undertaking that job.

**[Approbation]**

### **The Deputy Bailiff:**

Does any other Member wish to speak? Assistant Minister, do you wish to reply?

[12:45]

### **5.1.7 The Deputy of St. Peter:**

I will try to cover as many of those as I can as quickly as I can. With regard to members who may feel conflicted in any way, the policy has always been followed that any member - and I have used it myself - can remove themselves from the panel and the assessment will be made without their involvement. Talking about Senator Ozouf's comment, yes, there was an admin oversight which has resulted in the fact that this should have come to the States about a month ago. We are now bringing this to the States so that situation can now be rectified. With regard to Deputy Tadier, the issue that he raised was not initially a planning matter and I can say that I have every confidence in the decision-making of the objective panel ... and I do not mean that as a personal ... they are a very objective panel and their assessments I have every confidence in. If I have missed anything out, I ... sorry, minimum of 3 members for a quorum. Why there is not enough women, note we have I think 7 members now and I am sure that the Minister would be delighted to hear any requests from the female Members of this Assembly who may wish to partake in the role of a panel member.

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

I did ask the Assistant Minister if he would pass on the message that this House expects the Minister to refrain from determining certain applications that he chooses himself and asks the panel to undertake their duties.

**The Deputy of St. Peter:**

If I may answer that question, there is a review going on at the moment regarding the way that the Minister exercises his planning decision-making. We await the outcome of that report. I think that the Minister himself is very keen to use the Planning Applications Panel to its fullest extent.

**The Deputy Bailiff:**

Very well. The proposition is made. The appel is called for. I invite Members to return to their seats. The vote is on whether or not to adopt P.50/2011, the Appointment of Members to the Planning Applications Panel and I ask the Greffier to open the voting.

**POUR: 32**

Senator T.A. Le Sueur  
Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator J.L. Perchard  
Senator A. Breckon  
Senator S.C. Ferguson  
Senator B.I. Le Marquand  
Senator F.du H. Le Gresley  
Connétable of St. Ouen  
Connétable of St. Helier  
Connétable of St. Clement  
Connétable of St. Peter  
Connétable of St. Lawrence  
Deputy R.C. Duhamel (S)  
Deputy of St. Martin  
Deputy R.G. Le Hérisssier (S)  
Deputy J.B. Fox (H)  
Deputy J.A. Martin (H)  
Deputy of St. Ouen  
Deputy of Grouville  
Deputy of St. Peter  
Deputy J.A. Hilton (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy S.S.P.A. Power (B)  
Deputy S. Pitman (H)  
Deputy K.C. Lewis (S)  
Deputy I.J. Gorst (C)  
Deputy of St. John  
Deputy T.M. Pitman (H)  
Deputy A.T. Dupré (C)  
Deputy T.A. Vallois (S)  
Deputy D.J. De Sousa (H)

**CONTRE: 2**

Deputy M. Tadier (B)  
Deputy J.M. Maçon (S)

**ABSTAIN: 5**

Connétable of Trinity  
Connétable of St. John  
Connétable of St. Saviour  
Connétable of St. Mary  
Deputy P.V.F. Le Claire (H)

**Deputy J.M. Maçon of St. Saviour:**

I have an active policy of not abstaining on votes and therefore I voted against.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Deputy of St. John:**

Can I propose the adjournment?

**The Deputy Bailiff:**

The adjournment is proposed. The States will adjourn until 2.15 p.m. this afternoon.

[12:48]

**LUNCHEON ADJOURNMENT**

[14:15]

**The Deputy of St. Peter:**

Sir, before we commence this afternoon's session, if I could just clarify a point that I made in the somewhat rushed proposition regarding the Planning Panel. I may have inadvertently misled the States into believing that the individuals concerned in the previous planning team had only been out of position for a month. The actual issue came to light one month ago and it involved 3 members of the Planning Applications Panel. One member had not been re-appointed and their time expired in March 2010, the other 2 in September 2010. Having said that, the decisions that were made by the panel of the time are still valid and although any individual may wish to challenge, it has been decided that they can do that if they wish and they can always come back to the panel and ask for it to be reassessed but the panel, as constituted at the time, made valid planning decisions. They were the same people who will be making the decisions now.

**The Deputy Bailiff:**

I am grateful to the Assistant Minister for that clarification. We now come to P.43/2011, Draft Christmas Bonus (Jersey) Law 201- lodged by the Minister for Social Security and I ask the Greffier to read the proposition.

**6. Draft Christmas Bonus (Jersey) Law 201- (P.43/2011)**

**Deputy I.J. Gorst:**

Sir, sorry, I am not sure if now is appropriate or immediately after the citation has been read but you might recall when the amendment was presented in the Business Plan last year I am not sure if it was yourself, Sir, or the Bailiff, there was some consideration given to whether those Members who were in receipt of the Christmas Bonus have a conflict of interest and would therefore remove themselves from the Assembly. It is my opinion, and I believe you will need to rule, that we have made the decision in the Business Plan. This simply is bringing in the law to give effect to that decision and therefore I am of the opinion that those Members would not necessarily need to remove themselves from the Chamber but I would of course, and I suspect they themselves, Sir, would be grateful for your clarification on that matter.

**The Deputy Bailiff:**

I will ask the Greffier to read the citation of the draft.

**The Greffier of the States:**

Draft Christmas Bonus (Jersey) Law. A law to provide for payment of an annual lump sum to Jersey residents entitled to certain benefits and to repeal the Christmas Bonus (Jersey) Law 1991. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**The Deputy of St. John:**

Sir, I will declare an interest and leave the Chamber either way.

**The Deputy Bailiff:**

You are able to do that, Deputy, if you wish. Standing Order 106 says that a Member of the States who has or whose spouse or cohabitee has an interest in the subject matter of the proposition must, if it is a direct financial interest, declare the interest and withdraw from the Chamber for the duration of the debate and any vote on the proposition. If it is not a direct financial interest but a financial interest which is general, indirect or shared with a large class of persons declare the interest, and (c) is if it is not a financial interest, which does not apply. The ruling is that it is not necessary for Members to withdraw from the Chamber because they have a financial interest if they are in receipt of a Christmas Bonus, which is general and, shared with a large class of persons. It is therefore right for such Members to declare the interest but they do not need to withdraw.

**The Deputy of St. Martin:**

Can I declare an interest?

**The Connétable of Trinity:**

Sir, I am not too sure if I have an interest or not. [Laughter]

**The Connétable of St. Martin:**

I qualify for an interest.

**The Deputy Bailiff:**

Would all Members who think they have an interest please stand up and the Greffier will read for the record the names of those Members who have stood.

**The Greffier of the States:**

Senator Le Sueur, Senator Ferguson; the Connétables of St. Peter, St. Lawrence, St. Clement, St. Saviour, St. Martin, Trinity; Senator Le Main; Deputies Green, Fox, Dupré and Le Hérisssier.

**6.1 Deputy I.J. Gorst (The Minister for Social Security):**

Thank you for that clarification, very helpful indeed. As I, when I was asking for your clarification on that point, alluded to, this is a law which will give effect to the decision made in the Business Plan debate of last year where it was decided on amendment from Senator Le Gresley that the Christmas Bonus would be reduced for every class of recipient who currently received it which was slightly different from what I was proposing. This law will bring into effect that. It will repeal the old law and at the same time it will bring into place an appeals process for those in receipt of the Christmas Bonus. I therefore maintain the principles.

**The Deputy Bailiff:**

Are the principles seconded? [Seconded] Does any Member wish to speak? If no Member wishes to speak, then those in favour of adopting the principles, kindly show? Those against? The principles are adopted. That seems like a fairly strong win behind you, Minister. Connétable of St. Lawrence, do you think your panel would wish to scrutinise this piece of legislation?

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

I would expect us not to wish to scrutinise it, Sir. [Laughter]

**The Deputy Bailiff:**

Minister, now you certainly have a fair win behind you.

**Deputy I.J. Gorst:**

Yes, could I propose the Articles *en bloc*. They are indeed straightforward. As I said, they give effect to what is now a reduced Christmas Bonus for this coming Christmas. Each class remains as was proposed. However, of course, it is being removed from those who are no longer resident in

Jersey and that used to be in receipt of it. That will no longer be the case and as I also said, it brings this new law into line with regard to an appeal process with other laws that we administer in the department whereby an individual who is not satisfied with the decision of the department can ask for a redetermination by a second independent officer of the first decision. If they are then not satisfied with that, they can appeal to the Social Security Tribunal. Finally, if they are not satisfied with that, they then appeal to the Royal Court. I maintain the Articles.

**The Deputy Bailiff:**

The Articles and the Schedules?

**Deputy I.J. Gorst:**

Indeed, Sir, thank you.

**The Deputy Bailiff:**

Are those seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of adopting the Articles in the Schedules, kindly show? Those against? The Articles and the Schedules are adopted.

**Deputy I.J. Gorst:**

Thank you, Sir. Can I maintain them in Third Reading?

**The Deputy Bailiff:**

It is proposed for Third Reading. Is that seconded? **[Seconded]** Does any Member wish to speak? All Members in favour of adopting the law in Third Reading, kindly show? Those against? The Law is adopted in Third Reading. We now come to P.52/2011 - Constitution for Jersey - lodged by Deputy Le Claire and I ask the Greffier to read the proposition.

## **7. Constitution for Jersey (P.52/2011)**

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to request the Chief Minister to bring forward for debate a draft written constitution for Jersey.

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

It is an exciting time to be a politician when we get to the stage where a written constitution can be debated in the States. I do not feel with the comments that have been issued by the Council of Ministers that I am likely to achieve a success in this and rather than being stubborn-minded about it, I think it is best to take more of a sensible approach and try to set out some of the background as to where we are and then ask for States Members' contributions, especially that of the Minister for Treasury and Resources, Senator Ozouf - and we have a discussion this afternoon - where he believes, and I also believe, that we do need to go taking into account the consideration of the matters at hand. So I would just like to kick-off, if I may, with giving my best run through of how we ended up where we are and it may or may not be of interest. The Duchy of Normandy was founded by Rollo the Dane in 912 A.D. after capturing Rouen and proceeding to Paris. Charles the Simple, King of France, made peace and offered Rollo the provinces of the west and his daughter Gilla to wife. Rollo became a Christian and distributed to his followers the lands he had conquered, thus establishing a feudal system. He went on to enact laws with great severity and an appeal to Rollo ensured brief and certain justice. He came to be known as a terror to the wrongdoer. The Clameur de Haro and its invocation "Haro, Haro, Haro, A l'aide mon Prince, on me fait tort" (excuse my French) is still in place today as a piece of legislation in regards to a breach of real property rights and the Clameur can still be given today and still be heard. When the opponent on bended knee raises this, the court has the power to fine either the defendant for the breach of the

rights or the plaintiff who wrongly raised the Clameur. We went on in history and through the veil of time we moved through a concession of various issues. The Dukes of Norman went to the conquest in 1066 as part of Normandy. Jersey was linked by conquest and in 1204 when the King of England lost Normandy, the Channel Islands remained loyal to him. At some point, he granted a Royal Charter sometimes known as the Constitution of King John which established the basis of the constitutional rights enjoyed today. Over the centuries, successive monarchs reaffirmed these rights, the most explicit in the Charter of Queen Elizabeth I in June 1562. Some of the other milestones of the Royal Charter's grants and orders confirming the laws, customs and liberties of the Island are contained within a little book I have bought from an antique shop which I will be glad to share with Members rather than go through them now. They set out the Constitutions of King John, previous Charters, Grants of Privileges, the Presentation of the Royal Mace and interestingly it points out the heraldry in relation to the King's heraldry which is displayed above the President's chair today of the 3 leopards and has the same heraldic significance. In 1688, the U.K. adopted a Bill of Rights and in the 19th century, there have been disputes in the States of Jersey and the U.K. largely settled in favour of the States, which included in most recent times the Prison Board case and the Victoria College dispute over the Order-in-Council issued by the Crown regulating the Governors of the College without consulting the States. The Order-in-Council was subsequently rescinded and what happened there in both instances was that decisions were brought about that did not refer to the States and the States, based upon their privileges and the Code of 1771, formed arguments to those changes and petitioned the Privy Council, and the Crown submitted against those petitions in various degrees. The sovereign possessed in their view the absolute power of legislation for the Island. The contention of the States' immemorial existence and legislative authority was challenged. The Code of 1771 was challenged and the establishment of the Code, Projets des Lois for Royal Sanction and then it was challenged in Imperial Parliament. It was stated it had unquestionable power to legislate for the Island and the Executive Officers in Jersey were appointed, paid by and were responsible to the Crown and the States had no authority over them, and it went on. Subsequently their Lordships' opinion on this order 1891 came down and they did not deliberate upon the challenges of the Crown but they did find in favour for the States. The Prison Board and the right to set up a board subsequently and pay for that board also came into contest with the Victoria College question between 1853 and 1860 when it was said that money should be paid over to run the College and there should be a council or a board established with the Governor on it.

[14:30]

That was challenged and that was successfully overturned. Through the centuries, there have been gradual and incremental establishments of the Island's international personality and more recently we have seen disputes in Jersey and Guernsey in relation to Edwards which was a review of the financial institutions brought about by the U.K. Government without consultation which backfired. There have also been Royal Commissions in relation to the constitutions, the Rectors, Jurats, Honorary Police, *et cetera*, and also most importantly, there has been an adoption of the Human Rights Law, including Article 3 of Protocol 1 of the European Committee on Human Rights providing a commitment to free and fair elections. The other milestone that I could mention... the States of Jersey Law 2005, which in its preamble contains affirmation of the autonomy of the States in domestic affairs and we carry on into some of the background information that I have given in my proposition where Senator Walker relayed the renewed understanding with the United Kingdom Government following the tensions that sprang out of the E.U. (European Union) Code of Conduct that we had more of an autonomy in deciding upon our own external personalities and entering into agreements. Congratulations to the Chief Minister and the Minister for Treasury and Resources in taking those things forward in the way they have done. They certainly have done them in spades, so they are to be congratulated. What I believe now though is that we need to start to consider having a written constitution for the Island of Jersey because I believe that it may, as highlighted in the second review of the Constitution Review Group, which was ably chaired by Sir Philip

Bailhache, the previous Bailiff, yourself, Sir, and former officers of the States Executive ... It went on to look at the issues in relation to 2 sides of the coin, one where we would be forced to go independent which would not be a difficult one to get our heads around - we just have to get our heads around it - and the other one which is slightly more tricky and slightly more complex inasmuch as if we decided that the time was right that we would want to do that. I would say that there are questions in the Island about where one's loyalty lies and where one's ancestry lies. I for one was delighted by the Royal Wedding. I think it was a renewal of the Royal Family in my view. I think there certainly are grounds for us to retain our strong loyalty to the Crown in any evolving constitution. I certainly would like to see that evolve. I would like to see some of the issues that have been so ably set out before us in this second review be explored further and I do not have the ability to do that. I know my measure and I often try to exceed it, but I am no fool, I do not try to exceed it beyond the attainable. In setting out my proposition today, what I wanted to do was to request the Chief Minister to bring forward a written constitution that we could examine and we could prepare with the understanding that, like anything in Jersey, it is probably going to take an inordinate period of time. I take on board the comments of the Chief Minister and his colleagues that say this may take 5 years. Well, it may take 5 years but if it is anything to do with States business, it is probably going to take 15. Senator Ozouf yesterday in questions revealed that he was in favour of perhaps a written constitution, and he is going to speak about that, in resolving some certain aspects of our affairs and he has looked at and researched a number of jurisdictions, so I will be pleased to hear from him from what he has found out. We saw yesterday in our newspaper a date to remember with the new Polish Consul, a full page on the Polish Constitution. Hats off to the Polish community; I started the Jersey Polish Association on behalf of the priests who were being inundated with appeals for help and I have got a personal affinity to their community. But then I see on our own constitution on page 5, in relation to what is being discussed this morning - something no bigger than the size of a bus ticket I guess - the fact that a proposal to set up a written Constitution for Jersey would not benefit anyone and could cost £500,000 according to the Chief Minister. I would contest that. It will benefit people. I think that there will come a time when, much like other things that I have perhaps introduced at an earlier stage than they might have wanted it to have been introduced, we do need to be ahead of the game on this. I can refer, if I might, to the compensation proposition that I asked the States to agree, at the time there was some hesitancy. I am very pleased to say there was no hesitance from the Minister for Economic Development who took the opportunity with both hands and went off and did what the States tasked him, and welcomed it; and by the time it came into being, not only was it something that we had agreed to do, it was something that was extremely highly desirable that we did because the finance industry was in need of it. Now, it may be that I have the timing on this wrong, but I think with the delay that it is going to take in order to draw up all of the issues surrounding this constitution, the second review seems to be where we have left off, and I certainly do think that we need to be progressing those arguments that have been capably set out for these reasons. Understanding and appreciating it is going to take time and you do not just pull something off a shelf, I was hoping that the office of the Chief Minister - being an office in perpetuity, not necessarily the individual - could have been encouraged to take this up and produce in a considered way - it does not request him to come back within a particular timeframe, unless I am mistaken - a written constitution so that at the time that we are in need of it, or the time that we would desire to have one, it has been well fleshed-out and also, consequently, any constitution will have to go through the process of a referendum. If we are going to set about minute changes in our constitution as we have done recently with the abolition of the numbers of Senators down to 8, much to the consternation of the public, I think there is now a time that we need to consider how much of this constitution we wish to tinker with before we enshrine it under a better process where there is a requirement for changes to be made through the will of the people through a referendum. I argued before that a referendum should have been in place before such changes. It was not supported. I think if we are going to have a Bill of Rights and a written constitution then it is going to be necessary, like any other jurisdiction, to have a referendum and normally the best opportunity

to have a referendum is at, or around about, an election period. Now, given that they have said it will be 5 years and we are about to go into an election period the next opportunity for an Island-wide focus on what we are up to, an accountable focus on what we are up to, is going to be the subsequent election which is to 3 to 4 years down the track. Now, this year everything is fine and probably next year everything will be fine, but in 3 years' time if we find ourselves in a position where our finance industry and our way of life is coming under threat because of people who have decided they want to impose their will upon us rather than through dialogue and consult us, then I think we need to be in a position to have a considered constitution in readiness for the extremely unlikely event that we may need to introduce that for other reasons. Setting those other reasons to one side, I think it is highly appropriate that we consider having a modern democracy with a modern written constitution and I make the proposition.

**The Deputy Bailiff:**

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

**7.1.1 Deputy J.M. Maçon:**

I think in this time when we have just had a long debate over the critical point of how much money we have got to spend, I know each Member will have their own opinion but I think out of all the priorities that we have to deal with ... this lunchtime I attended a meeting talking to the representatives looking at our Social Services Department. I think out of all the priorities that we have as a government I am not consciously be able to support this.

**7.1.2 Deputy R.G. Le Hérissier:**

I must say that obviously there is a need at some point for this but, partly to support Deputy Maçon, I just do not think at this stage we are ready for this. While I appreciate Deputy Le Claire's arguments I think the notion that the Chief Minister just before he leaves us will rush into the Assembly with a written constitution is unfortunately a bit far-fetched and I would ask the Deputy, would he be prepared to consider a process where the development of this idea was put in train but to remove the pressure on the Chief Minister to do it before the session comes to an end. Because it is going to be quite rightly a controversial issue, the public will want a lot of input and so forth, and clearly they will also want a lot of information. They will want to hear what other jurisdictions do, they will want to hear from advisers and so forth and I do not think this can be done, quite frankly, between now and the end of the session. I would ask the good Deputy whether he is prepared to engage in discussions with the Chief Minister to see if some kind of investigation process can start, because clearly the Chief Minister cannot commit himself before this session comes to an end. I do not think, because of all the enormous pressures on this House with the Island Plan and so forth, that there is time and I would ask him, given the tremendous importance of the subject, if he is prepared to defer it on those grounds.

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

Just for clarification, I am not going to make a decision but I would like to just get an understanding if I might. The corporate sole as a Ministry continues in perpetuity whether the Minister dies in office and is replaced. Does that apply for the Chief Minister? Because I certainly thought that the request I was making was of the office not of the individual.

**The Solicitor General:**

Yes, I agree, that if you request the Chief Minister to do something then the Chief Minister will still be subject to that request, even if the occupant of the office changes.

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

I agree with some of the sentiments of the 3 previous speakers in terms of the priorities, in terms of this Assembly's time between now and the end of the year, the financial challenge, also to Deputy Le Hérissier about the scale of decision that we would be taking in terms of a constitution, but I

have to say that I agree with Deputy Le Claire - and I have said this to him - that I hope we are not going to take too long about it because we may well have a not very informed debate. I do think that this is a useful opportunity to start ventilating some of the arguments for whether or not it is the right thing for us to consider whether or not we should develop the concept of a written constitution. Island states, countries, colonies moving to independence, mature countries, most countries - with the exception of perhaps the United Kingdom, importantly for us - have written constitutions. Those constitutions set out their relations. It sets out what they are as a nation state. The constitution sets out rights - a Bill of Rights - it sets out the parliamentary arrangements, the judicial arrangements, the independence of the Civil Service, all sorts of quite important issues. I cannot say that I have spent a massive amount of time researching this, but I have looked with interest at countries or territories that I have had things to do with in the recent past in terms of what their written constitutions are. Gibraltar is in the comment from the Council of Ministers, and I am not speaking on behalf of the Council of Ministers, I am speaking as an independent Member. Gibraltar has a written constitution for different reasons. It was very interesting to read the Saint Kitts and Saint Nevis constitution from the Prime Minister and we had some useful discussions. I certainly enjoyed the discussion with the Prime Minister of Saint Kitts and Saint Nevis and I read their constitution and I will send Members a link, if they are interested, to their written constitution. New Zealand: I have looked at theirs; and at Canada. Constitutions are important statements of what a nation, a country, a jurisdiction is and I think that there is a useful discussion to be had about whether or not we do consider having a written constitution. I do not support, and I think that this might be one of the ... I am not sure, perhaps he will conclude when he speaks in summing up. I think that maybe the reason that Deputy Le Claire was suggesting a written constitution was in some way a step towards independence for the Island and I do not support independence at this time for Jersey.

[14:45]

I do support absolutely ... that is an interesting support from Members. I do support the constitutional evolution, the identity of Jersey being involved as set out very ably and very well in the constitutional review report. I have no doubt that we are going to, in the next 2 to 3 years, have to look at quite a number of things that are normally found in constitutions. This Assembly has already agreed for a review of the composition of the States in terms of the Electoral Commission. Yesterday the Chief Minister's statement in relation to the need - and I think that many Members agree with this, I hope they do - to have a review of the machinery of government. A lot of the arrangements for machinery of government are set out in written constitutions and we are going to have to make changes to that. I think that it could be the case that a written constitution could contain all of these issues which we may seek to change, or the Members of this Assembly may seek to change or update within the next 3 years. It may be a very useful document to construct, to consult upon, to work upon, and then submit in dealing with the issue of a referendum, and I agree with what Deputy Le Claire said, a constitution would need to be submitted to a referendum. Many Members of the States I think believe that the composition of the States should be not only agreed to by this Assembly. Many Members are upset about the changes to the composition of the States not being submitted to a referendum in terms of the reduction in Senators but maybe we have had that debate, or maybe we will have another debate on that again. Constitutions set out parliamentary arrangements and they have the protection and the support of a referendum and they need to be submitted for referendum when you make important changes. It would be a big step for Jersey to move to a written constitution. It would be an important step. With the greatest of respect to Deputy Le Claire who I think has been useful to ventilate these arguments initially, I do not think we are ready to sign-up. I do not think it is fair to require the Chief Minister, because that is what it is requiring ... and Deputy Le Claire is correct, I think that it would be for any successor, or the current Chief Minister and his successors or her successors to do that. But I do not think we are ready today to say that this is what we want. We have not had a debate. This is the kind of thing that must emerge, that there must be discussions about, not only within the Council of Ministers but

in P.P.C. among the general membership of this Assembly; it is something we need to talk more widely, to consult about, to argue the wrongs of it, the risks of a written constitution. I think that there is a fertile discussion to be had, but I do not think that we are ready to make that decision today, that we definitely want to embark down this course. So, I am not going to support the proposition, I am afraid, by Deputy Le Claire. I think that maybe Deputy Le Hérissier might have given Deputy Le Claire an olive branch in terms of potentially Deputy Le Claire might consider the best thing to do, rather than push it to a vote and maybe get rejected, never take the States for granted, you do not know where the States go sometimes in votes, but if it is voted then it is off the agenda. Where it might be better for us to ventilate these arguments for a bit longer, withdraw the proposition, and hold some discussions about what the merits of this would be, not something that I think that could be delivered this year, certainly not - we have our work cut out with this Assembly's agenda for the next few months - but it could be something that could be an important feature of the work of the next Assembly. It is certainly something that I am very interested in and I think has merit and I think that we should be starting the process of having a wider-ranging discussion on.

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

I rise to agree with most of what has been said before and to also say that I agree with Deputy Le Claire's views on the need to have this debate, but in the autumn of this Assembly, at this time in the third year of the lifespan of this particular Chamber, now is not the time to debate this, or even to begin the debate on this. While I give credit to Deputy Le Claire for again raising the profile of this within our political radar, this time of the year, within 26, 28 weeks of an election - who is counting - I do not think we should be touching this. Very briefly, when I came to these Islands in 1982 I was a Europhile. The country of my birth is a signed-up member of the E.U. and when I came to Jersey I firmly believed in the Euro Zone in what was then the E.C. (European Commission) and all that. I have now come full circle and changed my views 180 degrees and I would now be in support of what I think Senator Ozouf was saying would be a constitutional monarchy which is, I think, an appropriate term for where Jersey may be going in the future. I think Jersey as an Island needs to look at this and I think there are 2 individuals in the Channel Islands who have well-rehearsed views on where these Islands should be going. One is ... I think I am allowed to mention his name, Roger Perrot in Guernsey, and the other is our former Bailiff, Sir Philip Bailhache. If you read the writings of both Mr. Perrot and the former Bailiff you will see that they clearly identified there are issues for these Islands and I am using the plural - these Islands - because the issues are fairly clear; that we seem to be at times in a pincer movement between Brussels and Westminster. There are some clear examples of what Europe tends to do to dictate to the U.K. and Westminster tends to pass on the dictation to us, but there are also clearly issues within the interaction between Jersey and the Privy Council on debates that we have had and enabling legislation that has gone to Westminster, which is critically examined in Westminster to decide whether it affects Westminster interests in Jersey, or in Guernsey, and I think those are concerns that we need to look at. That is the macro view of where we go in terms of a constitutional monarchy. The micro view is probably what Deputy Le Claire is referring to. My view is that we need to have a seasoned... we need to have a mature debate, and it is not going to be within the term of this Assembly. I agree with almost everything everyone has said here, from Deputy Maçon to Senator Ozouf, to indeed Deputy Le Claire, that this debate must be had because we must, as an Island, and I am not a Jerseyman, but I am a passionate Islander and I would say that the debate has to be had as to how Jersey, and its sister Guernsey, positions itself in the future with regard to pressure coming on these Islands from outside these Islands and that is how we look to the future. But I again repeat what Deputy Le Hérissier has said. I would suggest that given what has already been said that Deputy Le Claire gives consideration to withdrawing this at this stage but I do thank him for bringing it up and positioning it again in this term of this Assembly, but it is not for us to decide.

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

I would echo the comments of the last speaker that probably the wisest thing to do at the present time is to withdraw this proposition but to recognise that it is an issue which is not going to go away and I would point out that the constitutional review begun by the former Bailiff is an ongoing operation and so it is not a question of the matter not coming back for further consideration. A few brief comments I might add: first of all I would like to be a lot clearer about what the proposer means by a constitution and I would ask, what is a constitution? Because I think different Members may have different ideas about a constitution and I do not think we have in this Chamber anyone who can have a great deal of expertise in constitutional law. There might be one or 2 with a smattering of it but a little knowledge in these things can be a very dangerous thing. I go on to ask, what would a written constitution achieve? Because as is quite clear a constitution does not have to be written to be a constitution; we have had an unwritten constitution for over 800 years now. In fact, I suppose on the basis that it is unwritten we have had it for much longer than that but certainly over those 800 years since 1204 our constitutional position has evolved and become clarified over time but without being codified. The most recent example of a step change in that was the document agreed with Lord Falconer and my predecessor some years ago. So, I think we have to be very careful in saying just what is the purpose behind this and why a written constitution would be an improvement over the unwritten constitution which we currently have and which has served us very well for a considerable period of time. Where a written constitution has been brought in it has usually been in response to a specific need. It could be a move towards independence, it could be a change in the status of some sort but there has to be a catalyst and I think there is a danger here of trying to look at electoral reform, or governmental reform, and suggesting, mistakenly in my view, that that is a catalyst for creating a written constitution. In my view it is no such thing, but I do believe that if we are going to embark down this route, and I accept it will certainly not be within my term of office because it will take some considerable time, we do need to be quite clear about what we mean by a written constitution and why we think we need one. At the present time I would urge the Deputy to withdraw this proposition, but to engage in further clarification of what he is seeking to achieve and to see how that can be brought into a proposition which a future Chief Minister might well wish to bring.

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

Members will know that I seconded the proposition and I think it is only fair to give the House a few words to justify my position. In the in camera debate where we were discussing potential changes to the Bailiffs' role and indeed Law Officers in relation to this House and government, I mentioned that there were perhaps significant pointers to solutions that some Members were expressing as reasons for not having those changes or indeed looking at those changes and they had been neatly brought together in terms of a constitutional document for the Government of Gibraltar. At the end of that debate, as Members know, I emailed Members with a copy of that document so that they could see that it was not necessarily a complete case of reinventing the wheel; that indeed other communities had been able to do the very things that perhaps were being said to be beyond us. I agree with one of the comments from the Chief Minister in that the Gibraltar constitution should not be seen as an off-the-peg document that could be used by Jersey by deleting the name Gibraltar and the replacement of Jersey upon it, but that said, I do have some other points to make about the comments by the Chief Minister. This House represents the Government of Jersey and I am hoping that the debates that take place within this House do represent the views not only of the elected politicians who are here expressing them, but the views of the people and give some indication as to those who are in an executive role as to what work they should undertake and the things that we should be looking at. It is right, I think, in that respect for Deputy Le Claire to be asking for a debate to consider a draft written constitution of Jersey, or indeed perhaps in a slightly watered-down version, a written constitution for Jersey of some description. It certainly would not have to have all the bells and whistles and all the "I"s dotted and the "T"s crossed as to the exact type of constitution that would be put in the document but it would certainly bring it forward for a sensible debate, which is timely in my view. We have had this government since 1204, so 900-odd

years and I think we were discussing about whether or not the freedom of information legislation that had taken 5 years to come to this House was sufficient. We have had some 900 years to get our act together in terms of constitution and perhaps the time is right to be looking at it a little bit more seriously.

[15:00]

I think the Chief Minister is being a little bit wayward in his comments in suggesting by way of comment to Deputy Le Claire's proposition that perhaps what should be taken as a reason for discounting the bringing forward for debate of a written constitution to this House as something that is desirable, to be concentrating on the timeframe within which these things can be done. Deputy Le Claire did stress, and rightly in this respect, that the office of Chief Minister goes on and he is not asking Senator Le Sueur to bring it by the end of this Assembly, bearing in mind that Senator Le Sueur is leaving politics, or so I have heard. He may change his mind yet, I do not know, but the post of Chief Minister does continue until this House decides to change it. So, that does mean that the request is a very soft one, suggesting that this House feels that it is desirable to have a debate at some stage on a written constitution for Jersey. In those terms I cannot see anything which goes further, which has been alluded to by the Chief Minister, to suggest that the work would have to be undertaken by him or forced to be undertaken by any other Chief Minister, or indeed put forward in a timeframe that has to deliver everything, all singing and dancing, by the end of this electoral period. As I say, the request is very, very simply to express this Assembly's desire to debate a written constitution for Jersey at some point in the future. The work can be organised by the Chief Minister and his department and indeed would do, and that is probably the best place for it to be undertaken because the remit for that particular work does come with the remit for the Chief Minister. So, I cannot really see, from that point of view, how in voting for this straightjacketing the commitment of too many funds or the commitment of too much office power, or whatever, in a very short timeframe in order to deliver something which quite clearly is not being asked for to be done by the time we hit the elections in September-October time. So, on that basis I think Members should re-read what the proposition asks for and to delete any extraneous comments that have been put forward as red herrings in order to find a reason or peg on which to suggest that this Assembly does not think that we should debate at some point in the future a written constitution, and to ask the Chief Minister and his officers to do the job as quickly as he can do but without giving him a time limit to do it, so that, as other Members have perhaps expressed, we are in a better position should the time come to have this document in our drawer of documents on which to rely. One particular comment did please me from Senator Ozouf, was that he did agree that perhaps in the drafting of this particular constitutional document it could perhaps provide an opportunity to put a whole load of other eggs into the same basket and to solve more than one problem in one kind of neat fashion. I am glad he has picked up on that point because in sending around the Gibraltar constitution that was indeed the main reason in my mind for doing it. Other jurisdictions, not just Gibraltar, have managed to square the circle, so to speak, and have done it in a way which benefits their community and society. I think indeed Jersey would be best advised to take a leaf out of all of those books and see if we can come up with our own version to our own society's betterment. I will be supporting the constitution, unless of course Deputy Le Claire does withdraw it, as he is wont to do.

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

I will be fairly brief. No, not that long. I think the question that occurs to my mind when I looked at this proposition was what is behind it? Then I read the comments and I take the point of the Council of Ministers, and I think it is well made, that there is not really a specific need or catalyst. They list the post-revolution situation, post-colonial era, and I would like to just focus a little bit on the case of Germany which was post-Hitler, post-war and so they were faced with the necessity to define how their government would work after that and they did not come up with a constitution; they are still waiting for it - I am advised by my wife - because they were waiting for the other half

of Germany to join-in and so they would be one Germany and then one constitution. So, they do not have a constitution, what they do have is a grundgesetz; they have a basic law and the focus of that basic law was to define the rights and responsibilities of the individual citizen and the state. Now, I wonder why they focused on that. They focused on the right relationship between the citizen and the state, with particular emphasis on human rights and on the value of the human being. Again, obviously, after Hitler they had to go to that particular place and make sure they got it right and that it was stated unambiguously for the future of Germany and I think that sheds a little bit of light on what may be driving this proposal. I do not think it is realistic in terms of a written constitution for Jersey but there might be, in the back of the proposer's mind - and I am sure there is and maybe he could comment on it in his summing up - there might be real shortcomings in the way that we govern our Island, the way that the government works, and that that is what is niggling away and providing the kind of impetus in his mind for saying: "Well, maybe we need a constitution. Maybe that would solve the problem." I have 5 issues here which we can work on, if you like, independently of having a constitution, but which do need to be addressed because we are not there. We are far from in the right place in terms of the relationships between citizens and state that I have been describing in the case of Germany. The first is Freedom of Information. We have tackled that today. We have at last put down a marker saying: "Information is public information unless there are good reasons for it not being public information." Well, that is a start. That is one of the 5 things I am going to talk about. That is a pillar of the right relationship. The second is electoral reform and again we are working on that as a one-off item, to have fair elections where people have equal rights of representation and not vastly unequal. So, that is another pillar and it can be worked on separately. We do not need the constitution for that. A third thing that comes to my mind, it may be a less important issue than the other 2, but I think it is still important, is liability. What is the liability of the government to its citizens? When you provide services or facilities, like for instance roads, and then do not maintain them to a satisfactory standard and then there are cases and liability issues and so on. So, what is the right relationship again? What is the responsibility of the government to its people? That can be worked on again independently. The fourth is the reform of the Bailiff situation which again we are tackling as a one-off, and the fifth that comes to my mind is consultation. The way we handle asking the opinions of our people, the way we enter into that dialogue, the way that it is written-up afterwards and so on is occasionally satisfactory, as in the case of the Island Plan, which is a model of how consultation is repeated again and again, how you go out, how you make sure that everyone has the right to participate and so on, and then with very flawed processes, as with the speed limits issue. We have to really get our act together on consultation to make sure that it delivers what it should deliver, to make sure that it works, and to make sure that it is a genuine dialogue between government and people. But all those things can be worked on, if you like, a bit by bit in their separate areas without necessarily having the full-blown whiz-bang constitution. Maybe there is a case later on but I think there is quite an agenda there to be getting on with and I would welcome the comments of the proposer of this proposition. I think it is a useful debate to have and we will see what he says in his summing up.

#### **7.1.8 Deputy M. Tadier:**

I am slightly split as to how I feel about this proposition, but I think let us start with the good news first. I think that Deputy Le Claire has to be commended for this proposition in one sense insofar as that at least he is reclaiming what is ultimately a political question from those who have sought to make it a legal question in which only the elite, up until now, have been able to take part. I will give you an example. I think it was last year, we know that there was an event which took place at the Hotel de France to discuss constitutional issues. How much did that event cost to take part in? I cannot quite remember; I think it was in the region of £500 a ticket. So, already it is very exclusive. When did it take place? It took place at a time during which a States debate was being held. I know this because I corresponded with the States Greffier before. I did not know when it was going to be and I said: "Would it not be a good idea if we could send a States Member down,

or could we ask for States Members to go down perhaps for free? Could we club together and pay for a States Member to be represented there at what is essentially a very political event or which has political consequences?" But of course it was on a States day so none of us could attend there because our priority is to come to the States. This is being managed by a small elite ... we know that the former Bailiff has very strong feelings when it comes to Jersey's potential independence and this was essentially a closed shop. So, I welcome the fact that Deputy Le Claire has brought this on to the agenda because it is ultimately a political decision which should be made at least in conjunction with politicians right from the outset and of course by extension with the public of Jersey. It is also in keeping, I think, with the Zeitgeist that there is around at the moment - a manufactured Zeitgeist, it has to be said - with the types that would also propagate allegiance to the flag and these kind of non-news events to make them news events so that we can all hoist flags on certain occasions to try and manufacture some kind of national identity which does not exist. Jersey is like many jurisdictions insecure in its national identity. This is because national identities do not exist. They are manufactured for political and social reasons as a medium of propaganda essentially to stop people thinking for themselves and this is exactly what we have going on here in Jersey and there is a great fear among an element of the population that is very fearful if Jersey were to ever go independent, not because they do not have pride in their Island where they live and in some of the traditions, but because they do not trust the unconstitutional piece of language which I cannot say rule this Island at the moment. It is interesting that in the report, part 24, on page 5, Deputy Le Claire says that: "In relation to appeals to the Crown, would the States ever wish to be in a position where it would call upon the Privy Council to decide upon a matter that it had already decided upon?" I seem to recall not so long ago we were asking to go back to the Privy Council because we did not agree with the decision that we had made, but putting that quite to one side for now it is not quite a case of whether the States would ever want to be in that position. Clearly we would not want to be but for many locals in Jersey it is very reassuring to know that the ultimate backstop, if ever something goes wrong in Jersey, as has happened in the past ... we only need to recall the Corn Riots of, I think it was 1768, when the Royal Court was stormed and when troops were called in from the U.K. and it was found out that the locals did have a reasonable grievance, which gave birth to the current States of Jersey that we have now which is elected rather than appointed. The U.K. were there to say: "Yes, things do need to be done differently." Of course when appealing to the Privy Council it is not really to the Queen, we are talking about the Queen in Council which is ultimately the U.K. Government and there are many people in Jersey who are very proud of their British ties, of their British passports, and the fact that we do have that link, not simply to the Crown but in real terms to the British Government for good governance in Jersey. So, I am glad on the one hand that Deputy Le Claire has raised this; it is a political issue, it is not one that should be left to the elites of Jersey. Ultimately of course it is about the future of Jersey; he is correct in that sense, but what I would encourage Deputy Le Claire to do is fight for the future of Jersey which is at the next elections. It is not so much about who Jersey is responsible to in terms of the U.K., to the E.U., it is about to whom Jersey politicians are responsible in the terms of the Island. Do they jump when the finance whip is cracked, when the finance industry says that we want certain legislation to be pushed through this House? Or when social legislation is required in the Island when individuals are saying: "I cannot afford to take time off for maternity leave, even if it is unpaid leave, because I simply cannot afford to do it"?

[15:15]

Are we going to listen to the population of the Island? Or are we going to listen to those who have the wealth and who have dictated for far too long in the Island which laws and which policy direction is decided upon? So, I would suggest, as Deputy Maçon has said, that this is quite a worthy intended proposition. I would say that what we need to do is concentrate our efforts elsewhere politically, and I think the matter of a constitution will fall into place in due course. Finally, the point for me is we are being asked to request the Chief Minister, and who is the Chief Minister? We know who it is at the moment, but by the time if and when this proposition were

adopted we have no idea who the next Chief Minister is. I would ask each Member to think if they are successful at the next elections in getting back in, what are the chances that that Chief Minister will be somebody that you voted for, that you endorse? How can we ask a Chief Minister who we do not know is going to be in there, who we do not even know what his inclinations are, to do something when we do not know what the output is going to be? I certainly cannot do it. At least I am in the fortunate position of knowing that the next Chief Minister will not be somebody that I endorse. I have that certainty, but for many Members in here they do not have that luxury, so I certainly cannot vote for this proposition.

### **7.1.9 The Deputy of St. John:**

Well, times are changing. Trust. I remember back in the bad old days, I suppose, of the late 1960s, early 1970s when we had the problems of the Beast of Jersey and the like and the Honorary Police of the Island worked just for the constitution passed down from generation to generation as such. We had problems and the Connétable of St. Ouen was a Centenier in those days at the same time as I was and we realised from within our own ranks that we had to do something to put a constitution in place and the likes of John Le Sueur, Don Filleul, Brian Ahier, and other like-minded people, we set in train the constitution for the Honorary Police of Jersey which was adopted by this House in 1976 and the Honorary Police in fact have gone from strength to strength - as have our States Police because at that time in 1976 they had only just more or less become of age, having been set up in the early 1950s - an honorary system that had been in place for several hundred years. So, there is nothing wrong with adopting a constitution, nothing wrong at all but I have to ask, do we need one? What changes have happened within this Island that require us to require a constitution? I suppose in 2002 when the Island, or this Chamber, adopted Clothier in part the changes were starting to happen. By 2005, probably 2006 when the new Ministerial system came into being we started on a new road, a new way of governing the Island with a Ministerial system; a system that we all accept, I believe, is not perfect and needs some kind of reform. There is nothing wrong with what is being proposed by Deputy Le Claire of St. Helier. In fact, it might be just timely that we look at a constitution. It might be very timely but after 900 years I think we have got to where we are with a measure of success. We are very successful and do we really need to go down the road of putting something in black and white more than what we already have? I think what we have allows us to push the boundaries in certain areas and, for want of a better word, punch above our weight in others and although it would be very useful for the Chief Minister's Department to bring forward a written constitution for debate, can we afford all this extra time of manpower to pull something together? More expense. I know the public out there are not very happy with what we have at the moment, the people who are representing them. I know at any one time whoever is in office, in my 17 or 18 years in the House, the government of the day is always the most unpopular. In fact, I was at the Boat Show on Saturday and there was a certain member of the public walking along the pontoon with his good lady and from the top of the jetty where I was standing a lady came up to me and she said: "I never did like that person but he is better than what we have now." I thought: "That is exactly what happens." People do not appreciate what they have in their hands at this time. We have a government. Yes, we are probably the most unpopular this week but come this time next year when a number of Members may not be in this Chamber, myself included, I may lose my seat at the end of the year, but they will turn around and say: "Oh, wish you were back there." I had that once before when I was out of the Chamber: "Can you go back?" I said: "Yes, okay." No, really we are where we are and are we going to spend more money that we do not have in going down the road of putting a constitution in place? Because it will not be cheap. Nothing ever is when we do it. If it could be done by an outside body i.e. a group of lawyers doing it free of charge in an honorary capacity and give us a constitution that we could debate, yes, fine, but I cannot see that happening, but who knows, it might. I would probably vote for this. I do not know. I will wait and hear the remainder of the debate but after 900 years I think the Island has got to where it is with a good measure of success, so I think we can go for another 100 years without a

constitution in writing for all the reasons that I said. We have flexibility by not having our hands tied, as other governments have, by having a written constitution. That is all I have to say.

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

To start with the question which the Deputy of St. John really posed during his speech, what is the urgent problem which needs to be addressed? The fact is that this Island will face major challenges in the next few years. I have no need to set out the details of those challenges because the Members of this Assembly are well aware ...

**The Deputy Bailiff:**

I am afraid you will have to stop, Senator, as we seem to have gone inquorate. Could I invite Members outside the Assembly to return to the Chamber? Thank you. We are now quorate again. You may continue.

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

I do not normally have that effect on the Assembly. There we are, they are all coming back now. I was just about to say that I have no need to set out the details of the major challenges which we face because they are well known to all the Members of this Assembly and frankly we are going to have our work cut out in the next few years in giving our full attention to those issues. I am also aware that we have tensions and divisions in our community which need to be repaired. Furthermore, we are an Island economy, which is - whether we like it or not - very, very heavily dependent upon the success of our major industry which is the finance industry. Now, the finance industry can only flourish in an atmosphere of certainty and stability and continuity. It is vital that there be confidence in those 3 things. The problem with this kind of process is firstly that it is going to force us to look at and to start to make decisions in very difficult areas which will be divisive. Secondly, it is going to create an atmosphere of uncertainty as to where we are and where we think we are going. Such a process would force us to make decisions; firstly, about our relationships with the United Kingdom. Do we wish to remain in the current arrangements? Do we wish to be independent? These are highly contentious issues. Secondly, it would force us to consider and to make decisions in relation to our relationships with Europe. Now, it is in my view often overlooked by those who are most enthusiastic for a move toward independence, that whatever our relationship might be with the U.K. we would have major issues in terms of our relationships with Europe. The fact is that a brilliant job was done by the late Senator Ralph Vibert during the accession negotiations. We obtained absolutely excellent terms. I remember speaking to him on one occasion and he confided in me that he had simply put down everything he thought about to ask for it and had been amazed to find that he got it all. We obtained excellent terms. If we were to be independent from the U.K. hypothetically, then what would our relationship be with Europe? We would, in my view, be forced to be either entirely in it with all the consequences of that, or entirely outside of it. That is a major, major issue for consideration. Now, there are other matters which were alluded to by the Deputy of St. Mary in terms of our internal structures, aspects of Ministerial government, role of the Bailiff, *et cetera*. Work is already in hand in relation to those areas. Those who oppose written constitutions very often do so because what they are really concerned about is the equivalent of a Bill of Rights. They are concerned that without a written constitution there are not clearly written down proper constitutional safeguards. Well, that would have been a valid argument up to a number of years ago, but once this Island committed itself to the European Convention of Human Rights... that of course provides us with the essentials that we need in terms of a Bill of Rights. Furthermore, where would the future Chief Minister, or the present Chief Minister, start? This proposition, if passed, just tells him to do a task but gives absolutely no guidance as to what criteria. To start with a completely blank piece of paper, no idea of where anybody wanted to go; that in my view is an impossible task. So, to summarise very rapidly, where is the urgent problem which needs to be addressed? I do not see it. We are facing enough major challenges and in my view this Assembly, and indeed the Council of Ministers, needs

in future to be more focused in terms of the targets which it wishes to achieve. We have the problem that so often we are going off in so many different directions, trying to achieve so many different things, if we are not careful we are not careful we end up achieving nothing at all, or very little. We need to be more targeted. We need to be more focused. We need to stop running with red herrings, or hares, or whatever, in all directions. We need to look at the major issues. We need to avoid further issues which are going to further divide our community because the sort of issues I have spoken about are very divisive and we need to ensure that we have the stability and the continuity in which, and which alone, our finance industry can thrive. So, for those reasons I am unable to support this proposition.

**The Deputy Bailiff:**

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

[15:30]

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

I thank all Members that spoke and I will begin, if I may, with the speech of the last speaker, the Minister for Home Affairs who asked: "What is the urgent problem that needs to be addressed?" Prior to being able to continue he was stopped short by the fact that there were not the right people in place or the right number of people in place for him to continue his argument in a timely fashion. Case in point, if you do not have the right people in place at the right time you have no argument. My concern, although much of what the Senator mentioned was extremely well made, is that we are not being honest about what it is ... well, I am not inferring that the Minister was not being honest, but I am saying that we are not being perhaps cognisant of what work has already been undertaken. Maybe we need to go back and we all need to read the excellent work that was done on the constitution by the review group because when it comes to, what should we do next, and what should we come back with, on page 75, the last page in the summary and concluding remarks, the very last line, it says: "We hope that the above discussion of the options available to Jersey is of assistance to the working group. Should the working group decide to pursue this matter, and we are told that the work is ongoing, for example, in terms of producing a draft constitution, we shall be pleased to assist further. Jeffrey Jowell Q.C. (Queens Counsel) and Iain Steele, Blackstone Chambers, Blackstone House, Temple, London." I have had this argument before with the Chief Minister *ad infinitum* on work permits: "Let us have work permits. Cannot have work permits. What do you mean by a work permit? Okay, I will go away and get you a work permit. There, Isle of Man work permit. Take out Isle of Man put in Jersey. That is a work permit. That is what I mean. Put in a work permit. No, not a good thing to do. Do not need that yet. We only need that when we have no work." Then there is no work: "Not a good thing to do. We only need that when there is lots of work. Putting it in now will send out a signal that we are closed for business." The Chief Minister made the same argument today. I thank Deputy Duhamel for giving me the courage to continue to finish this debate because I changed my mind and I am going for the vote because I think it is important for me to make a speech that is convicted ... or with conviction. **[Laughter]** Well, maybe I should be after this. I rest my case. But I think Deputy Duhamel made the point quite well. I am not asking for Senator Le Sueur to go away and do something and bring it back, I am asking for the corporation sole to go away and do something and bring it back along the lines that have already been drawn-up for many, many different reasons I will go into in a moment, so that when we want to make our argument, in the unlikely event that we are ever called to make our argument, perhaps at a time that we do not have the money to make the argument, perhaps at a time when we are bored and we want to be in the coffee room and we do not really want to be bothering with it, perhaps then that is when we have to make the argument. Where are we going to be if we have ignored all of this work that has been conducted by these people on our behalf and the public's behalf in not taking these matters forward? Now, there is clear evidence in the work that they have done that matters should be progressed. There is evidence within the transcript of this debate that matters are being progressed and my point is the urgency of this debate is we need to

send a signal that we would like a written constitution to come before the Assembly, whether we are elected or not, for debate; not for acceptance, possibly for amendment, but certainly for debate and what kind of a proposition should we have, through the Chair to the Chief Minister? Well, why do we not take the last line from the legal advisers who helped draft this and get them to do what they offered, get them to commission the draft constitution? The summary and concluding remarks that they make on page 74: "In summary, any future constitution for Jersey would have to address the following issues: a preamble, setting out why the new constitution has been promulgated and what values Jersey stands for." In the preamble it says any ordinary constitution normally sets out how you have come to be where you are. Now, I did that very briefly. I could have done it quite intensively with the books that I have in front of me on how we have come to where we are, but Members do not want to listen to that. They are not interested in that, they want to go home. So, I spared them that, but I did set out a brief historical trail of how we have come to be where we are. Their second recommendation is a Bill of Rights setting out the fundamental rights according to every individual, the conditions in which these rights may be limited or derogated from and the extent to which the courts may strike down legislation contrary to these rights. Within this document it talks about all of the rights and the privileges, and the structures as mentioned by Senator Le Marquand, in relation to what we would want to have and what we would not want to have, the review, the emergency powers, the European Convention of Human Rights, whether or not we adopt them with conditions, whether or not we adopt them at all, which international institutions we wish to sign up to, for example, the United Nations which is key, all of those things are within this document. Thirdly, it goes on to say: "Structures of government comprising chapters on the Head of State, the Executive of the Legislature, elections and local government." Now, that is interesting because then the Deputy of St. Mary has said: "Well, maybe there are some other things that are niggling at Deputy Le Claire's reason for bringing this" and he said there are 5 things that he thought that might be of interest. He set out only 3 that I could clearly understand but they certainly are freedom of information; he said electoral reform; liability of services *et cetera*. Electoral reform within a written constitution, most constitutions can have the fact that they review, for example, on page 69: "Reviewing constituency boundaries. Many constitutions provide for the creation of a body to review the number and boundaries of constituencies and submit a report to the government recommending changes on these matters. Some constitutions leave it to the relevant body to identify the principles which will guide it, others expressly provide what those principles are: for example, the constitution of Dominica 1978 which provides: 'All constituencies shall contain as nearly equal numbers of inhabitants as appeared to the Constituency Boundaries Commission to be reasonably practical, but the Commission may depart from the principle to such extent as it considers expedient to take account of the following factors; that is to say the density of population, the means of communication, geographical boundaries, and the boundaries of administrative areas'." So, there we are, an Electoral Commission is contained within the living, breathing entity of a written constitution. We have a Bill of Rights which is contained within a living, breathing constitution that evolves; written, breathing, understood, and only changed significantly when it has the support of the people. The Deputy of St. Mary was miffed, along with other Members, that our constitution was changed in their view by those that have the least amount of votes contrary to the good of, in their view, those that had the most amount of votes, the Senators. Now, there would be, and in my view there should be before any more of this nonsense goes forward, enshrined in writing, protected within a constitution, that a very high number of people would have to agree in a referendum to any changes of our constitution before we decide upon the role of the Bailiff and this is why. I am sitting there thinking in the previous debate when, unfortunately, the Constable of St. Lawrence was not there to tell me what P.P.C. had pledged to the people about there going to be a referendum, *et cetera*. I had not heard that and I thought: "Hang on, we are talking about the Bailiff now." We have real issues about our constitution. It is not just about Electoral Commissions and boundaries and Bill of Rights, it is about the mandate. We do not have one. It goes on: "Recommendation (4) - scrutiny of legislation executive; (5) the judiciary, setting out the methods for appointing, disciplining and removing judges, probably

through a Governor. You would have the Queen as the Titular Head of State, the Governor under advice of a body would recommend the judges, the judges would be there. Probably in the unlikely event - and I am not suggesting this is what I am doing this for - that we did go independent, then we would probably have to separate. There would be greater argument for a separation and a clear understanding of the separation of the roles of the Bailiffs. Recommendation (7) - citizenship; (8) - emergency powers, and the repeal of those emergency powers and how they can be put into place and how long they can be put into place for, under what conditions and how long and in what ways they can be raised. Amendments to provisions. Now, we have at least begun today to understand that we do not feel that we have the money or the inclination at this time to request the office of the Chief Minister to do this work, but I would considerably agree with Senator Ozouf that there are significant benefits for having a written constitution. Members, I am afraid, more than likely it would seem in this debate, are going to be reluctant to support me. I hope in the future I am proved wrong, that we do not need to send a clear signal now to the Chief Minister that we would like a draft constitution written up and I hope that when it comes time for us, if we ever do have to consider our position in the more modern world, whether or not we are going to be operating financially, that we have the right people and the right mechanisms in place to be able to deliberate upon and refer to referendum upon a written constitution that is capable of currying favour within the United Nations. If we do not have these sorts of mechanisms in place, like an Ombudsman, these are the sorts of things that they talk about. This is not me. Sir, with the greatest respect it was yourself, the previous Bailiff and some of the most senior executives within the States of Jersey, including Mr. Colin Powell. I personally - just for the record - if it ever transpired that Jersey was going to become a Borough of Hampshire, I would like to go independent if that is the case, personally. I personally would like to look to the Queen as our Duke in the future. I personally would like that. I certainly would like to have confidence and certainty about our future, as the finance industry would like to have, and I certainly would endorse bodies of work like this that have been put together by people that know better about what we need to do and how to progress them and I am asking Members to endorse this body of work, not what I am doing, endorse this body of work of what they have done and get us a written constitution that we can debate because if it sits around for another couple of years and we go to pull it off the wall and it does not work we will all be in it. I ask for the appel, please.

### **The Deputy Bailiff:**

The appel has been called for. The vote is on whether to request the Chief Minister to forward for debate a draft written constitution for Jersey and I ask Members to return to their seats and the Greffier to open the voting.

#### **POUR: 5**

Connétable of St. Helier  
 Deputy R.C. Duhamel (S)  
 Deputy of St. Martin  
 Deputy P.V.F. Le Claire (H)  
 Deputy D.J. De Sousa (H)

#### **CONTRE: 39**

Senator T.A. Le Sueur  
 Senator P.F. Routier  
 Senator T.J. Le Main  
 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 Trinity  
 Connétable of St. Brelade  
 Connétable of St. Martin  
 Connétable of St. John  
 Connétable of St. Saviour  
 Connétable of St. Clement  
 Connétable of St. Lawrence

#### **ABSTAIN: 1**

Senator P.F.C. Ozouf

Connétable of St. Mary  
Deputy R.G. Le Hérisssier (S)  
Deputy J.B. Fox (H)  
Deputy J.A. Martin (H)  
Deputy G.P. Southern (H)  
Deputy of St. Ouen  
Deputy of Grouville  
Deputy J.A. Hilton (H)  
Deputy of Trinity  
Deputy S.S.P.A. Power (B)  
Deputy S. Pitman (H)  
Deputy K.C. Lewis (S)  
Deputy I.J. Gorst (C)  
Deputy of St. John  
Deputy M. Tadier (B)  
Deputy of St. Mary  
Deputy T.M. Pitman (H)  
Deputy A.T. Dupré (C)  
Deputy E.J. Noel (L)  
Deputy M.R. Higgins (H)  
Deputy A.K.F. Green (H)  
Deputy J.M. Maçon (S)

**The Deputy Bailiff:**

Very well, we now come to the Arrangement of Public Business for the following sessions. Chairman.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**8. The Connétable of St. Mary:**

The arrangement of public business is as set out in the consolidated order paper with the following single addition, namely on 7th June we will take P.69 - Standing Orders: publication of register of Members' interests - lodged by the Deputy of St. Martin. That is it, thank you.

**The Deputy Bailiff:**

Thank you. The order of business is proposed. Do any Members wish to speak? It appears the order of business is acceptable. The States now stand adjourned until 10.30 a.m. on Liberation Day.

**ADJOURNMENT**

[15:44]