

# STATES OF JERSEY

## OFFICIAL REPORT

THURSDAY, 9th JUNE 2011

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[9:30]

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

**PUBLIC BUSINESS – resumption**

**1. Draft Architects (Registration) (Amendment No. 2) (Jersey) Law 201- (P.62/2011)**

**The Deputy Bailiff:**

We now come on the agenda to P.62 the Draft Architects (Registration) (Amendment No. 2) (Jersey) Law 201- and I ask the Greffier to read the citation of the draft.

**The Greffier of the States:**

Draft Architects (Registration) (Amendment No. 2) (Jersey) Law 201-. A law to amend further the Architects (Registration) (Jersey) Law 1954. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

The Architects (Registration) (Jersey) Law 1954 is the primary legislation which determines the ability of individuals to be registered as architects in Jersey. Under the law, having gained all the relevant qualifications and training, architects can make an application to the Royal Court to join the register, which is maintained by the Judicial Greffier, to use the name, style or title “architect”. The 1954 law makes it an offence for a person to carry on a business in Jersey using the name or title “architect” unless they are indeed registered. Designated penalties are identified for unlawfully using the title if convicted. Turning now to the specific reasons for bringing forward this amendment, when the Architects (Registration) (Jersey) Law 1954 was passed by the States, Article 1 carried definitions associated with the U.K. (United Kingdom) Architects (Registration) Act 1931. There is close alignment between the 2 pieces of legislation, the U.K. and the Jersey, establishing case principles which would allow the Royal Court and the Attorney General in Jersey to draw upon U.K. case law. Approximately a year ago it was discovered that the processes for the registration of architects in Jersey were deficient. That is because the Architects (Registration) (Jersey) Law 1954 provides that a person may be registered in Jersey if, and only if, the person is also registered under the Architects (Registration) Act 1931 in the U.K. Unfortunately, the 1931 U.K. Act was repealed in 1997 and replaced by the Architects Act 1997. As a consequence, since 1997 there has been no lawful mechanism for registering architects in Jersey. Therefore, some architects have been registered since the 1931 Act was repealed in 1997, a situation that was only identified in 2010. In practical terms this has the effect that either their registration needs to be validated or they need to be re-registered. When this came to light in 2010 an embargo on any new registrations was put in place on all those wishing to register as an architect in Jersey. In summary, the amendment sets out to achieve alignment between the Jersey Law and the U.K. Architects Act 1997. If approved it will move the criteria for registration in Jersey from the face of the law to in future being prescribed by order of the Minister. It allows architects to once again register in Jersey and through a validation process lawfully register those admitted erroneously to the Jersey register since 1997 when the U.K. repealed their 1931 law. It updates the penalties for offences under that law. In addition a number of smaller issues have also been addressed. It will enable a person’s name to be removed from the registered list, either at their request or indeed upon their death. It will require an architect to tell the Judicial Greffier if they change name or address or if their U.K. registration is for any reason cancelled. We believe this amendment deals with all outstanding issues and puts in place a new modern regime that will allow the Attorney General and Judicial Greffier to once again lawfully register architects to practise in Jersey. I should add that the Jersey Architects Association is also supportive. The current position is clearly unacceptable and is now acting as a barrier to professional registration and the ability to legally carry on a trade as an architect in Jersey. I therefore ask Members to support this amendment. I propose the amendment.

**The Deputy Bailiff:**

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

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

Is it the intention of the Minister to introduce a category called “internationally-renowned architect”? **[Laughter]**

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

This does appear to sort out the problems that exist. Is there any charge for this registration?

**The Deputy Bailiff:**

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

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

I am sure Deputy Le Hérissier appreciates that we already have quite a number of internationally-renowned architects practising in Jersey. I think he would be the first to agree that the standard of architecture here is exceptional. **[Laughter]** The Constable of St. Saviour asked the question about a charge. Yes, there is a one-off registration charge which is £120. I maintain the amendment.

**The Deputy Bailiff:**

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

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
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				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				

Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (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 A.E. Jeune (B)				
Deputy of St. Mary				
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)				
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**The Deputy Bailiff:**

I would say to the Chairman of the Economic Affairs Scrutiny Panel, the Deputy of Grouville, do you wish to scrutinise this legislation?

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

No, Sir.

**The Deputy Bailiff:**

Very well, Minister, do you propose the Articles?

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

Yes, I am not going to make any further comments. I have made the salient points during my introduction and I would, if I could, like to take the Articles *en bloc*. **[Interruption]**

**The Deputy Bailiff:**

Are the Articles seconded? **[Seconded]** Does any Member wish to speak on the Articles? The appel is called for. I invite Members to return to their seats if they have left them and I will ask the Greffier to open the voting.

<b>POUR: 46</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
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				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				

Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (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 A.E. Jeune (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)				

**The Deputy Bailiff:**

Minister, do you move the Bill in Third Reading?

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

Yes, Sir.

**The Deputy Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak? Those Members in favour of adopting the Bill in Third Reading kindly show. Those against. The Bill is adopted.

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

Just before we move on, can I just thank Members for that support? Obviously it is early in the day but I certainly hope that the remainder of the agenda moves as swiftly. **[Laughter]**

**2. Draft Social Security (Amendment No. 20) (Jersey) Law 201- (P.64/2011)**

**The Deputy Bailiff:**

We now move to P.64 the Draft Social Security (Amendment No. 20) (Jersey) Law 201- lodged by the Minister for Social Security and I ask the Greffier to read the citation of the draft.

**The Greffier of the States:**

Draft Social Security (Amendment No. 20) (Jersey) Law 201-. A law to amend further the Social Security (Jersey) Law 1974. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

**2.1 Deputy I.J. Gorst of St. Clement (The Minister for Social Security):**

I am pleased to propose this legislation, which will give some financial protection to employees whose employment ends due to their employer's insolvency. The draft legislation has been prepared based on my proposals that were set out in a White Paper in December 2009 and were widely supported, as well as the insolvency schemes operating in the United Kingdom and the Isle of Man. Our experience of administering the temporary insolvency scheme since early 2009 has been invaluable in preparing what I believe is an efficient system to promptly provide a reasonable proportion of amounts owed. An insolvency benefit has been created within the existing Social Security Law that sets out (1) the conditions that must be met for a person to be entitled to insolvency benefit, (2) the components of benefit which are unpaid wages, holiday pay, statutory notice pay and statutory redundancy pay, (3) the method of calculating that benefit and (4) a mechanism to allow the Minister to seek to recover amounts paid in benefit through insolvency proceedings. Subject to Members supporting this amendment, further preparations to support the administration of this new benefit will be undertaken while the amendment awaits Privy Council approval. I make the amendment.

**The Deputy Bailiff:**

Is the amendment seconded? **[Seconded]** Does any Member wish to speak? Senator Breckon.

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

Just a few words. This is very welcome and it looks like the Minister for Social Security is doing some very effective housekeeping. The reason I say that is I remember many years ago the company building Queen's Valley went bankrupt. It was said at the time that the Parish welfare system had to pick up those unfortunately who were owed money and there was a bonus scheme as well. There were all sorts of things that were not paid. The former Constable of St. Helier, Fred Clarke, was very proactive in doing something but there was no framework and other issues were looked at. There were a couple of fairly high profile building contractors and others that went the same way. Nothing could be done on behalf of people and, again, it was left to the Parish welfare system. So, that will give Members hopefully some idea - and it is certainly not this Minister's fault - as to how long it has taken to get this on the statute.

[9:45]

Really, it is sad that that was the case but I do welcome this and, as I say, it is a very effective housekeeping exercise by the Minister. Thank you.

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

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

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

Yes, Senator Breckon is right, it has been a long time in arriving. I am pleased to see he puts it "to get our housekeeping in order" and I think it is a necessary piece of social provision. Often, unfortunately, in the past committed, loyal employees have been left high and dry, as it were, by decisions of companies which have gone into insolvency and struggled to re-claim amounts owed to them and this should put that straight. I hope that Members will support the principles. There is of course an amendment to an Article but we will come to that in a moment. Thank you.

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

All Members in favour of adopting the principles, kindly show. Those against. The principles are adopted. Is there a member of the Health, Social Security and Housing Scrutiny Panel present in the Assembly? Yes, the Connétable of St. Lawrence.

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

Yes, Sir, as Vice-Chairman I can confirm that we do not wish to scrutinise it.

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

Very well, Minister, do you wish to propose Articles 1 to 4?

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

Yes, well I was wondering if I could move Articles 1 to 26F which is all the Articles prior to the amendment.

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

That is a slight difficulty because Article 5 is one Article although it contains lots of provisions within it.

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

I will take your lead, Sir, and move Articles 1 to 4. Hopefully they are straightforward. Thank you.

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

Are those seconded? **[Seconded]** Does any Member wish to speak on Articles 1 to 4? The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt Articles 1 to 4 of the draft law.

**POUR: 42**

**CONTRE: 0**

**ABSTAIN: 0**

Senator P.F. Routier

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 F. du H. Le Gresley

Connétable of St. Ouen

Connétable of St. Helier

Connétable of Trinity

Connétable of St. Martin

Connétable of St. John

Connétable of St. Saviour

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 Hérisier (S)

Deputy J.B. Fox (H)

Deputy of St. Ouen

Deputy of Grouville

Deputy of St. Peter

Deputy J.A. Hilton (H)

Deputy of Trinity

Deputy S.S.P.A. Power (B)

Deputy S. Pitman (H)

Deputy K.C. Lewis (S)

Deputy I.J. Gorst (C)

Deputy of St. John

Deputy M. Tadier (B)

Deputy A.E. Jeune (B)

Deputy 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:**

Do you wish to propose Article 5, Minister?

**Deputy I.J. Gorst:**

Yes, Sir, I will take your lead because obviously this brings into force Articles 26A to 26J. But 26G is the subject of an amendment, so I am assuming you are suggesting I go up to 26F.

**The Deputy Bailiff:**

No, I am suggesting you move the whole of Article 5 and then we will come on to the amendment.

**2.3 Deputy I.J. Gorst:**

I stand corrected, Sir; that is exactly what I do. **[Laughter]** **[Interruption]** Indeed, hopefully, if Members have had time to read this I do not need to plough through it; it is fairly straightforward and it outlines details with regard to the scheme, the meaning of “employee”. As I have said the components of the benefit: wages, notice pay, redundancy pay, holiday pay, how the benefit is to be calculated, the cap on the amount of benefit that an individual can receive from the fund and any mitigation against those components. Thank you.

**The Deputy Bailiff:**

Minister, I wonder if it would be helpful to Members before we receive the amendment if you would go into some detail on Article 26G so that Members will be aware of the comparison between what you propose and what the proposer of the amendment proposes.

**Deputy I.J. Gorst:**

Thank you, Sir, I will take your lead on how to deal with this. Yes, quite simply Article 26G suggests that the Social Security Department will deduct social security contributions from payments to individuals. The amendment, which obviously Senator Le Gresley will speak to, is suggesting that we should also deduct income tax payments. My officers liaised with the Income Tax Department and they were of the view that that was not appropriate and therefore that is the proposal I am putting before the Assembly. Obviously Senator Le Gresley will argue a different position and it will be for Members to decide. I obviously remain of the view put forward from the Treasury Department because I see the difficulties that it could include.

**The Deputy Bailiff:**

I was not asking you to address the amendment but to explain your own position. Thank you. Is Article 5 seconded? **[Seconded]**

**2.3 Draft Social Security (Amendment No. 20) (Jersey) Law 201- (P.64/2011) - amendment (P.64/2011 Amd.)**

**The Deputy Bailiff:**

We now come to the amendment. The amendment is lodged by Senator Le Gresley and I ask the Greffier to read the amendment.

**The Greffier of the States:**

Page 18, Article 5. In Article 26G (as to be inserted) - (a) in paragraph (2), delete the word “not”; (b) delete paragraph (3); (c) renumber paragraph (4) as paragraph (3).

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

That must be about the simplest wording of an amendment this House has ever seen, I should think. I would like today, as I am in a good mood, to congratulate the Minister for Social Security for proposing this change to the Social Security Law which will establish the new insolvency benefit. He has my full support as I am fully aware of the hardship caused in the past to employees when their employer becomes bankrupt. In my previous job at Citizens Advice I responded to the White Paper issued by his department and recommended that income tax be deducted from the appropriate components as well as social security contributions. I was therefore disappointed to see in P.64 that the Minister, on the advice of the Tax Office, was not intending to make tax deductions where applicable. I believe if we approve this legislation today without including my amendment, we will be rightly criticised for helping people to avoid paying income tax and also for potentially causing people hardship when at a later date steps are taken to recover tax arrears. Members may not be aware that if a person has arrears of income tax the amount of the arrears is added to the liability when the Tax Office calculate the effective rate for I.T.I.S. (Income Tax Instalment Scheme). For one year of arrears the maximum effective rate is 25 per cent, for 2 years 30 per cent and for 3 or more years 35 per cent. So let us look at the 4 components of insolvency benefit in the order in which they would be paid. Unpaid wages for up to a maximum of 12 months prior to redundancy. All wages are taxable, holiday pay, also taxable, pay in lieu of notice up to a maximum of 12 weeks, again, taxable and, finally, redundancy pay, which is not taxable. Now the Minister for Treasury and Resources in his comments to my amendment says, and I quote: “I.T.I.S. deductions would only be required on certain components of the insolvency benefit, quite possibly the smallest component.” Well as Members can appreciate I disagree, as the only component that is not taxable is redundancy pay and only employees with 2 years or more continuous service are entitled to receive one week’s pay for every full year of service capped at average earnings. The Minister for Social Security is proposing that the maximum amount of insolvency benefit is to be capped at £10,000. So let us look at a simple example of an employee on £36,000 per annum who has been with the same employer for 4 years. When his employer ceases trading he is owed 2 months’ pay. The calculation of the insolvency benefit would be as follows: unpaid wages £6,000, pay in lieu of

notice £2,769 which is equivalent to 4 weeks' pay, redundancy pay £2,769 equivalent to 4 weeks' pay, total £11,538. Now the insolvency payment will be capped at £10,000 of which £8,769 is taxable. If the employer had an I.T.I.S. rate of say 15 per cent, the tax deduction would be £1,315. However, the Minister for Treasury and Resources on the advice of the Tax Office says, and again I quote: "To deduct tax under I.T.I.S. from such components could be considered punitive on the individuals who may already have been suffering hardship due to their financial circumstances." With all due respect, it must be said that the Comptroller of Income Tax is not normally noted for showing such benevolence and compassion. It is quite possible that thousands of pounds of income tax could be lost should individuals who cannot secure new employment decide to leave Jersey without settling their tax liabilities. Should this be the case, the receipts of an insolvency benefit payment at the end of employment from the States of Jersey would be like receiving a tax-free golden handshake. I urge Members to support this amendment which is plain common sense. If we have to change the Income Tax Law to enable the Social Security Department to make I.T.I.S. deductions, I am sure that this can be done perhaps at a time that other tax changes are taking place, for instance, after the Budget. It is perfectly feasible for the Social Security Department to obtain the effective tax rates from employees themselves by requiring them to submit their last payslip when making a claim for insolvency benefit. It is a requirement by law for employers to give employees payslips. I ask Members to place little weight on the comments of the Minister for Treasury and Resources when reaching a decision on how to vote on my amendment but rather to consider the importance of behaving responsibly so as to ensure that legislation approved in this Chamber does not encourage tax avoidance or by the same token cause financial hardship. I make the amendment.

**The Deputy Bailiff:**

You say you are in a good mood today, Senator. It must be your birthday, is it?

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

It is, Sir. **[Laughter]** **[Approbation]**

**The Deputy Bailiff:**

Happy Birthday, indeed. Is the amendment seconded? **[Seconded]** Does any Member wish to speak? Minister.

**2.3.2 Deputy I.J. Gorst:**

Yes, perhaps I could start by offering many happy returns of the day to the mover of this amendment. **[Laughter]** This is quite a difficult amendment for me because while I can acknowledge the Senator's arguments and understand entirely what he is trying to achieve, he is trying to achieve hardship down the line from individuals who might, when they get back into work, have what he describes as a punitive I.T.I.S. rate from their salary, and that is something we should be aware of. Of course, one thing that I have learnt, and my department has learnt, over the last couple of years since this Assembly agreed that we should have a temporary insolvency scheme - and we have not always been able to do this because of the law surrounding insolvencies - is that people want the money as quickly as they can because the financial difficulty is when they leave their employment. That is the time when they are really concerned about how they are going to manage financially and how they are going to get through until the point that they have a new job. I wonder if that argument on this occasion does trump the argument of having to deal with the issues further down the line. Those individuals and those families do want as much of the benefit as they are entitled to in their hands to make sure that they can make suitable and appropriate provision for their families at the point that they are made insolvent. There have been a number of difficulties around that. We have not always been able to move quite as quickly as we would have liked to have done, as I have said, because of the legal issues surrounding insolvency.

[10:00]

I would be loathe, I have to say, to suggest that we should deduct any more. Of course, one would expect me to want to deduct social security payments, however, there is another reason why that might be appropriate in a way that I.T.I.S. is not and I will come on to that now. For me, I have to say I think that probably is the overriding factor that those families need as much of the benefit they are entitled to in their hands right at the point that they are made redundant through insolvency and not necessarily us helping them later down the line. They are issues that they will be able to manage as they move into employment. The other issue is of course that any benefit which the department pays out in this statutory scheme to individuals, the Minister via the department then becomes a creditor in the insolvency proceedings. The Viscount, when making those distributions, is able to deduct from those payments made to employees the social security but not the I.T.I.S. element as well. Therefore, I think perhaps that should have a bearing, the reason being that the Social Security Department can only re-claim or become a creditor for benefit paid and not for the respect of income tax. As I said at the start, I do understand the issues that the Senator is raising and it is a matter for this Assembly to make a decision. We have taken the advice of the Tax Office; of course there is the issue around I.T.I.S. anyway. Anybody who is not on a “pay as you go” a current year basis, the I.T.I.S. that they are paying might need to be adjusted. It might be too much; it might be too little anyway, so we will still have that issue to address when they move back into employment but it is, as I have said, an issue for the Assembly to decide upon. They, in my opinion, are the 2 contradictory issues that we need to address and decide which one trumps the other.

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

To be honest, I am quite amazed by this amendment and amazed that it should be coming from the direction that it is coming from. I have always taken the Senator to be somewhat of a liberal-minded person and here he is making what is, in effect, a massive step on behalf of the Government in a case that is absolutely inappropriate, I believe, and not proportionate. I am surprised that in his previous life dealing with individual citizens, in dealing with the vagaries and ways of various departments, his philosophy has not been one of those that is defending the ordinary citizen. But what we have here is a massive step to say that Income Tax will reveal details of your liabilities to a third party with or without and give them authority to tax you on their behalf willy-nilly. That is a tremendous increase in the powers of the Social Security Department. If you have matters to deal with the Social Security Department and you want to go down and deal with them, you do. You do not expect the officer in Social Security then to say: “Oh, and by the way, I have heard something about your tax issues. By the way, Housing have been in touch with me and I want to deal with this as well.” You do not expect that and quite rightly you would not expect that. It seems to me that this amendment overlooks the fundamental relationship between the individual and government and the protection of your human rights within that relationship. As far as your income tax is concerned and your earnings, that is a relationship with the Income Tax Department. They have certain powers; those powers should not be given willy-nilly to any other department in order to assist the Government in the rare, rare occasion that somebody may leave the Island and escape paying their tax which is due. This is an argument again which is based on the exceptions we should not be making rules for the minority. The fact is most of the hardworking people out there who might find themselves in this situation are as honest as the day is long and are not going to be skipping the Island in order to avoid paying their tax when it becomes due. But the overriding principle must be that your relationship as far as your tax is concerned is with the Comptroller of Income Tax and that is confidential to you and part of your relationship. He will look after your income tax situation and he will chase you for the money due when it becomes due and you will make arrangements with him. You should not be dealing with a third party from the Social Security Department on their behalf. That is a completely separate relationship and the balance between your rights and the rights of the Government administratively is a fine line and this steps well over that line.

### **2.3.4 Connétable J.M. Refault of St. Peter:**

If I can just add my congratulations to that of the Minister for Social Security on Senator Le Gresley's birthday as well. I would also like to follow Deputy Southern, he will be surprised to hear that I agree with much of what he has said, although I do not really want to associate myself with comments he made about Senator Le Gresley's past employment. But the general thrust of his argument I find very supportive. However, I think it would be right to say from the outset that Senator Le Gresley is entirely right to bring forward this amendment. He has pointed out a possibility that the States could be paying out money and not getting their due returns back from that. In that case, he is entirely right but I do not think it is appropriate. My mind goes back approximately 2 years ago when there were very long impassioned pleas in this Chamber about the Woolworths' people that were being put out of work and the needs and the hardship that they were going through. It was a hard-fought fight, mainly by Deputy Southern and contributed by other people as well. We supported the need to provide free money effectively at that time to people who were suffering such hardship and duress. If we look at the minimum wage now, off the top of my head I think we are looking at something in the region of £12,000 to £13,000 a year and I think it is fair to assume that they will not be paying I.T.I.S. on that. If somebody is earning a lot more than that, and let us say it is £20,00 a year even with the cap of £10,000, yes, they should be paying I.T.I.S. but if they are only getting £10,000 when they are used to £20,000 they are going to be suffering significant hardship. To put the burden of this amendment upon them at that time I think is inappropriate. The Tax Office has already said they have a mechanism to take it back when they get back into work and I accept once again Senator Le Gresley's argument that to do that is going to be punitive in the longer term. I would hope the Tax Office would not be punitive and to spread that repayment term over as long a period as possible in arrangement with the person involved, which I am sure they do now in other cases. So I think from the Treasury's point of view this is right to bring this amendment but it is wrong because it is inappropriate in the circumstances that people find themselves in and the Treasury do not support the amendment. Thank you.

### **2.3.5 Deputy M. Tadier of St. Brelade:**

I did not know it was Senator Le Gresley's birthday either so I wish him very many happy tax returns, which are the words I was trying to get out. There seems to be 2 conflicting issues and as has been said already it seems that possibly the intellectual argument is with Senator Le Gresley but the more reasonable argument is with the Minister for Social Security. I just want to make a few observations first, if I may. First of all, it needs to be clarified whether or not by taking income tax at the time, rather than subsequently when the individual may be back in work the year later, whether that would slow up the process at all. Because initially the Minister said that the money needs to be given as quickly as possible and I think what he may have meant was that the money needs to be given in a maximum form rather than anything else. **[Interruption]** I take those points on board. But presumably I think the issue of speed need not necessarily be a factor because irrespective of whether or not the Income Tax Department should be sharing information with the Social Security Department or vice versa it seems to be that a mechanism could be put in place very quickly so that Social Security would know what liability is due, and that could be deducted at the same time as the social security element is deducted. So I think that is possibly a red herring in terms of speed. The other argument is if the Minister is saying that they need to be given as much money as possible, I think it is important to qualify at this stage that even with this legislation in place, employees who have been made redundant due to insolvency are going to be more likely, on the balance of probability, I would suggest, less well off than if they had been made redundant under a situation where the company was not insolvent. If we are saying that they need to be given the maximum amount of funds, then why is the social security contribution being taken at all? That could be waived or it could be paid later on. So it seems that if that argument is to follow it should be the same for both departments. I do find the comments of the Minister for Treasury and Resources slightly confusing because if what Senator Le Gresley has told us is correct, the comments seem to be suggesting that the Tax Department are saying they will waiver the tax; they just will not collect it because they feel sorry for the individuals who are in the situation. Whereas

in fact if we look at part 3 it says that nothing in this Article affects the liability under the Income Tax Law for the person who is receiving the benefit. So it seems that it is a question of whether it is preferable to collect the tax there and then at source when they have the money. I need clarification in my mind if, for example, the year later the individual is still unemployed and that insolvency money has run out, then presumably their tax liability will still be there. It is not simply a case of one waits until one is back in gainful employment until you have to pay that. It is not like tuition fees where you wait until you have a certain amount of income before you start paying it back. The income tax will be due irrespective a year later whether or not one is in employment. So the question has to be asked: is it not better to pay it there and then when that individual has the money, and, of course, it will be proportionate. The other point I want clarification of - and perhaps the Senator can address it when he sums up - is that surely the tax is either due or it is not due at the time under I.T.I.S. So if an employee is paying 5 per cent I.T.I.S. and they are made redundant, presumably they should carry on paying 5 per cent I.T.I.S. on the sum that they received for insolvency. That seems pretty clear and logical to me. It will be exactly proportionate and of course if they earn less, if they get less money through that insolvency payment, then they will be paying proportionately less, although it may not make up for the whole sum that they have lost if they are losing any money in the long term. The last point I would make is that while I completely endorse the sentiment of Deputy Southern and others in saying that perhaps the current law is not set up for the exchange of information between departments, what I would say is that surely it is all Government at the end of the day. We talk about joined-up Governments but when it comes to these kinds of issues we are saying that the Social Security Department and the Income Tax could not possibly talk to each other because that is personal information and that seems slightly strange. Of course, it would be inappropriate for the Income Tax Department to share your tax information with the media, with a third party, but when it comes to a legitimate reason for sharing information which is hopefully going to result in a more expedient Government, more expedient collection of taxes and hopefully to keep the costs for doing that administration down in the long term, I think as an Assembly we need to take a mature approach. Members in this Assembly will know that I am not one to trample on human rights by any means or on data protection issues but as a Government we have to take a sensible and balanced approach and I think sometimes we can use these arguments spuriously. We need to look in the long term as to whether appropriate information sharing between departments can be used in a more expedient way. That said, I do fall on the side of being sceptical of this amendment purely because I do not think that we are currently set up to deal with it and I think that the arguments on balance we do need to show more compassion for those at a time when they are facing difficult periods in their life.

[10:15]

If there is a risk that we are taking more than we should, or if there is a risk that it is going to extend that period that the individuals have to wait, then I prefer to err to the side of caution on this. But I think Senator Le Gresley has flagged up some important issues and that we can in future make some - I will not call them no-brainers - intelligent changes about the way we do business in government, especially between departments.

#### **The Connétable of St. Peter:**

May I make a point of correction for the last speaker? He did suggest in his speech that I had said we would waive the I.T.I.S. It is very clear in the fifth bullet point of the Treasury's comments, the last line: "The Taxes Office would contend that any arrears would be collected through I.T.I.S. when an individual finds new employment." Thank you very much.

#### **2.3.6 Connétable L. Norman of St. Clement:**

In the absence of any compelling or convincing arguments from the Minister for Social Security or the Minister for Treasury and Resources I am minded to support this amendment because I think back when we introduced the Income Tax Instalment Scheme we did it for a number of reasons.

One of those I can remember in the debate was to remove this situation where individuals had to find a lump sum - a large lump sum - as one does normally at the end of the year. That is why I.T.I.S. was generally welcomed. It was taken at source, one never had it in one's pocket or bank account and the income tax bill was sorted out with no major problem at the end of the year. Now this tax from the individual who has been made redundant is due and the Senator's amendment does not ask the Social Security Department to take more from that person's benefit than is due to the taxpayer, so it is due. Now if it is not deducted at source, in due course that person who has suffered the redundancy their circumstances might improve but they might deteriorate as well. Whichever scenario exists, that bill, £1,000, £500, whatever it might be, is still due to the taxpayer and at some point will be pursued by the Comptroller of Income Tax for that amount and it could be in a lump sum, the very thing we tried to avoid when we introduced I.T.I.S. So we could be putting a burden on this individual and much better for them I would have thought - and for the taxpayer generally but I am thinking of the individual concerned - to remove that debt at source before they get that money in their pocket when one day they have to take it out again to give it back to the taxman. It just seems to me this is quite a sensible amendment but I could be convinced otherwise but I think it is going to be very difficult.

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

I will be brief and, I, like the last speaker, need convincing by the Minister that this is not the way to go. I have never in my time as a States Member or since I.T.I.S. came in been told by anybody on the Island that they do not like it. When people are given redundancy money, if they are going to be taxed on that, surely it is better to pay it at source than have to pay it along with other tax when they get employment. Although I do know, because I did run my own business before I was elected to the States, that if an employee has to pay 35 per cent and they really are finding it very difficult because it is leaving them with not enough money, they can appeal to the Tax Office and if they can prove it they can get that reduced and pay it over a longer term. So I do know that for a fact. We are often saying that we have a silo mentality and that we do not share information and that is why departments do not work well. Surely this is one step to having a collective view and information sharing. The other thing I will ask if the Minister can clarify, in the new Migration Law that is coming forward there will be information sharing between departments. Surely this would be a first step in that information sharing.

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

I will join the cacophony of good wishes to Senator Le Gresley for his birthday. I will not be so rude as to ask which one. We have had the example of one employee but what is the scale of the problem? What sort of level of income, what is the distribution of income levels that are affected by insolvency and what is the experience of the last couple of years? It also occurs to me that since I.T.I.S. is paid directly to the Tax Office by the company, is the Tax Office a preferential creditor for that I.T.I.S.? Will the tax be reclaimable from any assets realised by the insolvent company? I think we have to be careful in this instance. It seems to me that we could be in a position where the cost of collection through this amendment might possibly be more than the actual tax collected. Thank you.

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

I do understand where the Senator is coming from in bringing this amendment. But in my mind it creates problems because in Social Security the department and the staff there would not necessarily know what the I.T.I.S. obligation of an individual is. So what I would ask the Senator is this: is he suggesting that tax should be taken at 20 per cent of the actual monies that would be paid through the insolvency? Thank you.

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

Can I seek clarification of the last speaker? The Assistant Minister will know this from working at Social Security, is it not the case that one has a slip one can get from Income Tax and it says what your effective rate is? So presumably could one not hand that slip over to Social Security and then the department would know exactly what rate they have to take.

**Deputy A.E. Jeune:**

That might suggest what their I.T.I.S. rate is but that is in relation to usually the previous year, I think, and may not have a bearing on the person's responsibility of the current year. But I am not a tax expert and perhaps somebody else can elaborate better than I.

**2.3.10 The Connétable of St. Saviour:**

Just a brief point. If after insolvency it may take a while for somebody to be re-employed, once that happens it is quite possible they will not be earning the same wage that they were before. The tax liability will still be there but if they are in financial difficulties it would be better for their payments on I.T.I.S. to be lower than taking the sum at source. Because I think the Minister is absolutely correct: they will be in difficulties; they need the maximum amount of money as soon as possible. I think to take the tax liability, which could be quite considerable, out of it is making people that are in difficulty suffer even more. I think this is a chance for us to be as helpful to these people as possible, even if there is a slight risk that some of the tax might be lost.

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

Like my colleagues on the Connétables' benches I favour this proposition because I think that at the end of the day it gives the person who is involved some certainty. We have already, the Parishes, experienced some problems with the fact that the Social Security Department in its Income Support Scheme has an element towards the paying of rate bills. Now the rate bill comes as one lump bill in July/August of the year and many people by then have, for one reason or another, good or bad, spent that money which has come from Income Support before this bill has arrived. Then they come to us and they say: "We cannot afford to pay it" and we tell them: "Well you already had the money given from Social Security towards paying this bill, you should be able to pay it." I think this is exactly what the Senator is trying to avoid. The Senator is trying to avoid a situation where people who are in financial difficulties get this sudden large bill. If it has been taken, yes, it will in a way create a certain amount of hardship because less money is being given to them in the first place, but they will not, down the line, be faced with this one big bill and I will totally support this amendment.

**2.3.12 Deputy R.G. Le Hérissier:**

I was very seduced by Deputy Southern's argument, then I started thinking about it and it was quite extraordinary because he was saying there should not a link between tax and employment whereas, as he will well know, of course, for example, the U.K. Pay As You Earn system is totally based on the fact that a number is given by the authorities whereby your employer has to subtract an estimated tax; its aversion. We never went that far with I.T.I.S. but obviously we went some of the way. There was total integration of the 2 systems: the tax system and the payment you receive from your employer. So this notion that you have 2 silos, you should totally manage on your own and it is entirely your responsibility to inform the tax authorities is not quite the case. Similarly his argument that - I do not know what facts he has to make this assertion - very few people leave the Island. Well, certainly one of the drivers of I.T.I.S. was this impression that lots of people were leaving the Island or arranging their affairs so as to only work for a certain part of the year, or they could only work for a certain part of the year, they would minimise their tax liabilities by departing from the Island and they would return for another season. So this idea again that very few ... I do not know where he has this evidence from. I do not think any of us have evidence unless we are at the harbour or the airport looking at people and working out what their residential status has been. The other point I would raise with Senator Le Gresley though, because it does worry me that this

may be a hammer to crack a nut, is he going to apply a similar principle to people who receive lump-sum payments for other reasons that there should be an immediate deduction from these lump-sum payments because it does have, in that sense, an element of unfairness.

**The Deputy Bailiff:**

Does any other Member wish to speak? I call on Senator Le Gresley to reply.

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

I think it is important for me to say what I am proposing is exactly what happens in the U.K. This is nothing original or I have dreamt it up or whatever. In the U.K. the Redundancy Payment Office which is responsible for dealing with insolvency payments deducts from arrears of pay, holiday pay, *et cetera*, an amount of tax at the basic rate in force at the time payment is made. Now, Deputy Jeune said am I proposing that the rate should be 20 per cent? I am not proposing that and if she reads my report I say: "I am not proposing that the Social Security Department deduct income tax at the basic rate as it should be relatively easy to find out the I.T.I.S. rate for each employee." So I am not suggesting that it is 20 per cent for every employee. I can understand the argument about feeling sorry for these people and I can assure you that I am bringing this amendment because I do feel sorry for these people. I have hands-on experience of dealing with people who have lost their jobs through the employer becoming insolvent. What I would say to people, there is a deterrent to returning to work if you know that you have a substantial higher I.T.I.S. rate in the offering. That is a danger, the route we go to, if we do not take the tax at source.

[10:30]

A number of people quite correctly have pointed out that is exactly why I.T.I.S. was introduced so as to remove the situation where people end up with a large bill. Now Deputy Southern made comment about sharing of information and I find this rather strange, because perhaps he has not been in the workplace for long enough or recently, since I.T.I.S. came in. But what he may not know is that every employer knows what the I.T.I.S. rate is of their employee. That is the way it works. An employee has to hand that slip to the employer when they start work. If the I.T.I.S. rate changes at any time during the year they have to hand that slip in. So every employer on this Island knows the I.T.I.S. rate for their employees. All I am saying is Social Security are stepping into the shoes of the employer who has gone into liquidation or bankrupt; they will have to. What a lot of people have forgotten is how are we going to know what their basic rate of pay is? We are going to have to find the books of the company or the ledgers to find out what is their basic rate of pay before we start to calculate the amount that they are due; and in finding that information out you will see what their I.T.I.S. rate is, because it is going to be there. So I do not really see that I am suggesting that Social Security are suddenly put in the position where they get information that every employer has on the Island about their employees. Deputy Southern said: "The rare occasion when somebody may leave the Island" and Deputy Le Hérissier picked up on this. I find that quite amazing. Perhaps he does not know that you cannot get income support if you have not been continuously resident for 5 years. What happens when you have been here 4 years and you lose your job? You have got no support from the Government through benefits, so what do you do? You leave the Island if you cannot find work. You cannot keep going if you have not got employment. So a lot of people do leave the Island if they find themselves in that circumstance. The Constable of St. Peter speaking on behalf of the Treasury says that he does not know that this would affect that many people, particularly those on minimum wage. Unfortunately I did not come with the information today, but the tax threshold for a single person, and hopefully somebody will have that information, is relatively low. People may remember I tried to get it raised, but that did not work either. But it is relatively low; so a lot of people are paying some tax. It may not be more than 1, 2 or 3 per cent I.T.I.S., but they are paying tax these days. We must be careful that we do not make an assumption that every company that might get into financial difficulties is employing

people on the minimum wage. There are companies out there who may be paying salaries in excess of £50,000, £60,000 a year, but they get into financial difficulties. Perhaps there has been embezzlement or whatever. So there could be substantial salaries involved. I do recall that when we were dealing with Woolworths, there were people certainly at top management, who were on substantial sums of money and received substantial payments at the time. Deputy Tadier is quite correct; I do not think the case has been made by the Minister that taking tax will slow the process up in making payments. I think that is a complete red herring and we should not consider that at all. Deputy Tadier also asked me to clarify, are taxes due on insolvency benefit proportionate. I think I explained when I made the amendment that the first 3 elements of the components are taxable. It is only the redundancy pay in line with our statutory law which is treated by the Tax Office as not taxable. The more money that is owed in unpaid wages, *et cetera*, the more that those amounts will be taxable. Deputy De Sousa was also supporting this, which I am grateful for, and she says that people can appeal if they have a higher tax rate, that they cannot afford to pay the I.T.I.S. rates; and yes, there is an appeal process, but I can tell people that the Tax Office are very tough on this these days and you have to have a really ... just because you feel you cannot afford it is not a reason not to have the higher I.T.I.S. rate imposed on you. In answer to Senator Ferguson, I.T.I.S. is a preferential creditor, or the Tax Office is a preferential creditor for I.T.I.S. that has not been paid across by the employer to the Tax Department; because obviously I.T.I.S. is paid at regular intervals by the employer. So if at the date the company goes into liquidation then the tax that is due is a preferential creditor. I think I like what the Constable of St. Ouen said, only because he was supporting me. But he is absolutely right again about rate bills. We know that people on income support do not put money aside; it is a fact, and then they get a large bill for their Parish rates, and I believe the Ministers tried to come up with some arrangement with the Comité des Connétables to try and help them in that situation. I hope I have covered most of the points. Deputy Le Hérisier was one of the final speakers and he asked me if this sort of taking of tax would apply for other lump sum payments. To the best of my knowledge there are not any lump sum payments paid by Social Security in the region of £10,000. The Minister may correct me. It could occur where there is a backdated claim for Income Support, but Income support payments are not taxable, so I do not see this arising in an issue with any other payments, although I remember hearing, I think it was Deputy Fox at the meeting I went to, suggested that he would like his old age pension with tax deducted. He said he would find that easier. I am not suggesting that today. But this is a large sum of money that is potentially going to be paid out, and I think we have a duty to help people and take it at source, and not wait until later when they are going to get into even more financial difficulties. So I maintain the amendment, and ask for the appel.

**Senator S.C. Ferguson:**

Could I have a point of clarification? I did ask the Senator what was the scale of the problem that we were dealing with. Are we talking ... what was the distribution of incomes that he had seen coming in having problems?

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

Fortunately we have not had, to my knowledge, that many insolvencies. The biggest one obviously is the Woolworths' one that we all knew about and which led to this new benefit. But I go back to the point I made before: any company could get into financial difficulties not just because their business is falling away. It could be that something is done incorrectly by directors and they are sued or whatever, and the scale of money that could be involved would depend on the range of salaries within that company.

**Deputy M. Tadier:**

I have 2 points of clarification that I would like to seek, but probably from the Solicitor General I think. He would be better placed. So if I could ask a question of the Solicitor General? The first one is I would like to know, in a situation, for example, where the employee has had deductions

taken out for I.T.I.S., so the employer has that money but due to financial difficulties the employer may not have paid those sums to Income Tax; who would be liable for those outstanding sums? Would it be employee? Would he or she be chased in the first ...?

**Senator B.E. Shenton:**

Could I object, because when a speaker has summed up I think it is wrong to restart the debate again? It is very unfair on the person who has brought the proposition and who has already summed up.

**The Deputy Bailiff:**

I am entirely with you, Senator. I was going to invite Senator Le Gresley to add anything if he wished to, having heard from the Solicitor. Do you have a second question, Deputy, for the Solicitor?

**Deputy M. Tadier:**

I am not sure if that comment was directed at me, but it was my understanding that at any point during the debate under Standing Orders, Members can ask clarification from the Solicitor or Attorney General. I do not think we have gone to ...

**The Deputy Bailiff:**

Deputy, that matter is closed. Is there a second question you wanted to ask of the law officers?

**Deputy M. Tadier:**

It is more a question of clarification I think. I think Senator Le Gresley could clarify and it would affect the way I am going to vote. It is, can the Senator clarify whether the effect of his proposition amendment if adopted would result in 2 lots of tax being paid; that is to say, that the I.T.I.S. from the previous year and the liability for that sum which would normally be taken the year after, or is it simply the tax liability for the previous year which is what I initially understood to be the case?

**The Deputy Bailiff:**

Very well. Solicitor General.

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

The employer remains liable.

**The Deputy Bailiff:**

Senator Le Gresley, do you wish to comment on anything the Solicitor General has said or answer or clarify the question from Deputy Tadier?

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

No, Sir.

**The Deputy Bailiff:**

Very well. The appel is called for and I invite Members to return to their seats and ask the Greffier to open the voting.

<b>POUR: 27</b>		<b>CONTRE: 17</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator A.J.H. Maclean		
Senator T.J. Le Main		Senator B.I. Le Marquand		
Senator B.E. Shenton		Connétable of St. Saviour		

Senator J.L. Perchard		Connétable of St. Peter		
Senator A. Breckon		Deputy R.C. Duhamel (S)		
Senator S.C. Ferguson		Deputy G.P. Southern (H)		
Senator F. du H. Le Gresley		Deputy of St. Ouen		
Connétable of St. Ouen		Deputy J.A. Hilton (H)		
Connétable of St. Helier		Deputy of Trinity		
Connétable of Trinity		Deputy S.S.P.A. Power (B)		
Connétable of Grouville		Deputy K.C. Lewis (S)		
Connétable of St. Brelade		Deputy I.J. Gorst (C)		
Connétable of St. Martin		Deputy of St. John		
Connétable of St. Clement		Deputy M. Tadier (B)		
Deputy of St. Martin		Deputy A.E. Jeune (B)		
Deputy R.G. Le Hérisier (S)		Deputy E.J. Noel (L)		
Deputy J.B. Fox (H)		Deputy A.K.F. Green (H)		
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy S. Pitman (H)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

## **2.4 Draft Social Security (Amendment No. 20) (Jersey) Law 201- (P.64/2011) - as amended**

### **The Deputy Bailiff:**

Very well. We now return to the debate on Article 5 of the draft law as amended. Does any Member wish to speak? If not, all Members in favour of adopting this Article kindly show. Those against. The Article is adopted. Minister, you wish to propose Articles 6 and 7?

**2.4.1 Deputy I.J. Gorst:**

Yes, if I could. Article 6 amends the Social Security Law to ensure that sums recovered will be refunded, and 7, the citation and commencement.

**The Deputy Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on Articles 6 and 7? All Members in favour of adopting Articles 6 and 7 kindly show. Against. The Articles are adopted. Do you wish to move the Bill in Third Reading, Minister?

**Deputy I.J. Gorst:**

If I could, thank you.

**The Deputy Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on the Bill in Third Reading? The appel is called for and I invite Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 43</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.P. Southern (H)		
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				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Deputy R.C. Duhamel (S)				

Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy 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 A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

### **3. Draft Food Costs Bonus (Jersey) Regulations 201- (P.65/2011)**

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

We now come to the next item on the Order Paper, P.65, the Draft Food Costs Bonus (Jersey) Regulations 201- lodged by the Minister for Social Security and I ask the Greffier to read the citation of the Draft.

**Deputy I.J. Gorst:**

Sorry. Before we quite do that I am going to have to call on your direction and hopefully the mercy of the Assembly. I find myself in an odd position in that there does not appear to be a Standing Order that I can appeal to, to allow me to do that which I would like to invite the Assembly to do, and that is: these regulations that I hopefully am about to propose replace existing triennial regulations for this very bonus. The new regulations increase that bonus. The old ones in actual fact do not cease until the 23rd I think it is of July. Members are aware that G.S.T. (Goods and Services Tax) has already been raised, and I am keen and I hope that Members will be, that the new bonus and the increased amount is available to members of our community as soon as possible. Therefore I have asked my department and I am very grateful to them and to the law draftsmen for the amendment that I would like to propose to this regulation which would allow them to come into effect 7 days after our decision, be that today or not, which would then mean the old regulations cease and these would come into effect 7 days after. I am really not sure what it is that I am asking for, other than perhaps I would like to ask the Assembly if they would consider lifting Standing Orders to allow me to have that amendment to bring this benefit in sooner, rather than having to wait a month. If Members do not wish me to do that I feel I have little choice other than to delay this debate until the next sitting, because then at least it will be around a month earlier than it would have otherwise have been available. But I am in the hands of yourself and hopefully ultimately the Assembly.

[10:45]

**The Deputy Bailiff:**

Your request is that we lift the whole of Standing Order 26 on Member Lodging Periods in order to allow you to ask the Assembly to debate the Draft Food Costs Bonus (Jersey) Regulations amendment?

**Deputy I.J. Gorst:**

I believe that is what I am, if it achieves that which I would like to achieve.

**The Deputy Bailiff:**

This is because the powers in the Standing Order to reduce the minimum lodging periods are not powers which obviously fit your desire for the ability to pay the increased Food Costs Bonus at an earlier stage, because Standing Order 26(7) says: "The States may reduce the minimum lodging period if they are of opinion that the proposition relates to a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate."

**Deputy I.J. Gorst:**

That is right. I do not feel able to make that argument, and I am sure Members would understand why. I am simply appealing to Members to allow that Standing Order to be lifted so that this benefit can be available to members of our community this month and in as short an order as possible, rather than having to wait another month.

**The Deputy Bailiff:**

Minister, Standing Order 80 says that a Member of the States may propose without notice that one or more Standing Orders be suspended for a specified purpose. It is therefore open to you to make the proposition that Standing Order 26 should be suspended for the specified purpose of allowing debate upon your amendment, and it will be a matter for the States to resolve whether Members think that is an appropriate use of the Standing Order, because it would in theory, if the States so resolve, form a precedent which would allow any Minister or indeed any Member to bring forward a proposed amendment at very short notice indeed. But that is a matter for Members because it is clear from the Standing Order that Members have it within their power to make that decision. That is the proposition you make.

**Deputy I.J. Gorst:**

If I could make that, I am taking soundings as I sit here listening to your directions, and I feel that Members are suggesting I should just put this debate off until the next sitting, albeit that that is a heavy session. I am seeing nods of heads and therefore I am going to withdraw my proposition and ask that the Greffier not read out the regulation and we take it at the next sitting. Thank you.

**The Deputy Bailiff:**

Very well.

**Deputy M. Tadier:**

While we are sorting out our paperwork, because this is a reason on this occasion, it has happened in the past, could I ask that P.P.C. (Privileges and Procedures Committee) consider whether or not it is appropriate rather than to lift Standing Orders when one does not agree with this particular one, whether there should be more flexibility with regard to the words: “If it is prejudicial to the interests of Jersey”? Because it seems that would be preferable if the States decide on any one occasion. Perhaps P.P.C. would like to give that consideration.

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

I can inform the Assembly that matter has already been considered by P.P.C. and we have not recommended any change.

**The Deputy Bailiff:**

Members may be interested to know that until 2005 there was a minimum lodging period which was set out in the Code of 1771 and was therefore part of the established law of the Island, and it was only when the States of Jersey Law was enacted in 2005 that the Privileges and Procedures Committee of the day determined that it would be appropriate to introduce the lodging periods in Standing Orders, which therefore would be capable of being changed on occasion, as opposed to having a provision in law. But the original purpose was to ensure that there could be consultation in 1771, obviously by the Connétables with their Parishes, on the proposal to introduce legislation.

**4. Draft Employment (Amendment No. 7) (Jersey) Law 201- (P.66/2011):**

**The Deputy Bailiff:**

We now come to the Draft Employment (Amendment No.7) (Jersey) Law 201-, P.66 lodged by the Minister for Social Security and I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Employment (Amendment No.7) (Jersey) Law 201-. A law to amend further the Employment (Jersey) Law 2003. The States subject to the sanction of Her Most Excellent Majesty in Council have adopted the following law.

**4.1 Deputy I.J. Gorst:**

I am proposing this amendment to the Employment Law primarily to revise redundancy rights for employees on short fixed-term contracts. The amendment also provides some essential changes for consistency across the Employment Law. Shortly after the new redundancy rights were introduced on 1st January 2011, I became aware that the interaction of this new right with the existing rules for calculating continuous service impact upon employers and employees who use short fixed-term contracts in seasonal industries. This is because employees who are made redundant after 2 years’ continuous service are entitled to redundancy pay, and fixed-term contracts that are separated by a gap of 26 weeks or less are treated as a period of continuous service. This means that employees who work under short contracts over a number of consecutive seasons with the same employer can accrue 2 years’ service, giving them the right to a redundancy payment at the end of each season. This is a disincentive to hiring and ultimately may impact on job opportunities. I consulted stake-

holders and the Employment Forum and considered a number of different options. Taking into account seasonal business practices, the most appropriate solution is to preserve continuous service between fixed-term contracts that are separated by 9 weeks or less, instead of the 26 weeks or less. This is Article 3 of the amendment. The outcome is that fixed-term contract employees will continue to be protected against unfair dismissal after 26 weeks continuous service, but generally will not qualify for redundancy pay at the end of a season, because they will not have accrued 2 years' continuous service. I believe that the amendment provides a simple and both tourism and agricultural focused solution. It balances the preservation of appropriate rights for fixed-term contract employees while enabling employers to meet genuinely seasonal business requirements without leaving a loophole for employers to abuse rolling fixed-term contracts. The amendment makes other changes that are related to the issue of fixed-term contract employees as well as changes to clarify and extend the existing definitions. I maintain the amendment.

**The Deputy Bailiff:**

The principles are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak? No Member wishes to speak. Those in favour of adopting the principles? The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the principles of the Employment (Amendment No.7) (Jersey) Law and I ask the Greffier to open the voting.

<b>POUR: 38</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator F.du H. Le Gresley				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
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 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 A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

Connétable, does your panel wish to scrutinise?

**The Connétable of St. Mary (Vice-Chairman, Health, Social Security and Housing Scrutiny Panel):**

No, thank you.

**The Deputy Bailiff:**

Minister, do you wish to propose the Articles *en bloc*?

**Deputy I.J. Gorst:**

Yes, if I could. Once again I believe they are straight forward and I propose them *en bloc*.

**The Deputy Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on the Articles? No Member wishes to speak. Those in favour of adopting the Articles kindly show; those against. The Articles are adopted. Do you wish to propose the Bill in Third Reading?

**Deputy I.J. Gorst:**

Yes, I do. If I could just at this point give my thanks to the Jersey Hospitality Association, the Jersey Farmers Union, Lord Rasman and individuals at J.A.C.S. (Jersey Advisory and Conciliation Services) and my own departmental officers for coming up with what I believe is a quick and pragmatic solution, and I hope that it will alleviate some of the concerns that have been brought to me by those specific industries.

**The Deputy Bailiff:**

Does any Member wish to speak in Third Reading? Those Members in favour of adopting the Bill kindly show. The appel is called for.

**POUR: 40**

**CONTRE: 0**

**ABSTAIN: 0**

Senator P.F. Routier

Senator P.F.C. Ozouf

Senator T.J. Le Main

Senator B.E. Shenton

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 Trinity

Connétable of Grouville

Connétable of St. Brelade

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 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 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 A.E. Jeune (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)

**5. Draft Repatriation of Prisoners (Jersey) Law 201- (P.67/2011)**  
**The Deputy Bailiff:**

We now come to the Draft Repatriation of Prisoners (Jersey) Law 201- (P.67) lodged by the Minister for Home Affairs and I ask the Greffier to read the citation of the Draft.

**The Greffier of the States:**

Draft Repatriation of Prisoners (Jersey) Law 201-. A law to make provision for facilitating the transfer between Jersey and places outside the British Isles of persons for the time being detained in prisons, hospitals or other institutions by virtue of orders made in the course of the exercise by courts and tribunals of their criminal jurisdiction and for connected purposes. The States subject to the sanction of Her Most Excellent Majesty in Council have adopted the following the law.

**The Deputy Bailiff:**

Minister, do you wish to propose the principles?

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

Indeed. This is a highly technical piece of legislation, which I will attempt to explain as simply as I am able. Its effects may prove to be substantial in terms of an eventual substantial reduction in the Jersey prison population if it has the secondary effect which is anticipated. The main primary effect of the legislation is to enable in certain circumstances and subject to certain safeguards, which I will go into later, prisoners to be transferred back to their country of origin in order to serve their sentence there. The system works both out of Jersey and into Jersey, and accords with a European directive which is not binding upon us but is binding upon E.U. (European Union) countries. There are 2 main advantages to this. Firstly, this will aid the process of rehabilitation and return to the community for prisoners whose family, friends and community lie elsewhere. It is therefore clearly in the best interests of prisoners, and indeed I have already had interest expressed by individual prisoners in this regard. But secondly, there is an advantage in terms of good governments because of the numbers of prisoners in La Moye who have little or no ties with Jersey; that fact of course is a by-product of the courts' sentencing policy, particularly in relation to drug offenders. The number of such people who have little or no ties is quite substantial, and indeed there is set out in paragraph 29, page 9 of the report, some idea of the sort of figures. We have there numbers of foreign nationals and U.K. prisoners who were in La Moye at 23rd February 2011. There were 49 of each. If one takes those 2 groups together for the moment, that represents more than half the prison population because the total prison population as of that date was 186. Section 30 of the report, you will see that at least 16 and probably more of the 49 who are foreign nationals would be potentially eligible for transfer. It should be noticed that where prisoners are returned under this law to another jurisdiction then Jersey does not pay the cost for their imprisonment elsewhere, although we will have to pay the costs of the transfer. Now of course, the reverse also applies that if there are prisoners with strong Jersey connections returning to us we would then have to ...

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

I do not think we are quorate.

**The Deputy Bailiff:**

Thank you, Deputy. Could I please invite Members in the anteroom to return to the Chamber in order that we may become quorate. Very well, Deputy.

[11:00]

We have now become quorate again, Deputy, thank you. Minister, please continue. I am sure it was not your exposition which ...

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

I am getting rather worried by this, this is the second consecutive session we have become inquorate while I have been speaking. I know this is a very technical law, but there we are. Now I have lost my flow.

**The Deputy Bailiff:**

You had better pick it up or we will be inquorate again. [Laughter]

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

I have dealt so far with what I will call the primary effect, which is the direct effect potentially of this piece of legislation. But there also exists potential for a greater secondary effect which I am going to seek to explain to Members. This does not arise directly from this piece of legislation but is likely to arise as a by product of it. The secondary effect arises from the way in which currently U.K.-based prisoners serving a sentence in Jersey are treated. There is a mechanism for them to be returned to the U.K. in order to serve their sentence but currently they are returned at what is called a restrictive transfer. A restrictive transfer means that they return to serve their sentence but on the terms, in terms of parole or the equivalent thereof, which applies in Jersey and not on the terms which apply in the U.K. A change was made some years ago because there was concern that if that were not so then U.K. and Jersey-based prisoners sentenced at the same time for the same offence would be treated in quite a different way in terms of parole and things of that nature. The reason why the secondary effect will come into play, as a result of the primary effect in this particular matter, is because once we have a situation in which foreign prisoners, non-British Isles prisoners, would be returning to serve their sentence in accordance with the parole regime, *et cetera*, of their home country, clearly there is going to be a disparity of some sort in treatment if hypothetically, for instance, we had a Portuguese prisoner, an English prisoner and a Jersey prisoner all sentenced to the same amount on the same day then we would have a situation once this law applies where the Portuguese prisoner on being returned might have better parole terms than both the Jersey prisoner and the U.K. prisoner. Clearly that would give rise to a situation where you U.K. prisoners would say: "Why are non-British nationals being treated potentially more favourably than British nationals?" What I am saying in very simple terms is that it is my view that once the law has come into place the Minister for Home Affairs should move in order to change the current system for U.K. prisoners so that they are no longer on restrictive transfers but on unrestricted transfers which means that they will be serving their sentence in accordance with the system in the U.K. Now, I believe that is perfectly logical, although it could lead to a degree of disparity between Jersey prisoners and others because we would be adopting in so doing the fundamental principle set out in the E.U. Directive, which is that people serve their sentence in accordance with the rules in the place where they serve their sentence. If that occurs then suddenly return to the U.K. will become much more attractive for U.K. prisoners. At the moment there are many who are not wanting to return to the U.K. because there is no advantage to them in terms of better parole terms, or better opportunity of parole than we have at the moment. But what I am saying is that if this piece of legislation goes through, if it starts to be operated, then if I was still the Minister for Home Affairs it would be my intention, I give notice to the Assembly of that, to change the system so we then move to unrestricted transfers and that will then produce a secondary benefit in terms of a reduction in the prison population, and that could be even more substantial in terms of numbers than that from the primary effect. I am sorry if that is all pretty incomprehensible to Members, I have done my best to explain it simply and if they have further questions I will deal with them.

**The Deputy Bailiff:**

Are the principles seconded?

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

I have not stopped, Sir, I have a lot ...

**The Deputy Bailiff:**

I am sorry, I thought you had finished.

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

The reason I stopped was Deputy Martin's light went on and I thought she wanted to ask a question.

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

No, the reason my light went on, I thought you had finished and I wanted to make a few comments, sorry.

**The Deputy Bailiff:**

There are 2 Members wanting to speak so you obviously have some people listening to you, Minister. [Laughter]

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

I think you are hinting to me perhaps I should not say more.

**The Deputy Bailiff:**

Absolutely not.

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

I did want to go on to deal with the safeguards which are in the law and I am very prepared to also go on and deal with the human rights aspects if Members want me to do this. Yes, I am getting nods now, Sir, that I should do those things. There are a whole number of safeguards, both in the law and by virtue of the European Convention on Human Rights, which would prevent improper usage of the law. The first is that once the law is passed there will be a need to enter into what is called in the law, international arrangements. Now that is basically an agreement with other countries that this will apply to them, that they are happy that this mutual arrangement will apply and the terms upon which it will apply will have to be agreed with other countries. That can be done under the law either by individual agreements by Jersey with other jurisdictions or indeed possibly by a more global approach involving the U.K. authorities as well. It is not clear at this stage which is going to be the best but we have those options. So that is the first thing, we have to enter into individual agreements. Secondly, under those agreements there may be a requirement for prisoner consent. Some countries may say: "We will only enter to agreement if we have consent of the prisoner" others may say: "No, it is not necessary to have the consent of the prisoner." So I need to go on and deal with the safeguards which are in place where the consent of the prisoner is not required. Then, under Article 2(2)(a), if advised, the Minister for Home Affairs must not issue a transfer warrant unless the transfer appears to the Minister to be appropriate having regard to any close ties which the prisoner has with Jersey. So there is a clear safeguard. That provision will have to be considered in accordance with the provisions of the European Convention on Human Rights and, in particular, the following articles are engaged. Article 3, which says: "No one should be subjected to torture or to inhuman or degrading treatment or punishment." That is an absolute requirement under the E.C.H.R. (European Convention on Human Rights). There will therefore be a duty to ensure that the receiving country has a proper prison system which complies with E.C.H.R. and that the prisoner will not be at risk of such ill treatment whether from the State or from other parties. That will have to be considered in each case. Secondly, Article 5 of the E.C.H.R.: "No one shall be deprived of their liberty except in accordance with law and in certain circumstances, one of which is the lawful detention of a person after conviction by a competent court." This is particularly relevant to incoming prisoners in relation to whom the court will have to be independent of the executive and the parties and have to be a court which has criminal jurisdiction and which has the ability to determine whether or not an individual should be detained. So in relation to an incoming person there were safeguards that the Minister will have to be satisfied that the sentencing process conducted in the other country was satisfactory in terms of the

E.C.H.R. Thirdly, Article 8 of the European Convention on Human Rights, everyone has a right to respect for his private and family life, his home and his correspondence. There should be no interference by a public authority for the exercise of this right. This, of course, is a qualified right but is not an absolute right, which means that the States are permitted to interfere with this to the extent that there is a legitimate aim, to the extent that the interference is in accordance with the law and is necessary in a democratic society. Very often we talk in terms of it having to be necessary and proportionate. That will have to be considered in each case. That is particularly relevant in the Article 2(2)(a) test where the Minister will have to look at how close are the ties of the prisoner with Jersey before being in a position to issue such a warrant. Indeed a careful balancing exercise will need to be struck in each case, particularly those which might involve separation from family. Now, in relation to this, of course in some cases this same issue will already have been looked at in parallel by the Royal Court in terms of a recommendation for deportation. So there may, in some of the more difficult cases, be a situation where the Minister can be confident because the issues have been looked at by the Royal Court and is basically looking again at the same issues. Article 14 of the European Convention of Human Rights: "A person shall enjoy the other rights without discrimination." Clearly in the operation of this law there will be a differentiation between people of different nationalities. However, of course, it will be more beneficial for a prisoner who does not have ties with Jersey to serve their sentence elsewhere. That Article of course only operates in terms of considering other rights and I do not think it adds very much but I add it for completeness. Finally, Protocol 1, Article 1, protection of property. Now, this advises only in relation to Article 14(2) of the law in the eventuality of a prisoner returning to Jersey being required to pay the costs or part of the costs of those. Although there are safeguards in the law, particularly Article 14(3) in relation to an exemption for those who cannot afford to pay. So that is also safeguarded. A major safeguard in the law is the need for the receiving country to agree to receive the prisoner. So even if we have an agreement with another country by virtue of which the consent of the prisoner is not required, it will be necessary for the receiving country to agree to receive the prisoner and vice versa. A prisoner coming to Jersey, it will be necessary for the Minister for Home Affairs to agree to receive the prisoner and therefore to be satisfied that it is appropriate under the European Convention of Human Rights, which I will not go through again. A further safeguard lies with the courts, which I have already mentioned in relation to prisoners in relation to recommendation for deportation, and I will not go over that again. A further safeguard arises under Article 2(3) where the Minister must ensure that the effect of the international arrangements or of any warrant have been explained to the prisoner in their own language. Article 2(5) in cases where consent is required it must be obtained in a proper formal way and in accordance with the international arrangements. Finally in relation to safeguards, there is of course also the potential safeguard of judicial review of any ministerial decision to issue a warrant. That is the main aspects of the law but I must, in my opening statement, also deal with Articles 8 and 9, because Articles 8 and 9 are quite different. Articles 8 and 9 deal with the situation in which there might be a prisoner who had been sentenced in another country who was unlawfully at large in Jersey. If we suddenly were to find that there was somebody who should be serving a sentence elsewhere who was in Jersey, it then creates an ability to order the arrest of that person, take them before the Magistrates Court and determine whether they are the right person so they can be returned. Frankly we want to do this because if we have got such people in Jersey we do not want them and we want them to go back to serve their sentence elsewhere. That is in accordance with international comity and friendship to other friendly countries. I think that is all I need to say. I am sorry I have gone into it at such length but I did need, I think, to deal in detail with the safeguards. So I move the principles of the law.

### **The Deputy Bailiff:**

Are the principles seconded? **[Seconded]** I have had a number of Members wishing to speak, I call on Senator Shenton.

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

I am very pleased to see this law today, it is something I have been pushing for for a number of years and with my P.A.C. (Public Accounts Committee) hat on there is a number of financial benefits from the law going through. But it was not the financial benefits that brought it on to my radar in the very first place. Shortly after I was elected I gave a talk down at the Welcome Centre, which is a centre next to St. Thomas' Church, which welcomes immigrants into the Island, and they felt it was very unfair that Jersey did not have any repatriation agreements in place. A number of people within the prison were fairly young people that perhaps knew no one on the Island at all, who had been used as drug couriers or drug mules, and they would be sentenced in Jersey and then obviously they would have no visitors during their time in Jersey because their family and friends and so on and so forth were back in the country that they emanated from.

[11:15]

It was something that they felt should be done from a human rights perspective, that it would be better for these people to serve their sentences in their own countries. Obviously from a financial point of view as well it would be better for their own countries to pick up the bill of them serving back there. I did speak to both the current prison governor and the previous prison governor concerning this and both were fully in favour of repatriation agreements coming in place. Both felt that it would ease the burden on the prisoner quite substantially and allow them more resources to focus towards the remaining prisoners and the rehabilitation of those prisoners. So I fully support this, both from a human rights perspective and also from a financial perspective, and I do hope it goes through today.

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

I was not going to interrupt the speaker, it was just that I had written down about the U.K. prisoners and then the Minister went on to say this will have a secondary effect. If you note on page 4, it says the 1997 law because somebody noticed that we were sending U.K. prisoners to the U.K. and they were serving their sentences in the U.K. under the U.K. law and they were being paroled and they were put in ... obviously that was an incentive and suddenly someone found out this was happening and we had to restrict it back. Now we have got people ... why would you go for the same crime and be doing extra time in the U.K. You are going to do it here anyway so you might as well stay. So I am glad to hear that it is coming. My question is, the Minister did say it makes problems because you could have a Jersey, a Portuguese and a U.K. The U.K. we are coming ... I would like to know a date when this will be non-restrictive because the U.K. do not seem to have a problem with it, we seem to have made the problem and prisoners used to go there and suddenly, as I say, they were not being treated the same as U.K. prisoners. Secondly, you would have the Portuguese returned and they may have more ... let us say they were all on the same crime, Minister, so we have a sentence in the Jersey court, the one is sent to the U.K, does X amount and is allowed out on parole, one is sent back to Portugal, wants to go obviously, and then you have the Jersey prisoner who was in on the same crime will be in prison for longer. So my question is: when will this happen? Where is our parole system? Because I have heard it is coming since ... the Minister seems to think that we do not know. I had U.K. prisoners contact me that they had only gone over there ... that was before I was in the States and they had found out. So it is something that we do know about and it comes to back to where would you best want to serve your sentence and does the taxpayer really need to pick up the bill. But unless we get all the ducks in a row, people are not going to go and they will have ties here to stay. They might also have relatives in the U.K. and there is open prisons, lots of different options for the U.K. but the main reason people used to go was because they served less. So when will it all be equal for everybody and really I just welcome this part to start it off that the Minister said this will lead to, but when will it lead to everybody being treated the same. Please get on with making this unrestricted and not restricted.

### **5.1.3 Deputy S. Pitman of St. Helier:**

I have a few queries for the Minister. Firstly on page 5, number 7, it says that: "Multiparty arrangements to which the U.K. is signatory has concluded around 20 bilateral prisoner transfer agreements with other countries, the department is currently researching this" so I wonder what progress has been made on that. Then on page 6, point 13, if you could tell us what progress has been made on this. Page 12, Article 2, second paragraph, it says: "The transfer can be made without the prisoner's consent." I just wondered under what circumstances. How long the Minister envisages this legislation being implemented and, lastly, what provision of contact for prisoners with children living in countries other than the U.K. are currently in place at the prison at the moment.

### **5.1.4 The Connétable of St. Lawrence:**

Very briefly, this was discussed in great detail with the former Education and Home Affairs Scrutiny Panel and I would like to take this opportunity to thank the current panel for their very helpful comments which they have produced [**Approbation**] on this law. I was listening carefully to the Minister and probably when he sums up he will make reference to the comments that have been provided by the panel. I did not hear him mention them during his opening words. Of course this is a start towards reducing the prison population and a couple of things that I just need to ask is when the transfer between the Crown Dependencies will be effected, whether that will be part of the U.K. repatriation. One comment I found very helpful or intriguing from the panel and Deputy Martin has just touched on it is in point 28 of the comments is that the Jersey prison is seen as a good place to serve a sentence in comparison to many U.K. prisons. I think Deputy Martin just alluded to that. I wonder if the Minister will explain how he will deal with this when negotiating for the transfer of U.K. prisoners. How will he deal with it because this is very much, I understand, based on the prisoners being willing to be transferred? If they believe themselves to be better off in Jersey what is the incentive to get them back to the U.K.? I think those are all my comments on this other than it is a very welcome law.

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

This takes me back a while. I remember back when I first became a Centenier in the early part of the 1970s, I think 1972, when we used to take the people who committed minor offences from the cells in the morning and take them down to the local daylight boat and put them on the boat back to the U.K. and then after the 1976 law - possibly neither you, Sir, nor the proposer were acting advocates in the courts at the time, I think you both came a little later after the 1976 Honorary Police Law came into being - then we had to present them before the Magistrate and he in turn instructed that they pay their own expenses if they had the money on them and put them on the boat. Not quite like that but that is what happened and not to return for a period of time. It was quite interesting how things have moved on with human rights and the like. Can the proposer, when he sums up give us information on if the Howard League on Penal Reform been consulted in this area at all, because in fact they have been very useful in the past, in particular they have praised the method of the work done by the honorary system within the Island and the like and I just wondered if they had been consulted. On a further point, I presume we have still got long term prisoners that we send to the United Kingdom to serve sentences, i.e. murderers and the like. I am not 100 per cent sure if we still do that or they serve on Island. If they are being sent to the U.K. and there is a fixed penalty given for the offence that will serve a minimum of say 25 or 35 years, will this affected if a deal is done with another jurisdiction, because I would not want to see a murderer walk free if the Royal Court over here had made certain recommendations that the person serves 25 or 30 years of that sentence because the deal done with another jurisdiction maybe allows a person to walk free after 12 or 15 years. Will the Minister please be able to put my mind at rest on that point? I am very supportive of anything that will lift the burden on the Homes Affairs Department, i.e. the prison and obviously the police service and all that goes with it, and obviously the taxpayer and I take my hat off to the Minister for moving in this particular area. Thank you.

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

I would like to join other Members in congratulating the Minister on bringing forward this piece of much needed legislation. I have some experience of working with the prison staff having been a member prior to joining the States of the Release on Temporary Licence panel for some 5 years. This panel was set up by the Minister's predecessor and I was a lay member on that working with the prison governor, prison officers and reviewing whether people coming to the end of their sentence should be allowed out on temporary licence to visit family, start to work in the community and eventually to take on paid work. It was very revealing, and this picks up on what Senator Shenton said before. How many of the offenders that came up in the file were first offenders and they were what is known as drug mules. They were people who had arrived, usually at the harbour but sometimes at the airport, been arrested carrying or drugs often hidden in their body or wherever and were obviously brought before the courts and given quite substantial sentences under our current drug penalties. Often these unfortunate people, and I call them unfortunate because in some cases they had absolutely no connection with the Island, the only place they have ever seen is the harbour and H.M.P. (Her Majesty's Prison) La Moye. When it came to considering them for release on temporary licence of course there was nowhere for them to go. Nobody wanted to necessarily take them into their homes, they did not know anybody, they never had any visitors, they could not speak the language in many cases and it was a very difficult and sad situation to see, and by having this repatriation law we will be able to deal with that problem. Also during the current Minister's time he made a ruling, and I think it is probably still standing, that anybody who had been sentenced by the courts for deportation at the end of their sentence, they were not eligible for release on temporary licence in any form. Again, this was a bone of contention perhaps for some of these prison inmates that their colleagues were going out temporary licence but they could not because they had a deportation order made by the court. I think the key thing is that this will do a lot to help reduce the prison population, and I am particularly pleased to see that the Minister is recommending in the financial and manpower implications that he will be addressing the issue of how to separate the different prison population rather than the total number of cells. Again, this came to my attention when you visit the prison regularly, although a lot of money and a lot of good work has gone on with the accommodation available to prisoners there is a problem particularly with young offenders and hopefully the Minister would agree with me that this is something we need to deal with rather than mixing young offenders with more seasoned, shall we say, offenders. That is all I want to say, thank you.

### **5.1.7 Deputy K.C. Lewis of St. Saviour:**

Just a few minor questions. If a prisoner is repatriated to their country of origin, I am presuming they would sit their sentence out there as if they were in Jersey. A prisoner in Jersey, once they have completed their sentence would be released into the community.

[11:30]

Would there be any bar on any prisoner sent back to the country of origin of re-entering Jersey at a later date should they manage to retain their passports? Does the Minister have reciprocal health agreements with all the newer E.U. states and would the Minister define ties in Jersey? I can understand wife and/or children but everything else is a very grey area. Would the Minister clarify? Thank you.

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

Deputy Martin raised a lot of the questions I was going to ask. It is to do with the differential in a sense between the length of sentence before remission, it was mentioned about one third in Jersey, half in the U.K. and so on. I was just wondering, when the Minister went through the various European Convention of Human Rights Articles, if I am not mistaken I think it is Article 13, which is not a standalone article, it is to do with discrimination and I would like to know what effect it has

if you have got these differential rates whether Article 13 could be involved as well? Perhaps if he could advise us on that.

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

I would just like to start off with some congratulations. Congratulations to the Minister on bringing this forward. I often think he is not the quickest man on earth but it is a difficult area. I congratulate the Home Affairs Panel for their excellent work. I congratulate Senator Le Gresley on his birthday, only 7 years until he can retire now, thanks to us. But my real concern is the one touched on by Deputy Martin, it goes into the parole issue in Jersey and I look forward to hearing the Minister's thoughts on that. As we can see by the comments from our panel, Education, we were generally very supportive but I do not know whether the Minister agrees or not that while this is indeed a step towards reducing the prisoner population, this is just the first step and the next one if he is still here and if we are all still here is to look at our whole attitude to sentencing and crimes and why people perhaps are in that prison for something related to drug offences which are not hard drugs and yet they will be treated far differently to someone who drinks 18 pints of lager and then beats the living daylight out of some innocent person. Now, that is a key area, I think for the Minister or his successor. Could the Minister just give assurances that when it comes to repatriating prisoners he will give real consideration on an individual case by case basis because, as we all know, there is going to be huge discrepancies in the places where some people might be returned to ... they might well be not innocent people because if someone has committed offence they have still committed an offence but as Senator Le Gresley point out, some of these people are just desperate people really and they have almost entered into some of these criminal activities as a last resort, and I do hope the Minister will ensure that people who are vulnerable and were used by people much further up the criminal chain do not end up suffering in proportion to what they have done. But generally I say well done to the Minister, we are supportive as a panel and I look forward to some further steps in the future.

#### **5.1.10 The Connétable of St. Saviour:**

Just a couple of brief questions. The Minister has mentioned that obviously some of prisoners would serve a shorter term due to their country's parole conditions. Could he quantify this in some instances because I have to say I do not know whether we are talking about a few months or a few years? Presumably it is proportional to the length of the sentence. The other thing that follows on from that is is this likely to have any effect on the court's sentencing policy in that if they know a prisoner has committed a certain offence, they may not want him released before a certain term, and he is likely to be going back to another country where he would be out on parole, would this affect their sentencing?

#### **5.1.11 Deputy A.T. Dupre of St. Clement:**

It is about 13, about the expenses. I see that if it is a Jersey person coming back to the Island they are going to have to pay towards their expenses whereas it seems we are paying to get rid of the other people. Could he just explain that for me? Thank you.

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

Yes, I would like to thank Constable Mezbourian who is still thinking of us and Deputy Pitman for praising himself and ourselves. **[Laughter]** A bit of self-serving never goes amiss. We did have a long meeting with the Minister and some of the issues have not been mentioned because they were not seen as germane but they have since been raised. We were exceptionally worried about the fact that the U.K. remains a massive anomaly at the moment and that there have to be reforms as so many people have said to the parole laws. This has been in the works ... I remember the former Minister for Home Affairs, she convened task groups on this and so forth and so on, and it is rather sad that we still have not reached that point. We do have to remember there is a small group, of course, transferred to the U.K. in order that they can take part in specialist facilities there. Whether

they go voluntarily is another matter but they are there. It is quite interesting because I have been involved for some time with one of these cases. There is an incoming element in the sense that although some people with Jersey links are serving U.K. sentences for U.K.-based crimes, the prison here, under enormous pressure, has been good in the sense that it has allowed them to come over on short family breaks where often there has not been the possibility of keeping up family links within the U.K. So oddly enough there have been some informal arrangements. On that very enticing issue, because I have, as the Constable knows, worked in the U.K. prison service, on that issue of is the Jersey prison a better place, well it is better in the sense that obviously it is smaller. A lot of people do not like being thrown in these massive, anonymous, quite dangerous institutions, where there is obviously a real issue with how you control bullying and how you control peer group pressure and all these sorts of issues. So whether the Minister for Home Affairs is going to take a deliberate policy decision to make the Jersey prison a more unpleasant place or whether he is going to seek to encourage Mr. Clark to make English prisons uniformly more pleasant places is obviously up to him. But I think that will pose a bit of a dilemma. The issue was raised by the panel of more lax jurisdictions, which has been raised by some Members about people ... if they arrive there ... and we did quote the case which is slightly unrelated of the Libyan gentleman who I hope is still in safety who may recall left the Scottish prison system on what was seen as essentially, alleged, to be a political move rather than a straight inter-prison transfer so to speak. The view of the Minister, which I have no doubt he will elaborate upon, was that this will be done under European legislation essentially, under European standards, under human right protocols, and if there is evidence that people are moving to other countries and all of a sudden some deal is engineered, which was not apparent to the sending jurisdiction, then he will have mechanisms by which he can raise objections. It will have to be other than the very massive anomaly with the U.K. It will have to be complained about through those mechanisms. That is why, at the moment, there are certain jurisdictions as mentioned in our report where obviously ... because people have asked: "What about other jurisdictions where there may be Jersey prisoners, for example?" Obviously they do not come within the ambit of this and I think the Minister for Home Affairs would want a lot of reassurances before that extension were to occur. Indeed it is quite interesting, it is not mentioned in the report but I understand Poland is not accepting transfers at the moment because there is quite a log jam from countries like Britain in wishing to send people and the Polish system does not feel it can, at the moment, accept people. So that is another anomaly. The other issue that was raised was unintended consequences and the suggestion was put to the panel that if the Jersey prison slims down, and it has to be remembered with so many of these policies there is many a slip between cup and lip as these policies are implemented. But if the prison was to slim down in the light of these quite interesting numbers that are contained on page 9 and a lot of these people were to move, what impact would this have on the programmes of the prison and Senator Shenton it would enable more rehabilitation to take place. Well it may and it may not because it may sound a strange thing to say but there are economies of scale in offering services, so that is another interesting issue which the Minister did address. I would like to emphasis it is something that again does not fall the cracks as massively as the U.K. issue of inconsistent parole conditions but it is the issue raised by Constable Mezbourian of inter-Crown Dependency transfers. There are a few of these people in the system, as the Minister will acknowledge and we really have to deal with them because it is going to look quite odd if other people are starting to move and people in our sister islands, Crown Dependencies, cannot move, this is going to look very, very odd. But we tried in our report to make this a lay person's guide to the Minister's law and we tried to walk him through all aspects of it and I hope that has been achieved because it is a complex law and we know the Minister has enormous skills and knowledge in law, but we did try and tell him that we are but mere lay people and we wanted to process it, and that is why I thought it was a very good exercise and we do thank him for his engagement with that exercise and we hope it has been useful to Members.

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

I too think this a very useful piece of legislation and I also very much appreciate the comments by the Scrutiny Panel, in particular under paragraph 9 where it says repatriation would facilitate earlier and more effective rehabilitation into their home communities, and I think that is very important. But I have got one question, and I hope the Minister will excuse me if it is already written in here but I have not seen it; will this cover that where a person is sent to another jurisdiction to serve their sentence that that jurisdiction will allow an earlier release than had the person served it here in Jersey? Will that person be able to return to Jersey before the actual term of the sentence, had it been here in Jersey?

**5.1.14 Deputy J.M. Maçon of St. Saviour:**

My chairman made most of the points that I want to make, the only further thing I will say for Members is that behind this there is still a huge body of work which will have to go on, in particular the point that Deputy Lewis raised between not reciprocal health agreements but reciprocal prisoner transfer agreements. From the hearing the main thing that came out is if we are to follow this route terms of parole, *et cetera*, will be subject to that jurisdiction so if they are more harsh then the prisoner will expect to be more harsh, if they are more lenient then indeed they would be more lenient but we have to ask ourselves whether we are happy with the case and I come to the point of so be it. However one question which I failed to ask in the hearing, which has dawned on me now, is what happens perhaps in the very, very rare case where we might have a situation whereby someone who is convicted of a crime in Jersey, which may not correspond to any existing legislation in that person's home jurisdiction, what happens in that situation? If I could just challenge the Minister with that point. But overall I am very supportive of this legislation.

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

I would like to compliment the Minister for Home Affairs. I will not be so kind in the next proposition but certainly what a complement on this one. It is very much a win/win situation and one has to ask why has it taken the present Minister to bring this piece of legislation through and say congratulations to him, but this has been kicking around since 1984 and just think of all the hardship, all the costs, *et cetera*, to the Island for not bringing this legislation. It sometime defies logic but I think it is very important to mention the things that Deputy Martin and Senator Le Gresley also mentioned about the unfairness of the system and I think it is very important because they are all human rights issues as well. It did seem so unfair that so many prisoners were ... depending on where you were as to how long your sentence was and what the parole was. So I think that is going to be an excellent way of moving forward. I have just got one question of the Minister and that is on page 5, paragraph 8.

[11:45]

Again, I think this is another win/win for us here in Jersey. That is about the additional protocols and it says here that ... the protocol will now enable the Island to ... you know, where a prisoner is to be deported at the end of his sentence, that can happen. The Deputy of St. John is mentioning about the old days when you put them on a boat and they were gone; well, that can happen now. Also, very importantly again, where a prisoner has fled from the Island he or she can be arrested in where they have fled to and be dealt with. Again, that is another loophole that has been closed, so well done there. But the question I want to ask, it says, it is in italics here: "The consent of a sentenced person shall not be required to the transfer of the execution of the sentence." Can I just ask the Minister what form of appeal will that person have if they do not want to go? Does the protocol just say they have to go without a right of appeal? Maybe the Minister could inform Members of what the situation is. Again, well done to the Minister.

**5.1.16 Deputy M. Tadier:**

Things certainly have changed since the days when the Deputy of St. John was an Honorary Police Officer. I mean, you could just put somebody on the boat if they had been misbehaving and you did not really care where they ended up, and they could go on to reoffend over there. Thankfully, the legislation that is coming forward from the Minister is much more responsible than that form of practice where, for example, somebody may have been out drinking, they may have got into an assault and that person would be put on the boat - the next boat in the morning, I think, is the phrase - while the publican who had sold him the alcohol was not put on the boat but was able to remain in Jersey to sell more alcohol and to incite more people to drink and have alcohol-fuelled violence. I think that was alluded to by Deputy Trevor Pitman already; that in broad terms, of course, there are other pressures that the Minister and the Assembly of the Island faces with regard to alcohol and drugs, which is why a significant amount of those at the prison are there in the first place. Just to speak in broad terms, of course, personally and as a member of the Home Affairs Scrutiny Panel, we welcome this proposition, this law, which we have been able to scrutinise effectively, I think. In broad terms - and we have spoken to the Minister about it both informally and formally - I think we would all agree that prevention is better than cure. We have also highlighted the fact that it would be desirable, I think, if in fact we were in a position where we had a very minimal amount of overseas prisoners or any prisoners in the first place, but particularly because we know that those who come to Jersey have no real link with Jersey insofar as many of those who come over for drug-related offences may be mules. They often do that for economic purposes because they are not necessarily drug users themselves; they are in desperate situations where the only apparent solution that they see is to come over, smuggle drugs, often very precariously and dangerously, biologically speaking in terms of the way they sometimes do that, only to find themselves in a foreign jail. Of course, we must remember that in those circumstances it is not simply satisfactory to tar everyone with the same brush, thinking that everybody is a hardened criminal. Of course, this law does have an element of compassion, which I think is welcome in it. But clearly, it would be more expedient to catch people or prevent these kind of people coming in in the first place and if that could be done perhaps by targeting resources at different ports overseas so that these individuals do not come here in the first place, it could be a significant way to invest to save; so, a small investment of Jersey resources but overseas working perhaps in a more joined-up approach with overseas customs and immigration and police, special branch, *et cetera*, would be perhaps a more effective way. Because, of course, it is not simply the cost of the prison service; it is the court system and all the related costs. As we know with recent cases such as Curtis Warren, but that is not the only one. If we can stop these cases coming to Jersey in the first place then certainly that will be better socially and, in particular, economically. One interesting scenario that could occur, and it is perhaps not going to be the norm, but certainly there are scenarios whereby ... and one could end up with a curious situation and I will give perhaps 2 or 3 examples, and I would like the Minister to comment on what the eventuality might be. It revolves around offences that, in Jersey and elsewhere, may not be equally recognised as offences. The first one, let us take for example we have a Dutch person in Jersey's prison because he has been caught for possession of cannabis and smoking, perhaps on several occasions, which has led him to be housed at H.M.P. La Moye. He could be repatriated to a prison in his hometown of Amsterdam and he would have to explain to other prisoners why he is there and it would be because he has been smoking cannabis in Jersey, which would not be a crime in his own town. Similarly, a Jersey person could go to a Muslim country, I understand that this would not necessarily be the case now because it would not extend to Saudi Arabia, but in a scenario where a Jersey person ended up in a jail in Saudi Arabia and was put there, perhaps without trial, who knows, for 2 years and then some time in the future was able to be repatriated to Jersey, would Jersey's stance be that that person should remain in prison for having committed a crime of having a few glasses of alcohol, even in his hotel room, and then only to find himself in a Jersey prison? Of course, the underlying argument against that could be that one should always respect the laws of the land in which one is in at the time; that is of course correct. But it is also correct, I am sure, that any reasonable thinking and fair-minded Jersey person would not want to lock somebody up in a Jersey prison for something that is of no importance to the

current society in which he or she is living. It would not be a sensible use of resources. The implication is, of course ...

**Deputy R.G. Le Hérissier:**

Can I ask for a point of clarification from the speaker? Is he assuming that we are going to make a repatriation agreement with Saudi Arabia? There is absolutely no intention of doing so. Secondly, could he define his understanding of the cannabis smoking laws in Holland; I thought legal smoking was confined to cafés?

**Deputy M. Tadier:**

I am not an expert on the smoking practices of the Netherlands, but what I do understand is that certainly that is the case; it is restricted to certain zones, but certainly there would be a greater tolerance for those found in possession of that kind of drug in the street or for personal use in larger quantities and it certainly would not end up with a prison sentence with the severity of what we have in Jersey. The 2 are not ... there is not any parity there. Of course, Saudi Arabia is simply used as a didactic analogy. Of course, I could use an example that would be closer to home, which would be some countries in the E.U. that have different tolerations of what is sexually acceptable. For example, certain countries in the E.U., of which you possibly might be dealing in the future, might still outlaw homosexual practices, which we do not in Jersey. It would be strange if a Jersey person in one of those less liberal countries was found to be locked up in prison for a homosexual act, was then transferred back to Jersey and then put in a Jersey prison at our own expense for something that is not unacceptable in Jersey and is not criminal in Jersey because it would be completely inexpedient for that person to be put in prison. I would like the Minister to perhaps advise what would happen in that kind of scenario where a Jersey person, let us say it is a Jersey person for argument's sake, has been convicted of an offence which is not an offence in Jersey, would that person then be expected to finish the rest of their sentence in a Jersey prison for something which is not financially viable for them to stay in prison for at Jersey taxpayer's expense?

**The Deputy Bailiff:**

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

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

I will do my best; there were a lot of questions. In the first place I am not quite mortified, but I am close to being mortified, for the fact that I did not thank the panel for their report. **[Approbation]** I am afraid I wrote my speech while on holiday and there were certain family matters that distracted me since, so I do apologise. I did not of course see it until I returned on Monday and it was a very well written, very supportive document for which I do sincerely thank the panel. Secondly, I have just remembered before Deputy Le Hérissier mentioned it, that I should have mentioned the Polish situation. He is quite right and in fact the figures I quoted in terms of potential numbers did take that into account. Poland has asked for a ... I cannot remember the correct word, maybe a derogation for a period of 5 years from having to be banned by the E.U. Directive because of having so many naturals outside and therefore it may be difficult to enter into an agreement at an early date with Poland. My next note says: "Restrictive/non-restrictive when equal" but I now do not understand my own note, so whoever asked a question in that area will have to prompt me again, I am afraid, because I cannot understand the question. The parole system, this is a very interesting area because I thought, when I became Minister, that the Criminal Justice Policy document approved by the States of Jersey was effectively approving a move to a parole system under which people would be eligible for parole after half their sentence. Potentially eligible, sorry, for parole after half their sentence with the period of parole being up to two-thirds of their sentence. That is what I thought had been agreed by the States of Jersey because that was what was discussed at the consultation meetings to which I was a party when I was Magistrate. I then

discovered in fact the intention was potentially being eligible for parole after half, but with the period of parole to be right until the end of the full sentence and not for two-thirds. I do not need to go into the reasons why my opinion of that would be a hopeless provision; simply utterly unworkable. I do not find myself, as Minister, with a situation where previous policy had committed to something that I personally could not, under any circumstances, have agreed to. That has been a major difficulty in relation to proceeding with variation to parole. But in the meanwhile, we made certain adjustments to the early release arrangements that we have, which involve the potential for a prisoner being allowed to go out during the daytime for work purposes, but coming back at night time up to the last 12 months and now allow a prisoner to be released on a curfew for the last 4 months. I quite like those provisions and that exact view is shared by my Assistant Minister. In my discussions with probation officers they quite like those provisions because there is more of an ordered process of going from being fully a prisoner to going through a situation where you are able to go out during the day time to get work experience and so on, but still returning at night time so that issues like your use of drugs or whatever can continue to be monitored and so on to a situation of going out for the last 4 months just on a curfew. All those are subject, of course, to the approval of the group that Senator Le Gresley used to sit on. I quite like the system. At the moment there are ... I do not personally propose to bring changes. There is a secondary reason for that because of course - and this answers another question that was asked later on - there are potentially advantages to us having a different system in terms of there being a greater incentive to people from the U.K. to want to return. That answers, in fact, somebody else's question. It is an area which will no doubt have to be looked at again. There is a potential, of course, that we may find during the process of talking to other countries that they will want us to move towards a more unified system, a more consistent system, but I do not anticipate that we are going to have a problem with that at this stage, but that may eventually occur. As I say, I am perfectly happy with the system that we have at the moment and I am not proposing changes. The issue of international arrangements, how those would be entered into, under the law there are 2 possible ways: it is either effectively an agreement, a treaty, with the individual country, and obviously we have been looking first at Portugal/Madeira, at Poland when that is possible, but we could also be looking at other individual countries.

[12:00]

I am aware of individual cases involving an individual from Holland who is very keen to return there and one could seek to be entering into international arrangements earlier. If we could do this upon the basis of being tied into the treaty arrangements to which the U.K. are already tied in, that would be great because if we could enter and come in on the back of that, as it were, then we suddenly would find that we had all the arrangements with a whole lot of different countries and that would be excellent. But if we cannot do that then we will in fact have to enter into treaties with individual countries in the way that I have just suggested. My next note says: "Without consent" and I am trying to remember what that means. I think it was the question about circumstances in which a person might still be repatriated, even without their consent. An example of that would be, for instance, if there were a deportation recommendation because clearly if there were a deportation recommendation, notwithstanding the fact the person might want to stay, effectively that would mean that if that was confirmed at the end of the sentence, or towards the end of the sentence, the person would not have the right to stay anyway once they were released. It seems to be there would be a clear ground for overriding. There are safeguards - this was another question that was asked - in relation to the issues where there is a concern - I think Deputy Hill may have asked this question - and the safeguards are firstly the fact that the receiving country has got to agree as well. If a person is really unhappy they are going to be making submissions to the receiving country: "Please do not agree to my going back because it is wrong because of this and that" and in a sense there is a kind of informal appellate process. I also mentioned the human rights requirements that both the country who was sending and the country who was receiving would have to be satisfied that that would be properly dealt with, so there are various safeguards there. The

question of when in place, there are 2 issues there. There is the issue as to how long it is going to take, in fact, to get this law, assuming it is passed today, approved by the Privy Council and registered and there is the issue as to how long it will take to enter into the international arrangements, so there is that consideration. I am trying to think of whether I have covered the whole of when in place. Again, if I have not, I apologise to the questioner and no doubt they will prompt me on that. There was an interesting question about contact for prisoners with children, as to what the existing arrangements are. I do not think there are arrangements just to send to a non-U.K. country. I would think that there would be a discretion to attempt to send somebody back ... to transfer somebody to the U.K. if that was really necessary in the same way as Deputy Le Hérisier mentioned, but I am afraid I do not know what the current arrangements are in relation to that.

**Deputy S. Pitman:**

May I interrupt? That was my question. I did not put it clearly enough to the Minister. It was in terms of if there are allowances for prisoners to contact children via phone.

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

It was the ability of ... to speak to somebody, I think, something like that.

**Deputy S. Pitman:**

Yes.

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

Again, I do not know precise details of arrangements, but we do seek to run a very sympathetic regime in as far as we can within the existing rules. I am afraid I am not aware of the precise details of that. My Assistant Minister has more direct oversight of the sort of detailed operational aspects. Yes, in relation to a person returning to the U.K., it is correct that they must be willing to and that is a reason in fact why it may well be viable to retain an incentive to do so. Somebody very kindly said that Jersey was a good prison, or words to that effect. I hope it is. I hope it is a humane and good prison. It was not all that good a number of years ago, but we have managed to raise standards and the accommodation now of course is now massively improved and so on. But there may be desirable reasons why there should still be an incentive in terms of the difference of the parole systems. The Deputy of St. John, going back to the days where people were being, as it were, kicked out of the Island. Of course, it is still possible for a person to be bound over to ... be of good behaviour on the condition that they leave the Island and not return and that can last for 3 years, but it does now require their consent. There was a Royal Court judgment which disproved of other practices. Apparently, no, they have not been asked about it; no doubt they have been entirely supportive because this is ... and indeed any other such agency, particularly because of the humane aspects and the rehabilitation aspects of a person being able to return to their own country. It is fully in accordance with all those principles.

**The Deputy Bailiff:**

Can I say to Members there is a growing hum, which may make it difficult for those on the other side of the Assembly to hear what the Minister is saying.

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

How will our sentences be applied elsewhere? Both under the terms of the International Arrangements Agreement, which will specify that, but also under the terms of the particular warrants. When we get to some detail in a moment you will see that there are 2 stages of issuing warrants on the part of the Minister for Home Affairs. Frankly, it is going to be important that we ensure that people are serving the sentence for which they were sentenced, but the change is that they serve that sentence in accordance with the parole system, or early release system or whatever it may be, for the individual country. There is no standardisation within the European Union on this;

there are different rules in different countries at the moment. I do not know what they are besides unique points, there may be some slight differences, but it is essential for the integrity of our criminal justice system that people are not just being sent back and certainly they are just going to be let out. I can give assurances on that and I certainly would need, before entering into international arrangements with any country, to be assured that that was going to be acceptable. I trust any future Minister would do the same. There was a question in relation to deportation orders and this was raised by Senator Le Gresley; the issue in relation to parole ... the issue in relation to early release, as it were, in Jersey and deportation orders. One of the things I discovered as Minister to my horror was that what had been happening was that prisoners who were subject to deportation recommendations from the court, in other words, the court, having weighed all the human rights aspects and so on had decided it was not in the public interests that they remain, were being allowed early release for work purposes and things of that nature. That was in my view unsatisfactory because it cut quite across the principle for people that we did not want to remain in the Island. I did institute changes and I did so simply upon the basis that the purpose of the early release is integration back into the community. With people who are eventually going to be deported that was not the purpose and therefore that should not be applied. But it did create - and the Senator is absolutely right to point out - to a degree a sense of grievance among some prisoners who were foreign nationals who found that they were being treated differently because of the recommendation for deportation. This provision will of course readdress that and it is part of it, but it is a very well-made point. The issue of bar on return to Jersey, if a person is not subject to a deportation order then at the end of serving their period of sentence elsewhere they would be able to return to Jersey. This does not deal with that. It is the deportation legislation that deals with that principle, as to whether they should be able to return. If they are an E.U. national and not subject to a deportation order they will have a right to come back to Jersey at the end of the sentence. Somebody asked - I think it was Deputy Lewis - for a better definition of ties in Jersey. This is a general term contained in the law and obviously it has got to be family ties, work ties. The same way as the Royal Court or the Magistrate in determining whether or not it is appropriate to make a recommendation for deportation has to look at the strength of these and balance these, I would expect exactly the same process, exactly the same sort of criteria, to be looked at, so there are legal precedents, as it were, in the parallel situation of deportation that would provide guidance in relation to that. The question in relation to - I think this was Deputy Higgins - discrimination and differentials in people being treated, I raised that point in my opening speech because that is an issue that has got to be weighed and considered. But one needs to understand that of course this is in accordance with an E.U. Directive, i.e. the principle of people being sent back to their home country is part of an E.U. Directive. That E.U. Directive must clearly be human rights compliant and including in relation to the discrimination aspects of it. Sentencing issues were raised. I am not sure who raised these; it may have been Deputy Trevor Pitman, but I am not sure. Somebody raised the issue of sentencing issues for a particular type of offence. Unlike home secretaries in the U.K. who sometimes give the impression that they have the power to control sentencing policy, I do not. Sentencing policy is a matter for the courts constitutionally and it is in the U.K. as well. Although I may enter into amicable discussions with judges it is ultimately a matter for the courts constitutionally. That principle I uphold.

**The Connétable of St. Saviour:**

Could I just ask for clarification on that? On that point I was asking whether he felt the courts might change their policy if they felt people were being allowed out earlier on parole.

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

That is a different question; I was answering an earlier question. I will answer that question now, but it was lower down in my list. The answer to that is on a basis of discussions that I have had with the court now. I am cautious about revealing confidential discussions, but the impression from discussions I have had is that the view of the court would be that their job is to impose a sentence in

accordance with accepting guidelines and so on and the whole area of parole and matters of that nature, how the sentence is treated is a political matter; a matter ultimately for this Assembly, but initially a matter for the Minister for Home Affairs. I think that is the flipside of the constitutional position. That is in the political arena. The actual sentence is within the court arena. Sorry, I answered another question there. Somebody raised the question of matters being dealt with on a case-by-case basis; that is absolutely right. It is absolutely right - that was Deputy Trevor Pitman - and of course that is the reason why I went into the human rights safeguards, to indicate the considerations that the Minister would have to consider before making any decision. That has to be done on a case-by-case basis. The next point was that from the Connétable of St. Saviour; I have answered his second point. His first point, my note says: "Parole issues length." I have a feeling I do not now recall what that means. I do not know if the Connétable could clarify that?

**The Connétable of St. Saviour:**

I was just asking if the Minister could quantify, for example, if someone was sentenced to 3 years or 5 years how much earlier they would be coming out if they were on parole in another country?

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

That will depend on the parole system of the individual country. I am not knowledgeable on the individual countries to ... I am knowledgeable about the U.K. system; the U.K. system allows eligibility for parole after half. In a case of certain offences that is almost automatic now. In the case of other offences it is discretionary.

[12:15]

My impression in the discussions I have entered into, although I do not have detailed knowledge of this, is that eligibility for parole after half is a fairly standard system, but as I say, each country has their own system. Our system, just for clarity, is that people normally serve two-thirds but they are potentially eligible for the early release in the last 12 months and then there is the 4-month period as I mentioned in relation to curfew. Expenses that, I think, was a question from Deputy Dupre. My understanding is that where a person is outgoing, we are effectively going to have to pay the costs of that. That will be so unless there is a similar provision in any country to that which is contained in Article 13 whereby an individual prisoner might be charged expenses in an appropriate case. So I am working on the least favourable assumption, which is that we have to pay the costs of the transfer. Of course, there will be a saving to us in terms of less prisoner numbers. Incoming is dealt with in Article 13, which makes a provision for charge to the prisoner in some cases. The default position there would be, and I would expect this to be dealt with under the international arrangements, the default position would be that I would expect the international arrangements to say that where the prisoner could not afford to pay it that the outgoing Government would. But whatever happens, it is going to be reciprocal. It is going to be the same understanding both ways with whichever country we may enter into the arrangements. So in other words, if we are having to pay for ours outgoing, they would have to pay for the incoming and so on. Interesting point about economies of scale, which I think was raised by Deputy Le Hérisier, who is absolutely right. Sometimes, I am asked a question as to what is the cost per prisoner and my answer is: "It depends how many prisoners we have got today" because there are certain fixed costs in running a prison and real savings are only made when you can close down a floor or part of a floor or when you can reduce the number of people involved in teaching and training at a particular area because the numbers have got below a certain level. My understanding from the information provided to me by the Governor is that there will be kind of seeing a level of 20 less at which we achieve certain savings and another level of 40 less that we achieve higher savings. It is my understanding at the moment that to achieve the C.S.R. (Comprehensive Spending Review) level of savings, we would have to arrive at the 40 less level. Unfortunately, I do not want to be invidious in mentioning press details, but one of the media extrapolated the figures and came up with an extraordinary calculation of the amount per prisoner at about £55,000 multiplied by a hypothetical figure of 60. They came

out with something like £3.3 million. Well, that is completely ... it is nowhere like that sort of figure. The sort of figures we put in were £240,000 plus any reduction in numbers of people involved in training in the C.S.R. process. Returning to Jersey earlier, that sentence, I think was a question asked by Deputy Jeune. The answer ... well, first I have to explain there are different concepts. There is a concept of the sentence that a person has but even under our system, the person would normally be released after two-thirds of that. So really I think the question should relate to could they be coming back to Jersey earlier than they would have done if they had served the sentence in Jersey as opposed to if they had served their sentence? The answer is yes, quite possibly, if the parole and early release system of a particular country was more generous than that of Jersey. Then clearly, that is a theoretical possibility but, of course, that would not apply if they were subject to a deportation order. Interesting question in relation to crime here that does not correspond. That may be an issue that will arise in the context of the international arrangements; that was Deputy Tadier's question. There is a safeguard contained in Article 4(3) in relation to what I take to be a safeguard in relation to unreasonable penalties elsewhere. The Article 4(3)(a) is basically saying the Minister is very cautious where the penalties for a particular crime exceed the maximum penalties in Jersey. So there is clearly intended to be some sort of safeguard there. I do not think we are going to be seeking to enter into international arrangements with any country which is not compliant with the European Convention of Human Rights. I think that is quite clear from what I have said before because there would be major problems if we were seeking to do so, both in terms of breach of the Article in relation to inhuman or degrading punishment in the way they might serve their sentence elsewhere, and also in terms of whether the method of the criminal courts of that place was satisfactory. So there are safeguards in relation to that. I am not excluding the possibility eventually of arrangements being entered into with friendly jurisdictions which were not signatories to the European Court of Human Rights but they would have to be applying equivalent provisions which is satisfactory under that. So I think that covers the points of Deputy Tadier. I have covered Deputy Hill's question in relation to appeal procedures when there was no assent. There is no formal appeal procedure but there is the combination of the need for the receiving country to approve and the human rights obligations on the Minister here and the judiciary appeal possibility. Another point from Deputy Tadier in relation to whether we could not get people who are coming to Jersey with drugs picked up elsewhere. Well, that would be lovely if we could. Some countries are more co-operative than others in relation to that. Some do not want to have to prosecute them under their laws so they provide us with information so that we have to arrest them and charge them and try them and so on and others are more willing so to do. The French are particularly good in that respect. I am not going to publicly criticise other jurisdictions. I hope I have answered all the questions. If I have not answered any questions in passing, Members will no doubt stand up and remind me about the one I could not understand.

**Deputy M.R. Higgins:**

When the Minister was talking, he mentioned that he had probably answered my question. I do not think he has. Article 13, from memory, was the Article that is concerned with discrimination and although it is not a standalone Article, it is interacting with the other Articles. What I was concerned with was the fact that if we have prisoners which, let us say, we are sending off to different jurisdictions and they each have a different policy on remission of sentence, could we be accused of discriminating if, for example, we are imposing a one-third for the remission and others are offering say half or even more? So the point is this whole question of discrimination with letting people go and whether it is disadvantaging some of them.

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

Yes, I had attempted to do that. It is Article 14 and I did deal with it in my opening speech. It has to be considered. Article 14 says: "In dealing with the rights under other Articles, it must be done so without discrimination." It has to be considered in individual cases although my reading of it, it is not going to add very much to the provisions in the other Articles. A specific point I tried to deal

with before by saying of course there is a European Directive in relation to this to say to countries you must operate reciprocal systems. Now, if there is a European Directive, I deduce that must be human rights compliant otherwise it could not have been made in the first place. So I do not think there is a difference, the point being that the point of unity, the point of consistency in applying the system is if we adopt the principle for everybody that they serve in accordance with the regime in the prison where they are. That is the point. So I do not think there is a difficulty. The advice I have received has not suggested difficulty, if the Deputy would like to ask a question of the Solicitor General on that, but that is my understanding.

**Deputy M.R. Higgins:**

I have decided to follow through on that. If we have, for example, a prisoner who, for whatever reason, did not consent to going back to his own country because of whatever problems there and he was being entitled to any remission under the Jersey system whereas, let us say, it was more favourable although, for other reasons, he did not want to go back, whether again it could be alleged that it is discriminatory against him?

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

I do not think a discrimination issue would arise there.

**The Deputy Bailiff:**

Deputy of St. John, you have a point of clarification of something that the Minister has said?

**The Deputy of St. John:**

Yes, Sir, I did ask about what happens if we had a murderer that we sent away and the courts had specified that he or she does a minimum of 25 or 30 years, how would that be dealt with, please?

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

Thank you, I did omit to answer that question. That is part of both of the international arrangements which are entered into. It is clear that people are going to be dealt with on a basis which starts with the basis of the way they have been sentenced but also, of course, there is a further safeguard in the terms of the actual warrant. There are 2 stages of warrant but the second stage of warrant in which they are being passed over to be dealt with under that system should deal with that point. The individual warrant should ensure that that is what is going to happen.

**Deputy T.M. Pitman:**

Sorry, if he did, but I do not think the Minister answered Deputy Maçon's question about if an offence was not an offence in the country where that person originated from.

**Deputy J.M. Maçon:**

I believe the Minister did. It was expanded by Deputy Tadier and I believe the Minister addressed it.

**The Deputy Bailiff:**

Is there anything you wish to add, Minister, or not?

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

I think the one point I did not deal with was the possibility of a person being convicted in another jurisdiction for an offence that did not exist in Jersey. I did not directly deal with that issue but I did say, of course, that we were not going to be wanting to enter into agreements with countries that were not human rights compliant. But if we got into a situation where that existed, hypothetically, there could be a dilemma because it would still be in the best interests of the prisoner to return to the place where they would have their ties and so on. But I do not think in practice that is going to arise because of the nature of the jurisdictions with which arrangements would be entered into.

**The Deputy Bailiff:**

Very well. The principles are proposed. The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the principles of the Draft Repatriation of Prisoners (Jersey) Law and I ask the Greffier to open the voting.

<b>POUR: 46</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
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 Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				

Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy 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 A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

Now, Deputy Le Hérissier, Standing Order 72(4) suggests that we do not refer the legislation to a panel if it has already been referred and it looks to me as though it has already been referred but ...

**Deputy R.G. Le Hérissier:**

Yes, Sir, no, we do not wish to see it further.

**The Deputy Bailiff:**

Minister, how do you wish to deal with the Articles?

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

My notes are massive but I will try to reread them and make sense of them. Article 1 deals with the interpretation. The important issue there is that a prisoner includes a person detained in a prison, a hospital or other institution by virtue of ... it is not just prisons, it could be a hospital order or something of that nature. Although we do not currently have any secure provisions in Jersey, it would allow that to happen in the future if we did.

**The Deputy Bailiff:**

Minister, I am sorry, I wanted to establish whether you were proposing the Articles individually or *en bloc* or in groups so that I know what we are doing.

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

Sorry, Sir. [Aside] [Laughter] I am happy to take them *en bloc*, Sir, but I will need to give some degree of explanation, I think.

**The Deputy Bailiff:**

Yes, you give whatever explanation you think is appropriate. Are you going to propose them *en bloc*?

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

I will propose them all *en bloc*, Sir, yes, okay. [Approbation] I will truncate my speech, Sir. [Aside] [Laughter] I sense I am pushing at an open door.

**The Deputy Bailiff:**

If you do not, you might find it is repatriated.

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

Well, yes, that is right, if I do not, I may no longer be pushing an open door. Definitions in Article 1. Article 2 has got to do with the issue of a warrant for transfer of prisoner between Jersey and a country. This is what I call the first warrant. This is a warrant for transfer and it deals in some detail with that and there are various safeguards which I can go into if there are any questions. Article 2 deals with transfers either into or outside for certain purposes.

[12:30]

Article 3 then gives more detail in relation to the effect of the warrant with transfers out of Jersey, Article 4 in relation to transfers into Jersey and, again, there are various safeguards built into that. Then there is what I call the second warrant. The second warrant applies once a person has been transferred out and is elsewhere and this deals with telling the other place how long they have got to serve and on what terms they should serve and so on. That is Article 5, so that is the second warrant that kicks in and Article 5 deals with both ways again. Article 6 deals with the effect of the warrant where the transfer is going out. Article 7 deals with the transfer where the person is being transferred into Jersey. Articles 8 and 9 I mentioned are quite different because this has got to deal with a person who is unlawfully at large from another country who we find is in Jersey, and it provides a provision for an order for their arrest for presentation before the Magistrate. There are very tight timescales in which things have got to happen or else they have got to be released, but ultimately if it is found they are such a prisoner, then an order can be made that they be detained and returned to serve their sentence in the country where they should have been in the first place. That is Article 8 and that is Article 9. Article 10 deals with the temporary return of a prisoner. Now, this is where a prisoner has been transferred to another place but there is some reason why it is desirable that they come back to the original sentencing country for a period, and I thought about the sort of examples that might arise of that and such examples would be where they are required as a witness in relation to matters, perhaps even they might be required to return to be interviewed in relation to other offences. It would be matters of that sort of nature but there is no exhaustive list here of the reasons for a temporary return, but it just allows that to happen and it is just temporary;

they would then go back again. Article 11 has got to do with technical details of the warrant but also got to deal with retaking prisoners as where prisoners have somehow escaped and giving the power to recapture them if they have temporarily escaped while they are in transfer and so on. Article 12 has got to do with the power to revoke warrants and to amend warrants and gives all the necessary powers. Article 13 I have mentioned already has got to do with expenses of repatriation. It does provide an ability to charge an incoming prisoner but there are safeguards built in that if they have not got the means. As I say, I would expect the default position to be under arrangements that it would be the same thing country. Article 14 has got to do with certificates for different purposes produced by the Minister. Article 15 is a regulation-making power for the States for various different purposes, including amending the Schedule. Article 16 has to do with the power to make rules of court in relation to court proceedings. Article 17 is just the name of the law and the need for an Appointed Day Act. Finally, the Schedule which ties in with Article 4(5) has got to do with how incoming prisoners are treated under our existing prison rules and sentencing rules and things of that nature and basically has primarily got to do with how we are going to deal with such people, how they are to be treated under the purposes of this law. That can change by regulations. There is an interesting provision in relation to the States of Jersey Law in paragraph 5, which I am not 100 per cent sure what it means, but I am pretty sure that it means that prisoners who are transferred from here will not be treated as being resident for voting rights. If it does not mean that, I have no idea what it means. It must mean that. But there we are, I have run very quickly, probably too quickly, but I could spend days on this but there we are. I move all the Articles *en bloc* as requested by my colleagues.

**The Deputy Bailiff:**

The Articles are moved. Are they seconded? **[Seconded]** Does any Member wish to speak? The appel is called for. I invite Members to return to their seats.

**The Deputy of St. John:**

Before we have the appel, I just would like a clarification from the A.G. (Attorney General) as to Article 5 that the Minister could not explain.

**The Deputy Bailiff:**

Solicitor General, are you able to tell the Members what paragraph 5 of the Schedule means?

**The Solicitor General:**

Yes, Sir. Under the States of Jersey Law 2005, Article 8(1)(h) effectively says in terms a person cannot stand for Senator or Deputy if they have served a period of imprisonment of 3 or more months in the 7 years prior to their proposed election and all Article 5 is doing is applying that detention period for the purposes of that prohibition.

**The Deputy of St. John:**

I would like to thank the S.G., Sir.

**The Deputy Bailiff:**

The appel having been called for, I invite Members to return to their seats. The vote is on whether to adopt the Articles proposed *en bloc* and I invite the Greffier to open the voting.

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
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 Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy 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 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 A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

Do you propose the Bill in Third Reading, Minister? Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All Members in favour of adopting the Bill in Third Reading, kindly show, those against? The Bill is adopted. We now come to the Draft Sex Offenders (Amendment) (Jersey) Law P.68 lodged by the Minister for Home Affairs and I ask the Greffier to read the citation of the Draft.

**Deputy R.G. Le Hérissier:**

Sir, I wonder since we are getting near lunch and this may entail an explanation from the Minister, it is highly unlikely, or is it likely that he may be able to summarise it before we break? I do not think so.

**The Deputy Bailiff:**

Obviously, we are in the hands of Members. We still have quite a lot to do. If it is possible to get through it today, I am not sure whether it is or it is not but ...

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

I am not going to be able to complete my opening speech in 5 minutes, Sir.

**LUNCHEON ADJOURNMENT PROPOSED**

**LUNCHEON ADJOURNMENT**

[14:15]

**6. Draft Sex Offenders (Amendment) (Jersey) Law 201- (P.68/2011)**

**The Deputy Bailiff:**

Very well, the next item of Public Business is P.68, the Draft Sex Offenders (Amendment) (Jersey) Law lodged by the Minister for Home Affairs and I ask the Greffier to read the citation of the Draft.

**The Greffier of the States:**

Draft Sex Offenders (Amendment) (Jersey) Law, a law to amend the Sex Offenders (Jersey) Law 2010. The States subject to the sanction of Her Most Excellent Majesty in Council have adopted the following Law.

**The Deputy Bailiff:**

Minister, would you like to propose the principles?

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

Yes, I do. When I brought the Appointed Day Act before this Assembly on 10th December 2010 in relation to the main law, I indicated that there were areas in relation to which the Privy Council had concerns and in relation to which they recommended that amendments to the law take place as soon as possible. I then indicated my intention to bring such amendments to the Assembly as soon as possible and this is what I am now doing. The view of the Ministry of Justice was that, although there were reasonable grounds for challenge to the law on a number of points, they felt that the law could, in accordance with Jersey's own Human Rights Law, be operated compatibly with the European Convention on Human Rights. It would depend upon whether the courts of Jersey interpreted the law in a way which was compatible with that Convention. In practice, that is what has occurred as is shown by a number of judgments, including *Willows* and *Roberts*. Nevertheless, it is better for the future that these amendments are put in place. At the same time, in order to ensure that matters would be dealt with in a human rights compliant way, the Attorney General will issue guidance to prosecutors and to the police by a memorandum dated 1st February 2011. At the same time, I have taken the opportunity of this amendment existing to improve the drafting of parts of the law and a further improvement is contained in Article 5, which will allow a better provision in relation to the information which will have to be provided by people on the subject to notification requirements who travel outside Jersey when they return. Minor drafting improvements are contained in Articles 2, 4, 5(b), 6, 9 and 10, which I will explain later. Articles 3, 7 and 8 cover the points raised by the Ministry of Justice, which I will explain later, but I am not proposing this afternoon to proceed with Article 8 for technical reasons, which I will need to explain to this Assembly when I get there. Article 5(a) improves the information which a person has to give on returning to the Island if they are subject to notification requirements. I believe that that is as much information as I need to give at this stage. I move the principles.

**The Deputy Bailiff:**

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

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

This morning I said I was going to be kind when I was complimenting the Minister on the repatriation of prisoners and I said I would not be so kind this afternoon. My reason is one of disappointment because Article 16 in its state of the Jersey Human Rights Law says that the Ministers must have a statement of compatibility and twice I have brought propositions to the States asking the States to agree that Ministers should say why they are compatible because when 132, the original proposition came to the House, 132 of 2009 (it was debated on 8th October) there was a statement of compatibility from the Minister. In actual fact, it turns out it was not compatible with human rights because on 21st July, as we now know if one reads P.69, we see that the Privy Council or the Ministry of Justice expressed concerns and they expressed those concerns in a letter to the Lieutenant Governor as it says in P.69. Now, those concerns must have been then made known, one would assume, to the Crown Officers to the Minister and the Council of Ministers, *et cetera* but on 13th August the law was registered in the Royal Court and what I would ask the Minister is was he aware that were those concerns made known to the Royal Court because

obviously the Royal Court did register the law even though there were concerns and it is important to know - I would like to know - in fact whether the court were aware of what those concerns were because the Royal Court itself, as an authority, has to approve something or, no doubt, I will be standing corrected, but it is something that is human rights compliant. Well, quite clearly, there were concerns that the particular law that was being registered was not human right compliant. So then we move on from it being registered on 13th August that on 23rd November, P.175 was lodged and that was debated at the very last “knockings”, so to speak. It was almost before we had that wonderful speech from Deputy Duhamel telling us about the Cliff Richard song, the Christmas hymn, but it was debated then and I have got a copy of P.175 here and it makes no mention whatsoever of the concerns. It says if adopted and so on, it will bring into force the Sexual Offences Law 2010 which was adopted by the States October 2009. The law was subsequently sanctioned by Her Majesty in Council 2010 July and, as I said, went before the Royal Court on 13th August. Now, nowhere on P.175 were the concerns that were now coming in, about 8 or 9 or 10 maybe 11 amendments. Nowhere were they in P.175 and yet we have a statement of compatibility saying that something is human rights compliant. As I say, I am disappointed that States Members were not made aware of it. In fact, it should have been the duty of the Minister. Now, when the Minister did produce or make his opening speech, almost as an aside and I have got the Hansard here, almost as an aside he said: “Oh, by the way, finally” because the debate really was all about how much it was going to cost, not about the human rights concerns. Finally, he says: “Finally, it is right that I should draw attention to the Assembly that although this was approved by the Privy Council” ... this may support of course that Deputy of St. John’s argument on such matters. “They did point out there were certain areas in relation to which they had concerns and relations in which they recommended that amendments to the law take place as soon as possible. It is my intention to bring to the Assembly as soon as possible but the law draftsmen are working upon some amendments in those areas. But those amendments are not, in my opinion, significant and certainly do not prevent the law from coming into force on 1st January. Nevertheless, it is right that I point them out” *et cetera* and that is all we know. Now, the debate got underway and very quickly I have got here the very first question came from Deputy Southern and he says: “Sir, I seek clarification from the Minister as to what the amendments concern because it is all very well to say: ‘I do not think they are serious’ or should we stop the process or the proposition now.” Nevertheless, I think Members should know of those concerns and unfortunately ... I say unfortunately it was not you, Sir, it was the Bailiff, he said that: “I think he could probably deal with these afterwards” and I think really, with hindsight, it was a mistake. We ought to have been made aware of what those concerns were because the debate went on its sweet way and really was all about how we were going to finance it and we approved something without knowing what those concerns were although, in fairness, as I will be to the Minister, when he was summing up, he did make a remark about it and he used the word ... there was this very important word “exceptional” and that is really an important word within the concept of what we are debating today, and I make it quite clear I am going to support what the Minister is bringing because I think it is important but it should have been made known to us in December, should be made known way before. So I think ... and my point really is that here we are. We have Article 16 that tells us something is compatible. Are we sure this particular law now that is coming to the States is compatible and as I said, I think it is important we do support it but it has made a difference because were the courts made aware that this particular law was not human rights compliant because I know that certainly one case to my mind has come before the court and a decision has been handed down where the word “exceptional” has been used. I have got the judgment and again I would ask the Minister, have the courts been made aware following the Appointed Day Act that there were concerns about this particular law and the particular Sexual Offences Law was not compliant? Two questions, was the Royal Court way back in August made aware of what the concerns were and the second one, were the courts made aware after the Appointed Day Act but otherwise I will be supporting the Minister.

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

The first observation and that is in addition to ... first of all, I have to say I share the same concerns as the Deputy of St. Martin but over and above that and not having to repeat those, I cannot help feeling yet again we are in a situation, perhaps not for the first time in even the last few weeks, where we are putting the cart before the horse in bringing forward amendments or legislation which do and will call into requirement the necessity of a discrimination law and when we do not have that in place. We are putting the cart before the horse yet again and I give one example of that just reading through one paragraph here that has caught my eye. It says that there will be, of course, an appeal process and there may well be a situation in which a sex offender, at one given point, is no longer seen as posing a serious risk of sexual harm to the public or, indeed, to any particular individuals; that is cited on page 5. So we have this scenario, for example, where somebody could have been on the Sex Offenders Register where an employer would have been informed of that and then a few years later, that person is no longer on that list. He may go back to the same employer only for the employer to turn around and say: "Well, I am not employing you because I know about your past and your history" at which point he can turn around and say: "Well, no I am not on that list any more." It seems, in this case, there is no discrimination law to fall back on and we should really be pushing for the discrimination law and it should have been in place a long time ago. I can only compel the Minister for Home Affairs, the Chief Minister and I know the Minister for Treasury and Resources has also indicated that he is keen to have a discrimination law on the books as soon as possible. So get their heads together, find out which department is going to be pushing for that and to get it together. Now, I know we are not primarily talking about this today so I will not go on about that but it is certainly a consideration and we need to have the fundamentals of this law in place. We saw it earlier yesterday with the whole pension laws that we are putting through which will have implications. Lastly, I would just like the Minister to give clarification on Article 2. It says that the customary law offence in relation to the crime of sodomy, which is written in French for some reason, is being removed.

[14:30]

It no longer serves a practical purpose. My question would simply be, would it not be more sense if that law is not being used or if it is not ever enforced, would it not make more sense simply to repeal that law? Now, if the Minister can give advice on that, if my understanding of that law is what I think it is, it seems that it is redundant so perhaps the Minister can advise whether there have been any convictions under that law in recent years. If it seen that it is not a sufficient law to have on the books for this amendment here for this law, then why should it be on the books at all?

**The Deputy Bailiff:**

Deputy, if I may say so, this is a debate about the principles. If you have a problem with a particular Article, the time to raise that is when we come to debate the particular Articles. Otherwise, please carry on.

**Deputy M. Tadier:**

I think that is it, Sir.

**The Deputy Bailiff:**

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

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

In relation to the comments of the Deputy of St. Martin, in relation to when the matter was presented before the Royal Court, I simply do not know because the Minister would not be part of that procedure. My recollection from my days when I was Judicial Greffier was that when a law came back, it was then presented by the Attorney General for registration. It is after all an Order in Council, an order of Her Majesty in Council, and therefore that is essentially a matter for the Attorney General and for the courts as to what is presented. I was not a party to that and would not expect so to be. In relation to the point that the Deputy of St. Martin has made in relation to there

being nothing in the report together with the Appointed Day Act, I would accept that he has a good point there and there was an omission in relation to that. The reason for the omission was simply that we were having such difficulties establishing the final costings of this that our intention went in that direction and so nothing was put in. I was, of course, by that stage satisfied that the law could go ahead and that, in fact, that was quite acceptable, as I said. I then realised very late in the day that this had not been covered and that is why, on the very day, I raised the issue. Now, the Deputy of St. Martin has very kindly read out my first comment in my speech but he has not read out what I said in terms of the substance of Deputy Southern's report. I do not want to bore Members with the precise details but it is almost a full page of transcript where I go Article by Article in terms of the details of the issue which had been raised. I did that in response to Deputy Southern. So my conclusion is that the Deputy of St. Martin has a good point in relation to it not being in the report. I accept that it should have been, it was an omission, but I sought to cover it on the day. I believe I covered it adequately on the day so that Members were aware of the nature of the issues. Issue of compatibility now was raised I think by Deputy Tadier, it may have been the Deputy of St. Martin, but I of course had a further human rights compliance advice in relation to the amendments. Indeed, of course, the fact is that I had advice initially in relation to human rights compliance, which was very detailed. The fact that then the Ministry of Justice who advised in relation to this then came to a different opinion on certain Articles is frankly not my fault. I can only act on the advice which I give at the time when I sign the certificate. In relation to discrimination law raised by Deputy Tadier, I am afraid this, in my view, a complete and utter red herring. One of the difficulties with discrimination law is people do not understand how it works and seem to think it is a sort of "catch all" which will solve all ills. It works upon the basis of determining an attribute which might be age, it might be gender, it might be sexual orientation, it might be race, whatever. There is most certainly not going to be an attribute of being a sex offender and therefore that is, with respect to the Deputy, a complete misunderstanding of the nature of the issue. In relation to his point which ... I do not know if the Chair will allow me to answer his point or feel that I should explain it later, the customary law.

**The Deputy Bailiff:**

On the details of Article 2 on the law of sodomy, it is a matter for the detailed debate on the Articles.

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

Then I will explain it when we get there, Sir. So I move the principles of this amendment.

**The Deputy Bailiff:**

Are they seconded? **[Seconded]** Then all Members in favour of adopting the principles, kindly show, those against? The principles are adopted. Minister, you wish to propose the individual Articles?

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

Yes, I do. I will run through them as rapidly as I can.

**The Deputy Bailiff:**

I am sorry, I apologise, Minister. I should have first of all have invited Deputy Le Hérissier if he wished to scrutinise this legislation.

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

Yes, I accept the apology and no I do not wish to scrutinise. **[Laughter]**

**The Deputy Bailiff:**

The yes was you accept the apology and the second was no you do not wish to scrutinise, is that correct? Very well, Minister. Would you like to propose the ...

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

Sir, I just need a few seconds while my heart slows down after that. [Laughter] Article 1 is simply saying what the principle law is. Article 2 is a point which the draftsman wanted to raise, essentially a very, very minor point. It is not removing ...

### **The Deputy Bailiff:**

Minister, excuse me, I am sorry, I need to know what the scope of the debate is. Are you proposing them *en bloc*?

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

That seems to be popular today, Sir.

### **The Deputy Bailiff:**

So this includes Article 8 which I ...

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

No, I am sorry, I want to withdraw Article 8. If the House wants Article 8 in, that is fine but I will need to explain why I do not want a particular Article 8 at this stage. Shall I take 1 to 7, Sir?

### **The Deputy Bailiff:**

So you are taking 1 to 7?

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

I will take 1 to 7. That would be convenient. Yes, the Article 2 point. This is not removing the law of sodomy. What it is doing is simply removing the words “the customary law” from it. Sodomy is one of the offences which is listed in one of the particular Schedules. The offence is not disappearing as it were. It is simply the reference to customary law. It is a very picky drafting point. I am sorry if it has caused confusion. Article 3 is really the core of the changes in relation to the points raised by the Ministry of Justice. The context of the amendments is that this is an Article which requires a court in a variety of different circumstances to make an order that the offender is subject to a notification requirement. That is what is normally referred to as being on the Sex Offenders Register but it is actually notification requirements. I then turn to Article 5(3), the court must then specify the minimum period for which a person must be subject to notification requirements before an application can be made for them to cease so to be. There is a human rights point, which is raised under Article 8, the right to family life, and Article 7 because of historic cases people who offended in the past who might come out in relation to retrospective punishment. The first point here in Article 5(4) is that previously the court could only set a period of less than 5 years where there was an exceptional reason. The advice was that that should be read down by the courts to remove the word “exceptional” and the effect of the first amendment is to remove the word “exceptional” so that it just means where there is a reason. The second point relates to the factors to be taken into account by a court in determining the length of period before an application can be made for a person to effectively come off the list. The correct human rights compliant factors are now set out in the amendment and they are the risk of sexual harm to the public or to any particular person or persons that the person subject to notification requirements of law poses by virtue of the likelihood of re-offending. The third point is that the effect of sub-paragraphs (5) and (5A) is to allow an application for the termination of notification requirements to be made either by the individual, which was the position before, or by the Attorney General. The Attorney General would be under a duty under human rights principles to periodically review in conjunction with the police the papers in relation to individuals in order to see if such an application should be made. This amendment just gives him the power to make such an application having reviewed it. Sub-paragraph (6) makes the test to be applied in relation to the grounds for refusal of an application more human rights compliant and this was not a recommendation of the advisers to the Privy

Council but decided that it was more logical to have this in accordance with the same wording as 5(4) for the sake of consistency. So that is Article 3 which is really the main section. Article 4 is purely a drafting point because there was an ambiguity in it and that has just been clarified. Article 5, 2 parts to this. The background of this is the duty of a person who is subject to a notification requirement and who leaves Jersey to provide information about their travel plans. Now, the difficulty was that under the unamended law, they simply had to say where they were intending to go. But if they subsequently changed that, they did not have to say when they came back where they had been and that is what has now been changed because it would be too easy for a person to say where they intend to go although they really intend to go somewhere else go to prove that they have not told the truth initially and by making them have to say when they come back, it means that there can be theirs or with other jurisdictions and so on if that is necessary. So that is an improvement of information of that situation. Sub-paragraph (5), Article 5, is again a drafting improvement to make it clear as to when there is a breach. It is just a minor drafting that you see here. Article 6 which deals with Article 9(7), this is in relation to an offence of intentionally obstructing or hindering a police officer in the execution of a warrant and here has been a minor drafting alteration because the wording previously was different although it really in the execution of warrant that we want. So this has been changed simply as a drafting improvement. Article 7, this relates to a restraining order which is an order which prohibits a person from doing anything described in the order. Again, there was a minimum period of 5 years and, again, we have altered this to make it more compatible with the rest of the Law. I think I will stop there, Sir.

### **The Deputy Bailiff:**

Articles 1 to 7 are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak on Articles 1 to 7?

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

First of all with regard to Article 2, I think there was some confusion on my part and that is because probably the use of the archaic language of what we are describing as the criminal act of sodomy here is not what one would call in the common parlance the same act. So I think that was where the confusion arose from. Just with regard to the Minister dismissing my comments on the discrimination law, I was not suggesting for one moment that, of course, the discrimination law would have any specific clause in it about how society deals with sex offenders in terms of employment, *et cetera*. But we cannot pontificate or imagine what might be in a law which does not exist and it is not for the Minister to say what might be in any eventual future discrimination law. My point was simply that there may well be a clause in any future discrimination law, which deals with spent convictions and how members of the public or employers might have to deal with that eventuality and there could be many more clauses and things that are covered in any discrimination law over and above what the Minister has outlined. That would be for this Assembly to decide, not for the Minister himself.

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

Maybe I could just clarify before I speak on Article 5, is the issue about what the Minister did say after we had the debate about the word “exceptional”, and I do take the point that the Minister did say he spoke for almost half a page about it. But the point I was trying to make was that information should have been given before the debate started. We have had an incident again this morning when someone is introducing new things in on the summing up.

[14:45]

Again, I believe that should have been a part of the original speech. Anyway, getting back to Article 5, my concern really is about when someone goes away and goes on a tour, and I can understand if someone is going to go on a tour in a country the person concerned must give the first place they are going to but I have a bit of a concern here that someone goes away, goes to America

for a month, what restrictions would be placed on that person if whoever says ... I assume it will be the police will say: "No, you cannot go because we ought to know where you are going to go all the time." What sort of recourse has that person if they want to book this holiday and find they cannot go because they cannot say exactly where they are going because they may go to one part of America and then on to somewhere else. So again, what safeguards are there for that person if, indeed, they cannot satisfy whoever of the places they are going to?

**The Deputy Bailiff:**

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

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

I am sorry to have to disagree again with Deputy Tadier this afternoon but the point he made is not the discrimination point, it is a rehabilitation of offenders law point and there is an interesting potential point there but it is certainly not within the discrimination law. In relation to Deputy Hill's comments, I have already accepted the point that we should have put in the report details about this and I apologise for that failure. I did my best to cover for it and genuinely believe, and still do, that we have to get this important piece of legislation through as soon as possible. In relation to the point about travel, the question raised does not relate to the amendment because the amendment is about what information you give when you come back. But, of course, one of the points of people having to give information in relation to travel is that potentially an application can then be made to the Royal Court to prevent them from travelling and then, of course, that would be subject to the normal rights of appeal and so on. But that is not a point under this amendment. So I move Articles 1 to 7.

**The Deputy Bailiff:**

Articles 1 to 7 are proposed. Would all Members in favour of adopting them kindly show. Those against? Articles 1 to 7 are adopted. Minister, how do you wish to proceed?

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

I need to explain if I may why I do not propose to proceed with Article 8 at this time. Article 18(3) of the Law which is referred to in Article 8 was initially inserted at my initiative because I was concerned from my knowledge of procedure from the days when I had been the Judicial Greffier that the Court of Appeal law as set up was very restrictive in its approach and, indeed, Court of Appeal Rules were that they clearly defined between civil and criminal matters and this created potential difficulties. This was, therefore, included in to try to ensure there were rights of appeal went in the same place and, in particular, there is a difficulty caused by the fact that if a person were subject to sentencing and orders by the inferior number, that is a sentence of 4 years or less, then an appeal was lodged both against the sentence and against any order made under the Sex Offenders Law we would have a most peculiar position in which the criminal aspect of the appeal would go to the superior number but if there was a civil aspect it would go to the Court of Appeal. That is totally unsatisfactory and part of the thinking behind this initially was to avoid that. Now, the advice which came back from the legal advisers from the Ministry of Justice was that what had been put went too far and, therefore, I put forward this amendment simply to take out the provision and to avoid the difficulties which they had highlighted. But in so doing, forgot that it would be back into the other position of the appeal to do different places. Having discussed this with legal advisers we have looked at other options such as making rules of court to cover positions. That would not work. I am now of the view and advised and that it is best to leave this in place temporarily so that we do not have the situation with appeals from the same decision going off in 2 different directions, which is most undesirable but what will ultimately need to happen in my view is an amendment to the Court of Appeal Law to be passed in conjunction with this Article being deleted. I hope that Members have understood a very technical issue but I am currently advised

and accept that it is best temporarily to leave this in place but another attempt at solving the problem will have to be made.

**The Deputy Bailiff:**

As a result of that you are not moving anything.

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

I am proposing to move nothing. [Laughter]

**The Deputy of St. Martin:**

Can I talk about nothing because I would like to ask a question? [Laughter]

**The Deputy Bailiff:**

Do not tempt me, Deputy! I was just wondering whether or not we needed a seconder to move nothing [Laughter] but I think probably we do not. Minister, I think, frankly, the position is we now move on to proposing Articles 9 and the remaining Articles in the law and if the Deputy of St. Martin wants to say anything about Article 8, he can do so on Third Reading in a moment.

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

Article 9 is simply another drafting point in relation to ambiguity. Article 10 seems to relate to the law draftsmen who have looked at this not liking the Scottish word “outwith” and preferring the word “outside”. That is a very small point. I do not mind either way but I like to keep law draftsmen happy if I can. Article 11 is simply about when it would come into force and there was no need in this case for an Appointed Day Act. It would come into force 7 days after it is registered. So I move those Articles.

**The Deputy Bailiff:**

Articles 9 to 11 are proposed. Are they seconded? [Seconded] Does any Member wish to speak on Articles 9 to 11? No? No Member wish to speak? Would all those in favour of adopting Articles 9 to 11 kindly show? Those against? Those Articles are adopted. Minister, do you move the Bill in the Third Reading?

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

I do, indeed. I do not think it is necessary to say anything further.

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

Just about the Article 8. There are 2 aspects. Maybe I stand corrected on this but I thought one may have had to seek leave of the House to withdraw something when it has been lodged, but maybe a minor point. What I would like to ask the Minister is what about cases that are in the pipeline now going for appeal? Do they drop or what is the procedure? Also, I did start off this afternoon saying that under Article 16 the Minister must make a statement that a particular law is human rights compliant. Now, is this particular law human rights compliant bearing in mind part of it now is being withdrawn. Maybe the Minister can inform Members?

**6.5.2 The Connétable of St. Mary:**

Very briefly just to congratulate the Minister on bringing forward what was necessary and just to say once again that even though this is a relatively short set of legislation, a marked-up copy of the original version may have helped Members who did misunderstand certain points.

**The Deputy Bailiff:**

Does any other Member wish to speak? Then can I ask the Minister to reply?

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

A very interesting point raised by the Deputy of St. Martin. The amendment certainly was human rights compliant when I signed the certificate. The fact is that I would accept that a difficulty still remains but that difficulty has not been caused by this amendment. In relation to the comment, it was close in my mind as to whether I needed a marked-up copy or not given the nature of the amendments. I have to say that things became more difficult once I no longer went ahead with Article 8. It was easier without that. So I move in Third Reading.

**The Deputy of St. Martin:**

Maybe I missed it but I did ask about what appeals, if they were in the pipeline, what was going to happen to those appeals?

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

The law remains the same in relation to that. The lines of appeal will remain as specified in accordance with Article 18(3). Article 18(3) says where those lines of appeal go in terms of civil or criminal. It has the effect of keeping matters together so that if there is an appeal from the inferior number on both sentencing and also in relation to an order under this law, it will go to the superior number as I understand it.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt this amendment law in the Third Reading, and I ask the Greffier to open the voting.

<b>POUR: 39</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator B.E. Shenton				
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 Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				

Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
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 M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

## **7. Standing Orders: publication of Register of Members' Interests (P.67/2011)**

### **The Deputy Bailiff:**

We now come to P.67, Standing Orders: publication of Register of Members' Interests, lodged by the Deputy of St. Martin and I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion (a) to agree that Standing Order 154 should be amended to include a requirement for the Greffier of the States to publish the Register of

Members' Interests on the States Assembly website and to permit the Greffier to make further arrangements for its publication as deemed appropriate and (b) to request the Privileges and Procedures Committee to bring forward for approval the necessary amendment to Standing Orders to give effect to the proposal.

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

In 2005, P.P.C. lodged P.162 of 2005 which sought States approval for the current Standing Orders. In Article 152, that particular Standing Order is now 154, P.P.C. intended that Members' interests would be published in the form of a hard copy which would be available in the bookshop in Morier House. It was also intended that Members' interests would also be published on the States website. Now, just prior to the debate, P.P.C. was approached by a States Member, and I do not know who it was or is, who registered his concerns about the possible security implications for Members and their families. I do not know what the implications were and I am not sure if they still exist today but I will return to that in a minute. Again, I do not know again why P.P.C. accepted the amendment rather than tell the Member concerned: "Well, if you do feel strongly about it bring an amendment yourself into the House and debate it." However, P.P.C. decided that it would include that amendment along with 23 others. So that is why it went before the States. Now, as one can see if one looks at P.69, the comments made in 2005, it is said that it really went against its own interests in as much as they believe in freedom of information and that information really should have been available on site but they thought otherwise. They thought maybe we will make an exception to this case. So in other words you can go a hard copy, it is okay for freedom of information, but freedom of information does not extend to us putting it online. I do not know what the logic was in 2005 but I would hope the House has a different attitude now. Anyway, there is no Hansard in 2005 so I do not know exactly how much was discussed, although I do remember being in the Chamber but the amendment was adopted on a standing vote. Now, almost 6 years later, to my knowledge there has been no instance at all of anything untoward occurring and, as a result, of the States Members' interests being made available in Morier house. If we see the P.P.C.'s comments we will see that there is a register of interests which are published online in the U.K. House of Commons, the Scottish Parliament, the Assembly of Wales, Southern Ireland and even in the States of Guernsey. Again, to my knowledge, I have no knowledge at all of anything untoward occurring as a result of that information being either a hard copy or online. My attention was drawn to this anomaly when we had the issue of the freedom of information debate and my attention was drawn to the fact that here we are, the States, quite happy, pushing the chest out saying: "Are we not wonderful fellows. We have a Freedom of Information Bill, however, when it comes to States Members' interests, we are not going to have it online." Ask me why the anomaly existed and I looked into it and to me it just seemed a nonsense. I brought the proposition really to clarify the situation and also to put us compatible with the most normal jurisdictions.

[15:00]

So what we have before us today is quite a simple proposition, which is to ask Members to agree to what was originally intended way back in 2005 to have Members' interests online which would be consistent with other jurisdictions, certainly in the United Kingdom. P.P.C. lodged some comments and I was rather surprised when I saw them because when I looked at them I just wondered what was the point of making them because they did not really substantiate them at all and if one looks at the comments, there are 4 paragraphs, the first one tells us that the register is readily available at Morier House and we know that, it was in my report. It also said that the information contained in the register is likely to be of great interest to Member's constituents rather than those worldwide. Well, again, I would have thought that was common sense. Then, of course, very importantly, I think, and very helpfully, P.P.C. did tell us where one can see this information online. As I have already mentioned, the House of Commons and so on. Then it says that the committee received correspondence from a States Member who is concerned that the online publication of the Register of Interest could have security implications for States Members and their families. That is almost

in line with what we had in 2005 and that was one of the reasons P.P.C. decided to not to advance the decision of going online. It also said there were concerns about the published information could be misused and this might discourage people from standing for office and the view had been expressed that a risk management report and review of the data protection implications should be undertaken prior to any decision being taken to publish the register online. I did ask some questions about it and, finally, the last paragraph, again, I am really sorry but it does not sound very good for P.P.C., but the committee would not recommend the online publication of the current Register of Members' Interests: "Should the States adopt the proposition, the committee considers that a move to online publication should only be made once a new Assembly has been sworn in thus allowing those standing for election to take an informed decision in the full knowledge of the details they will be required to provide as elected members would be published on the interest." Again, I just wondered why make that comment? The obvious thing would have been to put an amendment and say that if we do agree with it, it should come into line as from 1st January. That would have been the most obvious thing. But no, it just said: "We are not going to recommend it." So I thought I had better find out why these comments were made so I did ask Members yesterday, or was it Tuesday, to keep the written answers to written question 25, and I thought it might be useful if Members have it in front of them, it may be easier to follow. But the first question I asked was: "Can we have the name of the States Member who submitted the correspondence?" and, again, the answer is there to be seen. It says: "The Member raised concerns with the committee and stated they did not wish for their identity to be known." In other words, they wanted it confidential. I do not have a problem with that but at least we know it is in confidence and the purpose of me asking the question really was that the same person who registered an interest in 2005, but we do not know. I asked when the correspondence was received. Again, I was trying to find out whether, in fact, it was a new States Member or was it the information we received in 2005 and we will see that it is not. It might be the same person but it is a different letter because the correspondence, as you can see here under (b), arrived by email to the chairman and to Senator Le Marquand on 5th May. So what I wanted to know was when was that letter considered and what was the outcome of the vote and to detail the vote. Well, we can see under answer (c), the correspondence was considered by P.P.C. on 10th May when it was agreed that a draft comment in respect of Proposition 69 would be prepared. The draft comment was considered at the committee meeting on 24th May at which time it was approved for presentation by Deputy Fox, Senator Ferguson, Connétable Hanning of St. Saviour with dissent from Deputies Martin and Pitman. So in other words, they were unhappy with the last paragraph and the last paragraph really was whether it should go online now or wait until January. Again, I said: "Why no amendment?" Now, (d) was quite interesting because I said: "What were the Members' concerns, particularly regarding security implications for States Members and their families?" Well, if we look over the page on (d) and it says, I will read it out for those who have not it in front of them. It says: "The concerns were as follows: putting the information on the website could prevent people from standing for office on the grounds that they would be required to disclose all their interest for worldwide publication on the internet." Well, one knows that when one enters the stage one has to make a declaration of one's interests and, of course, one should understand that you only have to go to the bookshop and get those details. You can then take them and upload them on to the internet, anyway, and I would far rather it was the States doing it that someone else doing it. It seems to make sense that we should take responsibility for our own actions. So again, that is one of the reasons. Also, another reason is the internet is not a secure location for placing information in the public domain and it could put a Member at risk of kidnapping. Fancy that. If our details go on the internet we could run the risk of being kidnapped. You will not be kidnapped if someone has found out in Morier House but if it goes on the internet, someone said to me: "Well, I hope they do kidnap a few of us" but there we are. So again, what I would ask, maybe, P.P.C., where is the evidence that one could be kidnapped if this information goes online bearing in mind the amount of information that does go online on the States website? The third reason was Standing Order 155 also requires the spouse and/or her partner of the States Member to disclose their assets although this person did not stand for public

office. Well, I could understand that to a certain degree but, on the other hand, surely if one goes into politics, one discusses it with your partner, your spouse, whoever, and they know what the rules are before you start out. It is no good saying after: "I did not know." Also, I looked to have a look at Article 154. In fact, it is the wrong Article. It is Article 152. I did check to see it. So those are the reasons why it should not go on internet. I think, because I did ask again, how could the published information be misused and what evidence is there of misuse in other directions? Again, we have other people doing this, find out. So we can see the committee did not seek to obtain that evidence in respect of misuse in other jurisdictions. It rather sought to use its opportunity to comment on the proposition in order to advise Members of the concerns that had been expressed by a fellow Member. So really, if you are going to make comments, I always believe one ought to do the homework and either make them truthfully or do not bother with them at all. I want to know why might the publishing of Members' interests online discourage people from standing for office when they are available at Morier House already? The answer we have there: "People might be discouraged from standing for office on the basis they did not wish their interests to be published online." Well, I do not know. Again, I ask where is the evidence of that? At (g), I asked whether the committee undertook research as to whether risk assessments or data protection implications were undertaken before the States of Guernsey, the U.K. Government, the Scottish Parliament, *et cetera*, before they put their interests online and, if so, what were the outcome and the committee says it did not undertake research as to whether risk assessments or data protection implications had been undertaken before this countries did so, *et cetera*. So again, why oppose something if we have not gone out to find out what the information was beforehand. The last questions was (h): "Whether the committee shares the views expressed to it that a risk management report and review of data implications should be undertaken prior to a decision to publish the register online?" Again, it says here: "The committee did not form a view as to whether risk management or review of data protection should be undertaken prior to a decision being taken to register." So again, one wonders why. One wonders why P.P.C. should not be recommending something when it has not done its homework. All I would say is this is quite a simple proposition. The information is already in Morier House. It was always intended to go online. Somehow at the last minute it was pulled and it has remained pulled for the last 6 years. Again, I remind Members if anyone wants to see the information, it is in Morier House. If they want to take it and put it online they can do so because it is already in the public domain. I make the proposition.

### **The Deputy Bailiff:**

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

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

This is a proposal that should take about 5 minutes to do because to challenge it is absolute absurdity. I am on P.P.C. and, of course, on P.P.C. we all have the right to say aye, nay or disagree with each other or whatever and I was one of those, like Deputy Martin, who dissented on this because, frankly, it is a complete farce. I have a website. It is very good. It is much better than the *J.E.P.*, [www.thebaldtruth.co.uk](http://www.thebaldtruth.co.uk). Now, what is to stop me going and sitting in there, in my lunch hour writing up all this information, sticking it on that website. There is nothing to stop me, I do not think. It is public information. Why should it not be available to the internet user community? I do not think by objecting to the Deputy of St. Martin's proposals we are going to achieve anything because the citizens media now, it is quite likely someone will go and sit in there for half an hour, write it all about, put it on the internet and, as I think the proposer said, surely it would be much better to have it done officially where it is all controlled than someone who might want to leave a few bits out of someone's interests or perhaps add a few bits in. So what are we going to gain by refusing to do this? Nothing, I would suggest. So I think we really must support the Deputy of St. Martin. The bigger problem is that the register is, in my opinion, an absolute farce at present. We should either get it up online and make it a full and complete register or we should abandon it because I can remember before I got elected going in there and seeing apparently that, and I know

we must not talk about individuals and I will not identify individuals, but I saw that one multimillionaire, his only income was apparently of £700 from a field in St. Lawrence. So what use is that to anyone? The Member who, I obviously know which Member has complained, what is he worried about when things are as inaccurate as that? I have seen things as daft in there, that someone was a member of the Arsenal Football Club Supporters. How mad. I could understand the worry if it was Chelsea. **[Laughter]** But it is, as Senator Perchard uses so often, a nonsense, is it not? There is nothing to stop any one of us writing all this down, putting it on to the internet and there we go. Frankly, having become aware that the individual who complained is obviously so rich I am considering kidnapping him myself because he has drawn attention now to how rich he is. Do we really think preventing this going online is going to stop any of us being kidnapped? I do not think so. As the proposer said, some people out there would probably like us all to be kidnapped. But really, we should just vote this through and get on to the next thing because it is going to take a very long time and I think that is a much more serious issue. So, there we go.

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

Very, very briefly. I will be supporting this. I have absolutely no problem with it whatsoever and I will be interested to hear any argument that changes my mind. I think the biggest risk for this Assembly is the fact that we may vote this through today and then Privileges and Procedures who will be charged to implement it may then produce a statement saying they do not agree with it and they are not going to do it. But I think we should vote for it today.

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

It was the P.P.C. that I was on that handled this originally and it is my thought ... just by way of mitigation, I think the Deputy of St. Martin has totally the wrong end of the stick when he says it took the easy way out. It, in fact, divided the committee. So it was not the easy way out, despite his statement. What had happened was Standing Orders were being put through, there were over 150 of them. Many of them were debates in their own rights. There were separate issues in their own rights. There were over 20 amendments. It was a massive thing and some of the committee felt that this was an important issue of principle, which it was in any case, and there were others who said that given the stage at which this massive process had reached, it was almost necessary to be pragmatic about it. I know that is not a sound basis upon which to make all decisions but that, essentially, is what happened. The other plea in mitigation I would make on behalf of some of the Members who were involved was at that stage, the role of the web, its enormity, its reach and everything was not known and there was an element of apprehension and concern as to whether the - and I am not saying this is my point of view - the circulation of information could somehow be restricted locally.

[15:15]

That was the intention. Could it be restricted locally? Because the web's reach at that point was not as well known as it is now, I suppose there was an assumption on the part of some people that, indeed, you could make an attempt to restrict it locally and, therefore, deal with the fears that the individual had raised. So that was some of the background to it, and that is why it was done as it was done. My view is, as Senator Shenton, it should be through, I think. You only have to look at the Guernsey one, which I looked at over the last couple of days. It is very straightforward and, quite honestly, I will build upon what Deputy Pitman said, it was one of the most enormously complex ... and I remember people like the ice cream eating Constable of Grouville, for example, as photographed in the *J.E.P.* today, did he declare that ice cream? **[Aside]** Oh, he was only holding it for a young lady. **[Laughter]** I do remember the Constable roundly attacking us because we had not really worked out what the impact was in terms of declaration of our shareholdings and what were significant shareholdings. It was enormously difficult and a lot of it derives from the fact that, historically, a lot of the arguments about declarations are to do with fact that we can be nobbled in terms of land and property ownership. Hence the declaration is not in terms of value which, as

Deputy Pitman quite rightly says, is not declared hence the emphasis on the declarations of land and property. But there are people who have worldwide assets, moveable assets, which are not being declared. There are people, as I have been reminded, who may have collections of classic cars that amount to millions. Now, should they be declared? I think that should be revisited, quite frankly. But it is the historical interest in land and property because of this feeling that, obviously, we may be nobbled in terms of, for example, planning applications. But it has to be reviewed and also, obviously, business interests. But I would like to see the whole thing reviewed by P.P.C. I totally agree with the Deputy of St. Martin but please do acknowledge that there were fears that perhaps in the context of that time did merit consideration.

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

The first thing to say is that I really cannot see why there is resistance coming from P.P.C. From the conversations I am having, it sounds like there was a very split committee and if it is simply to do with time, I think the point has already been said that it could be accepted that P.P.C. would do this and maybe it would be done in the next House if necessary if there was not enough time. It has been said again that jurisdictions across the globe in the civilized part of the world certainly are moving towards greater transparency. We have made a declaration in our Strategic Plan, which I will be talking about at the next sitting, about openness, transparency and engaging the public. We live in an electronic age. How many people go to Morier House apart from us or apart from when people are perhaps paying bills to the Viscount? Most people are not going to go there yet we do live in an electronic age. These are things which are of public interest. We passed the Freedom of Information Act, for goodness sake, only a few months ago. Are we really saying that we cannot make the States Members' interests, which should be of public interest, on an internet site because ... and the only reason that I am hearing is because the risk of terrorist attacks or because of kidnappings. Let us look at the argument of kidnapping, shall we? Now, first of all, if the argument of kidnapping is an invalid one, if it is not a consideration, of course, there is no reason for it to stop us publishing these things online. If, in fact, there is a serious risk or a risk at all of a Member or Member's grandchild or son or daughter getting kidnapped when that person is abroad, I think that is a very good reason to publish it because I certainly do not want any of my family or I do not want to be at risk when I am travelling in a States group abroad of being kidnapped when they should be targeting the more wealthy Members in the Assembly. **[Laughter]** So I think we have 2 very good reasons either way. But surely the whole argument of kidnapping is a spurious one. As States Members we do put our heads above the parapets repeatedly. We make statements, for example, in the House which are controversial. Surely those things are more likely to put us at risk. In Jersey, of course, we know that we live in a civilised society. These things do not tend to happen. So I really would urge Members just to use a bit of common sense here to support openness and transparency, and I would urge P.P.C. to change their resistance to this proposition and let us vote this through unanimously. Surely, we can do that?

#### **7.1.5 Deputy M.R. Higgins:**

I am also very surprised that some Members are concerned that they may be kidnapped or come to harm because of what they put on their register. I certainly do not think so and I think that Members should more concerned about their broken election promises, which are more likely to cause harm. I have always been a private person but a great deal of background information about myself and my views are already on the internet as it is for other States Members who stood in the last election. After all, P.P.C. also published information in the *J.E.P.* Channel Television did manifestos. We did radio manifestos and I believe a lot of information put online as well. The information is out there. We are in the public eye and I think the public deserves to know more about what we do, what we are doing outside this House as well. Now, I happen to believe in freedom of information and even back to Deputy Tadier's point of view, so does this House, supposedly. After all, we did pass the law and I think we now need to demonstrate our commitment to freedom of information by supporting this proposition.

### **7.1.6 Deputy J.M. Maçon:**

On behalf of Deputy Le Claire who is not here, may I remind Members that during the Strategic Plan debate it was unanimously passed to move the Government should be open, transparent and accountable and we should move that way, and I did second that at the time and all I can say is what better place to start with than ourselves.

### **7.1.7 The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):**

I would just like to say this statement that P.P.C. is resisting this, Members should really learn to read the comments carefully and understand what comments are for and understand why this is not an amendment. A Member came to the committee via correspondence and expressed their concerns that they felt they could not raise personally in the debate because that would have identified, obviously, what their concerns were and who they related to. P.P.C. represents Members in many ways and P.P.C. felt it was appropriate to outline in broad terms those concerns. The committee has not recommended on a slight majority the online publication of the current register and gives some guidance as to what they think should be done or could be done before the next Assembly's register is due to be published. It does not say: "We oppose this." It says: "Think about it." Understand the implications and if you decide as an Assembly, if the Assembly decides that they wish to go online, we recommend that it is done for the new House who will be elected knowing what would be expected of them and there would not be any cause for controversy at all. People will go into the election knowing what to expect of the outcome. Bearing in mind that we are so close to an election, so close to that new register being published that there is so much really important business that really matters to the people out there who can, let us face it, all get to Morier House because we are only 9 by 5 and nobody is excluded from getting to St. Helier. If they are burningly interested in knowing between now and October what is in that register they can access it, and then make a provision to put that register online when the new Members are sworn in. I do not think that is opposition. I think that is just: "Hey, a concern has been raised, you ought to know about it and there is a workable way to deal with it." So please, Members, stop making such heavy weather of this. You all know whether you want to go online or not. I suggest that Members just get ahead to the vote because then we will know exactly what is required of P.P.C. Incidentally, for Senator Shenton's benefit, we will not have any problem giving a clear instruction that does not require us to come up with a solution that Members themselves could not find. **[Approbation]** Come back to the Assembly with a workable changes to Standing Orders that would put the exact requirements into place.

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

I have no objection whatsoever to my personal interests being taken from any Members' interest in hard copy and put on the internet. But Members, hopefully, have noticed the phrase I use, "my personal interests." I am the elected representative, as long as that lasts, not my family, not my loved ones and I am uncomfortable enough that my declaration has to include them. I think that is completely unfair upon them. They support me. They, shall I say, allow me to put my name forward for election to serve the community but I believe that their privacy and their interests must be protected and I hope that each Member believes the same for their family. For that reason, I do not believe that the interest I am expected to make in hard copy should at this point be put on the internet. We are a very small community. Members of our community ... and the internet is used in a way which it never was before. People are Googled and information is freely available which could be damaging to my family or they might feel that their privacy has been invaded. Invade my privacy by all means because I put my name forward but I for one will fight for the privacy of my family and, therefore, until that Members' interest is changed perhaps along the lines that Deputy Le Hérisier was suggesting, not just the obsession with land and property but also other assets. Until it is that I do not have to make an interest on behalf of my family and loved ones I am afraid I cannot support this.

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

I basically want to follow on from my good friend's comments there. I have always been happy with what is in hard copy in Morier House. That is absolutely right and as far as I am concerned it is for our constituents on the Island and it is accessible. The point is that the internet is a worldwide accessible tool and I think the trouble is people make light of it but the world is changing. They say: "There is no evidence." But let us think about this. One of the former Ministers for Housing has had all sorts of problem in the past from disgruntled individuals. I seem to recall this year the Minister for Planning has had a number of problems, and that is putting it mildly, and yet we are sometimes defined that some of the most open ... one of the most open Assemblies. In the perspective, the Chief Minister's home address and telephone number is in the phone book and online, as are all of ours, I believe, and if you start putting those kinds of things together and you want to think not necessarily about the society we are living in now but where things might go in 5 years' time or whatever, we need to go where we are going and what the consequences of those are. That might sound a bit over the top but let us keep going here. I was informed probably 2 years ago, at least, that officer names are not to be included on the reports that they are writing because those go on the internet because of the risk of identity theft. Okay? Let us think about it. The Judicial Greffe, you can go in there and you can access the Property Register. Well, if we are going to open and transparent, why is that not directly accessible to the internet? You access it through a computer. I do not know if it is just revenue based. I have always understood it was a wider thing. It was about recognition that it was appropriate on an Island basis but not necessarily on a worldwide basis. I do not know how many people get them, I seem to get them every so often, you get the Nigerian letter or whatever it, the internet scam letter coming that is through and no doubt that is because some internet machine search engine has hauled out our email addresses which, of course, are publicly online. It is a tricky one to phrase it this way and, obviously, there are people on the Island who have more assets or who are better off than other individuals. That is just the nature of this Island but, overall, we are a wealthy Island. Any householder ... sorry, most householders or property owners owning one place that they occupy has an asset that is worth several hundred thousand pounds at least. In the context of other places in the world, that is a lot of money. People do not recognise that that is just the price that we pay over here but you put that all together, it is going out on the worldwide thing and it is there, you do not know how long for. Those are my concerns. I have absolutely no problem with the register at Morier House. I think that is right and appropriate. I have a huge problem with it going online. I think the other point is we have had comments made about the Westminster M.P.s have all their declarations of interest there and, okay, on a very, very small sample I went on to the U.K. Parliament website today, clicked on the first one, happened to be I think it was Diane Abbott who appears on television from time to time and you can see her Declaration of Interest.

[15:30]

Now, her home address is not there. I rather suspect that the Cabinet Ministers rather have security that goes with the job. Those kinds of complications, that is extreme for Jersey. That is not in our thoughts but just think about the consequences of where you are going before suddenly line up to this. Identity theft particularly, it is out there, it is happening and we know people ... I believe, I have always understood, we get the telephone marketing scams and I have always understood people have lost money on those bases locally already. Put that all together in the context of the world we are operating in. I will not be supporting the proposition.

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

I was chairing the meeting of P.P.C. when the comments or response to the comments were asked for. I would like to say from the start that freedom of information is available because the information is available in Morier House. It does not say under the Freedom of Information Act that it all has to come through the great wide world web internet. So the information is not being restricted. It is there. It is in writing. It is in hard copy. More to the point, it does not get changed,

which on internet it can be to suit anybody's purpose and as we know the difficulties in trying to have things removed from the internet or changed can be a very laborious, serious thing as the Americans are experiencing right now with a certain individual that is wanted in Sweden, to mention just one to give you an example. On another example, we are asking for something to be done retrospectively, i.e., this term of office is coming to a near 3-year end and we are asking for it to be brought in now, not in the future after it has been suggested by P.P.C. that we are so close to an election that you can bring it in and any new prospective candidate and the existing candidates can then have the full knowledge of what is proposed. I think this is important. We do not make laws retrospectively for anything else. So it is not a question of being against. When it talks about more serious criminal things, I cannot tell you in an open Government like this, I can tell you in a previous life I have dealt with many things that happen to people or that affect people of this Island that are very serious and none of which will ever go in the press or come to light for obvious reasons. So it is there in the background and what I am just saying when I make my 2-penny worth in a committee meeting is be aware that the world does not stand still. It changes, and so do the people in it and if we are going to make decisions that affect us, that is fine. We can, as 2 previous speakers have just said, we can deal with our one fate but when it affects our family and our extended family and others around us that might not have a clue of what is going on because of something that has been seen on the internet, then we have to think what we, as a House, have a responsibility to do is think ahead and think beforehand and let us do it properly if we are going to change it at all. Let us make sure we have covered the subject in a proper and efficient manner and we have looked at the options available and then make a proper decision. There is no rush on this one. We have 5 months to be able to make it for a change for the new or at the new Assembly if they so wish. Let us not hurry this and then regret it because something happened that we did not want to happen and we did not foresee it.

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

I think Deputy Gorst made an ideal contribution to this debate putting the arguments about the rights of privacy for spouses, partners, children and family members. He came to a conclusion and I would echo every part of his argument and endorse it completely but I come to a different conclusion. I come to the opposite, that if P.P.C. are instructed to bring forward as requested in part (b) of the proposition for approval in this Assembly the necessary amendments to Standing Orders to allow publication of Members' interests online, at that point we can ensure that our loved ones, as Deputy Gorst put it, and those people that are not elected as Members of this Assembly have protection and we can ensure that in no way will they be affected by online publication. That is important. But there is no doubt that the law in respect of internet abuse or internet libel is yet to catch up with the rate of modern technology and we need to consider this very carefully but, that said, we are bound, modern democracy demands that we are open and transparent and I can see no argument as to why we should not be. But it is important that we get this right. It is certainly not a rush to do it immediately. I think it needs careful consideration and I certainly support the proposition in principle that the P.P.C. should come back with a proposal for online publication. I can see no problem with it.

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

There is no doubt that the world is changing and the information that is available on the internet is changing everything in all spheres of life. Members may be aware that last night I was privileged to attend a dinner which was attended and at which the U.K. Foreign Secretary attended. He gave an impressive speech and in conversations with some other foreign and Commonwealth Ministers I had a very interesting discussion about the coalition's approach to foreign policy at the Commonwealth and, indeed, the Overseas Territories of which they have direct responsibility. At the heart of the coalition's position on international politics is democracy, and democracy that functions and that works. As uncomfortable as it is to say, power does corrupt and it is the publication of interests, it is the declaration of interests, that ensure that there is the highest

standards of democracy that are at work. In fact, it is a control. It guards against corruption, when we are making decisions in the administrative capacities in all sorts of way, we must declare, we must show that we are completely taking a decision in the public interest and the declaration of interests of our assets, of our relationships, of our earnings from organisations. I agree absolutely with Deputy Gorst the issue I think that he made in relation to an obsession of land. It is not only land, it is other relationships whether or not they be relationships with non-profit organisations or whatever. I am uncomfortable with this. I do not have a spouse so I cannot speak in relation to that particular issue although in a modern world, civil partners, *et cetera*, will be also required to have a similar declaration. I understand the concern of Members particularly when their family interests and their spouse's family's interests are declared. I am uncomfortable with this proposition. I have asked the President of P.P.C., I know she has spoken, when I look at the appendix and look at the list of the U.K. Parliament and the other regional assemblies in the U.K., they all declare their register of publication of interests online. I would ask the Deputy of St. Martin if he could address the issue as to whether or not he has carried out research as to other parliaments perhaps within the Commonwealth or elsewhere. Do they always publish their information online? I doubt that we will be able to not publish online our declarations of interests at some point. I think that it is inevitable. But as a number of Members have said, it is going to have to be organised and presented in a way that does afford some measure of protection while the full declarations need to be made in relation to linking addresses, *et cetera*. P.P.C. are going to have to do some work on this. I suspect it would be entirely wrong for the current Declaration of Interests, which was a ... I have inspected the Declarations of Interest myself, I have been over and had a look at my own declaration, of how it looks in a register and I have looked at other Members. There is no doubt at all that there is going to have to be some changes in the way the declarations are made in relation to the way that they are presented. P.P.C. are going to have to, if this proposition is successful, make some changes. They cannot just lift the current declaration and put that online and it would be wrong also, I think, for the current membership of the Assembly to see something which was envisaged originally because there is also a different level of detail, if I may say, in different Member's declarations. I am not criticising in any way but some Members who have land, for example, detail absolutely the field numbers, for example, the obsession of land. Other Members just put a general description. I think both are within the spirit of Standing Orders but there are going to have to be certainly some standards made. I think the Deputy of St. Martin needs to explain his acceptance of the fact that this would be a matter for the new Assembly, that the P.P.C. are going to have to consider this matter and look at international best practice on it. I, on the basis that it will be and I am going to vote in favour of it because I think that this is an inevitable way that the world is going and we are going to have to accept it. I am going to also vote, however, that when the Standing Order comes to the States, it is only in force for the new Assembly when it is convened and I see the Deputy of St. Martin nodding. That has to be the right way and P.P.C. are going to have to do some work on this, I regret to say. But the inevitable wind in terms of internet publication is with us and we cannot resist it and we need to uphold ... Jersey, when I sit at a table and discuss the standards in the Crown Dependencies and Jersey compared with other places in the world, I am proud to say that this is an Island with an absence of corruption, an absence of the difficulties that exist in some other areas in the world, and we need to be at the forefront of that and continue to demonstrate that we are in the forefront of that and as uncomfortable as it is, that does mean, unfortunately, the wider declaration and dissemination of our interests to ensure that we not only say that there are high standards but we can prove that we have the highest standards in terms of transparency and openness. I will just say one final thing, that of course Members who are concerned, public office is difficult. It does require the torchlight in terms of one's own ownership and involvement in other organisations to be declared. There are ways in which politicians in other areas of the world do arrange their affairs in blind trusts, *et cetera*, where they do not have any ... no longer control over those assets and they put their arrangements, in fact, so they do not ... they are completely squeaky clean in terms of influence and assets on planning issues or directorships or shareholdings. There are some arrangements that need to be put in place. They are expensive but

such is the price that open and transparent democracies and standards that are upheld in this Assembly are required.

**Deputy T.M. Pitman:**

I am not sure if it is a point of order or clarification, but is it possible to get the Attorney General or yourself to give a clarification because I think it might influence how people vote. Is any person or any member of the public who goes and sits in the Morier House, copies it all, puts it on the internet, are they breaking any law? Because if they are not, I think we really are wasting time. We could move to the next proposition. So it would be helpful.

**The Deputy Bailiff:**

Sorry, my note was not clear, Deputy. I have asked the Solicitor General to come back to the Assembly to give the Assembly advice.

**7.1.13 Deputy G.P. Southern:**

Sometimes debates in this House absolutely amaze me. I really cannot believe we are sitting here debating the ins and outs of this declaration. It seems to me that we publish the minimum we can and we put it in one place and that made me think of what happens when the wheel was invented in Jersey? Did 53 people gather around this new invention, this round thing, and say: "Well, not sure about that. No, we think we will keep on working with the square ones and we will drag them around." When the priests, I do not know where they were, in St. Helier, out on the rock in St. Helier, were scribing away about their documents and they invented the printing press. "Oh, if you can do that, if you like, and spread it around the world but I am not sure we will." I have news for people in this House. The internet has been invented and having been invented it cannot, no matter how much we might wish it, be disinvented. The fact is, details about each and every one of us who have stood and been elected for public office, make our name and details a matter of public record.

[15:45]

The key is "public" and there is absolutely no reason why we should be considering, as Deputy Le Hérisier suggested earlier, what I wanted was a local declaration for local people and I was thinking then that I may have the glimmerings of the first sight of the economic growth plan because with locally provided information we could promote local kidnappers and only local kidnappers to start that side of business. It seems to me no ... but perhaps I go too far and that we should not do that although I am not sure it is very different from privateering, which we used to do very profitably on the Island. Come on. Let us grasp we are in the 21st century and just admit that we have to, if we are going to disseminate a document, which is essential to ensure that we do not suffer from the evils of corruption, and declare our interests openly that we have to do that and we do it and we get on with it.

**The Deputy Bailiff:**

Deputy Trevor Pitman, you had a question to ask of the Solicitor General?

**Deputy T.M. Pitman:**

I just think it may be helpful for the way people vote because possibly it will show whether we are wasting our time or not. Is any member of the public, I would like to know if the Solicitor General could tell me, breaking the law if they go and sit in Morier House, copy all of our details, all 53 of us, type them up nicely, put them on the internet? Is someone breaking the law? Because if they are not, I would surmise that we are wasting our time and it could happen and it might happen tomorrow. Who knows?

**The Deputy Bailiff:**

Solicitor General, while you are thinking about that, I will call on Deputy Martin to speak.

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

I will be brief and I was one of the other members, as Deputy Pitman has said, that dissented against this. I was in a sort of a bit of a déjà vu sitting round the same table with the same people who, only I think 2 weeks prior, had pushed and pushed the Freedom of Information Law through I could not ... Yes, we had that speech from Deputy Fox, he could not tell us that there were things that happened to people in different lives, obviously not because they were on the internet, not because they were on the internet. I think we did have the conversation round the table as well that people could go, and even if you cannot write it down, if you have got a good memory you could go in every day, look at it, that we are making such heavy weather, somebody is already probably over there now putting it on the internet. It is not official, as people say. Senator Ozouf, I support lots of what he said, and I do get obviously where Deputy Gorst is coming from but an interest, if your spouse or partner has, you know, obviously you are married and they have lots of interests, they might have lots ... they might be on different boards or owning different companies, I am sorry, if the perception that would be, that must be declared. If your spouse or partner knows this, you know that, at this time it is going to be on the register of ... I totally agree with Deputy Pitman and probably Deputy Le Hérisier and Senator Ozouf, we do need to really look at what is put there. I mean I had to declare an interest in the meeting that I had no interests but does that make me less? I think what we are getting at ... I am hearing that we are so important. Now let us say I am travelling abroad somewhere and I am kidnapped, and they make a ransom to the, you know: "We have got one of your Government and we are holding them to ransom." Well I am sorry, I would hope I am as valuable as anybody else **[Laughter]** and I do not know what pot that would come out of but I mean, look I am either being kidnapped because I am a Member of the Jersey Government or I am being kidnapped because I have some sort of fortune, and we all have a value in Jersey. I mean, obviously the people in Westminster do not have a value and a lot of them do not ... MP Diane Abbot lives in Hackney, and I will not put her address over but the people in Hackney I am telling you now all know where she lives, I can assure you, and she did stand for the position of being Prime Minister, although she was an outside, 100 to one, sorry Leader of the Opposition. So sorry, we are standing here today, as Senator Ozouf says, we are trying to stem back the tide, you know, hold the sea back. This is going to happen, I cannot see the resistance. As I say, from the same committee that, and I think it passed unanimously as well, the F.O.I. (Freedom of Information) Law. I did say in that debate: "Remember what they wished in England." When it came to their expenses, that Channel 4 play was brilliant, and they said ... the Speaker who had to resign: "But we did not mean us." Those were his words, and he did not mean us. This would never come under anything under the F.O.I. Law that could be restricted. It would be out there. All we would need is the freedom of information, it would be given to somebody and they can put it where they like. I am sorry, that is where we are and I thank ... did not realise this had to be taken out 5 years ago as you say. Deputy Le Hérisier says it was a massive debate and something I must have missed but maybe 5 years is a long time and it has moved on. It is something sensible that we should put on. It will be distorted, we are on there now, we are blogged every day, loads of, you know, those people. I never read them. People come and tell me. I am not interested. If someone cannot tell me who they are, if they want to insult me, I am certainly not interested and I am not going to waste my time sitting there reading it. I am not doing it but it happens, it happens every day and we are there, our addresses as you say. Our interests must be forefront and it must be really, really clear what our interests are and what interests we are married to or are in partnership with. I am very sorry, and if the wife or the husband do not like that you do not stand for public office, as Deputy Southern has said. That is a discussion, and the only thing that I will override is what we did bring up. I think if we are going to do it, it would be best for the new House because ... yes I am glad the Deputy of St. Martin is agreeing with me because everyone knows then and that is fine, and it will take, do not worry about it, it will take P.P.C. that long to get there, we have a list as long as my arm anyway.

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

Solicitor General, are you ready to deal with the question?

**The Solicitor General:**

Yes thank you, Sir. The answer is it is not an offence to publish such information on the internet per se, although of course depending on how the information is used, and whether or not it is used properly or maliciously. I suppose one could commit an offence of, for example, harassment, but the mere fact of publication itself is not an offence.

**Deputy M. Tadier:**

Sir, may I ask a further ... I can wait until after Senator Ferguson has spoken.

**7.1.15 Senator S.C. Ferguson:**

I am not giving way; I do not feel like it. I just wonder what is the purpose of making the declarations? Why do we do it? Are we making the declarations for the genuine Jersiais or is it for the whole world? I mean, there are well known cases elsewhere of kidnap and so on arising because a name has been published in the media. I think we do need to remember that the internet is the media writ large and what is more it is permanent. You may think that an article, if you have deleted it from a website, that it has gone. Forget it, it is not gone. It is tucked away in the recesses of the archives. I have had it explained how to access it, it is quite easy if you know the procedure. It is there for ever. So, do not start thinking that you can just delete something from your website. It is permanent. I think your family do have ... I am surprised at the Deputy of St. Martin because where are the human rights of my family, and their right to privacy because they are not the ones who stood for election? They may have said: "Okay, go for it" or something like that, but it was my head that went above the parapet, and it is fine if it is my head but not my family. So if the House passes this I think we do need to look carefully at Standing Orders to look at what is to be declared, whether to extend it, how to extend it, and who to refer it to. I mean I do not care; yes my interests are up there, no problem. I have not really got very much to declare so that is all right folks but there are the implications for our families and I think this needs to be taken very carefully.

**The Deputy Bailiff:**

Deputy Tadier, did you have a further question for the Solicitor General?

**Deputy M. Tadier:**

Thank you, Sir, I was just jotting down a note but I will ask him directly. It is a supplementary to that of Deputy Trevor Pitman. Can the register be physically copied by the public, either in the form of a photocopy being taken, and if not can it be taken by pen and paper, and if not could it be perceivably done by memory and then re-distributed on a blog site, whether it is Deputy Pitman's, mine or somebody else's?

**The Solicitor General:**

I believe the word in the Standing Order is "inspect" and inspect means you look at it, so you cannot copy it or photocopy it but there is nothing to stop you I suppose with a pen and paper jotting down what you can see.

**7.1.16 Senator P.F. Routier:**

I am very pleased we are having this debate today because it has reminded me I have to go and update my declaration of interests. **[Laughter]** I have one less interest, which I need to update and that probably is something that has made me think about how this is progressing because I think that we are probably better to publish it ourselves rather than other people go and do it because, as Senator Ferguson has said, people could ... well as we know somebody could go in and make the notes of it and publish whatever they liked and it is out there for ever and it is wrong, and it could be wrong for ever. We are probably better to be in a position to publish it ourselves so as people know that they can go to the States Greffe website and get the up-to-date information. But in

saying that I do take note of what a number of speakers have said about what form it takes. The information should be about ourselves certainly, it really has to be focused on us because we are the ones who are elected but when it goes further than that into family and other things like that I think that P.P.C. have got a big piece of work to do to make sure that those people are protected who have not put themselves forward for public office. So, on the understanding that P.P.C. will come back at a later stage with an updated version of how we are to make that declaration and that it does not go too far into ... **[Laughter]**

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

Sir, guilty and £10. I apologise.

**Senator J.L. Perchard:**

Sir, that should be £20, a ring tone like that. **[Laughter]**

**The Deputy Bailiff:**

The Greffier has you down. That does remind me the Deputy of St. John came into peril on Tuesday and the Greffier should have him down as well.

**Senator P.F. Routier:**

So we seem to be a few pounds better off now so that is good, well at least a charity is. Certainly, as I say, I think this is something that we will need to do in the future but I will give my support to this on the understanding that P.P.C. will come back with new Standing Orders that do give some consideration to the protection of our families. As I say, I think we are better to publish it ourselves rather than let other people do it.

[16:00]

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

I was going to make 2 points and now it is one because I agree entirely with what Senator Routier just said; I was going to say that. We are making astonishingly heavy weather of this. It is quite extraordinary what some people are saying and I will just give one example and then sit down. We have been told that genuine Jersiais can go along to Morier House and find out this information. By implication there were no genuine Jersiais anywhere else but we have just been told that Mr. Boleat alias Mr. Boléat is a genuine Jerseyman and he lives in London, so what happens if he wants to check something? Or even anybody at election time who happens to be on holiday and it just comes into their mind there is something they want to check? It really is extraordinary the sort of things that are being said about this simple issue, and I am amazed that we have been at it for about an hour. So I would urge people to support the proposer.

**7.1.18 The Connétable of St. Saviour:**

I believe that this will come in time, I believe it is something that is inevitable but I think we have to be concerned that it should not be retrospective. I do not think that is fair to Members. There is no doubt that there are genuine beliefs that there are serious concerns with some of this for some Members, and I think those are concerns we have to take seriously. We have been given information confidentially, that is not information that I can ignore, and that is why I voted against this being published at this stage. I think Members should be very careful what they vote for. We have been told that it is possible to structure your affairs in such a way that interests are not shown in the sort of detail that a lot of Members are thinking they will be. I believe if we put this through as it is being intended by some Members, an awful lot of information that we have now will no longer be available. It will be re-structured in such a way that we will not see it. I think, be careful what you vote for.

**The Deputy Bailiff:**

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

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

I was rather disappointed to hear from a Connétable, saying how one must almost, I am saying, rig what one puts down on our declaration. I put everything down, which I think I ought to put down. I am a States Member, I know I have a public obligation and Standing Orders require me. It is one of those things that is here ... it was 152 P.P.C. rather than 154, but the register of interests is there for everyone to see. Those I suppose like myself have taken a bit more interest in it lately because I have been over there and seen what was on there. All the information that will be going on is what is already in Morier House, and if people want to conceal in some form or other what they wish to put on their declaration so be it, that is down to individuals. What you put down is your responsibility and of course if you do not put down something, which you ought to, and you are found out no doubt there will be repercussions but I would hope that everyone puts on their declaration what is their genuine declaration of interests, and I would hope there would be no States Member that would not do that. As a matter of interest, we have taken an hour on this debate and the Deputy of St. Mary said: "Goodness why are we taking so long?" Eighteen people have spoken and I am not going to go through everything because I think there are different conflicts but there are obviously concerns about family but again I will ask: where is the evidence? It is already at Morier House. Anyone, as we now know, can take it and put it online, and so many Members including Senator Routier have said: "If we do not do it somebody else will do it" and I would far rather we did it. Let us manage our own affairs. I think a couple of questions were asked, one question in particular and that was Senator Ozouf. The one thing he disappointed me with, he did not tell us what he had to eat last night. We know who he met, I am sure it was a good meal, but and also I compliment him on what he had to say because a lot of what Senator Ozouf had to say, I think, rung a bell. It is right we are democratic and we ought to be upfront, *et cetera*, we should be making quite clear who we are, what we are and what we stand for. He did ask what other ... I think what research had I carried out elsewhere. Well, I had not carried it out elsewhere, I think the most important thing is what P.P.C. have told us, that nearly all the other jurisdictions within the United Kingdom have it, including Guernsey and I said: "To the best of my knowledge nothing untoward had ever occurred." Even Deputy Martin, no one has been kidnapped, and so there we are. What I would ask Members to do is to look at the proposition. It is quite clear, to agree that Standing Orders 154 should be amended to include a requirement of the Greffier of the States to publish the register of Members' interests on the States Assembly website and permit the Greffier to make further arrangements for its publication as deemed appropriate. Now, at the moment Standing Orders make it quite clear what our declaration of interests are. It is there, and again if it is there in hard copy why can it not be the internet? As someone said: "We are now an internet age." The important I think is part (b) and that is why I had hoped that Members will agree to it this afternoon because it is in the hands of P.P.C. I fully understand there are a load of things ahead. If indeed it is not drafted until it comes back at the end of the year, this session, so everyone knows that when it starts out next term, the new Members, it will be there. It is in the hands of P.P.C. What I am asking for is to approve the principle of it, to agree that what we have already got in, our declaration of interests is already there, is put into online, and for P.P.C. to make the necessary arrangements for it to come back to the House in its own time to ensure that we can all agree to it. I certainly from my own point of view, I do not have a problem if P.P.C. does not get there until we make it available for the new session. It is in the hands of P.P.C. Let us agree first that we should agree to it going online, and then let P.P.C. come back with it in their own good time for us, and possibly to make it available for the next session. Sir, I have nothing else to add and I would ask for the appel.

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

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

<b>POUR: 35</b>		<b>CONTRE: 9</b>		<b>ABSTAIN: 2</b>
Senator P.F. Routier		Senator T.J. Le Main		Connétable of St. Saviour
Senator P.F.C. Ozouf		Senator S.C. Ferguson		Connétable of St. Mary
Senator B.E. Shenton		Senator B.I. Le Marquand		
Senator J.L. Perchard		Connétable of Trinity		
Senator A. Breckon		Deputy J.B. Fox (H)		
Senator A.J.H. Maclean		Deputy J.A.N. Le Fondré (L)		
Senator F. du H. Le Gresley		Deputy S.S.P.A. Power (B)		
Connétable of St. Ouen		Deputy of St. John		
Connétable of Grouville		Deputy A.E. Jeune (B)		
Connétable of St. Brelade				
Connétable of St. Martin				
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 Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				

Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy 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)				

**The Connétable of St. Mary:**

Sir, I wonder if I might just crave your indulgence? At the close of business last night I did ask Members about how they wanted to re-schedule any business that we did not finish. We have 2 items left this sitting, Sir, one of which I think will be extremely substantial. I just thought if we were going to make a decision that perhaps might involve staying late tonight we ought to do it before the termination of business so that Members can make arrangements for anything they needed to do. The feedback I have had is that there is no appetite for tomorrow or Monday, and that Members would seem to want to conclude the business today and stay late until that is done. I wonder if I could put that proposal we could have it debated to have it discussed?

**The Deputy Bailiff:**

So your proposition is that we complete the agenda this evening?

**The Connétable of St. Mary:**

Yes, Sir.

**The Deputy Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on it? Can we have very brief debate on it?

**Deputy I.J. Gorst:**

I personally, and 4 other Members I think, already have a meeting this evening and therefore could not stay.

**Deputy G.P. Southern:**

I am already committed, and to change arrangements at 4.05 p.m. for this evening is ridiculous to attempt to do that.

**Senator A.H. Maclean:**

Just one point, Sir, I have a proposition last on the agenda and unfortunately I have a meeting this evening so it would be difficult for me to present my proposition if I cannot be here.

**Deputy M. Tadier:**

Similar position and I am into this evening and tomorrow, that is why I will be voting for Tuesday if no one else wants to do that.

**The Deputy Bailiff:**

Chairman, how do you feel having heard that?

**The Connétable of St. Mary:**

This is precisely ... I wanted to open it up so I could hear that, Sir. In that case I will withdraw that proposition and move that we continue now and then on Tuesday as necessary.

**Deputy M.R. Higgins:**

I will have to declare that I will not be in the Island on Tuesday so I will be unable to. This was not a scheduled session.

**The Deputy Bailiff:**

Well, there is a proposal that we continue until 5.30 p.m. or a convenient time around 5.30 p.m. this evening and then continue again on Tuesday. Will all Members in favour of that kindly show? The appel is called for.

**Deputy R.G. Le Hérisier:**

Can an alterative be put as to meeting tomorrow?

**The Deputy Bailiff:**

After we have taken this proposition we can consider other propositions, Deputy. The appel is called for, the vote is whether or not to continue until approximately 5.30 p.m. this evening and then re-convene on Tuesday, and I will ask the Greffier to open the voting.

<b>POUR: 31</b>		<b>CONTRE: 11</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Senator P.F.C. Ozouf		Senator B.I. Le Marquand
Senator B.E. Shenton		Senator T.J. Le Main		
Senator J.L. Perchard		Senator F.du H. Le Gresley		
Senator A. Breckon		Deputy R.C. Duhamel (S)		
Senator S.C. Ferguson		Deputy R.G. Le Hérisier (S)		
Senator A.J.H. Maclean		Deputy J.A.N. Le Fondré (L)		
Connétable of St. Ouen		Deputy I.J. Gorst (C)		
Connétable of Trinity		Deputy A.E. Jeune (B)		
Connétable of St. Brelade		Deputy A.T. Dupré (C)		
Connétable of St. Martin		Deputy M.R. Higgins (H)		
Connétable of St. Saviour		Deputy A.K.F. Green (H)		
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy of St. Martin				

Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

**The Connétable of St. Saviour:**

Excuse me, Sir, could I just make a note that it would appear that the Constable of St. Martin's vote is pour and he does not appear to be in the ...

**The Connétable of St. Mary:**

Has he been kidnapped, Sir?

**The Deputy Bailiff:**

Well, unless ...

**The Connétable of St. Saviour:**

Sir, is this a virtual vote?

**The Deputy Bailiff:**

Unless Members are very worried about it I would say that the one vote on that analysis is not going to make any difference so we will move on and proceed on the basis that that is what we are going to do.

**Deputy J.A.N. Le Fondré:**

Just as a question, what is the position for Members who cannot turn up on Tuesday? Are they défaut excusé or will they be défaut?

**The Deputy Bailiff:**

That will be a matter for Members at the time. Very well we now come to P.72, Grant aided schools ...

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

Does that mean that we have decided that we are definitely sitting on Tuesday as opposed to tomorrow? Apologies.

**The Deputy Bailiff:**

Yes, unless of course the business is finished this evening. **[Laughter]**

**Deputy T.M. Pitman:**

Sorry, sir, in the interests of fairness, because I know we will be asked to make a decision on Tuesday who is *défaut excusé* and who is not, I think it will be useful if those who cannot attend and know already would inform perhaps at the end of the session as I think it would be unfair to mark someone *défaut* if they have got genuine commitments rather than just not wanting to turn up, Sir.

**The Deputy Bailiff:**

Until there is a very effective internet system I am not sure that can be accepted. Now we come to P.72 Grant aided schools ...

**Senator B.E. Shenton:**

Sir, I am sorry to interrupt. I did offer P.P.C. to move this item as long as it was the first item of the next session. Now, I know we have got a lot of planning issues on that day but it was just something to add to the mix.

**The Connétable of St. Mary:**

Senator Shenton did say that but I reiterate the fact that if you just move the business back we still need to tackle it at some point, Sir.

**8. Grant aided Schools: grants (P.72/2011)**

**The Deputy Bailiff:**

If I may say so from the Chair, we have a huge list yet to come, particularly with the planning issues. The extent of the planning debate is as yet unclear as one does not know how many amendments the Minister will accept but it is going to be a substantial debate by any standards. So, we come to P.72 Grant aided schools; Grants, unless you want to withdraw it altogether for the time being, is lodged by Senator Shenton and I ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion: (a) to request the Minister for Education, Sport and Culture to maintain grants to Beaulieu Convent School, De La Salle College, F.C.J. Primary School, Jersey College for Girls Preparatory School, Jersey College for Girls, Victoria College and Victoria College Preparatory School at the current levels pending publication of the forthcoming Education White Paper ensuring that there is meaningful consultation through a Green Paper beforehand; (b) to request the Minister for Education, Sport and Culture to lodge as a separate proposition both ahead of and outside of the Annual Business Plan process, any changes to the current arrangements with detailed analysis of the reason for the policy change, as well as the benefits and efficiencies of any proposed change, and to refrain from implementing any changes

until the revised policy has been approved by the States Assembly; (c) to request the Minister for Education, Sport and Culture to establish service level agreements between the Education Department and the receivers of any grants described above, setting out the minimum requirements in respect of educational standards and facilities including the provision of any bursary schemes and brought into force by December 2012.

**The Deputy Bailiff:**

Now before I ask Senator Shenton to propose this proposition I would like to give some guidance to Members in relation to declarations of interest under Standing Order 106 because I know this has been raised informally with the Greffier.

[16:15]

Standing Order 106 says: “A Member of the States who has, or whose spouse or cohabitee has, an interest in the subject matter of a proposition, must if it is a direct financial interest, declare the interest and withdraw 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. If it is an interest, which is not financial, declare the interest.” The question, which has been raised with the Greffier is, what is the position of those Members who have either children, or whose spouse or cohabitee has children, attending one of the schools in question? Or it could be grandchildren where the Member or spouse or cohabitee is funding that education. Is it necessary that that ... is that a direct financial interest, which requires withdrawal? Standing Order 106(4) says: “A financial interest in any subject matter is direct if it is immediate or personal to the person concerned.” There is therefore a slight inconsistency perhaps, which I would invite the Privileges and Procedures Committee to look at between Standing Order 106(1)(b) and Standing Order 106(4) but the guidance I give Members today is that 106(1)(b) only makes sense if one takes the view that an interest shared with a large class of persons is not a direct financial interest but nonetheless must be declared. Now, in this case it could be said that the proposition is only about the level of the grants from the Minister for Education, Sport and Culture and does not therefore necessarily affect fees, and that is a matter upon which Members may have different views, but to the extent that Members were of the view that it could affect fees and therefore resulted in an interest, the guidance I give from the Chair is that Members should declare the interest if they are paying for, or spouse or cohabitee is paying for, a child attending one of these schools, but does not need to withdraw because it does not make sense of Standing Order 106(1)(b) in my view, to say that they should. I hope that is clear to Members. If there are any questions please let me know.

**Deputy J.A.N. Le Fondré:**

Just for the avoidance of doubt, I have 2 children and none of them are at fee-paying schools but one of them is at a non fee-paying school.

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

I do not know if it is appropriate now or not but I have got in my speech, and it is not a financial gain to me, but I am recently elected as a governor at Rouge Bouillon.

**The Deputy Bailiff:**

That is the sort of interest which is not financial and needs to be declared, and so you have declared it.

**The Deputy of St. John:**

I have 12 grandchildren, Sir, quite a number of them all at private schools on Island but I do not pay their fees as they are paid for by their parents but I declare the interest anyway.

**The Connétable of Trinity:**

Likewise, Sir, my grandchildren are at fee-paying schools but I do not pay the fees. **[Aside]**  
**[Laughter]**

**The Deputy Bailiff:**

If I may say so, Senator, you do not have to shout about it but you do have to declare it.  
**[Laughter]**

**Deputy A.T. Dupre:**

My daughter teaches at a fee-paying school and my grandchildren are at a different fee-paying school, but I do not pay.

**The Deputy Bailiff:**

Are there any other interests, which Members feel they need to declare?

**Deputy I.J. Gorst:**

Yes please, Sir. I am a governor of a non fee-paying school and my daughter is listed for attendance at a fee-paying school.

**The Deputy Bailiff:**

Very well. Senator Shenton, would you like to propose the proposition?

**8.1 Senator B.E. Shenton:**

Thank you, Sir. This is going to be quite a strange proposition because I have a feeling that I will be proposing it today and summing up about 5 days later. Before we start, I was going to start my speech by just sort of outlining my involvement with fee-paying schools. I am not only a De La Salle Old Boy but I am also a Beaulieu Old Boy because Beaulieu used to take ... boys **[Laughter]** back in the 1960s before De La Salle lowered the age that they took on children. My father also went to De La Salle and the family has a long connection with De La Salle College. I was Chairman of the Beaulieu P.T.A. (Parent Teachers Association) before I entered the States, the P.T.A. being a fund-raising body. I have never been a governor or trustee of any of the schools, and both my daughters went to Beaulieu Convent School. My youngest daughter, I have paid my final cheque to Beaulieu, she is doing her final A levels at the moment. I do not have any financial interests going forward in Beaulieu Convent School. The reason I brought this proposition was largely because I felt that the Education Department and the Minister for Education, Sport and Culture did not understand education in Jersey. This came about largely as a result of attending a meeting at Beaulieu School where the Minister attended with his chief officer to inform parents of the cuts in the grants, and obviously he met with a very hostile reception and a number of parents were in tears at the end of the meeting because he gave the impression that this was going to be regardless of public opinion and regardless of what the States wanted. When you have a child in Jersey you have a right to a 100 per cent grant from the public purse to educate that child. You have a right to have that child educated, and when my wife and I had our children we could have taken that 100 per cent grant and had our children educated. However, I was brought up and educated, as I said before, at a faith based school and we wanted a faith based education for our children, and the Government did not offer that option of a faith based education for their children. So we, if we wished to do that, would therefore have to pay towards this education, and we did not mind doing so because this was our personal choice and it was what we wanted. So, instead of taking the 100 per cent from the public we contributed ourselves, and at primary level we took a 25 per cent grant from the States of Jersey taxpayer and at secondary level a slightly higher 40 per cent grant. It is worth noting that in Sweden, for example, if we had have made those choices we would have got a 75 per cent grant at primary level and a 75 per cent grant at secondary level. I will be honest with you, I was very angry at the meeting at Beaulieu with the Minister, as the Minister will probably agree, because I felt that the public that attended that meeting were being somewhat misled as to what was happening here. I felt that the answers given by the chief officer and by the

Minister were perhaps not as open and transparent as they should be, and that is why I went off after the event and started compiling a proposition that would show in more detail the cost of educating children in Jersey. I started off this proposition very much from the angle of a parent that wanted faith based education for their children, and that is why the proposition is probably slightly biased towards the faith based schools because that is how the proposition started off. It was only as I was working through the proposition that I realised that many of the attributes applying to faith based children also applied to the other schools and I would include in that the schools that are not fee-based as well. I sent Deputy De Sousa an email because at the end of the day I did not get elected to destroy the education system on this Island and I did not get elected to destroy the health system on this Island. I believe as politicians we are there to provide a good education system and a good health system and defence and other things. I do not necessarily agree that we are here to provide the bulk of the things provided by my colleague Senator Maclean at E.D.D. (Economic Development Department) or various other aspects that we provide as a Government. If there is a cost to education and to health we must meet that cost. What I felt was that this was a very dangerous way to go because the Minister had been asked for savings without knowing what the optimum level of expenditure its education required was. Furthermore, if through these savings, which is in fact an increased taxation on parents, if one of the schools found that they were no longer economically viable and closed down and moved their children to the States schools, the actual education budget would go through the roof because while parents are contributing it does lower the overall cost of education to the taxpayer. I set out, when I went through the Excel spreadsheet, and I know I got the figures off Education and Education were extremely helpful, I met with Deputy Vallois and they could not be more helpful. Deputy Reed was not there, and I went through the figures and a lot of the figures were quite interesting. A lot of the figures you can explain. We know, for example, different schools have different inputs of children with special needs and disorders and so on and so forth, and that there will be a higher cost to educating those children. So, working through the list you can see a trend as to why some schools are higher than the others, but what I could not quite work out is there were one or 2 schools there where the cost from a taxpayer's point of view did seem fairly high. I think this is a body of work that we need to look at. I split the proposition down to various sections to try and sort of work my way through it. The first point filed was the importance of a faith based education. As I said before, Government does not provide a faith based education option for the children of parents in Jersey. If you want a faith based school that is up to the parents to contribute towards it, and I see nothing wrong with that point of view. The slight dilemma you have with a faith based education is that you are trying to be as inclusive as possible. That is the whole point of a lot of faiths, is you try and be inclusive. The schools of Beaulieu, ... well Beaulieu I can speak of because I know it better, has bursaries and ways of helping parents give their children the education that they require, and part of those bursaries are funded from the level of fees. The level of fees at Beaulieu for example, are higher than J.C.G. (Jersey College for Girls) and Victoria College, and they use some of that money to provide bursaries to get a wider choice. Now the trouble is, when I was at the meeting and the parents were in tears, there were a lot of parents that would like to send their children to that school but they would not be able to afford it and you would end up with a rather strange position of having a faith based school trying to teach equality and so on and so forth that is only accessible to the wealthy. It seems quite ridiculous to me that we were going down this way. The second part was, have we really looked at why so many children are sent to private schools in Jersey? We all know that the education system in Jersey is successful. In recent years, or recent disclosures have opened up a few questions in this respect but this is perhaps down to the 14 plus transfers and other aspects as opposed to the quality of the teaching.

[16:30]

I certainly do not want to do down the teaching at any school on the Island because you have different types of children going to different schools, but we do have a successful model here. Year after year the late Senator Vibert used to stand up and say how much better we were than the U.K.

with our results. I think dismantling the system is quite dangerous, even if we do it in a very slight way because, as I said before, if you start losing the fee-paying schools and the children then start moving to the State sector, and the class sizes get bigger and so on and so forth, we could end up in a right mess. We cannot afford to take that chance. We cannot deny a generation good education because we went with the Minister and made a mistake. So I think we need to think this through, and I think we also need to examine the effects on the economy. Most people when they say: "make savings" think that perhaps they could make savings through efficiency savings, through perhaps looking at the salaries of the chief executive and the senior management and so on and so forth, and seeing if they are too high or should be brought in line with their U.K. counterpart. That is most people's ideas of savings. It is not about charging parents more to educate their children. That is not a saving, that is just running the same model but moving the burden on to the parents. No one has done any work on the effect that this big transfer of funds away from the parents will have on the economy. We have spoken to the Economic Adviser, no one has asked him to do any modelling on how this will affect the economy as a whole. We know that the economy in Jersey is shaky, we know that there are people out there struggling, and yet we want to pull more money out of people almost like a form of education tax, in order to get savings to a level where we have not even identified what the true cost of education is. There is a cost to education. There is a cost to education on this Island. We must make sure that we do not take a C.S.R. arbitrary figure and start spending less on education than is required because that would do neither ourselves any good nor our children, nor our children's children. My wife and I, we sent our children to fee-paying school, and we saved up and we managed to meet the fees but after, we also had to make sure we put enough money aside for their university education. University's funding is considerable and it is a massive cost to parents. It is a massive cost to parents at most levels and with the changes going on the burden is probably going to get moved more and more towards the students as it is in the U.K. So not only will we be asking these parents to find more in the way of school fees for their own children, and significantly more, we will also be asking them to put aside more to cover university funding in the future. I have mentioned before the fact that we are also putting at risk a system that has served us so well. I have unfortunately received some ... spoken to some parents who have no problem with the reduction in grants because they would like to see reductions in class sizes as the less well off parents' students move off to the States schools, and they would like to see a rather more elitist schooling for their children. This sort of attitude does not do anyone any good. Certainly, if you did see a big movement towards the States schools, the budget for the States schools is not going to increase so the only way you can incorporate them into the States system is to have higher class sizes and a lower quality of education for the people that perhaps need us to focus on and pull up with everyone else, educational standards. So it is not only the fee-paying children that you may hit by this attempt to pull money from them but it is also all the States school children as well. Then we come to the point of the fact that in 2009 the Minister said that they would institute a Green Paper to look at education in Jersey; 2009 this was announced and yet we still have not seen it. There are a number of issues that need to be looked at. Personally I think the 14 plus transfer system is quite divisive because it takes children who are perhaps less bright and if they cannot get on the 14 plus transfer they sort of get rubber-stamped with that mark. Furthermore, speaking to the head teacher at Le Quennevais, he would prefer to keep all his top students because he believes that they would do just as well staying at Le Quennevais as they would going off to Hautlieu. I think that is true of a number of schools on the Island because if you mix the bright students and the less bright you would hope to pull up the less bright to the higher level but we have never really had a look at this 14 plus transfer system, and we also need to have a look at sixth form provision on the Island and various other issues. So, all this proposition does is say: "Hold tight." We do not know what the optimum cost of education is. We do not know the effects of the transfer. We have not had any proper consultation. There has been no real consultation with the schools despite what the Minister will say. In fact, in some respects the Education Department have been quite bullying in the way that they have handled this. Their idea of consultation is, we will tell you what is happening and we will see if you agree and if you do not

agree we will just keep pushing away and pushing away until you do agree. I am not even sure if they really know the meaning of the word “consultation”, so I felt that I had no option but to bring this proposition to the House. The final issue is; whose policy is this? This is a policy that has come into the House. This is a policy that says we have to cut the education budget. Is that what States Members decided, that we would cut the education budget? The States Members decided to cut the overall budget of the States. We did not decide to cut the education budget. If you look at the Annual Business Plan there is no breakdown for the education budget or any other department budget for next year. Did we as the States decide that this was the way we were going to find the money? No, that was down to the Minister. The Minister as an individual and his chief officer decided to reduce the grants to fee-paying schools. This was not a decision of the States Assembly. It was not a decision that the States Assembly had any input in. It is a decision that will literally affect thousands of children. It is a decision that will affect thousands of parents and yet it has been made in isolation in a silo without any approval from the States. Can the Council of Ministers, if they disagreed with the Minister’s policy overrule them? No, they cannot because we did not implement the checks and balances of Clothier. Have the Council of Ministers got collective responsibility for this decision? No, they have not. This is the decision of an individual. This is a very strange concept of government that we are all operating in. Will the policies be reversed perhaps by the next Minister for Education, Sport and Culture? It could be very likely. It depends on what he or she personally stands for and what he or she decides to do. There are significant people out there that will be affected by this. This will, in my opinion, seriously diminish educational standards within the Island. It is without doubt a policy set up to appease C.S.R. targets, which are quite arbitrary, and to appease C.S.R. targets in terms of cutting education that have not been passed by this Chamber. For the Minister to turn round and say that we will discuss this at the Business Plan debate, which as we all know is a very long debate where things do not always get the coverage that they need, and whereby schools by that time will have already had to make serious cuts to their budgets and school numbers. I got an email from the headmaster of De La Salle who said a significant number of children had already dropped out for next year, around 10 per cent, just because of the uncertainty. Well, that is very clever, is it not? For those children instead of the taxpayer paying 25 or 40 per cent of the cost will now pay 100 per cent of the cost. I mean, that is a brilliant saving. This is a brilliant plan. I would ask Members to support this and I would also ask Members to make sure that when they stand for election they stand for the right things. We have to run this Chamber efficiently and we have to run it with business efficiency but this, the States Chamber, is not a business. We have to provide education and we have to provide choice of education to those that require choice. We need to pull up educational standards right across the board. The policies of this Minister will not do that. He must be the first Minister to want to try and destroy the education system that we have. He must be the first Minister that wants to cut his own budget, and it must be the first Minister that perhaps has forgotten that he left P.A.C 3 years ago and is now a Minister himself. Just a mention about P.A.C., P.A.C. is there about getting efficiency. P.A.C. is there about providing efficient health service and efficient education service. It is not there to advocate cutting for the sake of cutting. There is a cost to health and there is a cost to education, and provided we run those efficiently we have to pay that cost, and that cost has to come off the taxpayer because at the end of the day the education of our children today is the future of this Island. So I ask Members to support this proposition and I will just finish off, because I know we are going to go straight on to the amendment of Deputy De Sousa, and I would just like to add what I wrote at the end of the proposition, and obviously I was not aware that Deputy De Sousa was going to bring an amendment. If we get this wrong it will not be the children of the rich that will suffer, as their parents will be able to afford the fees at any levels, and class sizes may well reduce. It will be the children denied a place through lack of bursary funding or because their middle-income parents cannot afford to give their offspring the faith based education they desire. With a limited budget a meaningful transfer to non fee-paying schools will result in higher class sizes, an increasing strain on resources and lower educational standards. I want fee-

based education to become more inclusive not more elitist. I ask Members to support the proposition. Thank you.

**The Deputy Bailiff:**

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

**8.2 Grant aided Schools: grants (P.72/2011) - amendment (P.72/2011 Amd.)**

**The Deputy Bailiff:**

We then come to the amendment lodged by Deputy De Sousa and I ask the Greffier to read the amendment.

**The Greffier of the States:**

Page 2, paragraph (a), after the words “Victoria College Preparatory School” insert the words, “and funding for all non fee-paying schools.”

**The Deputy Bailiff:**

Deputy De Sousa, do you wish to propose the amendment?

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

First of all I wish to reiterate my declaration that I am a governor at Rouge Bouillon Primary School. I took over recently when Deputy Fox stood down. There is no payment for this; it is a voluntary position to which I was democratically elected.

[16:45]

I hope Members will bear with me, as I will be making the longest speech I have ever made since entering the States [**Approbation**] but it will not be so long that Members will want to fall asleep or go home. I brought this amendment because the proposition from the Senator was very one sided, and if it was accepted by this Assembly would have left our non fee-paying schools at a very distinct disadvantage. If fee-paying schools are going to have their cuts delayed or removed from the process that will make the whole situation fundamentally unfair. Our non fee-paying schools would then be left with even bigger cuts to find than are currently being expected. How can it be fair that one area of education is expected to make cuts when another area is not? Because believe me our non fee-paying schools have taken cuts whereas fee-paying schools have at times had some increases. The Minister’s comments state quite clearly: “I have an obligation under the Education (Jersey) Law 1999 to ensure that there is available to every child of compulsory school age, full time education appropriate to their age, ability and aptitude.” He also goes on to say that Senator Shenton’s proposition if adopted would effectively increase the pressure on our States schools, as I have already said to Members. He also says in his comments: “The fee-paying sector in contrast has not been asked to make major savings over the same period as the non fee-paying schools have and it is only fair that it should be expected to play its part.” I know Members have had many emails over the months on this topic, and I also know that Members have received emails recently from governors of many of our non fee-paying schools as well. My amendment is not about tit for tat. Let us be clear, the Minister has an obligation to every child regardless of culture, social or ethnic background, and it is a real shame but it is a fact that those that shout the loudest get heard. This whole thing in my opinion is not even the main issue. The education of our children is the most important issue here. Without education where will the nurses, doctors, civil servants, street sweepers, shop workers, teachers and yes, even the politicians of tomorrow, where will they come from? We should be investing in education not forcing them to make cuts that are false savings. Only recently in the press the Parents for Choice founder member described delaying the cuts as a logical thing to do. He went on to say that it would be a victory for common sense, and it seems completely crazy to seek to change something without being fully informed of the consequences. This goes for our non fee-paying schools as well. If the main amendment is going to be adopted we

have to accept my amendment as well so there is a clear level playing field for all. There has been much in the media of late denigrating our non fee-paying schools. I would like to give one example of a really exceptional achievement. A pupil of whom English was not their first language, after only a short time of being at one of our non fee-paying primary schools achieved a silver at an Eisteddfod and that was not for speaking French, for speaking Jèrriais, this is a real achievement and it shows the dedication of the staff at our schools. While I know, and all Members do, that the departments must be more efficient, especially in the current economic outlook, the education of our children should not in my view have even been part of the C.S.R. savings. That is the point. These are not savings. They are cuts. The whole C.S.R. process has been flawed insomuch as Ministers have gone for the vulnerable targets and this often happens when we are asked to make cuts. They go for the targets that nobody really wants to lose the funding for, and because of the loud outcry sometimes they are withdrawn as happened in the first round of the C.S.R. with the Grands Vaux Family Centre, and they do a wonderful job. Sometimes, as I say, these are withdrawn and delayed. This then looks as though the Minister has done his duty by finding the savings, and it looks as though it is this House and Members that are trying to stop the C.S.R. process and that is not really what is happening. This Chamber has already removed free school milk. Please think long and hard before you vote on the main proposition and my amendment. We are removing funding for those that we know are in the education system. We know that we are also trying to increase our population due to the demographics that are proposed for the future of the Island. If we remove the funding now where will the additional costs come? I support all education and if we go through with these cuts we are in danger of damaging our education system. But I will finally finish with the fact that if my amendment is not accepted, even though I support education because of the level playing field, I will be in the difficult position, between a rock and a hard place, that due to the inequality I will not be able to support the main proposition. So I will end my longest speech in the House with one final thing. When the C.S.R. process was started Tribal was set up to look at each area of the ministries. When Tribal came to look at education they said that there was nowhere that they could benchmark against Jersey because our system is unique. Our top students are creamed off from our non fee-paying schools and they end up going to Hautlieu. Maybe what we should think about in the future is, maybe, those exam results going towards the schools that started off the education and taught those bright children until they were taken.

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

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

#### **8.2.2 Deputy A.T. Dupre:**

I fully support the aims that Deputy De Sousa's amendment has made as it promotes fairness to all schools whether fee-paying or provided. However, I am disappointed that Senator Shenton has brought this proposition in the first place as it is untimely, disruptive and flawed. As an Assembly we have the Business Plan in September, which is the time to determine departmental expenditure and savings. It is time for the fee-paying schools to come to grips with the planned cuts in education as they have not had their subsidies reduced over the years. All our provider schools have had their budgets trimmed time and time again and to exempt the fee-paying schools from this process would be totally unjust and inequitable. Our schools are not, I emphasise not, second class establishments, rather they wonderfully inclusive with dedicated and well trained staff that provide for children of all abilities and needs. They also teach children from various cultural and ethnic backgrounds, many of whom, who enter our schools in all year groups, have very little grasp of the English language. The majority of parents are delighted with the results from our provider schools and are keen to support them in any way that they can and as more than one parent has pointed out to me they are paying their taxes too, which go to support the fee-paying schools. I do hope that this is not going to become an electioneering platform as we need to address the serious consequences of not delivering the reduction of spending required by both the States and the public.

**The Deputy Bailiff:**

Deputy, forgive me for interrupting you, and it is a very difficult line to draw, but this is the debate about the amendments rather than about the main proposition.

**Deputy A.T. Dupre:**

I am on the last line. I support fairness and equality for all.

**8.2.3 Senator J.L. Perchard:**

Can I remind the Assistant Minister that we are speaking on the amendment to the substantive proposition and the proposition is really not about not reducing subsidies to fee-paying schools, it is not about C.S.R., it is about a Green Paper that was promised. I would like to quote from a question I asked on 30th November last year. A simple question I asked of the Minister for Education, Sport and Culture: “When was it first agreed that a Green Paper on the future of education should be produced? Who was undertaking the work and what are their terms of reference and when does the Minister expect to publish the results?” The Minister replied, at some length, but I have highlighted a couple of points that I would like to raise and to remind Members, the Green Paper was, among other things, to look at secondary education, review of options, including opportunities at sixth form. “The paper will be published shortly and the major consultation will be launched early next year.” Well, we are already June; we have not seen a Green Paper. This proposal of the Ministers, the C.S.R. drive to deliver these savings has to be linked to an initiative of the Education Department. We cannot have a - and I am speaking to ... I can see you looking at me quizzically, I am speaking to the amendment because the amendment says that we must include all schools in this proposal to not cut support for any schools until such time as the Green Paper has been produced. We need a strategy, a plan, and the amendment is absolutely right, it is part of the Green Paper proposal that we need to understand the direction for education, the rationalisation that may be required; the proposals of the Minister to shift more students away from fee-paying into States provision. There needs to be a joined up plan and I am afraid this off the wall proposal of the Minister is simply driven by the lust to deliver his C.S.R. savings. It makes no sense at this time; we need a Green Paper, a White Paper, a policy. That policy can well include, may well have to include, reductions in funding to education in the round, including fee-paying schools, but there needs to be a plan. I am afraid there is no plan and until such time that we have a policy I will not be supporting any proposals of the Minister to make arbitrary cuts wherever he so wishes.

**The Deputy Bailiff:**

If I may say to the Members, I think the proposition is about the preparation of a plan for some schools and the amendment is about the preparation of a plan for all schools. Therefore, the debate on the amendment is whether it should be limited to some schools or to all schools. Therefore, if Members can make their contributions on that basis, I am sure that would be helpful.

[17:00]

**8.2.4 Deputy T.M. Pitman:**

It is strange how it gets near an election and all the people who wanted to cut and cut and cut, change their minds, but I am sure there is some rational reason for that. I will be supporting Deputy De Sousa because I think if we are going to support the main proposition, whatever our feelings about why it has arisen, we have to go along with Deputy De Sousa because it should be about the quality. Non fee-paying schools are absolutely brilliant; generally, they do not get the credit they deserve. They turn out some excellent students and young people and even some rather excellent politicians, probably, and we want that to continue. We want a good mix from everywhere, do we not? So if anyone that is sitting here and they are going to vote for the main proposition then I am afraid, to me, it seems you have to support this amendment. I will take your order and I will keep my main comments for that proposition but Deputy De Sousa really does deserve support.

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

May I just make a point of order with regards to your ruling, just a moment ago, on the amendment?

**The Deputy Bailiff:**

I did not give an order, I gave some guidance.

**Deputy T.A. Vallois:**

Well, guidance, with regards to saying that it is all schools. It does not include all schools because St. Michael's and St. George's have not been included. So it is only non fee-paying schools and the schools that have been mentioned as part of Senator Shenton's original proposition.

**The Deputy Bailiff:**

Deputy Vallois, I am grateful for that clarification.

**8.2.5 Senator B.E. Shenton:**

Although, obviously, the Minister does have discretion. I would just like to, once again, almost apologise to Deputy De Sousa in some ways because this proposition was never meant to be divisory. I have spent a great deal of time, I have been to many of the Island's States schools and I understand not only the work that they do but, obviously, I was a foster parent for a number of years and they do have to deal with some very difficult children and, to be honest with you, some very difficult parents. I never wanted to, sort of, make this divisory and make this fee-paying versus non fee-paying; that was never the case. This came out of my own meeting at Beaulieu, I explained, and the proposition has, sort of, evolved over a period of time. I do not want to see education put at risk. I think I have to just come back to Deputy Dupre who has to realise that when you send your child to a school, it is for a long term and you have got to not only be able to afford that school for that year, it is 14 years you have got to afford it. To accuse me of electioneering is quite ridiculous because the timing was set by Deputy Dupre. It was the Education Department that failed to bring the Green Paper, it was the Education Department that decided to time this when they did; it was the Education Department that decided to leave debate to the Business Plan when it would be too late to do anything about it. So this is not electioneering, this is dealing with an issue that has arisen through the incompetence of a department of which Deputy Dupre is an Assistant Minister and rather than making sound bites I suggest he goes and talks and listens to parents instead of dictating to them what is good for them because this could destroy, not only the education for the fee-paying students, but also the education of the non fee-paying students and the students that need it the most.

**8.2.6 Deputy J.B. Fox:**

I am very troubled about both the amendment and the original, but I will stick to the amendment because the truth of the matter is that this State recognises that we have a severe financial shortfall that has to be addressed. Yes, you can do things slowly or you can do things quicker or you can do things fast track but this is divisive in all its sets of forms because it is saying let us delay. On one side we are talking about the education and the running of it and then the other side, we are talking about the financial support that is required whether it is on fee-paying or non fee-paying. Education is a very complicated issue, it is not simple ... 80 per cent, or thereabouts, and I am going from memory, are paid on wages. We have also had laws, employment laws, that make the situation that you cannot just dismiss somebody like that, you have got to consider the various contracts of the laws that we have already made and that has only been done in recent years. You cannot just say that we are going to delay something and not have the money to be able to do it because of States debate. We are also waiting for Green Papers; we are waiting for Business Plans, *et cetera, et cetera*. I have got a problem here because we also have got to think about the children, which is the most important thing. Now, from the 9 years that I spent on Education and a lot of it

dealing from the lowest end, at the pre-primary school, and bear in mind that we are talking about the compulsory age of 5 to 16, but then you have got the education, further education, after 16, and all the skills and all the other things that come into it and that is without the culture and the sports side of things. People go on courses ... Sorry, I talking against someone. [Aside] Whether it is G.C.S.E. (General Certificate of Secondary Education), A.S. (Advanced Subsidiary) levels, A. (Advanced) levels, B.T.E.C. (Business and Technology Education Certificate) or whatever it is, these courses are not just for 12 months, they are succession after succession, some are 2 years, some are 3 years, some are even 4 years. It is a process that we go through, which is very important. You cannot just say: "Oh well, we are not going to maintain the funds so you have got to lose teachers." Those teachers might be an integral part of the courses that the students are taking and you cannot just take something out and say: "Oh, you cannot complete that course", or whatever. This is divisive in both its amendment and in its overall theme. There is a process to go through and the process is that we are going through C.S.R. process; we are going through a budgetary process and at the end of the day all these things that are in these documents here can be put in but at the right place. We are cherry-picking again. We are trying to delay things and I understand the reasons that we are trying to do it. But we are doing it again, just like we do in Clothier and all the other things, we pick out the bits we do not like and we try to delay things and then the other bits do not knit together. In this case it is very serious, we are talking about the children and we are not just talking about secondary school, we are talking about from nursery to primary school because this amendment, especially, is very wide reaching. Therefore, I shall not be voting for either of them because I cannot support something that is taken out of, what I consider, a proper place because of the complication of where it sits in the overall things involving the children, the teachers, the parents and everybody else. Thank you.

#### **8.2.7 Deputy J.A. Hilton of St. Helier:**

Just briefly. I will be supporting this amendment that has been brought by Deputy De Sousa. I think it is entirely unfair to support the main proposition and not support this amendment so that the States schools suffer, so I will be supporting the amendment.

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

I will also be supporting the amendment for the reasons just given by the last speaker. I just wanted to say, I do not know how many Members have picked up on this, but this is about a broken promise. On 2nd November 2010 the Minister for Education, Sport and Culture made a statement to this House, and I will read a little bit of it to remind Members why we are having this debate today. He said: "Members will be aware that Senator Perchard has recently lodged, au Greffe, a report and proposition, P.146, in which the States have been asked to request me not to make any reduction in the level of financial support in 2011 for fee-paying schools until the matter has been brought to the States. I have discussed this with the Council of Ministers and they support my view that the States should be asked to consider any significant changes to the funding of the fee-paying schools. I am therefore happy to accept Senator Perchard's proposition." I will fast forward to the last paragraph: "I look forward to further discussions on this subject and intend to bring a report and proposition to the States in due course for a full and proper debate and in time to allow schools to set their fees within the normal timescales." That was the Minister's promise, in fact I think this was the Council of Ministers' promise. We have not seen that proposition, the schools have been told what grants they are having reduced and it has taken Senator Shenton and Deputy De Sousa to bring this matter to the States and it is all about a broken promise.

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

I do not know if we need to declare an interest. I have got a child at school and he is not fee-paying. I am not trying to be flippant, States educated, that is all. The statement that was read out by Senator Perchard in relation to the response given to him by the Minister for Education, Sport and Culture, the Deputy of St. Ouen, was something that I discussed with Senator Perchard. I

found it while trawling through some different bits of paper, but it does say ... Senator Perchard highlighted it and I think I would just like to echo with Senator Shenton, as well, is that we are often accused of electioneering because we are responding to issues that have been held back to make the Ministers look good at election time and we are having to try to battle those at a time the elections are coming up. We have got the Island Plan that is a year and half late and we are being accused of electioneering on that, it would not have been an election a year and half ago, the same for this. In one sentence, I appreciate you want the short contributions now, he says I am going to be supporting the amendment and the main proposition. The Minister says: "I hope as many" ... he talks about the consultation. "It was agreed in 2009 that a Green Paper should be produced on the future of education. This document will be the outcome of a series of policy reviews commissioned early in 2009, shortly after my appointment as Minister for Education, Sport and Culture, and which are now either complete or nearing completion", 30th November 2010. "I hope as many people as possible will contribute to the public consultation so that we can deliver an education system that meets the needs of all people regardless of ability or background." So background obviously means people without reasonable means and it also means backgrounds of people with reasonable means. So it is only sensible that we support Deputy De Sousa, and I would ask the Minister to reflect upon his own words to this Assembly in thinking how he is going to deal with the rest of this proposition.

#### **8.2.10 Senator T.J. Le Main:**

I have been very quiet lately and it is rather time that I got myself together again but, you know, I feel quite ashamed today to think of what is being proposed. How these unthought out - and I am going to support, very much, Deputy De Sousa on this amendment - how unthought out these proposals that cut back on school education, not only the private education schools but all schools. These proposals are just quite enormous sums. We have no Green Paper, no plans, no policy, nothing. Every day we read, yes, every day, we read ... and I, as an ex-Minister, now have to read in the *J.E.P.* the millions being wasted on handouts and other faux pas that are taking place or have been taking place. We keep hearing all the time: "It will not happen again, will not happen again", I have been listening to this for 20 years. I want, and the public want to know, what is really going on. The public, and many like me in the House, are ashamed to continue to read of the millions wasted when these unthought out educational proposals will affect so many families and children.

[17:15]

I have no intention to follow at the moment. I intend to speak on the main proposition on Tuesday. I have to say that we are getting absolutely fed up of what is going on and this is, as Senator Le Gresley had said, this is broken promises, this is just picking things out of the air. I feel that the public are really going to have something to say in the next few months in the elections of the way we are carrying on. I just hope that the amendment is supported today and that we vote down any of these proposals until we get a proper Green Paper, as promised, with plans and a proper policy that has full consultation with the public and the Island. The biggest thing in somebody's life is the education of their children and people put their lives and borrow and beg to the hilt for the future of their children, like I have done and all of you have done in this Assembly. Today, the way we are going on the ill thought out proposals, or further cutbacks, without any thought of, particularly in the private schools where the bursaries are given out to poor people because of further wanting to further their faith and this is their choice. I feel quite ashamed and I am going to have something to say on Tuesday I can assure you.

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

If I may, I do not believe we can. It seems to me that we are going very slowly today and it seems to me that this is about the cuts and the prevention of cuts whether it is main motion or the amendment and that we really do have to hear from, (a) the Minister for Treasury and Resources, and (b) the Minister for Education, Sport and Culture, if we are going to have a decent debate on

this topic. They seem to be holding out for Tuesday but I do not see how we can go on for that, I would propose the adjournment now if we are not going to hear from the Minister for Treasury and Resources and Minister for Education, Sport and Culture pretty shortly.

**The Deputy Bailiff:**

Are you making a proposal or is that a speech?

**Deputy G.P Southern:**

No, it is not a speech.

**The Deputy Bailiff:**

On the amendment? So you are making a proposal ...

**Deputy G.P Southern:**

If you wish a proposal to adjourn because ...

**The Deputy Bailiff:**

Is that seconded? **[Seconded]** All Members in favour of adjournment ...

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

Ask for the appel please.

**The Deputy Bailiff:**

The appel is called for as to whether we should adjourn at this stage. I invite Members to return to their seats and ask the Greffier to open the voting.

<b>POUR: 20</b>		<b>CONTRE: 26</b>		<b>ABSTAIN: 0</b>
Senator T.J. Le Main		Senator P.F. Routier		
Senator A. Breckon		Senator P.F.C. Ozouf		
Senator F.du H. Le Gresley		Senator B.E. Shenton		
Connétable of Trinity		Senator J.L. Perchard		
Connétable of Grouville		Senator S.C. Ferguson		
Deputy R.C. Duhamel (S)		Senator A.J.H. Maclean		
Deputy R.G. Le Hérisier (S)		Senator B.I. Le Marquand		
Deputy J.B. Fox (H)		Connétable of St. Brelade		
Deputy G.P. Southern (H)		Connétable of St. Saviour		
Deputy of St. Peter		Connétable of St. Clement		
Deputy J.A. Hilton (H)		Connétable of St. Peter		
Deputy P.V.F. Le Claire (H)		Connétable of St. Lawrence		
Deputy S.S.P.A. Power (B)		Connétable of St. Mary		
Deputy S. Pitman (H)		Deputy of St. Martin		

Deputy of St. John		Deputy J.A. Martin (H)		
Deputy M. Tadier (B)		Deputy of St. Ouen		
Deputy of St. Mary		Deputy of Grouville		
Deputy T.M. Pitman (H)		Deputy J.A.N. Le Fondré (L)		
Deputy M.R. Higgins (H)		Deputy K.C. Lewis (S)		
Deputy J.M. Maçon (S)		Deputy I.J. Gorst (C)		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy D.J. De Sousa (H)		

**The Deputy of St. John:**

Is there an error, yet again, on the Connétable of St. Martin?

**The Deputy Bailiff:**

Very well. Sorry? The Constable of St. Martin, in his absence, voted in favour of the adjournment [Laughter] which, by any analysis, must be right and proper. [Laughter]

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

Well, it would be so much better if we were hearing from the Minister of Treasury and Resources, but there you go. Yes, certainly, I echo what other people have said. If you are going to support the original proposition you have to support the amendment, there is really no 2 ways about it. I cannot follow Senator Le Main's emotion but I can follow with a few figures. What I find difficult to square is that we see in the original proposition, there is a table of the increases in fees that Beaulieu, over the last few years, and he goes 4 per cent, 8 per cent, 7 per cent, 10 per cent, 10 per cent, going over the decade and then into the last 5 years, 3 per cent, 6 per cent, 6 per cent, 6 per cent, 6 per cent. Those are increases in fees and at the same time the Education Department was imposing one per cent efficiency cuts on those schools. Okay, so that is what you put in the balance on one side and on the other side if you look at the table in the ... I think it is the amendment, yes, in the amendment at the back, appendix 3, you can see that at the same time as Beaulieu's fees were going 6 per cent, 6 per cent, 6 per cent, 6 per cent annual increases, at the same time the States non fee-paying schools were undergoing efficiency cuts of 1 per cent every year. So I find that difficult to square, there are 6 per cent increases on the one hand and one per cent cuts going ahead every year on the other hand. We see the result in the Minister's comments to the main proposition where there is a table on page 5 with an amazing bar chart, which really surprised me, that the amount spent on the education of a child in the faith secondary schools is £7,500, this compares to £5,000, £7,000 in the non fee-paying sector, a difference of more than 30 per cent. So that is where the difference is, 30 per cent more is spent per child in the faith ...

**Senator B.E. Shenton:**

Those figures are wholly inaccurate.

**The Deputy Bailiff:**

Please carry on but please remember that you are addressing the amendment.

**The Deputy of St. Mary:**

I am addressing the amendment. I am saying that on any ground if we are going to, on grounds of fairness, include one set of schools then we have to include the other. I hope that the Minister will comment on whether that table is accurate or not because, certainly, Senator Shenton's figures have been questioned by others in some of the documents. So that is really all I have to say and I think if we vote for one then we vote for the other.

**Deputy G.P. Southern:**

My light was here to say please, Minister for Treasury and Resources, please Minister for Education, Sport and Culture, will you contribute to this debate since you started this whole thing. However, I shall attempt to address some of the issues here, since I am requested to.

**The Deputy Bailiff:**

I am sorry, I am absolutely not forcing you to speak; you flashed your light a moment ago so I thought you wanted to speak.

**Deputy G.P. Southern:**

No, not consciously. I do not know if it was a ring binder moment, possibly.

**The Deputy Bailiff:**

If you do not wish to speak then you are free to sit down, I will cross you off, you are free to speak when the debate resumes if it needs to.

**8.2.12 Deputy M. Tadier:**

I do not have much to say so I may be the last speaker and I will not have to speak on Tuesday on this part. Just some observations from ... I am hearing some very strong opposition from the likes of Senator Le Main about these cuts saying that it is absolutely terrible that we are thinking of making cuts to the education system. It has already been said, of course, that first of all, the majority of Members in this Chamber did endorse the cuts that the Minister for Education, Sport and Culture, call them cuts or savings, whatever one will, is putting forward so there is an inherent contradiction here. Sorry, in the Business Plan.

**The Deputy Bailiff:**

Can we go back to the ordinary rules of debate and let the Deputy make his speech without interruption, thank you.

**Deputy M. Tadier:**

There is a clear ethos in the Strategic Plan, in the Business Plan that the Minister for Education, Sport and Culture, along with many other Ministers, had to make savings and part of these savings, when they simply get put on to the private schools, because there simply is not enough meat to cut in the public sector schools, what happens is that certain Members in this Assembly do not like it even though they are in favour of a small society when it suits them, but as soon as any money is threatened to be taken off the budget off these fee-paying schools, we hear Senator Shenton coming back. I do have to commend him because, ironically, at least he is standing up for the interests of his own schools. In another way you could argue that the Minister for Education, Sport and Culture should also be fighting against the cuts themselves, but there are all sorts of contradictions going on in this Assembly. The Minister, one has to feel sympathy for him, partially, because the Assembly and the majority has charged him to make these savings. As I have said, when those savings fall on

the fee-paying sectors, it is simply not acceptable. I can vote with a clear conscience because I opposed the cuts initially across the board and, clearly, I do not favour any of the cuts in the public sector schools. I know that they function already on a very tight budget. I am fearful for the big school, for example, in my own district, which has a very good secondary school, but also other schools that they simply cannot make any savings in real terms and that may or may not be the case for the fee-paying schools. That needs to be discussed in the substantive debate. I think my position will become clear on that. I do agree, nonetheless, with Senator Shenton that we do have to tread very carefully when we are making cuts to the very important services such as health, but in this case, education, because they are so fundamentally important to the fabric of our Island and that we could be predicating a false economy for the future. If we cut a little bit here, a little bit there, it might seem like it makes a short term saving but it could have vast consequences both finally and socially later on. So, insofar as that, I definitely support the very shrewd amendment, it has to be said, that Deputy De Sousa has brought here.

**Senator J.L. Perchard:**

If the previous speaker could clarify for Members as to when the States charged the Minister for Education, Sport and Culture to make cuts in the region of £11 million? I do not think there is anything in the public domain, or any decision made by this Assembly. If the previous speaker can supply that evidence I would be very interested in it.

**The Deputy Bailiff:**

If that arose out of the previous speaker's speech, it is not relevant to the amendment which is what we are discussing but Deputy if you wish to answer it, if you can.

**Deputy M. Tadier:**

I think my points were clear, whether the exact sum of £11 million or not has been ... that is going to come out later. I think there are speakers who are going to speak on Tuesday who are going to address this issue. My point is that the Assembly has been very clear about wanting Ministers and the Minister for Education, Sport and Culture to make cuts insofar as many Members thought that the last set of cuts did not go far enough. So there is definitely a clear message that has gone to the Minister for Education, Sport and Culture in the past to make cuts in education and that is what we are seeing him proposing to do at the moment.

**8.2.13 Deputy M.R. Higgins:**

If, I may. As the States is meeting on Tuesday, which was an unscheduled sitting, I may not be here. I am going to try and change plans that have been in place for some time but I may not be, but I would like to register the fact that had I been here I would be supporting this amendment. It is only right that all schools are treated equally.

**The Deputy Bailiff:**

Thank you, Deputy. Can I just say we are about to hit 5.30 p.m., I am sure that the adjournment is going to be proposed imminently but numbers of the speeches we have this afternoon have dealt with the main proposition as well as the amendment. It is perfectly possible to make all those speeches on the main proposition whether it is amended or not. We are in danger of having 2 speeches on the same subject matter. When the States resumes on Tuesday, I do hope Members will try and concentrate. At the moment, the first thing, on the amendment, which is whether it is only the question of the schools named in paragraph (a) of the proposition or whether one adds to that all non fee-paying schools as well. Does somebody wish to propose ...

**The Deputy of St. John:**

I propose the adjournment.

**The Deputy Bailiff:**

The adjournment is proposed. These States now stand adjourned until 9.30 a.m. on Tuesday.

**ADJOURNMENT**

[17:30]