

# STATES OF JERSEY

## OFFICIAL REPORT

### WEDNESDAY, 11th SEPTEMBER

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[09:31]

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

**PUBLIC BUSINESS - resumption**

**1. Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) - Articles 9 to 12 - resumption**

**The Bailiff:**

We return to the matter we were dealing with when we adjourned yesterday, that is Projet 73, Draft Public Finances (Amendment No. 4) (Jersey) Law 201-, lodged by the Minister for Treasury and Resources. We were debating Articles 9 to 12 and I had seen Senator Ferguson.

**1.1 Senator S.C. Ferguson:**

Oh, it is a bit early in the morning, Sir, I apologise. Basically, we are on a tale of 2 Articles. There is Article 10 of the amendment, which covers the resuscitation of Article 11(8) requests and Article 12 of the amendment, which covers internal movements between heads of expenditure. We have had a long email last night from the Minister for Treasury and Resources making a number of explanations, but I would like to take us back a step. What is a contingency? A contingency is an unexpected event. I have known it called in a household... the wife can call it the 'running away money' or it is money for a new washing machine, things like that, but it is money that is set aside for unexpected events, things you have not planned for. If you are an investment adviser, you never invest 100 per cent of your client's funds, you leave them a certain amount of money for contingencies. So we have established that. We have contingency funds, but what do we do? We allocate them: we use them as part of the budget. It beggars belief. Our contingency fund allocation is full of things which we have agreed in the States. We have asked for them to be put in the budget and they have not been included in the budget. The Committee of Inquiry, for example, that should have been put in the budget, but no, it is in the contingency fund. It is absolutely incredible. Then if we look at the email from the Minister for Treasury and Resources, he has been talking about events and these were funded as Article 11(8) requests, but I do wonder. We are told: "Additional funding for unavoidable court and case costs" but there is not any overnight urgency about things like that. "The cessation of the U.K. (United Kingdom) Reciprocal Health Agreement." That came as a combination of political bias plus incorrect charging, or in fact over-charging by N.H.S. (National Health Service). These were not overnight urgencies, but anyway, that is as far as I say. We are not using contingency funds correctly. In fact, Article 9 of the Law provides particular circumstances when the M.T.F.P. (Medium-Term Financial Plan) can be amended: states of emergency, threat to the health and safety of Islanders, threat to the economic, environmental or social wellbeing of the Island. This is Article 9 of the main law, and this Article 10 of the amendment is amending Article 9 of the main law. I hope I have not lost anyone there. So basically, we can alter the Medium-Term Financial Plan under certain specific requirements, but the point about that is that you can only alter them by bringing a proposition to the States. Article 20 also provides for urgent expenditure, but these do not have to come to the States because this is a movement of monies between Heads of Expenditure. So we have 2 existing routes of providing money for emergencies. Article 9 under the existing Law, it is under a range of scenarios and under strict conditions, but the Council of Ministers must lodge a proposition with the States, whereas Article 20, a state of emergency - i.e. a state of emergency has been declared and there is an immediate threat to the health and safety of all Islanders and immediate expenditure is required - has to be funded by a withdrawal from the Consolidated Fund or met by existing Heads of Expenditure as determined by the Council of Ministers. So we can get emergency funding. We have contingency funds and we want to bring back Article 11(8) - we call them 11(8) requests - to provide additional flexibility, so we now have 2 pots of money where we used to have one. As I

have said, we are using the replacement to 11(8) - the contingency funds - and we were promised that contingency funds, as Deputy Vallois said yesterday, when the contingency funds came in, 11(8) requests were gone. Now we have 2 pots; we have the contingency fund pot and we have the 11(8) availability. We do not need both, not if we are practising good financial management and sound budgeting. Then Article 12 gives even more flexibility: "Currently, a Minister can vary a Head of Expenditure under certain specific circumstances to transfer from capital to revenue or *vice versa* to comply with accounting practice, to reflect a transfer of Ministerial functions or the transfer of a service or function from one States-funded body to another, to transfer to contingency expenditure or to withdraw funds after the year end." The main thing is that the transfers are for very specific purposes. Under this amendment, a transfer will now be allowed between Heads of Expenditure for any reason without coming back to the States. It will be recorded for the States, but it will be 6 months after the changes have been made, so we are not going to be able to comment on it. It will be done.

[09:45]

In other words, this gives a potentially unlimited operational service capability, and as our advisers said, will allow a level of in-year flexibility which we have not seen among organisations we have worked with. This is C.I.P.F.A. (Chartered Institute of Public Finance and Accountancy), the finance and accounting professionals. As I say, it is a very-known and very well-respected organisation. Our advisers are particularly concerned that this inherent flexibility will have the potential to undermine the rigour of the Medium-Term Financial Plan if budgetary resources can be moved. The Minister for Treasury and Resources will have the ability to answer at the amendment. I do wish he would possess his sole impatience.

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

Would the Senator give way, because I just wanted to try to be helpful to her, because she said something that was inaccurate, if I may. It is designed to be helpful, if she would give way.

**Senator S.C. Ferguson:**

Absolutely.

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

Just to reassure the Senator, what she said in terms of reporting is not quite right, because every transfer will be subject to Ministerial Decision, the actual giving Minister must sign a Ministerial Decision which is then published, then the receiving Minister signs it and then the Minister for Treasury and Resources does it, so what she said was not quite right. The actual reporting of it is done prior to even the Minister for Treasury and Resources signing off. That is why I was remonstrating, sorry.

**Senator S.C. Ferguson:**

It comes back to the States in the budget transfer list 6 months after it has happened and 9 times out 10, you find that it is an exempt decision so it is not listed. Anyway, it is not a very good way to start the morning.

**The Bailiff:**

The Minister will have the opportunity of responding at the end.

**Senator S.C. Ferguson:**

As I say, our advisers are particularly concerned about this inherent flexibility because it does have the potential to undermine the rigour of the Medium-Term Finance Plan if budgetary resources can be moved around with impunity and/or transferred to contingency for any reason. Effectively, we

can agree the bottom line of net revenue expenditure, but anything you like can happen above the bottom line and we shall be lucky if we hear about it in less than 6 months. I detect the odd look of disbelief. I can assure Members that we do find that a function will move from A to B without so much as a how's-your-father, and it would be a good thing if procedures were followed, but frankly, this is no way to run a chip-shop, let alone a national government. On the other hand, this may be one of those unintended consequences, and I would ask the Minister for Treasury and Resources to withdraw this particular part of the amendments and bring them back after they have been reworked. For example, the Minister could use something similar to Standing Order 168 that we use for property or something like that, but if he is not going to withdraw it, then I would ask Members to reject Articles 10 and 12.

**The Bailiff:**

Does any other Member wish to speak on these Articles? Then I invite the Minister ... Deputy of St. Ouen.

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

I would just like to focus on Article 10 and it is worth reminding Members what decisions were made and what we were told of by this Council of Ministers about a year ago, and it starts with the Strategic Plan, and we were told in the Strategic Plan under the resource summary: "Our early work demonstrates that there is sufficient flexibility within our financial estimates to enable the Council of Ministers to deliver against the proposed strategic priorities." We then were presented with a Medium-Term Financial Plan which started with quite considerable amounts of money allocated for contingency and, equally, growth. On the proposition of the Council of Ministers, the amounts of contingency and growth were significantly reduced, but again, we got assurances that that was quite feasible because the flexibility within the Medium-Term Financial Plan still allowed us to deal with any unforeseen changes in priority over the period of the plan. Let us not forget the whole point of having a 3-year plan was introduced to try and stop what we could term 'expenditure creep', and it is something that the C. & A.G. (Comptroller and Auditor General), Chamber of Commerce and others have continued to criticise the States Assembly about, because we agree a budget and then when it comes to it, we increase it for various reasons. It can be argued at the time that there are legitimate reasons, but that is what happens. The whole idea of the Medium-Term Financial Plan is to control States spending, because let us not forget it is the taxpayer that ultimately pays the cost. What are the public saying to us? The public are saying to us and continue to say: "Please control expenditure. Please manage within the budgets that are being set by the Council of Ministers" and indeed agreed by this Assembly. The removal of Article 11(8) that we keep talking about was due to the fact that it did allow that budget creep and it was determined that there was a much better way of dealing with it, which is why significant sums were allocated, as I say, for contingency and growth over the period of the plan. I do not know if other States Members are confused, but we have the Minister for Treasury and Resources who continues to tell us how well we are doing and how well the Government is performing. Yet less than 12 months after the new Medium-Term Financial Plan was introduced: "Oh, we might need some extra money for urgent need." What is "urgent need"? No explanation has been given, a couple of examples, but some of those examples, if you look in the documentation that we have been provided, have already been allowed for. Also, as the Chairman of our panel has already mentioned, there is also already an Article that allows the Council of Ministers to come back if there is an urgent need, which is described and outlined and expressed in Article 9. The Minister seemed to raise doubts or issues regarding the comments that the Chairman made yesterday, I believe, regarding the fact that the Scrutiny Panel and States Members had not had a Ministerial response to the Scrutiny report. I would just like to say that it is important for us to see the full picture, and part of the reason there is a requirement to present a Ministerial response is it provides

and responds to a Scrutiny report and recommendations and findings contained in it. There is good reason for that, because if we look at S.R.18(Res), which was presented to the States on 5th December 2012 by the Minister for Treasury and Resources in response to the Scrutiny Panel's review of the Medium-Term Financial Plan, and we go to the response to finding 7, we get confirmation in a response from the Minister that flexibility is still there, flexibility has been provided for. He highlights in his response a number of different areas and options that the Council of Ministers, together with the Minister for Treasury and Resources, can use if there is a change of priority or a need to deal with certain matters within the period of the plan. Yet today - or yesterday, should I say - we are being told a totally different story. What has changed? Have we been told what has changed? No, we are just told: "Oh well, we have got to do it just in case. We need that extra flexibility." Where is the evidence? Where is the evidence that the Council of Ministers have demonstrated that they are delivering the savings, they are dealing with the priorities, they are managing within budget? In fact, the opposite exists, because the Minister for Treasury and Resources announced and shouted from the rooftops: "We have underspent by £42 million in 2012." £42 million. Well, if that is not flexible enough, Minister, and the Council of Ministers, I ask what is? Yet we are told: "Well, we need a bit more flexibility." I do not believe that the case has been made to reintroduce into the Public Finances Law (Jersey) Law 2005 at this time when we are only part-way through the very first Medium-Term Financial Plan that there is a need for this particular Article. I really do ask States Members to consider whether or not we should or there is a need and there is proof that this particular reintroduction of this Article 11(8) is required. Thank you.

**The Bailiff:**

Does any other Member wish to speak? Deputy Maçon.

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

Very briefly. First of all, I would like to congratulate the Corporate Services Scrutiny Panel in what has been a thorough examination of these Articles. What is striking me is that, unanimously, all the members of the Corporate Services Panel are standing up and saying that first of all they would like an actual response to their report before we proceed, and I cannot understand for a moment why the Minister for Treasury and Resources is so keen on dealing with this. That does not seem to me as appropriate. I think that just out of courtesy, given that this is not an urgent matter, that it cannot wait, I do not think that it is appropriate to proceed in that manner. Secondly, I have concerns that the Corporate Services Scrutiny Panel have raised which is a u-turn on this case of 11(8) requests. Yes, we were told in the Medium-Term Financial Plan that we would bring in contingency funds in order to do away with this particular Article because it would not be needed, and the issue for that was to include contingency funding, but that put up the net expenditure of the States overall. I believe it was about approximately £20 million, but it was a figure to increase the overall States budget under the understanding that we would not need 11(8) requests, and now all of a sudden we are turning around and coming back and saying: "Well, thank you very much for that extra pot of money. Now we want this extra flexibility in the plan." It does not seem to make any sense to me and we are just making a u-turn. I did not support it then and I am very concerned about changing it yet again. I am also alarmed by what the Corporate Services Scrutiny Panel have brought to our attention today, which is about changing some of the governance procedures between shifting monies between departments - the Heads of Expenditures - for absolutely any reason whatsoever, which again does cause me alarm. The reason for this is because as it is currently constituted under the Public Finances (Jersey) Law 2005, it is in order to protect services because it is tagged to certain services when they are transferring functions, but if we start to remove that, then what is the safeguard in order to protect the services that we as a States Assembly have agreed when debating the Medium-Term Financial Plan? Obviously one of

our key functions is expenditure, agreeing that as a States Assembly, and providing to the Council of Ministers in order to carry out their spending plans... again giving them the ability to change it basically as and when they see fit.

[10:00]

Where does that leave Back-Benchers, where does that leave other Members of the Assembly when we pass something in the Assembly? I am very concerned about these amendments and I would ask the Minister for Treasury and Resources to consider deferring this debate so that he can have proper time in order to consider the Corporate Services Scrutiny Panel's response, to allow the Corporate Services Scrutiny Panel... as we are often told that: "Scrutiny is held in such high regard and we appreciate the work of Scrutiny so much that we believe it is an important part of how the States Assembly functions... Oh, unless it is something we want, in which case we will carry on and ignore it." I do not think that is acceptable. I do think we need to stand up for Scrutiny and our colleagues on Scrutiny, who have worked incredibly hard over the summer in order to deliver this for us today and I would ask the Minister for Treasury and Resources to consider that, because I do not think at the moment it is appropriate to proceed.

**The Bailiff:**

Does any other Member wish to speak?

**The Bailiff:**

Very well, I invite the Minister to reply.

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

I will address immediately Deputy Maçon's remarks, because I have a high regard for Scrutiny, but at the end of the day we sometimes have to agree to differ and I am sorry that on this occasion I have not been able - as I explained to Members in my email last night - to respond to the Corporate Services Scrutiny Panel report in a formal way. I would say in my defence, as I said in my email last night, I have already considered - and the Deputy Chief Minister was kind enough to sign-off an amendment while I was on leave - responding immediately to the Corporate Services Scrutiny Panel's report in relation to the issue, not a matter of these Articles, but immediately on issue of the reporting of the Treasurer of the States to the Council of Ministers. It is just simply not fair to say that we have not. I would also respectfully say to Deputy Maçon that he might not be aware that I addressed the panel on these amendments prior to lodging them, I think on 2 occasions. I wanted this debate and was requesting this debate because of the importance putting in on the statutory basis the Fiscal Policy Panel, whose terms of office have expired and have created a problem for me. I wanted this debate before the summer break. I briefed the Corporate Services Scrutiny Panel before lodging the amendments in June and I extended the period of time. I said "Yes, we would debate this in September", and I am afraid this is urgent, this is an issue that needs to be resolved because of the other provisions there and I want the Public Finances Law put in place on a proper basis so that we can do it, because much of this is agreed. I am afraid to say that on some occasions there is a political colour of different Members and the Corporate Services Scrutiny Panel have particularly strong views about issues in terms of public finance which might not even accord to what Deputy Maçon believes, and so it is not a bad thing, it is not a criticism, it is not a slur against Scrutiny to say that on occasion we will have differences of opinion. There are 2 issues which we do not agree on which I will address during the course of my remarks and I will be saying to Members that there is an entirely reasonable argument to allow Heads of Expenditure to be moved between departments. Frankly, on the other issue of whether or not this Assembly wants to give itself provision to make additional allocations during a 4-year term, that is a joint issue between me and this Assembly. Does the Assembly believe that it wants the ability during a 4-year term to allocate something additional to a department given a political priority, because this Assembly

could be in a position that it wants to do something, but the law does not allow it. That is clearly a matter for Members, but I do not think it is fair that Deputy Maçon casts me or the relationship with Scrutiny in that way. Now, Deputy Vallois, Senator Ferguson, Deputy Le Fondré spoke strongly, and indeed, Deputy Vallois, if I may say, she went perhaps a little too far in saying that on the 11(8) thing, that she was going to bring forward a proposition to completely do away with contingencies. I ask her to reflect upon those remarks and really whether or not that is the kind of Stateswoman-like approach that one may take. I think that was probably a petulant remark, because contingencies are absolutely required and they have improved the running and the appropriate running of the Council of Ministers. Contingencies were not available before, hence 11(8) requests were required and they came regularly. The Assembly allocated tough budget allocations to departments and contingencies were put in place, for example, as a protection to deliver some savings such as procurement and it is simply not right for Senator Ferguson also to say that the Council of Ministers has earmarked or has spent contingencies before they have been made. The Treasury and Resources Department this morning has given me a list of potential risks in 2014 and 2015 of new things that have come forward. Well, Senator Ferguson again seems to know what is on this list before I have even said anything, which is interesting. I will give one example of something that this Assembly today will deal with, which is an Assembly request potentially already endorsed by Deputy Young which was not foreseen in the M.T.F.P., which is a real-live example. The fact that the planning appeals alternative system is going to be more expensive - that was not envisaged in the M.T.F.P. - is an absolutely good example of this Assembly having something additional which we need to find resources for, which this Assembly is asking me in a later debate to find resources for. That is on the list of contingencies. Can we say to the Minister for Planning and Environment: "We want you to give a new appeals mechanism. We know it is going to cost more money, but you have to live within your own budget to do it" when it is going to cost £200,000 on a relatively small department that has been one of the leaders, if I may say, to the Minister for Planning and Environment in terms of delivery C.S.R. (Comprehensive Spending Review) cuts? Now, that is an example of a political priority which shows that you need contingencies and some flexibilities, and yes, I will give way to Senator Ferguson.

**Senator S.C. Ferguson:**

I wonder, Sir, for the purposes of clarification the Minister would like to read out the list of contingencies he has there in front of him.

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

Well, they are quite long, I am not going to read out everything, but some of them - because it would just be not a good use of the Assembly's time - yes, I will summarise, because some of them are quite lengthy - the H.C.A.E. (Historic Child Abuse Expenses) expense claims. Now, that is the expense claim for the Historic Abuse Redress Scheme. That has been a use of the contingency. I defy any Member of this Assembly to say that that is not an absolutely appropriate and unforeseen amount in expenditure and the amounts have been there. There is an amount for the Band of the Island of Jersey. I cannot remember exactly what it is; I think it is for uniforms. That was something that was forgotten. Is there any Member of this Assembly that is going to say to me, to the Minister for Treasury and Resources, in something ... and yes, there will be things that are forgotten. We are a £700 million organisation and it is £20,000, and should we say the Band of the Island should not ... or: "No, the Treasury cannot sort it?" Yes, we have put in place provision for additional funding for a Cadet and Military Liaison Officer, which is run out of Government House, doing excellent work in Grainville School and others with cadets and, yes, we put the additional funding, reaching disadvantaged youngsters and helping Grainville in terms of their arrangements. A bad thing? Something that was foreseen 2 years ago? I do not think so. There are contingencies for pay awards, the doctors' pay award, which Members may be aware of. There are other things to

do with the nurses' pay award and others. So are some contingencies held for the flexibility of negotiating the pay settlement. Entirely appropriate arrangements and Deputy Vallois knows the contingency has got some sub-allocations in terms of the pay award and others, and yes, looking forward there is a contingency item here forecast potentially for other Members bringing propositions for things that we may be asked to be spending money for and Members do bring propositions. There is a proposition from Senator Breckon asking for us to come forward with the compensation amount. Where will that come from? So yes, it is earmarked in Treasury contingency. Is that the Treasury being wrong, is that us saying ... "I am not saying we should agree to it" but it is there to do it. Nurses' pay award, countryside infrastructure, some Parish schemes that we want to do and bring forward. L.V.C.R. (Low Value Consignment Relief) costs, that was unexpected and nobody would ever say anything for that. There are other things in relation to, certainly, some aspects of the London Office were not originally put in place. Those are relatively small amounts. So the Charities Law, there are some arrangements that we think we need to put in place that was not provisioned there. That is a one-off amount. The Discrimination Law, there are some additional costs that were not envisaged at the time of the M.T.F.P. - I am just running through these - and there is the planning appeals thing there, which will come forward later, which is in 2015 at £148,000. Simply the issue, contingencies are agreed and an amount of money is agreed by this Assembly to be held by the Treasury to be released for departmental challenges and yes, it is difficult, and that is appropriate and we do need to assist. We need to be tough on departments, we need to be tough on them delivering their savings, but we do need to have some flexibility where that is the case and I need that flexibility, and surely it is not right for Deputy Vallois to simply say: "Do away with contingencies and every time a Minister has a problem, they need to come to this Assembly to solve that problem". That is simply unreasonable, Members are delegating to the Government of Jersey and the Treasury the operational running of departments and there are going to be unexpected items and we are tough on contingencies and contingencies are working well. The Deputy of St. Ouen: I am grateful to the Corporate Services Scrutiny Panel for recognising the tough financial management that has been improved over the last few years and certainly in my tenure and in the tenure of Deputy Noel and the former Connétable of St. Peter, and in our term of tenure at the Treasury and Resources Department, we have been tough and we have improved financial management. I will give way to Deputy Young, if he wishes.

#### **1.1.4 Deputy J.H. Young of St. Brelade:**

I am sorry to interrupt the Minister for Treasury and Resources, but I am concerned about his explanation on the difference between contingencies and transfers. He has cited a number of examples where I am sure Members would want to ensure that we have flexibility, but I am still very confused over what are those changes; for example, the example he gave about planning applications, just what comes under the notion of 'requires additional sums to be voted in the plan' and what of it can be dealt with under transfers. I would have expected there would have been sufficient flexibility within the States budgets to deal with those sorts of items by transfers between vote. I would like that clarification. I am very unhappy with this process where we are throwing around a really important ...

#### **The Bailiff:**

I am sorry, you cannot make another speech.

#### **Deputy J.H. Young:**

My proposal is that Article be referred back under Standing Order 83 for this part in order to have an explanation in writing from the Minister to clarify this point before we vote on it.

#### **The Bailiff:**

I thought you just applied to intervene to ask a question, but ...

**Deputy J.H. Young:**

The Minister gave way. I apologise if I strayed, but it is a point of order, Sir. I will withdraw that and do it after he has finished.

**The Bailiff:**

It is not a point of order. I think it is too late now. We are at the end of the debate. The Minister is replying and you cannot pop up and ask for reference back in the context of interruption of another speech.

**Deputy J.H. Young:**

Could I have an answer to the question then, Sir? Could I have an explanation as to the difference between ...

**The Bailiff:**

Yes, of course.

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

Indeed, happy to do so, and Members are equipped with knowing the arguments, and I will summarise them at the end of my remarks. This is not complicated, this is really quite simple, and I was in the middle of ... and Deputy Young, in a former life, had a responsibility. He was an accounting officer within a department and I will address virement issues which he will be aware of. I would imagine as a former Chief Officer, who used virements within departments, and certainly they were used from planning when I arrived at planning, he would say that flexibility is required. Flexibility was certainly well in force when I arrived at planning a number of years ago, so I am slightly surprised that he now wants to almost curb the flexibility. I am not giving way to any other Members.

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

I did have a point of order. It relates to the reference back, Sir. Under Standing Order 83, it does say that a States Member may propose without notice during the debate. Obviously that raises the question if the summing-up is part of the debate and I think decisions have been made in the past and the logic goes that if a Member has concerns that something has not been answered, that there is a piece of information that is missing, you cannot know that until the summing-up, because you wait for the summing-up to be given, and then if you are not satisfied with the summing-up that has been given, the information may still be lacking. I think in this case I feel the same as Deputy Young, that we need a formal response to the areas that Scrutiny have raised. They have not had a formal written response as we might otherwise expect and that is the basis for the reference back, Sir, so if I can ask that the reference back be made so that the Minister for Treasury and Resources can respond formally to the concerns that Scrutiny have, that they are still concerned about, so that we may all see that information before we make an informed decision.

**The Bailiff:**

Sorry, I am just reminding myself of the exact terms of the Standing Order. The Standing Order says: "A Member of the States may propose without notice during the debate on a proposition" and I think that must be right, that the debate at the moment is continuing. I am not aware of it ever having happened before and I have to say, it seems to me leaving it extremely late, but nevertheless, I think that it is during the debate. It is only in order though... if there is further information or there is any ambiguity or inconsistency in information which has already been

provided to the States. Now, Deputy Young, can I have clarification on what is this further information you say is listed there?

[10:15]

**Deputy J.H. Young:**

I would like the Minister for Treasury and Resources to clarify the difference between Article 10 allocations under this amendment and the variations in heads of expenditure under Article 12. I would like that clarified to explain on what occasions it is appropriate to use those things and I would like that in the context of a reply to the Corporate Services Scrutiny Panel's report.

**The Bailiff:**

Can you not, first of all, ask him to deal with that in his reply?

## **1.2 Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) - reference back**

### **1.2.1 Deputy J.H. Young:**

My concern is that this is a very complex business and this really needs fine detail and so I think my request is to have that written information as a reference back and then we can all make that decision when we have the proper information. That is my reason for the proposal.

**The Bailiff:**

Very well. Is the proposition seconded? [**Seconded**] Well, then, I am going to accept it. So we now have a debate open on whether there should be a reference back but I do urge Members to be brief on this.

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

I would say 2 things. If Members have the proposition before them, perhaps they could look at the individual articles. Deputy Young, there is absolutely no additional information that a further report that in the context of Scrutiny. I have effectively already responded to the Scrutiny request because Members will be aware of the 2 issues that we do not agree with, which I have already addressed and communicated overnight with Members and they have seen my argument. So there is nothing further that any Scrutiny response will be over that that I have already provided. In respect of the Articles 10 and 12, 10 is simply the reintroduction of this Assembly's ability to allocate an additional amount of money within the period of the financial plan, which is not a state of emergency, which is what the States would do. That is effectively what that is. This is a provision. It is not automatic, it is not a "pot", as Senator Ferguson said. It is a provision that allows for this Assembly to make an amount available. In relation to permitted areas of Heads of Expenditure, this permits departments to, with the authorisation of the receiving Minister and the giving Minister, to move resources from one department to another subject to the Minister for Treasury and Resources agreeing. It is a transparent process which must be done by Ministerial Decision and is reported in the 6-monthly report to the States. Those are the differences and I think that there is nothing further. I think that Members know exactly what those issues are. That is the explanation of what those 2 articles are and there is nothing further that I may add by referring this back. Deputy Young said yesterday that he had not read this until yesterday. I am not criticising him but it is, I think, clear to most Members if they have been reviewing their documentation.

**The Bailiff:**

Does any other Member wish to speak on reference back?

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

I will support this because to be honest, I am highly fed up with how this whole debate has been handled from the perspective of, we are getting very late comments coming through from the Treasury and Resources Department on a report which has had a lot of time spent on it and was produced in good time at the end of the summer break. The perspective from that point of view that what we are doing at the moment, we are making decisions made upon emails we are receiving less than 24 hours before the debate. That is not a good way to make a decision. **[Approbation]** That is the summary and I think it will do no harm to calm it down a bit and to get some considered responses. I have to say in response to the Minister summing up that, for example, he has made reference to the Historical Child Abuse Enquiry. Now, my recollection is the H.C.A.E. was used as a compelling argument for the introduction of contingencies. So why have we gone from the argument and said we need contingencies, we have all supported that ...

**The Bailiff:**

You are getting on to merits. Can you just confine yourself to the need for a reference back.

**Deputy J.A.N. Le Fondré:**

Sir, that is why I am trying to get to the point. Clarification is required and I am using this as an example. We have had an argument way back to introduce the contingencies of about, I think, £27 million. What we are now turning around and saying is that we suddenly need greater flexibility for exactly the same reason used for the contingencies to basically spend more money than that £27 million. It will be fine because it will come back to the Assembly. I think we need a greater response from Treasury on that information before one goes into voting *pour* or *contre*. If this does not go through as a reference back in the next 2 minutes.

**The Bailiff:**

Deputy Martin, did you wish to speak on the reference back?

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

Yes, and I did want to speak just briefly, Sir, as well.

**The Bailiff:**

Go right ahead.

**Deputy J.A. Martin:**

Really it is to endorse and may be helpful to the Minister for Treasury and Resources that as he said, he was disappointed that Deputy Young had not read everything and we all know that Deputy Young has a big proposition coming up a little bit later on in this debate which has probably been an example for why we might need to have Article 10 and even possibly 12. But the Minister for Treasury and Resources again, and with all their, let us say, officer support, has been very tardy on this and again, we have been supposed to read things overnight. A lot of Members had meetings after this last night. Myself, I did not get home until 8.45 p.m. Yesterday I had hours of things to do and do. Again, up at 6.00 a.m. this morning and I have just been able to open that email because I have the luxury of a Blackberry. I am not saying the information in there may be okay to carry on this debate in 2 weeks' time and I just think the Minister for Treasury and Resources should not be banging his head. He said it is urgent. This is absolutely urgent but I do think the way this is going, it could be a reference back whereas if he decided to defer it for 2 weeks so everyone did have a chance to digest the helpful comments, maybe ask a few questions and obviously there will be some who will still not be convinced that Article 10 is needed. I am probably a bit sceptical as well. Then Article 12. Why are we even bothering? Why are we planning for anything when we can just move money around and if we spend too much we will then go over the top. But the Minister obviously is the Minister for Treasury and Resources. He knows a lot more than me but

sometimes what he does not see is the mood of the House. He really should not sometimes sit there making faces at people who are speaking behind him but listen to the whole mood of the house. **[Approbation]** I think this time, just to move it a couple of weeks, would not hurt. So that is really all I have to say.

**The Bailiff:**

Does any other Member wish to speak on reference back?

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

Just very briefly and to highlight again one of the comments made by our independent adviser in the report. He raises the issue that due to a lack of precision around what range of scenarios would qualify as being urgent is significant in this particular matter, unlike Article 9, which qualifies exactly what emergency and appropriate action would be taken at what point. So, with regard to that, it is absolutely right and it is an issue that the Corporate Services Scrutiny Panel raised, we need to fully understand and the States need to fully understand what qualifies as an urgent need. In fact, it would be beneficial to see that being mentioned and outlined underneath and in the context of this Article.

**The Bailiff:**

Does any other Member wish to speak on reference back?

**1.2.5 Senator I.J. Gorst:**

I appreciate that Scrutiny have done a lot of work on these amendments. They have had to do that over the summer recess and not all Members might have had the time to perhaps read it more than once, as with these amendments and therefore might feel that further information is necessary. But if I could just refer them to what the Minister for Treasury and Resources said at the start of the request for the reference back. We can sometimes try and make issues more complex than they are. I think that Scrutiny have done good work but they are in principle against the need to reintroduce what was 11(8) and that is a perfectly legitimate position to take. I do not think that we need more information to be able to make that decision today and I do not think that any further information is going to change the view of the Scrutiny Panel. They have quite clearly put forward their position and that is exactly what we asked Scrutiny to do, to review amendments, policy, legislation and come forward with an opinion and they have done that with the help of their professional adviser. From time to time, it will always be that Ministers may agree to disagree. The Minister for Treasury and Resources has largely agreed with many observations of the Corporate Services Scrutiny Panel and has largely accepted the Corporate Services Scrutiny Panel's amendments. In this particular area, he does not agree with them and we have discussed that at the Council of Ministers and the Council of Ministers supports the Minister for Treasury and Resources. The first Article, 10, which Members are asking for more information about is quite clearly, as the Minister for Treasury and Resources said, it is allowing this Assembly. It is the Council of Ministers saying that it thinks that this Assembly should not, indefinitely for a period of 3 years, tie its hands. So the power remains with this Assembly to be able to make those decisions and to deal with the information that it might require on an individual basis. It is looking back and there may be times when this Assembly wants to use the facility that Ministers are recommending and I think that is an eminently sensible position to be in. We would, of course, expect it to be in extreme circumstances but is it right to say that we do not want this Assembly to have that ability within the regulation? I think that what we are proposing now is that it is eminently sensible as a complete backstop position to have that ability within the regulation and therefore the decision is straightforward in that respect. Of course, 12 is about transferring between Heads of ...

**Deputy M. Tadier:**

Sir, a point of order. This is not related to the reference back. This is in the territory of the substantive debate.

**The Bailiff:**

I think at the moment he is explaining why there is no further information, he says, that will be forthcoming. It is a simple issue, he says.

**Senator I.J. Gorst:**

I am simply saying why the information is already there and the decision is about whether Members wish to give themselves that backstop position or not. I do not want to use the words, “contingency-planning”, but it is the ultimate contingency to give the Assembly that ability. Some Members have suggested that what would 2 or 4 weeks be? That again is on the surface a compelling argument but of course we know that the Treasury and Resources Department are busy preparing for the budget and that is going to be announced on 8th October, so we are very quickly going to be up against that position and therefore it is right for us to deal with it today rather than defer it because I, with respect, believe that the information is there. There may be a disagreement with Scrutiny about the best way forward but I think Members do have the information to make that decision this morning.

**Deputy J.A.N. Le Fondré:**

Sir, can I seek a point of clarification from the previous speaker? Only briefly. The Chief Minister made reference to the amendments from Scrutiny largely being accepted. Could you clarify that? Because the only one I am aware of is the position on Treasurer of the States, which I have to say ...

[10:30]

**The Bailiff:**

Deputy Le Fondré, that has nothing to do with the reference back.

**Deputy J.A.N. Le Fondré:**

It is a comment he made, Sir, in his speech.

**The Bailiff:**

I know he mentioned it in his speech but it has nothing to do with the reference back. Now, Senator Ferguson?

**1.2.6 Senator S.C. Ferguson:**

Yes, I will try and stay on the point. It would be helpful to the Assembly, if the Minister explained why the incorrect use of contingencies and increased flexibility, which he is asking for under this amendment, is in the interests of best financial management. It would help if he published a full list of the items on the contingency fund to support his arguments and to explain why the total elasticity enclosed in Article 12 is absolutely essential. These are items which must be explained to the Assembly because as far as the Corporate Services Scrutiny Panel goes, we are looking for best financial management and this is why we put forward the remarks and arguments that we did.

**The Bailiff:**

Does any other Member wish to speak on the reference back?

**1.2.7 Connétable P.J. Rondel of St. John:**

I must say, people in this Chamber have short memories. Only earlier this week I recall hearing a radio programme where the Chief Minister was praising the work that Scrutiny do and as soon as Scrutiny ask for something to happen, it is outside of his position to give the support that is

required. Really, talk about talking with false tongue. This is the first occasion where there is a challenge up from members of Scrutiny and we are not giving the time that is being requested. The whole debate, as far as I was concerned, in this area of the debate is a re-run of the Health Insurance Fund and the way the money was taken out. As far as I am concerned, I would ask the Chief Minister to reconsider taking this away and giving the Scrutiny the time they require.

**The Bailiff:**

Does any other Member wish to speak on the reference back?

**1.2.8 Deputy M. Tadier:**

Sir, I will keep it brief. This is not about the Minister's right to disagree with Scrutiny. This is about proper process being followed and basic courtesy, I would suggest. Now, the Minister was quite revealing in his comment. He said: "Well, I do not need to provide the information because I have responded effectively because I sent this email last night." When did it arrive? 20.24 on Members' laptops if they happened to have it open at that time and certainly for my part - and I know for Deputy Young who has it on his tablet here - we cannot open these documents on our laptops anyway at the moment because the I.T. (Information Technology) function does not work. That is being looked at. Is it really satisfactory, I would ask rhetorically? How long did it take the Corporate Services Scrutiny Panel to research all those answers? It is only when the Minister for Treasury and Resources is effectively caught out because this has not been responded to formally. Why do we have a Scrutiny function at all if we do not have the courtesy to provide the information in a meaningful way? To say that we have the information in front of us, how many have had time to digest that information that only arrived last night? A smaller example in my own case, the reason I deferred, for example, the S.T.V. (Single Transferable Vote) and A.V (Alternative Vote) is, because I know we have had a long summer, Members may not have had a chance to read it. We have had expert advice and you have the time for the interactions. Scrutiny must be done in the open. The documents must be there. Not simply so that Members can say: "Well, we probably trust the Minister for Treasury and Resources on the balance of probability in this case." It needs to be there for all the information to be examined and we take a very dangerous step today if we continue to undermine Scrutiny in this way. We have already empowered Ministers under our system greatly, something the Machinery of Government Review talks about and if the Council of Ministers - after becoming increasingly more powerful - if we are to abdicate the responsibility from the Assembly to the Ministers and to give them more trust, the accountability mechanisms must be there and they must lie with the Scrutiny function. This is a basic courtesy. The information should be laid on the table for 2 weeks so that everybody can digest it and that any problems can be resolved in a non-rushed way. These are simple basic things that you would expect from a functioning Assembly. I ask Members to support this reference back and to support Scrutiny.

**1.2.9 Deputy G.P. Southern:**

Very briefly I just draw Members attention to the complete absence of any pause whatsoever between the phrase: "I have every respect for Scrutiny but in this case we differ." The assumption is therefore: "Trust me. I know what I am doing, let me through with this."

**1.2.10 Deputy E.J. Noel of St. Lawrence:**

I would just like to remind Members of the point that the Chief Minister said, a reference back would not provide any additional information. This is merely a difference of opinion between the Treasury and Resources Department, the Minister for Treasury and Resources and myself and Scrutiny in this matter. It is for Members - they have the information - it is for them to decide which camp they wish to be in.

### **1.2.11 Deputy J.M. Maçon:**

I think Members are also missing a point. When we have our responses from the Ministerial points in our report, it is also for the Scrutiny Panel to then consider what is the way forward, possibly change their stance when they receive that information and clarification. The Corporate Services Scrutiny Panel is asking for that opportunity. It is the process that this Assembly has agreed to when adopting the codes of practice. It seems rather bizarre that we can turn around and not support Scrutiny in this case because that is only fair and it is what we have agreed to do in all the processes. I do not believe that an email responding to some of the points the night before in the middle of a debate which concerns raising to the Scrutiny Panel, is going to be acceptable. Certainly I would not accept it as a chairman of a Scrutiny Panel and I do not think any other Members should accept it either. That is why I think we have to support Scrutiny and this reference back.

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

Sir, can I just make a point of information which is fairly important? I have already responded to Scrutiny's draft response. There is a difference of opinion. I have already responded with a full, annotated version of the comments...

### **The Bailiff:**

You have spoken in this debate, Minister. Deputy Vallois?

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

I was a member of the Scrutiny Panel that looked at this. I can understand other Members asking for a reference back. In my own opinion, the only thing that I feel the Minister has not answered with regards to this particular area - because Scrutiny did come up with a compromise in their report with regards to Article 12 - is that the Minister for Treasury and Resources should give due consideration to proposing an alternative approach similar to that of Standing Order 168 for the transfer of funds between Heads of Expenditure and he has not stated whether he would consider doing that. I have not heard anything around that area. In my view, I think the arguments have been relayed about the 11(8), whether to have it or not and how good the contingency system is and the views of individual Members. Can I just remind Members that Scrutiny is about evidence-based reporting? This report has been done based on evidence and working with an experienced and professional adviser. When we are in this Assembly, independent Members have their own views and the Minister for Treasury and Resources has made that point and he seems to believe I am a petulant child but I just thought I would make the point here that although the Minister is saying that he has answered, there is a compromise within this report that he has not answered. So if he was willing to answer that then I would be happy. The reference back ... there has been a lot of time being put into this, not just from the Treasury and Resources Department but from the Scrutiny point of view. All the information is open, up for Members to read and identify and make a decision, and Scrutiny have been criticised repeatedly in the past about not doing enough legislative scrutiny. This has been done line by line. This has been put across and the Minister just does not agree with what Scrutiny have put forward and it is for this Assembly to decide whether they agree with that or not. In my view, if I was to get an answer as to whether that recommendation, I would not support the reference back.

### **The Bailiff:**

The Minister is half way through his speech at the moment so if the reference is successful, his speech will end. If the reference is unsuccessful, he will deal with whatever matters he wishes to deal with. Does any other Member wish to speak on reference back? Senator Farnham?

### **1.2.13 Senator L.J. Farnham:**

I just wanted to address very briefly the situation with this email. So the Minister for Treasury and Resources sent a very short email and it took me all of 4 minutes to read the email and the attachment. I really think Members are trying to use this as an excuse. The reference back will only serve as a delay. The alternative, of course, is to support the amendment. But the email was perfectly reasonable and very helpful.

**The Bailiff:**

Does any other Member wish to speak on the reference back? Then I invite Deputy Young to reply.

**1.2.14 Deputy J.H. Young:**

I do not think I am the only Member to find this debate very difficult. It is clearly a very important subject and the choice we are asked to make goes right to the heart of our financial management. We need flexibility in our finances to be able to operate but we need the rules to be clear and understandable by everybody. I think we need clear, digestible information in which to make that choice. I apologise that I have not been able to get myself fully up to speed with this information. I accept this information has been out since June but the Scrutiny report obviously came at the end of August. It is a very big subject, very fat, a lot of issues in here, and here we are debating it without a formal response that clearly sets out the information on which to make that choice. I thought I was being helpful to the States because I do not like having to vote and being put in this position where we have the Scrutiny, Ministerial divide and we have to back Scrutiny or Ministers on our guts, as it were. I do not like that. I want to do it on the basis of information because I want that decision to be reliable. Of course, this email, as Deputy Martin said, I had to spend time preparing for other matters on today's debate and I did not open this email. I have opened it this morning, I cannot open the attachment. I am sorry but I just think one evening before the debate is just not enough on a crucial point and I am a little bit disappointed that my proposal, that I am going to debate later, is brought into this whole thing. I want to see flexibility, I want to see the rules clearer, I want them explained and I think it is so complex that doing it verbally across the House like this, without a formal document, is not best. I do not want a long delay. I just want a good process to make a decision. So, I therefore make the proposition for this reference back.

**The Bailiff:**

Do you ask for the appel?

**Deputy J.H. Young:**

Yes, Sir.

**The Bailiff:**

The appel is called for then in relation to the proposition of Deputy Young that this matter be referred back. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 15</b>		<b>CONTRE: 32</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. John		Senator A.J.H. Maclean		
Deputy R.C. Duhamel (S)		Senator B.I. Le Marquand		
Deputy J.A. Martin (H)		Senator F.du H. Le Gresley		
Deputy G.P. Southern (H)		Senator I.J. Gorst		
Deputy of St. Ouen		Senator L.J. Farnham		
Deputy J.A. Hilton (H)		Senator P.M. Bailhache		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Helier		
Deputy S. Pitman (H)		Connétable of Trinity		

Deputy M. Tadier (B)		Connétable of St. Clement		
Deputy T.M. Pitman (H)		Connétable of St. Peter		
Deputy J.M. Maçon (S)		Connétable of St. Lawrence		
Deputy G.C.L. Baudains (C)		Connétable of St. Mary		
Deputy J.H. Young (B)		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. Saviour		
		Deputy R.G. Le Hérisssier (S)		
		Deputy of Grouville		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		

### **1.3 Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013)**

#### **The Bailiff:**

Very well. We will then return to the debate and the Minister's reply.

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

I am grateful to Members for not agreeing to a reference back. I do not wish any discourtesy to Members. This is an urgent matter and I will return to the substance. I was not going to be in the Assembly in 2 weeks time and the next sitting after that is the budget statement and I am due to be in Washington for the I.M.F. (International Monetary Fund) World Bank meeting and must be immediately departing and I had already asked for this matter to be taken before the summer break. I think Members are going to be fully-equipped. I will be asking for a vote on each of the individual articles and Members who do not agree with the provisions simply can vote against it. I really do think that all Members will be perfectly equipped to know the arguments about the individual items. So I will just make a few final remarks, if I may, responding to those Members who spoke. I would just say to the Deputy of St. Ouen, no power is going to exist in relation to the variation of Article 10. No power is going to exist within the Treasury and Resources Department to do this without this Assembly's approval. I think that is absolutely vital. It is this Assembly that is going to be given the approval to ultimately vary the M.T.F.P. if it wishes. Frankly, if a Minister for Treasury and Resources is going to come forward in the next few years with an additional allocation that the Assembly does not like, then he or she is going to have to think very carefully. It is almost a vote of confidence about whether or not the Assembly has confidence in the ability of the Minister for Treasury and Resources to be running public finances and to make proper allocations. Ultimately, of course, doing what this Assembly wishes. I think that the areas where we do agree with the panel, and I know that the Deputy Vallois wants an alternative of a standing order but we simply do not agree. The Articles - if I can go through - Article 9 is simple and I think agreed. 10: it is a matter for Members. If Members want the flexibility for this Assembly to put more money into a budget, it is a matter for Members to do it. It is not a die in the ditch for the

Treasury and Resources Department on this one. Frankly, it is a matter for Members. It is a reasonable issue.

[10:45]

Article 11, Central Planning Vote: that is warmly welcomed by all parties. We all agree on that. As for the permitted variances of Heads of Expenditure, I will say in summing up, this is what I think the States Assembly wants the Council of Ministers to do. They want the Council of Ministers to work together to deal corporately and collectively with problems. From a Treasury and Resources Department point of view, before I go and allocate a contingency to a priority, I will go to Ministers and say: "Can you absorb this particular problem without us referring to contingencies before we take the step, if we get it, to go to the Assembly?" Moving Heads of Expenditure between departments is collective, collaborative, corporate working. Deputy Vallois, in a previous debate and on previous matters, simply said: "I do not want to know how you deal with it, Ministers, just get on with it." Well, this is Ministers being given the ability to get on with it. I hope he does not mind, but the Constable of St. Brelade kindly rang me this morning because he wanted some answers to some questions he had. He said: "What is the safeguard for Scrutiny? We scrutinise the budget and then you can change it, what are the safeguards around that?" That was an absolutely appropriate question and I would say that the safeguards are this: First of all, it is reported. If there is going to be a change ahead of expenditure, it is reported by way of Ministerial Decision and then it is going to be reported in the quarterly monitor and that reporting means that Scrutiny can ask questions about it. If they think the decision is wrong they can challenge it and they can bring questions. They can use the normal political process to bring ... it is the ability of being questioned, it is the ability of getting found out which stops you doing things, so that is an important safeguard and a protection. It is obviously reasonable, surely. Scrutiny panels themselves are sharing information, moving projects from one panel to the other; that is, in effect, a resources issue. I have to say that Members can treat the Treasury and Resources Department on their track record and I know that there is a C.I.P.F.A. report that has been put forward. I have to say that I am advised by the Treasurer of the States that the Treasurer of the States is on the C.I.P.F.A. Council and, as usual, with economists and lawyers, sometimes people will come to differences of opinion. The Treasurer of the States, who I think is held in very high regard - she is held in extremely high regard - and indeed the professional staff we have within the Treasury, they think that this is an appropriate issue that we should be dealing and give us the flexibility and, frankly, gives the Treasury and Resources Department the ability to have tough discussions with departments when an issue arises which we need to deal with. Consuming our own smoke is something that I think Members want us to do and this gives us the flexibility of doing so in a full reporting. I will just concede, if I may, one further thing, I do not think it is appropriate to suggest that the Treasury is run like a chip-shop **[Laughter]**. I have done a few jobs in my life but chip-frying is not one of them, at least not recently. Frankly, we can raise the tone and raise the level of this debate. I will say one thing that I have had a discussion with my Assistant Minister this morning and the Treasurer of the States about reporting because one thing that is fair to say of the C.I.P.F.A. report is to say that there is a lot of flexibility to departments. We vote a proposal to give the Health and Social Services Department an amount of money, and the Education, Sport and Culture Department, and they themselves, without any reporting, can move money between primary education, secondary education, social services or elsewhere. There is no reporting. What I have discussed this morning - which gives an indication to Members, of the toughness and the approach of the ongoing improvements that we want to make - I have been discussing this morning with the Treasurer of the States an appropriate new financial standard, a new direction which will require departments themselves to report virements within their own department's Heads of Expenditure, which is a further strengthening of a reporting to meet the Connétable of St. Brelade's issues because he is quite right to say that, yes, you vote an overall budget but then Ministers

themselves with their Accounting Officer can move Heads of Expenditure within their own departments. Therefore, there is an example of the Treasury and Resources Department wanting to constantly improve the transparency of the reporting of information and, if Members do vote in favour of this, I will commit to further - we now do a quarterly monitor. That has never happened before. We never reported financial information to Members except in the annual report. We now do quarterly reporting; we now get a 6-monthly publication of a report which is just going to be done and I will commit to Members of including in that quarterly monitor a summary of all the Heads of Expenditure movements and the Treasury and Resources Department will give consideration to do in-department virement reporting, something which Deputy Young will know happened extensively certainly in his department when he was Chief Officer and that perhaps reporting will be an appropriate and additional safeguard. Members I think have all the information. I propose the articles to be taken in order and that Members, if they do not like the 11(8) provision, they can simply vote against it. I think I have answered all Members' questions and I ask for the individual articles to be taken separately.

**Deputy G.P. Southern:**

There is one question which I find has not been answered which is my question yesterday, and the Minister for Treasury and Resources quite rightly may well have mislaid his response to it, which was does Article 10 give this House more power to ensure that Ministers do deliver when this House votes for an issue like - and the example I chose was the Hoppa Bus which was voted by this House and yet the money was not found come the Medium-Term Financial Plan. Does it increase the power of this House to hold the Minister to account?

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

I do not think it holds the Minister to account; you need to have a Minister for Treasury and Resources that is going to bring forward a proposition to bring forward that. But, you know, political priorities... I will not go into detail, there is flexibility. The Members are going to receive the full budget statement. There is in-year flexibility within a Medium-Term Financial Plan because there is an annual allocation of growth and one of money. Article 10 is ultimately a matter of a relationship between the Council of Ministers, the Treasury and Resources Department and this Assembly to say - notwithstanding all the other flexibility that you have, contingencies, moving money between Heads of Expenditure - on an extreme occasion you could bring forward an additional allocation. Frankly, I would be surprised if Deputy Southern was to agree with that. I do not think it is about holding Ministers to account. It is about giving this Assembly flexibility to do something and it is a matter for Members. I do not think I can add anything else.

**The Bailiff:**

Very well, the vote is to be taken separately on each one of the articles in Part 3. First of all, Article 9, all those in favour of adopting Article 9 kindly show? Those against? Article 9 is adopted. Article 10, is an appel called for? Yes. We now are on to Article 10 and the appel is called for. Members will return to their seats and the Greffier will open the voting.

<b>POUR: 30</b>		<b>CONTRE: 12</b>		<b>ABSTAIN: 2</b>
Senator P.F. Routier		Senator A. Breckon		Deputy R.C. Duhamel (S)
Senator P.F.C. Ozouf		Senator S.C. Ferguson		Deputy J.H. Young (B)
Senator A.J.H. Maclean		Connétable of St. John		
Senator B.I. Le Marquand		Deputy J.A. Martin (H)		
Senator F. du H. Le Gresley		Deputy of St. Ouen		
Senator I.J. Gorst		Deputy J.A. Hilton (H)		
Senator L.J. Farnham		Deputy J.A.N. Le Fondré (L)		
Senator P.M. Bailhache		Deputy M. Tadier (B)		

Connétable of Trinity		Deputy T.M. Pitman (H)		
Connétable of St. Peter		Deputy T.A. Vallois (S)		
Connétable of St. Lawrence		Deputy J.M. Maçon (S)		
Connétable of St. Mary		Deputy G.C.L. Baudains (C)		
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.G. Le Hérisier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

### The Bailiff:

Then we come to Article 11. Is an appel called for on that or not? No. All those in favour of adopting Article 11 please show? Those against? Article 11 is adopted. We then come to Article 12 where an appel is called for. The appel is called for in relation to Article 12 and the Greffier will open the voting.

<b>POUR: 30</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator A. Breckon		
Senator P.F.C. Ozouf		Senator S.C. Ferguson		
Senator A.J.H. Maclean		Connétable of St. John		
Senator B.I. Le Marquand		Deputy R.C. Duhamel (S)		
Senator F.du H. Le Gresley		Deputy J.A. Martin (H)		
Senator I.J. Gorst		Deputy G.P. Southern (H)		
Senator L.J. Farnham		Deputy of St. Ouen		
Senator P.M. Bailhache		Deputy J.A. Hilton (H)		
Connétable of Trinity		Deputy J.A.N. Le Fondré (L)		
Connétable of St. Peter		Deputy M. Tadier (B)		
Connétable of St. Lawrence		Deputy T.M. Pitman (H)		
Connétable of St. Mary		Deputy T.A. Vallois (S)		
Connétable of St. Ouen		Deputy J.M. Maçon (S)		
Connétable of St. Brelade		Deputy G.C.L. Baudains (C)		
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.G. Le Hérisier (S)				
Deputy of Grouville				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				

Deputy A.K.F. Green (H)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

**1.4 Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) - Articles 13 to 17**

**The Bailiff:**

Very well, then we move next to Part 4. Now on Article 13 is your own amendment, Minister for Treasury and Resources. I think you want to propose Article 13 as amended so I will just ask the Greffier to read the amendment and then you can propose all the articles in Part 4 but with Article 13 as amended. Greffier, would you read the amendment to Article 13.

**The Deputy Greffier of the States:**

The second amendment, pages 24 to 25, Article 13, (a) delete the “(1)” at the beginning of the Article; (b) delete paragraph (2).

**The Bailiff:**

Yes. Minister for Treasury and Resources, do you propose Articles 13 as amended, up to 17?

**1.4.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resource):**

Indeed, thank you. It is worth saying that the previous Comptroller and Auditor General recommended that the role of Treasurer of the States be further strengthened and the amendments proposed in 13 to 15 are aimed at achieving that. I highlighted earlier that we were happy to accept the Corporate Services Scrutiny Panel’s observations in relation to the issue of the Treasurer of the States providing advice to the Council of Ministers on financial issues and my amendment in removing that delivers what Corporate Services wished. I was grateful that the Corporate Services Scrutiny Panel made strong comments that the independence of the Treasurer of the States should be maintained. Indeed, other Members have suggested that the inclusion of this article confused the reporting responsibilities to the Council of Ministers. **But, for the reasons that the Corporate Services Scrutiny Panel put forward, I was pleased and I was grateful for the Deputy Chief Minister to agree that amendment in my absence.** A further amendment is proposed which builds upon the Treasurer of the States’ current ability to report directly to the States where any person who deals with money in contravention of the finance law, the amendment extends the circumstances in which the Treasurer of the States may report, to include a failure to comply with the financial direction and also instances where there has been a financial contravention of the law which, although it has been rectified, the consequence of the action, in the Treasurer of the States’ view, were material or the money was material. In Article 16 we are proposing that a change is made on which the basis on which the States of Jersey accounts are prepared, this change is mainly required in order to reflect best financial practice and the changing financial environment and, therefore, enabling the Treasurer of the States to produce accounts which reflect changing and improved financial standards. The States will be informed of the appropriate accounting standards that will be used. I am sure that Members will agree that the way in which the States accounts are now produced, G.A.A.P. (Generally Accepted Accounting Principles) compliance, the transparency in which I think our accounts are held up as a model of small state jurisdictions. I do not think there is

virtually any state that I can find that has accounts to these standards and this article further will ensure that we continue to achieve that leadership role in best practice. Turning to the issues of Accounting Officers in Article 16, the current version of the law establishes a chief officer as Accounting Officer for the department, making them personally accountable for the economic expenditure of that department and this has been, if I may say, extremely successful in ensuring accountability since the introduction of Ministerial government. This amendment builds on this role, empowering the Minister to appoint an Accounting Officer for all States income, which includes income tax and impôts and also incorporates the same responsibility for trusts and special funds within the main law. I move Articles 13 to 17.

**The Bailiff:**

Seconded? [**Seconded**] Does any Member wish to speak on any of those Articles?

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

Just to say that we are certainly grateful and pleased that the Minister for Treasury and Resources is not proposing the provision for the Treasurer of the States to advise the Council of Ministers on the Public Finances (Jersey) Law 201- and it is not included within primary legislation, which was one of our recommendations. Clearly we felt that there was a significant conflict of interest and greater and improved management accountability would be provided with not including the Treasurer of the States as he had initially proposed.

**The Bailiff:**

Does any other Member wish to speak to these articles? Do you wish to reply, Minister?

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

Nothing further to add.

**The Bailiff:**

Very well, all those in favour of adopting Articles 13 to 17 kindly show? Those against? They are adopted. Minister, what I would suggest next is that you propose Article 18, which seems fairly uncontentious, and then we will deal with Article 19 and debate on Article 19 separately.

### **1.5 Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) - Article 18**

#### **1.5.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):**

Indeed. The introduction of Article 18 simply creates the non-Ministerial States body of a panel of the F.P.P. (Fiscal Policy Panel). I will be addressing in the next part the real importance of now putting the F.P.P. on a statutory basis. This is something that the Assistant Minister and I have asked Treasury to include and it is a really, really important further strengthening of the powers of this Assembly and the governance of good economic matters and I look forward to a debate on this shortly. So I just simply propose Article 18.

[11:00]

**The Bailiff:**

Article 18 seconded? [**Seconded**] Does any Member wish to speak on Article 18?

#### **1.5.2 Deputy J.M. Maçon:**

I am sure Members will endorse me, just to thank the current Members of the Fiscal Policy Panel to say that I do believe they have provided a great amount of expertise and wisdom to this Assembly while making their decisions and I fully endorse this measure.

**The Bailiff:**

Very well, does any other Member wish to speak? All those in favour of adopting Article 18 kindly show? Those against? Article 18 is adopted. Very well, so now do you propose Article 19?

## **1.6 Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) - Article 19**

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

In P.133/2006, the Assembly set up the Fiscal Policy Panel. Notwithstanding the fact that they have conducted their activities and their reporting, I think, in a way that everybody would agree has improved the financial management and economic decisions of the States, I am confident that this putting on a statutory basis the F.P.P will provide and continue to provide this Assembly with unbiased, independent economic advice and make recommendations on the prevailing economic climate, both within Jersey and outside. The membership of the panel the article refers to will continue to be of at least up to 3 high calibre individuals who have relevant knowledge and experience to carry out the role. I am particularly keen that the independence of the panel is maintained and the appointment of the panel is not swayed by views of an individual States Member or, indeed, a Minister and, therefore, we will have a debate on the issue of the appointment of the members themselves in an amendment by the panel. I know that there will be views held by members of P.P.C. (Privileges and Procedures Committee) on whether or not this Assembly should vote for the F.P.P. members if I am proposing that the Minister is appointing members of the F.P.P., and that is just not the Minister appointing somebody that he thinks should be doing it, that is as a result of a process which is overseen by the Appointments Commission. But obviously we will come to that matter of who should finally sign-off on that. Personally, it is going to be a matter really for Members to decide. As far as the role and responsibilities of the panel are concerned, Members will see that it is extremely detailed. We have set out a detailed set of requirements for the panel, that is a protection and also a requirement and the plan aims to ensure that the States does get a report by the F.P.P. when there is any change in expenditure and that the F.P.P. reports to Members directly on any information. The panel under these arrangements will continue to produce an annual report, commenting on the global and Island economy and States finances, including, importantly, transfers in and out of the Strategic Reserve. The amendment has been drafted so to ensure that the report is produced - also perhaps differently from previously - in sufficient time that it can be considered for by Members and, indeed, the Treasury, prior to the annual budget debate. We have put some further new arrangements in place to ensure that the F.P.P., where previously they just reported prior to a debate, they now have to report earlier to ensure that I can consider that report and, indeed, Members consider amendments. This is a landmark decision. I believe that other small jurisdictions around the world are now following us and following our leadership in putting an F.P.P. in place and certainly I am going to look forward to briefing the Cayman Islands representatives later on today and tomorrow on our Public Finances (Jersey) Law. Among other things, we are sharing best practice among small jurisdictions and I know that this element and this F.P.P. is something which is held up as a model internationally now of good financial governance and good economic management and I commend the article to the Assembly.

### **The Bailiff:**

Is the article seconded? **[Seconded]** Very well, now there is an amendment to Article 19, lodged by the Corporate Services Scrutiny Panel and I will ask the Greffier to read the amendment.

## **1.7 Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) - amendment (P.73/2013 Amd.)**

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

Pages 27 to 28, Article 19. In the inserted Article 56A, (a) in paragraph 3 (i) for the word "Minister" substitute the word "States"; (ii) at the end add the words "on a proposition signed by

the Chief Minister and the Minister for Treasury and Resources and lodged by the Chief Minister”; (b) in paragraph 4 delete the words “by the Minister”; (c) in paragraph 5 for the words “before appointing a member of the panel, the Minister”, substitute the words “before signing a proposition under paragraph 3 the Chief Minister and Minister for Treasury and Resources”; (d) delete paragraph 6; (e) in paragraph 7 (i) delete the words “the Minister shall appoint”; (ii) after the words “a member of the panel” insert the words “shall be appointed”; (f) in paragraph 8 (i) delete the words “the Minister may appoint”; (ii) after the words “a person” insert the words “may be appointed”; (g) in paragraph 9 for the word “Minister” substitute the words “Chief Minister”; (h) after paragraph 9 insert the following paragraph “(10) If a member of the panel resigns the Chief Minister shall notify the States of the resignation at their next meeting”; (i) in paragraph 10 for the words “the Minister” substitute the words “the States on a proposition lodged by any Member of the States”; (j) delete paragraph 11; (k) in paragraph 12 for the word “Minister” substitute the words “Minister for Treasury and Resources”; (l) in paragraph 13 for the words “the Minister” substitute the words “the Chief Minister and the Minister for Treasury and Resources” and renumber the paragraphs in Article 56A accordingly.

### **1.7.1 Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):**

It is meant to be a very simple amendment: it seems to have gone on for ever - I must apologise to the Greffier. It is a very simple amendment but it arises because of the law of unintended consequences. Some time ago we passed a proposition on revised procedures to appoint to various positions and these were proposed by the Privileges and Procedures Committee of the day in P.205/2009 with a view to streamlining States proceedings. Certain posts were not included in the new procedures as they reported directly to the States and not to the relevant Ministers. Effectively, these are positions which are required to be totally independent of political influences. It has to be absolutely obvious that they are totally independent and the particular posts that I am referring to are the Comptroller and Auditor General and the Greffier of the States. The F.P.P. reports directly to the States and like the Comptroller and Auditor General and the Greffier, it is also intended to be free from political influence. I am not saying that this occurs in the present regime, but it is a question of putting the proper systems in place. It is quite simple, we must do things in an orderly manner. The panel can quite understand the intention of bringing the appointments in line with ordinary States appointments but we felt that it is essential for the independence, both perceived and real, of the F.P.P. to be maintained and this is a view with which our advisers from C.I.P.F.A. also concurred. It does seem to the panel that if the F.P.P. is not perceived to be independent and is independent then their advice to the States loses its credibility. We have no problem putting them on a statutory basis but we must keep it independent and undeniably independent. The proposition appointing the F.P.P. will be brought to the States by the Chief Minister and the Minister for Treasury and Resources. This is in a similar manner to the way that the Comptroller and Auditor General is appointed. Very simple: we just want to put a nice solid system in place so that everybody is happy and there is undeniable independence. I commend the amendment to the Assembly.

### **The Bailiff:**

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

### **1.7.2 Senator P.M. Bailhache:**

The object of the Scrutiny Panel in relation to this amendment, insofar as Senator Ferguson expressed it as ensuring the independence of the F.P.P., is, I am sure, an object that is shared by all Members. But this amendment would, in my view, place the Assembly in a position which, in principle, a legislature should not find itself because this Assembly is not the appropriate body to make appointments to senior positions other than in very rare circumstances such as Senator

Ferguson has outlined, like the Greffier of the States and the Comptroller and Auditor General. The reason for that is that things can so easily go wrong if this Assembly is put in the position of an appointer. If a Member has concerns about a nomination, a public States debate would ensue and that is not really the way to address these concerns. It is not fair to prospective appointees to have their characters and abilities made the subject of public debate in that way. So often in those circumstances the States are driven to consider whether they should debate such a proposition in camera and that is, I think nearly all Members would agree, in principle wrong. We sit in public, debates should take place in public and for the Assembly to go into camera to debate this kind of thing is almost a contradiction in terms. I saw Deputy Le Hérissier nodding and, as a matter of fact, he put it as well, I think, as anybody could put it, on 16th January 2008, during a debate on whether the States should move into camera. Deputy Le Hérissier said this: "I am very ambivalent about this. I thought we, as an organisation, Sir, have always been embarrassed by these debates. We have never thought a 53-person recruitment and appointments panel was the way to handle personnel issues, just as it does not handle Government reform, and I am very embarrassed. People have been put through what appears to have been a very professional appointments process and while I do not doubt for a moment that Deputy Southern may have some valid points to raise about an individual, it really raises some very serious points about our belief in the validity of the process. I really feel for these people, they have been put through it." If the Assembly does move into camera, experience has shown, sadly, that the transcript of such a debate can find its way on to the bloggersphere. The privacy of such a debate is not, in fact, always respected. I accept, as Senator Ferguson has said, that in instances like the Greffier of the States and the Comptroller and Auditor General, it is right, it is necessary that the States should make those appointments because those offices are directly accountable to the States. But Senator Ferguson said the F.P.P. reports directly to the States, I am not sure that that is right. Certainly their reports come to the States but it is not the case, I think, that the F.P.P. has a direct relationship with the States. If Members will look at Article 56E - I seem to have lost it, thank you - other reports prepared, they produce an annual report.

[11:15]

Firstly, at 56C they produce an annual report upon the state of the economy in Jersey and the States finances but then 56E, Other Reports: "The Minister may, for the purposes of the preparation of the draft budget, request that the panel prepare a report." Paragraph 3: "The Minister may request that the panel prepare a report in respect of proposals for any significant change" and so on. These reports obviously will come to the Assembly but they are sent to the Minister. The relationship of accountability, such accountability as there is, is the relationship between the Minister and the F.P.P. Perhaps I should just add that in Senator Ferguson's amendment that there is nothing that would change that state of affairs, the relationship between the F.P.P. and the Minister would remain exactly the same. But I ask Members, if they would, to look at Article 56A in the appendix to Senator Ferguson's amendment which sets out the article as it would be if this amendment of the panel is adopted. Down at the bottom, paragraph 10: "The appointment of a member of the panel may be terminated by the States on a proposition lodged by any Member of the States on any of the following grounds." Then down to paragraph (d): "That the person is otherwise unable or unfit to discharge his or her duties as a member." So any Member with an axe to grind could lodge a proposition and, in principle, there would then be a debate in public about the abilities of a distinguished member of the F.P.P. and his or her ability to discharge his or her duties properly as a member. Distinguished economists do not like having their reputations dragged through the mire and it seems to me that this would be quite a significant deterrent to many economists who might otherwise think that it was appropriate to accept an invitation to serve on the F.P.P. If they knew that if something went wrong, some advice was given with which a particular member took a particular exception and the consequence could be a public debate on their capacity, I think that

many economists would be deterred from applying to sit on this panel and that, I think, would be a great detriment to Jersey. The Minister for Treasury and Resource's power to appoint is not to be exercised without any constraint. Before making an appointment he has to seek the views of the Appointments Commission and, in my experience, the purpose of the Appointments Commission is to ensure a rigorously fair and independent process in the making of appointments. Certainly my experience of the Appointments Commission in the appointment of members of the Electoral Commission underlined the complete independence of that process. I am not sure that the requirement for the States, either to rubberstamp the process on the assumption that nobody objected to a proposal about the membership of the F.P.P. or to engage in a debate with all the difficulties that were so eloquently expressed by Deputy Le Hérisssier earlier on, would improve matters in any way and I hope Members will reject this amendment.

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

Just to pick up on a couple of points that Senator Bailhache makes, and I think we get to the heart of the problem because Senator Bailhache quite rightly says if you look at what is proposed by the Minister for Treasury and Resources, the Fiscal Policy Panel does not seem to have a direct relationship to the States but in their own words and following the comments that they made with regard to draft legislation, they said: "The draft legislation appears to dilute the practice we have established and we are concerned about the impact this could have on transparency and the Panel's independence. To be consistent with the existing framework and practice, it should be absolutely clear in the legislation that the Fiscal Policy Panel is not an advisory body to the Minister, but a body that advises the States as a whole." This is why the panel chose to bring this amendment to the States because it recognises that what is being currently proposed by the Minister makes the Minister the key driver, not only behind the appointment but places a requirement on the Fiscal Policy Panel to provide appropriate support to do its work with capability to request further through the Minister giving ... has the capability to request a report in circumstances of significant change in States activity or economic conditions. It is, therefore, clear that there is a strong level of Fiscal Policy Panel accountability to the Minister. That is what they wrote and raised concerns about. This is why ... and they highlight the issue of being independent. That is the strength that they have at the moment and it gives us, the States, the confidence, when we read their comments in their reports and we go to the briefing, that they are independent and not simply reflecting a Minister's view. They do not want to get into that position and I believe, as I say, that is why the Corporate Services have brought the amendment. Indeed, again, it is easy for the Minister for Treasury and Resources to question the capabilities of the independent adviser, but certainly it has not bothered the U.K. Government in the past. Our adviser who was involved in helping us to look at the Medium Term Financial Plan, by the way - so he is not new to the game - their concern is that the proposals put forward by the Minister would be too prescriptive and if imposed in statute may negatively affect or inhibit the Panel's professional ability to provide optimal advice, unhindered by practical issues of accountability that temper independence. In other words, they are saying: "Be careful. You have got something good at the moment. Take care of it, look after it, enhance it, do not compromise it."

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

Could I just seek a point of clarification from the last speaker? The quote that he has read out, would he agree that the words were introduced by ... expressed concern to an earlier draft of the agreement and not necessarily the current proposition in front of us?

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

Exactly, but its sentiments are very clear, whether it is an earlier draft or this draft. They have not changed.

## **The Bailiff:**

Does any other Member wish to speak?

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

I am grateful for Members' concern and, indeed, Corporate Services' concern about the independence of the Fiscal Policy Panel because former Senator Le Sueur and myself - who effectively conceived this panel - wanted absolutely that for this Assembly and, indeed, we are putting in place a control on our decisions and a reporting of our decisions back in 2006. We discussed this previously when we were on the Finance and Economics Committee. We wanted to subject the then Finance and Economics Committee and then, of course, it was eventually Treasury and Resources ... we wanted to be subject to proper rigorous, independent, economic analysis and that is why we brought it forward. It is curious and, indeed, we ourselves, nobody else has asked us, no Member of this Assembly asked us to move from just simply a proposition to putting it on a statutory basis, we are proposing to put it on a statutory basis. We are proposing to put the article in to ensure that Article 56 be independent of the panel. It is a curious state of affairs that we are being almost told that we are doing things that are not compliant with what we set out to do. It is ultimately going to be a matter for the Assembly. The Treasurer of the States is not an appointment by this Assembly but in the Public Finances Law, which is the underlying law which we are amending, is independent and there is absolutely a statement of that independence. There is no doubt that the panel is independent and the Assistant Chief Minister, Senator Bailhache, is quite correct when he does say that while there is a reporting provision by the F.P.P. to this Assembly, which means that they are unfettered in their ability to report, there is a relationship between the F.P.P. and the Minister because the Minister is asking the F.P.P. to do things. Now, that is a bit like asking a judge to consider an issue, asking a court to issue a matter. That is the nature of the relationship. Now, really, Members must consider, is the process that I have put forward to appointment of the F.P.P. possibly ... and that is not myself but a future Minister for Treasury and Resources, could a Minister for Treasury and Resources really effectively influence the Appointments Commission and do something to give an impression that the F.P.P. is independent? Well, the independence article is there. The F.P.P., once they are there, can report. Publicly, they write their reports, completely unfettered by the Minister in what they are doing. The questions are asked but they are ... and the appointment. Well, we have set up the Appointments Commission. The Appointments Commission is there to ensure that Ministers cannot appoint their mates or their people that they like or do not like ... well, probably like - you might not want to appoint somebody you do not like, I suppose, for something. But the Appointments Commission is there to do that and many Members of this Assembly will have been through appointments processes. They are the ones that safeguard the independence so while I would have the ability... and we are going to obviously and I am in discussion at the moment with the F.P.P. about the end of their terms of office and I have been quite clear, I would like to refresh ... it is good to have new blood on the F.P.P. and I will discuss appropriately with the Chief Minister and Council of Ministers whether or not it is appropriate to perhaps lift the membership of the F.P.P. to 4. I think we should have not all the appointments that are ending at the same point in order to have a constant cycling of members and certainly, I will be honest with Members, I will say that when a process of appointment to the F.P.P. is there, I will write to economists, and I hope other people, to say: "Would you apply to this process?" and that is right. There are economists, senior people, ex-members of the M.P.C. (Monetary Policy Committee) that would need to be approached to say: "Would you be interested in applying for membership of the Jersey F.P.P.?" Now, that is a whole different situation from then saying that you are going to be appointed because it is the Appointments Commission that makes the appointment and oversees the appointment. Now, that is there and further, the Minister, lest there be any doubt that there is some sort of cosy relationship with the Appointments Commission and that they have cooked-up together their own preferred candidate and the Minister

for Treasury and Resources can inappropriately interfere with the Appointments Commission and get his preferred ... because there is a colour of economic adviser. You can have Mr. Blanche Flower on one side and you can have ... well, you could have some of Senator Ferguson's friends on the other side. I mean, there is a colour of economic advice that might meet different requirements, let us be clear about that.

[11:30]

But the protection is there under Article 56A Article 6 that the Minister must at least 2 weeks before appointing the person that the Appointments Commission has said, not the Minister said, must notify Members the intention of appointment of that individual. Now, I think, if I may say, Senator Bailhache's observations about the risks of the politicisation in this Assembly of somebody being either criticised or spoken about or the provisions as the panel put forward mean that another Member of the States may, I think, if I have read the amendment correctly, another Member of the States may put forward another candidate. I think that is what the amendment says. Forgive me if I have not quite understood that. This is all the wrong situation. I am afraid we ... as Senator Bailhache says, I do not think that we should be subjecting people that have gone through a proper process ultimately, particularly economists who will have different political views and be coloured by economic considerations. We want a balance of people. We want some ... and the current membership of the F.P.P. does have a colour of different economic views. That is what is the actual tension of the debate. They argue, they argue about whether or not you should be spending more, whether you should be austere, whether or not you should be doing fiscal boosting or activism, *et cetera*. That is what happens. The M.P.C. in the U.K. advising the Governor of the Bank of England on interest rates and now the additional responsibility, they have a tense argument. Now to therefore then subject those individuals to political comment in this Assembly and risk their own ... because this Assembly, when it is debating individuals, it does say careless things in relation to individuals and particularly whether or not we are going to appoint them, we will be saying things and I do not think that that is right. Ultimately it is a matter for Members. It is not a die in the ditch but it is a preferred approach. I think that my amendment unamended which has all sorts of protection, the protection of the panel, in statute, the fact that the appointments are being made by the Appointments Commission and the fact that the appointment itself must be subject to a notice period before it is made, I think that is sufficient in order to ensure independence. So I did give consideration to whether or not agreeing to the Senator ... to the Corporate Services Panel. It is a matter for Members. It is not a die in the ditch but on balance, I think the amendment should be rejected.

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

Could I seek clarification from the speaker?

**The Bailiff:**

Yes.

**Deputy T.M. Pitman:**

The Senator said that in his view the amendment meant that one of us, one of the Assembly, could put forward another alternative candidate. Is that correct because I do not think it is and it is probably quite an important issue for a lot of people.

**The Bailiff:**

The proposer no doubt will deal with that in reply.

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

It was my question, Sir. I am not clear whether or not the proposition signed by the Chief Minister and Minister for Treasury and Resources could be amended.

**The Bailiff:**

I would have thought not, in the sense that the appointment has to be on a proposition signed by the Chief Minister and Minister. In other words, it is their nomination. The States can reject it, tell them to go away again. I do not think the States could put forward somebody because that person would not have been proposed by the Chief Minister and Minister. So I think my interpretation is that, no, individual Members would not be able to raise an alternative. They could reject what the Minister says and tell him to go away and start again.

**Deputy T.M. Pitman:**

Yes, Sir, I did think that was right, thank you.

**1.7.5 Deputy T.A. Vallois:**

It is a difficult one maybe for the States Assembly to grapple with because it is very much a technical matter and it is a discussion that this Assembly has to have because everything that the Minister for Treasury and Resources has just stated is exactly the same processes that I and the Chief Minister have to go through in appointing the C. & A.G. Now, the C. & A.G. has to be of high calibre and after what happened after the last C. & A.G., what happened previously and P.A.C. (Public Accounts Committee) being left without an adviser technically, we were glad to have the high calibre of people that did come forward for the post and it is this States Assembly that appoints that C. & A.G. for the actual reason of perception of the independence of that office. The C. & A.G. has to, by order of this Assembly, attend the P.A.C. meetings to advise upon information with regards to accounting standards and financial management within the States, her remit that is appointed and her terms of reference as per the States Assembly which is under the Public Finance Law under Part 6. The reason why the Corporate Services Scrutiny Panel have put these amendments forward, we recognise the arguments about the possibility of Members denigrating professional people coming before the States Assembly and there are concerns around that and we have had that debate over whether we should allow the Appointments Commission to get on with that and I am in agreement with that but the question we have to ask ourselves is the perception and the actual view, the conflict of interest or the independence of the panel as per the C. & A.G. Now, do the F.P.P. purely advise and report to the Minister for Treasury and Resources? Upon the evidence that we obtained during our review when the original proposition came forward to the States about the independence of the Fiscal Policy Panel, in that, they were absolutely clear in the independence and the reporting to this States Assembly. Now, the C. & A.G. goes through an extremely rigid process of the Jersey Appointments Commission. The H.R. Department helped myself and the Chief Minister to find a well-respected recruitment company to find people who would be able to serve in the capacity of the C. & A.G. A large amount of people put their names forward; very good and very professional people came forward. That process was vetted via the Jersey Appointments Commission. Myself and the Chief Minister attended the interviews and we appointed a person based on the short listing and the appropriate skills. Then we had to bring that appointment to the States Assembly to be endorsed and the reason why we do that is because everybody has to see the credibility and the importance of the role of the C. & A.G.'s office. Now, what we are saying is that the F.P.P. should be held and seen in the same regard because their advice, their reporting, is to the States Assembly. This is not about whether we believe certain people are going to do bad things behind the scenes or not. This is about perception and actual independence of an extremely important and crucial role to the States Assembly. Now, Members may view that what the Minister for Treasury and Resources has put forward is the correct thing but I would ask them to just keep in mind the fact is that the C. & A.G. process is exactly the same as

the Minister for Treasury and Resources has explained just before myself as they would go through with the Fiscal Policy Panel. However, the C. & A.G. officer is endorsed and I make that extremely importantly, that this States Assembly endorses that appointment. It shows that 51 States Members have support for that individual to carry out the important office of the C. & A.G. and the point in having the independence and showing the independence of the Fiscal Policy Panel is that this States Assembly, 51 States Members, have support for the independence and the reporting of the Fiscal Policy Panel and that is the reason why the Corporate Services Scrutiny Panel put this forward because this is an important area for the States Assembly to consider when moving forward and identifying the differences between what the executive and the Ministerial teams do in terms of advising and reporting and how that happens and how the non-executive and the Back-Benchers can hold that to account or this States Assembly hold individuals to account. So it is a higher level of considering how we administer ourselves appropriately going forward and who we consider and how we consider them to be independent because it is not just about us but it is about the public's perception of these people and the way that the information is reported and I just leave that with Members and ask them to consider that upon the voting of the amendment.

### **1.7.6 Deputy R.G. Le Hérisier of St. Saviour:**

I have obviously got to speak, having been quoted in ... having pursued a line and I entirely agree still with those sentiments which Senator Bailhache kindly alluded to. But I think I was listening to Deputy Vallois who made a very spirited case for simply replicating the C.A.G. process in this process and I think there is a difference in the sense that we are appointing a group of people and that the chance, so to speak, for mischief is greater. It also should be said the reason I express those sentiments and still do is there have been some awful debates, particularly when we have been looking at local people and this is probably where the C.A.G. appointment and the Fiscal Panel are different because almost by definition, they will be outsiders to bring an outside view and not be, so to speak, contaminated by our system. I think what was happening with certainly local appointments was everybody was dreaming-up a bit of gossip they had heard perhaps about an individual or some were and these things were being dragged out in, I thought, an incredibly unprofessional manner and we were not looking at the skills that were required, whether the person had the skills, in a very rigorous fashion that: "I have heard so and so about so and so and they are on the side of the establishment or they are anti the establishment." All those factors were coming into play and it was descending into a most unprofessional circus quite frankly and that is why I expressed those sentiments and I am very pleased that Senator Bailhache has brought them up, so to speak. The dilemma I face, I would prefer - and this may sound hypocritical in the light of what I have said - in a sense the Deputy Vallois approach about the C.A.G. but it also has to be remembered when the C.A.G. position comes before the States, when the Greffier's position comes before the States, the processes have been so thorough that it would almost be seen as impolite - it should not be but it would be seen as impolite - to say: "Well, I happen to have another person up my sleeve." I mean, it would almost be impossible to answer in that fashion because there would have been such a rigorous process. So from that point of view, it is highly unlikely that somebody in the States is going to say: "I have heard on the grapevine that so and so is totally incompetent despite all this work by the Appointments Commission" and so forth. In other words, it is almost in the best sense of the term, a rubberstamping. I would like to see more checks and balances in the appointment of the Fiscal Policy Panel but I have this real fear, where it is a group, where it involves economists, you know, if you put 12 in a room, you get 13 opinions, this kind of approach. There will be people saying it does not represent the right spread of opinion and the Minister could have done this with the group. He could have stacked the group with his clones, so to speak, or people who for various reasons engage in group-think but I still believe, if there were the right checks and balances... and I am like Deputy Young, I wish I had come to this in a more thorough way and earlier. I would have liked something, for example, that the Minister would be required to

consult but not to get the endorsement of, to consult the Corporate Services Scrutiny Panel, for example, as to how the group should be constituted. I would not wish them to be compromised, I would not wish them to be told later: "You approved, therefore you are not in the position to say anything counter what has now emerged," not in that way, but just as a process of consultation and they would give their views as to the slate of candidates, as to the spread of opinions that are being represented in the group that he is bringing forward to form the membership. That, I think, would be a good check and balance rather than, as Senator Bailhache in quoting me said: "51 is now the case, 51 people acting as an appointment and recruitment panel" which is clearly not satisfactory. I would like to see that and the final longstop would, in any case be, if it was obvious that the Minister for Treasury and Resources was leaning too much, for example, on the Appointments Commission or it appeared to be the case of the names being sent there or it was quite clear that he was not following or he was not rationally answering the advice put forward by the Fiscal Policy Panel, then obviously the ... sadly the little used option of a vote of no confidence could be brought forward, that he is utterly and wilfully disregarding the views of this independent panel and let it be upon his head, not upon the head of the panel. So with a rather messy approach trying to reconcile my previously expressed views with the situation, it is a rock and a hard place situation, I do not like the States being actively involved in appointments, even though you could argue: "Oh, that is the ultimate accountability, that we be involved." It does not work. It leads to awful situations of people on half-baked bits of gossip and half-baked assertions as to where people lie on the pro and anti establishment line, for example. I would prefer a stronger view, but at the moment, I will go with the Minister's view and I would like to suggest that he puts forward to the Corporate Services Panel: "This is what I intend to do. This is the kind of balance that is emerging. Can I have your views without in any way compromising you and without in any way suggesting that this is your endorsement?"

[11:45]

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

This one, when I listened to Senator Bailhache, you do think that, yes, sometimes it does come down to the States and we have to discuss individuals which sometimes might not be the right thing, sometimes it has turned out that it absolutely was the right thing. What worries me going back to when the Fiscal Policy Panel came into force and the credence that they are now given, which is totally understandable, Senator Ozouf, the Minister for Treasury and Resources basically aligns them with the people who advise the Bank of England which I think the people in the money in the Island would also agree. I am not that far up on that high level spending. As long as I can make the bills meet at the end of the month, I am okay. But what I do realise, this panel over the years has become the word of God really. What they say goes. I mean, the timely, targeted, temporary and, if every proposition brought by a Back-Bencher had to fit those 3 and maybe that is a right thing, maybe that is a wrong thing, but on this process I go back to Senator Ozouf again. He said it himself and Deputy Le Hérissier said it, you put economists together and you might get a different answer. I do know the Corporate Services advisers at the Société once did question the 3 Panel members and they had come up with completely different ways of cutting the cake. Now, the Panel who were appointed obviously had the ear of the Treasury. So that is where I have been quite frightened, just listening to this debate. The power that the Fiscal Policy Panel does have understandably, who appoints them, and Deputy Vallois said it starts at the beginning and an independent process starts with an independent recruitment agency. I heard Senator Ozouf say he would be asking people to put their name forward for interview. I do not get that that is so independent as going out to an independent recruitment agency which will go the whole of England, maybe further. So I think the Minister for Treasury and Resources was... he did say in his opening remarks he could live with either way. I would sooner see the argument where Senator Bailhache is saying it is not very nice if people have got their name ruined in the States of Jersey.

Sometimes you listen to Deputy Le Hérissier and there is part of his speech you can steal for your own argument because he did say that the vigorousness, if it is done properly, would stop that that far down the line but he does not think we should be as a States appointing members. I think it is new, it is coming in statute. The Minister for Treasury and Resources said it may not be 3 all at once and really not a good idea to keep it all at once so it could be rolling so it would be just one member on a rolling basis. Again, also Senator Bailhache mentioned 10(d), that any States Member on a grudge or a whim or probably any other reason could bring a proposition if we put it in the hands of the States under 10(d) that the person is otherwise unable or unfit to discharge his or her duties as a member of the Panel which again I do not think would happen. It would have been resolved under (a), (b) or (c) well before it got to (d) if the person displayed any of the above. So I do think we are making heavy weather of this as it is a new appointment in the fact that it is now going to statute, it is all written down, the independence and what they will do. I would rather at the moment go with the amendment from Corporate Services Scrutiny Panel and because of the importance and the independence of this Panel being set up in statute.

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

It is quite opportune that I rise to follow the last speaker because I totally disagree with what she just said. I remind Members today we are debating draft legislation. We are not just having a discussion about the role of the Fiscal Policy Panel. We are drafting legislation that will be in force for years to come and I would say to Members that you could not vote for this amendment on the basis of the wording of clause 10 of the proposed 56(a) change. You could not vote for a situation and the Deputy who spoke last just said: "I do not think this would happen." Well, I am sorry, you do not introduce new legislation on the basis: "I do not think that this would happen." You could not have a situation where an individual Member of this Assembly could bring a proposition to remove a member of the Fiscal Policy Panel just on a whim. You know: "I do not particularly like that person and they seem to always be dominating the Fiscal Policy Panel views. So I am going to bring a proposition because I will be allowed to under this change in legislation to get rid of them and I can say whatever I like about them," as Senator Bailhache made clear when he spoke. You just cannot pass legislation today, I would suggest to Members, that would bring in such a flexible and quite frankly stupid change to our laws. Now, I say this in quite an anger because I do not think the members of the panel took advice on what they were trying to change. I think they simply supplemented "a member" for the wording in the original proposition. I do not think they thought about what they were doing but the repercussions would be immense. I have a panel that reports to me called the Employment Forum and I am responsible for the appointment of the members and I bring a report to the Assembly to advise them of changes. Can you imagine if the Employment Forum was subject to this sort of scenario where any Member could bring a proposition to remove a member of the Employment Forum? So, for example, and this is an extreme example and he is not in the Assembly at the moment, if Deputy Southern was not happy that the Employment Forum kept recommending a minimum wage that he was not happy with, he could bring a proposition in his own name to remove members of the forum who he thought were biased against employees. Now, he could do that and he could put all the arguments against the individuals who sit perhaps on that forum who he does not think should be suitable and by the same token, another Member who thinks that we should have a much lower minimum wage in Jersey would attempt to remove perhaps all the employee representatives. You cannot pass legislation on the hoof, I would suggest, and I would ask all Members to reject this amendment.

#### **1.7.9 Deputy J.M. Maçon:**

I do not rise as Chairman of P.P.C. to address this because I have not had a chance to discuss this exactly with my committee. What I would ask Members to do is look at the next item of business because all the fears and concerns that have been alluded to could exactly happen in our exactly

next debate. So I think what the debate has shown, we have a total mixture of ways in which we appoint people to different panels, depending on what it is and how it goes or even what Deputy Le Hérisier commented on about his concerns but if there was a concern about the member, there is nothing stopping them, as the Deputy did, lodging a question to the Minister about the appointment. So for him to turn around and say: "I am uncomfortable with the appointments process because they did it better, if I want to raise a concern within the Assembly, I have still got the opportunity to do that through an oral question" but you could do that through the appointments process. So it seems to me that we are juggling different systems and sometimes we seem to say: "Oh, it is absolutely okay" and sometimes we seem to say: "Oh, we are not so happy with it." So turning to this, I am not strongly one way or another because it seems that we manage both systems depending on who we want. The Minister for Social Security said it would be awful if we did that with the Employment Forum but he has got other members of tribunals that he appoints which again the same situation could occur that if Members did not like them for whatever reason, they could say that during the debate. So I think it does come down to for better or for worse, the professionalism of Members within this Assembly. The issue, I suppose, is we have that safeguard in those systems because if something has been missed by the Appointments Commission, or something comes to light, that Members at the last opportunity do have an option of saying something in this Assembly. On the other hand, you have to remember with the amount of appointments that do go through the Assembly, very little often is ever said about any of them apart from, of course, congratulating them and thanking them for what they are doing and that happens in the majority of cases. I know sometimes that does not happen but that is part of the safeguarding system and it comes down to individual Members' discretion and professionalism about how they wish to handle that which again explains why I am not particularly swayed one way or another. The strongest argument, I think, which I am concerned more with, it is more this issue of perception about perhaps I think for a Minister, for any Minister, is it safer perception-wise to have them appointed by the Assembly than to have a Minister appoint them in that process, albeit overseen by the Appointments Commission. But in my mind, I am slightly swayed more towards what the Scrutiny Panel is suggesting because of that but I think what I have to point out to Members is that the concerns that have been raised, we choose different methods of appointing people. The next item of business points that out and those concerns could happen so to say: "Well, we do not want it for the Fiscal Policy Panel members but we are quite happy to have it for other categories." It just seems to me that is not really a logical way to address this matter and I will carry on listening to the debate but I just wanted to point out those things and bear in mind the next item of business that we will be discussed.

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

Just briefly to remove any doubt, I have no objection to the membership of anybody that advises the States and the Minister for Social Security in particular. I occasionally do have variance with the policies that they suggest or the decisions that they arrive at and will continue to oppose them where I think it is appropriate but not individually. On the general issue, I think the principle I will adopt is that this House should give away as little of its power as possible to Ministers and that is an indication to the way I will be voting.

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

Just a couple of points on the appointment of people who are not Members of this House. Of course, they do not have the right to reply or defend themselves. I mean, if Deputy Southern and Senator Le Gresley stand for Minister for Social Security, then they both have the opportunity to say things and respond to that in questions but ordinary Members do not. In my experience, I remember years ago the Joint Advisory Council which was made up of members of the public, as it were, and appointments were approved by this House. It was a particularly embarrassing debate

where the merits of members of the public were discussed in an open forum. From my experience, that put people off from applying. They said: “Well, why should you lot be maligning somebody?” and there was another instance, I think it was the then Deputy of St. John who is now the Constable of St. John where 3 Members were proposed for something and he had a particular problem with one of them but he would not say which one it was and I think, if I remember rightly, I think we went in camera so that the merits of whoever it was could be discussed. Now, we now have a rigorous process.

[12:00]

The agreement was - and I am sure Deputy Le Hérissier will remember this - if possible take this away from this House because of that embarrassment factor. Now, we have got Ministers and as Senator Le Gresley said, he has got certain responsibilities, as do others, of bringing... I think of Economic Development. I was aware we were informed of appointments. Now, if there is a problem with any of that, I am sure any Member could raise that. For me we need to get people involved from outside but we need to make it as user-friendly as possible and I think if there was the possibility of discussion and debate about the personal merits of somebody, then it could put people off and because of that, we could lose people who had something to offer who say: “Well, yes, I would not mind doing this but I do not particularly want to go through that process if somebody could pop up and say something very uncomplimentary about me” when they have walked into this without that. For that reason, I think we should stay with the main proposals because it does give the Minister the rights to do that but having said that, questions can be asked and there are some checks and balances within that. So I think for me it is the sensible thing to do at the moment, so it allows those who may wish to give - some do it, do not forget, freely - their time and effort without the hindrance, as I would see it, of an embarrassing debate in this Assembly.

**1.7.12 Deputy E.J. Noel:**

I am grateful to follow Senator Breckon. I would just like to remind Members of the instance that he is referring to, and it is when we were looking for a chairman and non-executive board members for the States of Jersey Development Company. Members will recall this happened in the previous Assembly that one of our colleagues, for whatever reason, took a dislike to one of the proposed board members, and in doing so we lost the chairman designate. Really my plea to Deputy Maçon is mischief does happen in the States so we cannot always be relied on for our professionalism, and I would urge him to support the Minister and myself in having the robust guidelines that we have set out, along with the oversight of the Appointments Commission and bodies such as the F.P.P. Particularly whether you can have a different colour of members of that panel should not be appointed by this Assembly.

**1.7.13 Deputy M. Tadier:**

I think it is important that we do not get taken in here as to what is the real reason, and I think some Members have hit the nail on the head there, whether that is the sole intention, the reality of it is it does consolidate more power with the Minister, taking it away from the Assembly. The questions about accountability structures quite rightly do need to be asked. If we are really putting the focus on this about protecting members of the public from embarrassing and unnecessary debate, well, first of all I do not see that happening, and secondly it can happen already in other formats. In question time this week we had quite legitimate questions being raised about whether or not it was appropriate for a certain individual to be appointed to a certain post, given the fact that he had a conflict of interest. Those debates can still take place. Can we really imagine that if the Minister wants to get rid of somebody from a panel that questions are not going to be asked subsequently? He will have to quite rightly be asked questions by the media and by this Assembly: “Minister, why

did you get rid of that person from your panel? Was he or she not performing correctly?” Either the Minister will not tell us publically, which is very strange because what is the accountability mechanism there, or otherwise he does tell us the truth in the Assembly and it is equally embarrassing for that individual who has been removed. So one way or the other we do need accountability. We also need to put faith in the States Assembly. I do not see anybody in their right mind is going to bring a proposition to get rid of an individual for personal reasons. They may wish to quite legitimately question the policy direction that is coming forward by a particular panel because it just does not seem correct or it may seem politically biased. If that is the case, and I say it is a big if, then why would a States Member not bring that to the States, and also it would have to have the approval of the rest of the Assembly in order for it to be passed. So I think we are making too much heavy weather of this and that on balance we do need to support the amendment that is being put forward.

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

I may not mention everybody, if I do not I will thank them for taking part and apologise. Senator Bailhache: we talked about 56(e) but 56(e) is a change from the original law. That is the amendment. I was a bit disappointed, and I am sure it was unintentional, but I think the Assistant Chief Minister was somewhat insulting to Members because Members raise queries from genuine concerns. To imply that we would gratuitously insult people is really quite insulting to Members. I did take the time to check and the original concept of the Fiscal Policy Panel came from a discussion that the Minister for Treasury and Resources and Senator Le Sueur had with the previous Comptroller and Auditor General. Then it was brought to the States in P.133/2006 and it was quite clear on independence. It was also clear that it would be an appointment by the States on the recommendation of the Minister for Treasury and Resources. That is fine, but what we are doing here if we approve the Minister for Treasury and Resources’ amendment, and not our amendment to the amendment, is in fact we are changing a States decision without being aware of it. I am sorry but we need to look at what we originally agreed. We agreed that the F.P.P. would be appointed by the States, on the recommendation of the Minister for Treasury and Resources. I just leave that with Members. I do not like changing decisions if I do not know I am changing it. I do like to know what I am meant to be doing. When Senator Ozouf talked about independence and so on, it is not just a question of independence, it is a question of the perception of independence. The crucial difference is in the eventual sort of ratification of the appointment. As I say, the original proposition required it to be appointed by the States, on the recommendation of the Minister for Treasury and Resources. I was a bit intrigued too, the Minister for Treasury and Resources is starting to think: “Well, we have had the F.P.P. for some time” we have got them run in and they are understanding Jersey which takes a bit of time, and he is thinking it is time for a change. Why? What has suddenly brought that about? Mind you, on the same basis we could be thinking that we ought to have a new Minister for Treasury and Resources so he had better watch it. **[Laughter]** I will not rise to the comment, sir, it is not worth it. But, as I say, this is changing a decision of the States without telling us. I thank Deputy Vallois for her contribution, as usual it was short and absolutely to the point, which is more than I can perhaps say for Deputy Le Hérisier, which is long and not always to the point. Yes, we have had problems with appointments, but his comment about maybe the Scrutiny Panel should, well, almost get to the point of interviewing the panels. No, I am not sure that is a good idea. The problem is, of course, that Scrutiny Panels have the same economic knowledge limitations as Ministers so that we might take the 51-member recruitment panel away, but we are adding a 5-person one. So I think perhaps we will leave that one. Deputy Martin’s points on independence were very well made, as ever, thank you. Senator Le Gresley was a bit annoyed about the way this was going about and he wondered if we had even visited the law drafting offices about the amendment. We did. We looked at the Comptroller and Auditor General’s legislation and we went to the law drafting offices and said: “This is what we are

wanting to do, does this fit the bill?” We had it cleared that way. If you look at Article 44 of the main law, which people may not have with them, but I will quote it, Article 44 says that: “The States may revoke appointment of the Comptroller and Auditor General on a proposition signed by the Chief Minister and the Chairman of the Public Accounts Committee, or on a proposition signed by at least 12 Members of the States.” For some reason the law draftsman has put that down to one, it may need amending that, but basically it is there. That is our precedent for it. Deputy Maçon made a good case for perhaps reviewing procedures. Deputy Maçon was also absolutely right, it is a question of perception. I thank Deputy Southern for his contribution. Senator Breckon commented on it and in actual fact, as other Members have said, we do not need to comment on appointments to insult people, we can do it quite well without an appointment. I think we are perhaps being a little precious. Deputy Noel made a comment on the fiasco on one of the appointments and, yes, that was a previous appointment which was being organised by the Minister of Treasury and Resources, so make of that what you will. Deputy Tadier was correct in that we do need accountability. Basically we want an amendment to give the Fiscal Policy Panel the confidence that they have their independence and that we can look at their reports and know that it is absolutely independent, there is no bias, this is exactly what they are thinking. I ask Members to vote for the amendment.

**The Bailiff:**

Do you ask for the appel?

**Senator S.C. Ferguson:**

Yes, please.

**The Bailiff:**

The appel is called for then in relation to the amendment to Article 19 of the draft law which has been lodged by the Corporate Services Scrutiny Panel. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 13</b>	<b>CONTRE: 31</b>	<b>ABSTAIN: 0</b>
Senator S.C. Ferguson	Senator P.F. Routier	
Connétable of St. John	Senator P.F.C. Ozouf	
Deputy R.C. Duhamel (S)	Senator A. Breckon	
Deputy J.A. Martin (H)	Senator A.J.H. Maclean	
Deputy G.P. Southern (H)	Senator B.I. Le Marquand	
Deputy of St. Ouen	Senator F.du H. Le Gresley	
Deputy J.A.N. Le Fondré (L)	Senator I.J. Gorst	
Deputy M. Tadier (B)	Senator L.J. Farnham	
Deputy T.M. Pitman (H)	Senator P.M. Bailhache	
Deputy T.A. Vallois (S)	Connétable of St. Helier	
Deputy J.M. Maçon (S)	Connétable of Trinity	
Deputy G.C.L. Baudains (C)	Connétable of St. Peter	
Deputy J.H. Young (B)	Connétable of St. Lawrence	
	Connétable of St. Mary	
	Connétable of St. Ouen	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of St. Saviour	
	Deputy R.G. Le Hérisier (S)	
	Deputy of Grouville	
	Deputy J.A. Hilton (H)	
	Deputy of Trinity	

		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		

**The Bailiff:**

Very well, that concludes the amendment and, therefore, we return to the debate upon Article 19 in its original form. Does any Member wish to speak on that? Very well, all those in favour of adopting Article 19 kindly show. Those against. Article 19 is adopted. Minister, how do you wish to proceed?

[12:15]

**1.8 Draft Public Finances (Amendment No. 4) (Jersey) Law 201- (P.73/2013) - Article 20 to 23**

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

I will take, if I may, Part 6 together, which are the remaining articles.

**The Bailiff:**

The whole of Part 6?

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

Yes, sir. Turning now to the final Part 6, I am proposing minor changes in the way that special funds are set up. These changes will ensure that States special funds established by proposition will be able to retain income and will enable any Minister to lend from a special fund, subject to restrictions. The amendment 21 is an amendment which will allow in future Parts 3 and 4 of the Public Finances Law, which deal with the administrative process, as many of the things that we have been discussing in this amendment of the M.T.F.P. in budgets, arrangements in Part 4 for States training operations, and that these changes in the future could be made by regulations. There is a move to ensure that where we can we give this Assembly the ability to make changes to underlying laws by regulations and I am advised by law officers that this is not going to cause any concern with undermining the powers of the principal law because this is generally administrative arrangements and it is perfectly in order to give States the regulations power to make changes in future. I will answer any Members questions on those articles.

**The Bailiff:**

Are those articles seconded? **[Seconded]** Does any Member wish to speak on any of Articles 20 to 23? Very well, all those in favour of adopting those articles, kindly show. Those against. They are adopted. Do you propose the Bill in Third Reading, Minister?

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

With great pleasure.

**The Bailiff:**

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

<b>POUR: 35</b>		<b>CONTRE: 6</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Deputy of St. Ouen		
Senator A. Breckon		Deputy J.A.N. Le Fondré (L)		
Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Senator B.I. Le Marquand		Deputy J.M. Maçon (S)		
Senator F.du H. Le Gresley		Deputy G.C.L. Baudains (C)		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

## **2. Jersey Appointments Commission: Reappointment of Member (P.79/2013)**

### **The Bailiff:**

Very well, that concludes that matter. We now move to P.79/2013, Jersey Appointments Commission: Reappointment of Member, lodged by the Chief Minister. I will ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of the opinion, in accordance with Article 18(7) of the Employment of States of Jersey Employees (Jersey) Law 2005, which is concerned with the

reappointment of commissioners to the Jersey Appointments Commission, to reappoint Mr. Julian Rogers as a commissioner of the Jersey Appointments Commission until 23rd February 2014.

### **2.1 Senator I.J. Gorst (The Chief Minister):**

Thank you. Yes, it is as the Assistant Greffier has just read out. I would like to thank Mr. Rogers for his first term of office and I hope Members will support this extension to a second, albeit short, term.

#### **The Bailiff:**

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

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

I do not have a comment to do with the individual himself but I do have a question about the recruitment processes for this in general. Can I ask the Chief Minister to explain what safeguards are or are not put in place - probably more likely - to ensure that the representatives here are representative of wider society. I say that in so far as last time I checked 50 per cent of the population were female, yet 100 per cent of these individuals are male. That is just one way of looking at the demographics, but there are no doubt other factors which could also be highlighted about the particular traits that these characters may have, to do with age, background, *et cetera*. So could the Chief Minister comment on that, whether it is a concern for him that boards of this nature which are themselves appointing other bodies should be representative in the modern era?

### **2.3 Deputy T.A. Vallois:**

This is just more administrative questions about the roles of Members on the Jersey Appointments Commission as to whether there will be an intention any time to remunerate commissioners or the chairman even of holding a Jersey Appointments Commission role, and why it is only until the February 2014 period that he is appointed until. Thank you.

#### **The Bailiff:**

Does any other Member wish to speak? Very well, I will ask the Chief Minister to reply.

### **2.4 Senator I.J. Gorst:**

Thank you, and I thank Deputies Tadier and Vallois for their questions. Deputy Tadier, I think previously when we have been bringing forward Members to the Appointments Commission has made similar observations and there is no easy answer to address his concerns. He is aware that we do not run a quota system and historically it has been largely those who have applied, and I think it is certainly the case that the most recent position which needed to be applied from open competition, it was only males that applied in that instance. I have no doubt that simply placing an advert, as I have said before, in the local media and then just looking for people to apply as an old approach to these processes and there should be a more proactive approach of suggesting that individuals with the appropriate skills should consider applying. That is certainly the way that we will be moving to. In some regards, that, I hope, will answer why it is only a short second term because the H.R. Department is reviewing the role of the Appointments Commission and we hope shortly to be considering some proposals at the States Employment Board. If those are reviewed then they will need to come to the States for consideration because I think what Deputy Tadier is saying is that we need to be ensuring that these are very important posts and positions and we need to ensure that they continually are fit for purpose and that their remit may need to change, (a) in light of experience, (b) to make them fit for the future. With regards to payments, they do already receive payment but I do not have the amounts in front of me, so I cannot answer that question. But they only receive, as far as I am aware, payments for days that they are sitting. But there is a

budget within the Human Resources section of the Chief Minister's Department for the Appointments Commission. I maintain the nomination.

**The Bailiff:**

All those in favour of adopting the proposition, kindly show? Those against? The proposition is adopted.

**3. Draft Adoption (Amendment No. 6) (Jersey) Law - (P.80/2013)**

The next matter is the Draft Adoption (Amendment No. 6) (Jersey) Law P.80, lodged by the Chief Minister and I will ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Adoption (Amendment No. 6) (Jersey) Law 2000, a law to amend further the Adoption (Jersey) Law 1961. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

**Senator I.J. Gorst:**

I would like to ask my Assistant Minister, who is the Chairman of the Legislation Advisory Panel which this piece of legislation arose from, as did the next one, to act as rapporteur for this item and the next item.

**3.1 Senator P.M. Bailhache (Chairman of the Legislation Advisory Panel - rapporteur):**

This bill or the purpose of this bill is to remove a provision that discriminates against homosexual men. It is a small amendment but it is an important amendment. It seeks to amend the 1961 Adoption (Jersey) Law by repealing paragraph 3 of Article 11, which prevents a single male from adopting a female child unless the court determines that there are special circumstances. If such an application comes before the court then the court has to examine the matter extremely carefully to see whether it can identify special circumstances justifying overriding this presumption. A corresponding provision in the English statute, the Adoption Act, was removed in 1975 but the provision remains on our statute book. In 2009 and 2011 there were cases before the court, and I declare that I was a member of the court on both occasions, and the judgments of the court requested this Assembly to consider whether Article 11(3) of the law ought to be repealed. The request for consideration by this Assembly was based on the rationale that the provision in the Adoption Law is outmoded. It is based upon an assumption that men pose a *de facto* risk to female infants. Furthermore, it assumes that fathers are unable to meet the emotional needs of a female infant, whereas, of course, there is no such assumption in relation to a woman meeting the needs of a male infant. The courts, if the Assembly adopts this amendment, will remain under the duty to ensure that the primary consideration is the welfare of an infant but that will be the sole consideration before the court, should it have to consider, in future, an application by a male to adopt a female child. I accordingly move the principle of the bill.

**The Bailiff:**

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

**3.2 Connétable M.P.S. Le Troquer of St. Martin:**

I think it will be a difficult contribution for me today to make in this probably short debate. I understand, and it is shown many times in the proposition, that it is the Royal Court, up until now, that had to be satisfied for the child's best interest, and it is mentioned many times, to promote the welfare of a child, *et cetera*, before allowing a single male to adopt a female child. The court has to be satisfied, I should say, of the special circumstances, that is what they had to look at and that is what we are debating today, the removal of that. It is stressed many times in the proposition, and I

am sure we all appreciate the role the Royal Court has undertaken to ensure the best interests of a child. Where I have a difficulty is the whole Article 11 of the law. I accept that we are not discussing the whole Article 11 today. We are debating just a part, Article 11(3), and I find it difficult to support that part, as I do not really support the article as a whole. I suppose I could have brought my own proposition to seek a change for some of the provisions for the adoption law but I know that I would have probably had little chance of success in this Assembly. It may be a proposition to the effect that a single male or single female could not, without thorough Royal Court examination, adopt a female or male child respectively. There is a whole range of scenarios. We know we have occasions where a husband or wife cannot have children and wish to adopt. I admire those couples who may wish to bring up a family and have no difficulty with that, who open up their own home and their lives to raise children. There are those scenarios where someone will lose a partner and wish to adopt the child they were raising before the death. Again, I have no difficulty. The same again when relatives wish to adopt a child following some major issue in a family, maybe the parents are killed or through serious illness and death. My difficulty is where a sole male or male and his partner, or, indeed, a female with a female partner wish to adopt a child. I accept today we are discussing the female adoption aspect only and removing reference to the Royal Court. Maybe we should, indeed, be adding that a female cannot be adopted by a male. I do not feel I can support making adoption of a female child by a male easier, even if there was continued proviso that the Royal Court would prioritise a child's best interests.

[12:30]

The law indicates that up until now the Royal Court intervention occurs when consideration is being given to the adoption of a female child by a sole male. Removing this proviso surely gives greater power and greater authority to the officers dealing with adoption and removes yet another important role for the Royal Court to consider, more authority for civil servants, and not that I criticise their excellent and very difficult and upsetting role that they have to undertake on a daily basis in such circumstances. The proposition contains human rights advice. It starts by telling us that the proposition is compatible with the European Convention. However, it goes on to explain that it is the continued existence of Article 11(3) of the Adoption Law that gives rise to the difficulty if it was not replaced. Strange, I would say, that the use, deliberations and decisions made by the Royal Court of this Island might breach human rights legislation. If we have to change and repeal this, then why are we having to discuss it, why bring it to this Assembly at all? Everyone has a right to respect for his or her private life and family life and all the issues of the proposition: race and colour, sex, religion and political opinion. I have no difficulties with any of that and I hope Members will respect my opinions too. However, we do have another element to this equation. Someone else has human rights and we have the child, maybe a baby. It will be having decisions made on his or her behalf for their entire future and who have little say in that decision making. A child might be being placed in the care of a male or same sex relationship that already exists. A child is a result, is a gift of a relationship between a man and a woman, with the love of a couple. If a person wishes to live in some other arrangement, be it alone or man and man or woman and woman, then that is their choice. But I am troubled that they may wish to have a child to make up that family. I am thinking of that child who grows up with a different perspective of life to male - female relationship. There will be Members here today maybe upset and surprised at my views and comments. I may be a lone voice. However, I feel I owe it to this Assembly an explanation as to why I will vote against the proposition.

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

I was not going to speak in this debate but as I think probably the only out Member of this Assembly, I have to, I am afraid, rise just to make a very brief remark in relation to the Connétable's comments. I do not think his comments are related to the particular Article and

amendment that is before the Assembly. But I have to say that the Connétable's views, while sincerely held, are, frankly, wrong. I am afraid that sexual orientation, as he suggests, is not a choice. I am afraid that it is the way that individuals are made and it is certainly the way that I am made. It is, frankly, outrageous, in this day and age, in 2013, to suggest that it is wrong for a same sex couple not to be able to adopt or bring up a child. He needs to perhaps meet some of the people that I know, some of the people that are friends of mine, who bring up children in a loving, stable, supportive family environment. His views are outmoded, are outdated, are offensive, and, in my view, he is entitled to his view but we should not send out of this Assembly, I hope, a message that in 2013 we have a view that children that should be adopted or need to be adopted should not be adopted by either a single individual who is gay, who is homosexual, or a couple who choose to give a young individual, a young child, the support and a loving environment of being able to be brought up. I find such remarks wrong. I welcome the amendment. I thank the Deputy Chief Minister for having signed it and the Assistant Chief Minister to having brought this amendment to the Assembly, which I do not think is what the Connétable raised.

### **3.4 Connétable S.A. Rennard of St. Saviour:**

I have an adopted child. At the time when I started the adoption I was a one-parent family. I then found another gentleman, bless his heart, and I got remarried. We then went through a lot of scrutiny, both of us, to find out if we were acceptable to adopt this child, who I had had and looked after since it was born. We did go through a lot of checks. There are a lot of checks made before you can adopt a child. I think the most important thing that the people who checking us did say: "It is important that a child has love and understanding." This is what I was able to give -- sorry. If the child had not been allowed to remain in my care, it would have been transported to Guernsey and the Guernsey children come here. I would have considered every time then where the child was and what it was doing and then we would have had to -- this is slightly off the present thing -- but we would have had to decide when a young child knocked on the door, as to why we had given it away. A child just needs a lot of love and understanding and if it can only get that from one person, well and good. Sometimes there are families where there are 3 or 4 and the families argue all the time. I am going to go with this amendment because I think what is important here is the love and the understanding that a child gets from either one person or 2 [**Approbation**] and I do feel it is very important to not consider anything else than the child. I say the people that are adopted or the adoptive people who want to look after this child are vigorously gone through a lot of checks. I can honestly guarantee you that; finance, everything. Please vote for this amendment so that a child can have a loving parent or parents and that they can have the love which they definitely deserve.

### **3.5 Senator I.J. Gorst:**

I just wanted to rise in light of the Connétable of St. Martin because I think, as he has admitted in his comments, he was not talking about the amendment before us today.

#### **The Bailiff:**

Well, he went wider but he is opposing the amendment for the reasons he gave.

#### **Senator I.J. Gorst:**

Indeed, but I think his concern arose from the actual Article, as he himself suggested. I just wanted to say that what this amendment does, and I hope Senator Bailhache will be able to explain this, is simply bring the law into line with the considerations that the Royal Court will be taking, i.e. in the best interests of the child. I would suggest that is the overriding consideration and that should be the overriding consideration, and I would suggest that any other consideration which might be put up for that is not correct. I think it is not correct to say that every child is a gift and a result of love. There are some very difficult circumstances and I do think, of course, the difficulty is how the court

and the agencies interpret the best interests of the child. But the best interests of the child should be the overriding consideration. I believe that it is. It already is. The judgments of the courts show that and therefore this is an amendment to the law, bringing it into line with the consideration that is already the overriding one. Thank you.

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

Listening to Senator Ozouf's comments, I have to say I agree with the first part. It is a shame that more people do not appreciate the fact that sexual orientation is not a choice but it is the way one is made. I completely agree with that but that is where I part company with him because, while I respect his views on what he said afterwards, I believe he should also respect others' views in the same vein. As the Constable of St. Martin said, this could contain a very wide range of scenarios. I shall not attempt to cover all of them as he did, but suffice to say when I first read this proposition I struggled to find a rationale behind the proposition. The only reason that I could find was that for some reason same-sex couples would be denied the opportunity to adopt a female child. It seems to me, carrying forwards the paragraph 3 of Article 11 of the 1961 Law, that in certain circumstances it might be the male child that would need to be in the minds of the court. The other reason, in fact the *raison d'être* of this proposition, seems to me, I suspect, it is mainly to facilitate homosexual couples, either male or female, to facilitate their ability to adopt children. I am of the view, and this is my opinion, that such circumstances are not an appropriate environment for raising children and therefore I doubt I will be supporting this proposition.

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

Last night after a meeting I went to, somebody told me of what happened in the US when they were debating civil partnerships, same-sex marriage and the subsequent adoption that goes with it. Somebody had left a sign outside a church saying: "Jesus had 2 dads and he turned out all right", which I thought was quite apt. There is not one thing that Christians have to believe. The Constable of St. Martin needs to be commended for his bravery and freedom of speech is something that should be protected at all costs. But quite rightly, if other Members do not agree with that and it is a minority voice, then he will also come under some fire in the Assembly. But obviously that stays in the Assembly and that is the right way to do business. There is an issue because when making the speech it was not clear to me whether or not he was opposed and others may be opposed to the fact that a single male can adopt a child who happens to be female or whether the underlying issue is that male, if he is homosexual, should not be allowed to adopt the child. That seems to be the underlying issue, which I can understand some people have certain religious beliefs which may entail that. There is an issue, though, of course, is there not? Because, and Senator Ozouf again, who made an equally compelling and passionate speech which I commend him for and which I agree with entirely, is that if you have a family situation where a mother dies and then a father wants to adopt that female child, why should he not be able to do that? There is also the broader question about the family unit in the modern era and about how you engage with that child. It is much better to live in an open and honest family which talks to each other than it is for, let us say, a homosexual male who is in a sham relationship with a female. He could quite rightly, or not quite rightly, under the current situation be masquerading, adopt a child because he ticks all the boxes and then imagine what kind of family that child would be living in, whether it is a boy or a girl. The other implication is if we do not allow males to adopt children, if you have a scenario where, again, the female dies, the male is left with a daughter, if we are to be logical, under the Constable of St. Martin's rationale, immediately, the moment that the mother dies, that child should be taken away from the father because the father cannot look after a female child who may be his own. We may feel as though it is simply not right for a male to be looking after a female child. It is bizarre. It is frankly bizarre and I think those comments needed to be made and I do not see any reason for not supporting this.

**The Bailiff:**

Does any other Member wish to speak? Deputy Pitman. I see we are now at 1.45 p.m.

**Deputy T.M. Pitman:**

Thank you for giving me a chance to speak, Sir.

**The Bailiff:**

Is any other Member wishing to speak after this? Deputy Martin. Does everyone wish to continue for a short while? Very well. Deputy Pitman.

**3.8 Deputy T.M. Pitman:**

I am going to speak for an hour, so do not worry; dinnertime is coming. I do not often agree with the Constable of St. Saviour but I do agree entirely with her sentiments. I think ideally we would all say that a child should hopefully have a mother and a father. However, the reality in the work I used to do, I have seen that many parents who never, ever should have had children and their lives have been absolute hell.

[12:45]

It is surely better that that child gets the love, as the Constable said, from someone. Provided that person has been vetted and they are the material to make a good parent, then I think that is what really should be of prime importance. It is ironic that all of these objections are often tied to the church and the church, of course, has done more to enable, and some people might even say sponsor, child abuse and cover-ups than any institution in the history of mankind, and that is a fact. We know the church in America certainly had got huge funds put aside for the abuse that they have covered up when the welfare of that child has just been secondary to everything else. I have seen a lot of children, as I say, grow up in my previous work. I think if they were asked what was the most important, I re-iterate, and this is why I am going to support this, is that somebody loved them and somebody was there. It really does not matter at the end of the day whether that is a man, a woman, a heterosexual, a homosexual. People are always going to have their own views on this but if we are really talking about the welfare of the children then I think that we have to support this. Because that is what it does come down to, I think; love and doing what is right for the child. Having both a mother and a father is absolutely no guarantee, I repeat, that a child will get all they need in life. So, I think people should just put any personal views and misgivings aside and take the view of the Constable of St. Saviour, if they are not going to take my views, because kids come first and I think this is potentially to be a good thing as long as it is all monitored as stringently as we think Jersey does do. I hope Jersey does, because if it is not, then we have not learnt very much off the Haut de la Garenne.

**3.9 Deputy J.A. Martin:**

I will be brief and I was asked by the Minister as I lead on the children's area under the Ministry of Health and Social Services too, if there was something, probably extra to say, to say it. I would just like to re-iterate what the excellent speech by the Constable of St. Saviour said. Yes, and I do respect other people's opinions, but we are here to make laws and laws that are fair for everybody. We at the Ministry for Health and Social Services are dealing with a law that is 52 years-old. It was passed in 1961 and it has not been changed. We vigorously check everybody who comes up for adoption. We do not always get the right sorts of people, whether or not they seem to be in what the Constable of St. Martin describes as a loving heterosexual relationship. We have got so many children who, by the time they do reach adoption, have already got some really special needs, emotional needs that we need exceptional people who can give the time and hopefully try and repair the damage that has already been done. This just gives us a tool to stop these cases going to

Royal Court, hanging around, making them longer than they need be. But please be assured at the Ministry of Health and Social Services, the checks, as the Constable of St. Saviour said, we do more now than we ever did, and rightly so, of the respective adoptive parents. We check, there are always ongoing checks and there is always ongoing advice. If adoptive parents need any help we are there. It used to work out that Guernsey children who could not ... we would swap islands. We do not do that now, which is good. We go, we look at the needs of the child, the individual needs, and very rarely do we have a little cuddly baby. We are talking about different; sometimes we do but very, very rare. But families in 2013 come in all shapes and sizes and it is all about what that family can give to the child. We have second families living together. We always hope that everything is taken into consideration. Yes, is a man better whether, whatever sexual orientation, to give a female or a male child emotional support? It is down to the individual and it is down to the child. This is a nonsensical amendment. Senator Bailhache put the law in context and I think many Members have put the rights of the child. I would like it to go through obviously unopposed, but obviously we all respect that some people for different reasons cannot understand this. But for my personal, well, it is not personal, it is seeing the families, all different sorts of families, in 2013, how they work with help, with support groups and everything that goes with it. So, I really hope that we can all support this and I really just thank the Assistant Chief Minister for bringing this. I think it is very, very long overdue. Thank you, Sir.

**The Bailiff:**

Is there any other Member wishing to speak? Then I will call upon Senator Bailhache to reply.

**3.10 Senator P.M. Bailhache:**

I am grateful to Members who have spoken. I will not, I think, deal with the individual contributions except to say that I hope the Greffier will pick up when it comes to doing Hansard that Deputy Martin called this a nonsensical amendment but I think she meant it would be nonsensical not to adopt the amendment. It seems to me that it is important that 2 things should emerge clearly from the Assembly today. The first is that homophobia is outdated and is no longer acceptable in our community. **[Approbation]** The second one is that the rights of children in our community are paramount. There is nothing more important in the context of this part of family law than that as many children as possible should be given the opportunity of growing up in a loving and supportive environment. The adoption law and the obligation of the courts under the adoption law is to give primacy to the interests of children. But there is a clog on that because Article 11(3) of the law sets out an obligation in the circumstances set out in that paragraph not to make an adoption order unless the court is satisfied that there are special circumstances. It is that clog on the law which it is the purpose of this amendment to remove. I do not think it that it would be appropriate to go into the background of the children involved in the first case in any detail but I think I will say this. The children had been brought up for the first 9 or 10 years of their lives in an entirely dysfunctional family where substance abuse, criminality and violence were the norm. When the adoption service first came to deal with the children the boy was an extremely troubled young man, violent himself in school, ignoring requests from teachers, making enormous difficulties for the educational environment where he was. The female child looked as if she were intellectually challenged, such were the difficulties that she had experienced in the early years of her life. The adoption service found it very difficult to find adoptive families to take on these 2 extremely challenged and difficult children. The only people who were prepared to do it were a homosexual couple who were living in the Island and one of them was prepared to give up his job in order to look after the children and to act, as it were, as the quasi mother to them. The family were reported in the national press not very many weeks ago and in fact the *Jersey Evening Post* published an article about them. The transformation in those children was quite extraordinary. The

female child no longer gave the appearance that she had before, the male child was smiling and full of happiness and full of love. That was the effect of placing these 2 troubled young people in a proper environment rather than keeping them in an institution. That is the purpose of this amendment to the Adoption Law and I hope that Members will support it unanimously.

**[Approbation]**

**The Bailiff:**

Is the appel called for? The appel is called for then in relation to the principles of the legislation, projet 80. I invite Members to return to their seats and the Greffier will open the voting

<b>POUR: 36</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Connétable of St. Martin		
Senator P.F.C. Ozouf		Deputy of St. Ouen		
Senator A. Breckon		Deputy G.C.L. Baudains (C)		
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				

**The Bailiff:**

Senator Ferguson, do you wish this matter referred to your Scrutiny Panel?

**Senator S.C. Ferguson:**

No, thank you, Sir.

**The Bailiff:**

Senator Bailhache, do you wish to propose the articles *en bloc*?

**Senator P.M. Bailhache:**

I wish to propose them *en bloc*.

**The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on the individual articles? All those in favour of adopting Articles 1 and 2 kindly show? Those against? They are adopted.

**Senator P.M. Bailhache:**

I move the bill in third reading.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak in third reading? All those in favour of adopting the bill in third reading, please show? Those against? The bill is adopted in third reading.

#### **LUNCHEON ADJOURNMENT PROPOSED**

**Senator P.F. Routier:**

I propose the adjournment.

**The Bailiff:**

The adjournment is proposed. The Assembly will reconvene at 2.15 p.m.

[12:57]

#### **LUNCHEON ADJOURNMENT**

[14:16]

#### **4. British Nationality Act (H.M. Armed Forces Exemption) Bill: extension to Jersey (P.81/2013)**

**The Bailiff:**

Now the next matter on the Order Paper is the British Nationality Act (H.M. Armed Force Exemption) Bill: Extension to Jersey Projet 81 lodged by the Chief Minister. I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to signify, pursuant to Article 31(1)(a) of the States of Jersey (Jersey) Law 2005, whether they agree that the provisions of the British Nationality Act 1981 (H.M. Armed Forces Exemption) Bill of the United Kingdom Parliament should, when the Act comes into force, extend to Jersey as summarised in the report of the Chief Minister dated 12th June 2013.

##### **4.1 Senator P.M. Bailhache:**

In 2005 the States made provision in the States of Jersey (Jersey) Law 2005 that provisions of any Act of the United Kingdom Parliament purporting to apply to Jersey should first be referred to the Assembly so that the States might have the opportunity to indicate their views on the proposed United Kingdom Act. The purpose of this proposition is therefore to give the Assembly the

opportunity to consider whether there is any Jersey interest in the proposed amendment to the British Nationality Act which might lead us to consider that the Act should not apply in Jersey. At present the British Nationality Act 1981, which applies to Jersey, contains a provision that anyone wishing to be naturalised as a British citizen must be in the United Kingdom as there defined on the first day of the 5 year qualifying period. Currently those serving overseas can apply for naturalisation without meeting the residence requirement. However, they must be overseas at the time of the application and still serving in the Crown service, including the Armed Services. The proposed amendment broadens this exemption so that it covers those who have left the forces and are in the United Kingdom. Service and welfare organisations such as the Royal British Legion have been very supportive of this change in the Act and indeed have been instrumental in persuading the United Kingdom Government to bring forwards the amendment. I am sure that Members will agree that is no adverse Jersey interest, at least I hope Members will agree, and that the amendment which will be of benefit probably only to a small number of servicemen and others should be approved, I move the proposition.

**The Bailiff:**

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

**5. Commissioners of Appeal for Taxes Office: reappointment of members (P.83/2013)**

**The Bailiff:**

We come next to Projet 83 - Commissioners for Appeal on Taxes Office, reappointment of members - lodged by the Minister for Treasury and Resources. I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion – in accordance with Article 10 of the Income Tax (Jersey) Law 1961, as amended, to approve the appointment of the following as Commissioners of Appeal for the Taxes Office for the periods stated: Mr. Philip Barber (3 years), Ms. Jacqueline Collins (4 years).

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

Sir, this is one Deputy Noel will be putting forward.

**5.1 Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):**

We are seeking Members' approval to reappoint 2 individuals as Commissioners of Appeal for the Taxes Office. The detailed background, knowledge and experience of those individuals are outlined in our report. The Commissioners of Appeal are appointed by virtue of Article 10 of the Income Tax (Jersey) Law 1961 and are an independent and impartial body that exists as the first point of appeal for taxpayers, both individuals and businesses, who are in dispute over decisions and rulings made by the Comptroller of Taxes. We are seeking reappointment for one of these individuals for a 3-year term commencing on 1st July 2013 and for the other, a 4-year term commencing on the same date. The Appointments Commission has requested that the terms of office for these 2 individuals are staggered so that as both are retiring at the end of the proposed term those retirements can be staggered and will provide an opportunity for more seamless handover by any new Commissioners that are appointed. Further, we can confirm that the reappointment of these individuals as Commissioners of Appeal for the Taxes Office is supported by the Appointments Commission. Both these Commissioners have made an invaluable

contribution during their previous terms of office, hearing appeals from taxpayers and making decisions based on sound judgment and an in-depth understanding of the Income Tax Law. They both possess integrity, common sense and patience which are essential qualities for this role and we would like to take this opportunity to thank them and the other 3 Commissioners for their services to date. We hope that Members will provide their support in approving these reappointments.

**The Bailiff:**

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

**5.2 Senator S.C. Ferguson:**

Yes, I am not querying the probity or anything of these 2 particular people but we have a system here, the procedures of which have been criticised to the ends of the earth this morning and here we are applying it this afternoon. I think probably I would like to refer it to P.P.C. and ask that they should consider this and consider whether we should be in fact standardising our approach to this because this is totally contradictory to what we have been discussing this morning.

**5.3 Deputy R.G. Le Hérisier:**

There have been over the years, made by myself, several requests to do the very thing that the good Senator has mentioned, and hopefully the new chairman will take this on board. No doubt, if he has a spare minute he will bring this up with his committee. The inconsistency in appointment procedures, the Senator is quite right, I do not think it should cut across this but I would like to ask the rapporteur, could he tell us why all of the proceedings are in private and why it is not possible to publish decisions with personal details removed?

**5.4 Deputy J.M. Maçon:**

Very briefly. Just to thank Members for their contributions and I will be raising that with the P.P.C. in the long-term but I would just put it down with a caution that it would appear Members decide to take things as they will as things go on. We are having this debate, no one is saying anything negative about these people, I really think some people make heavy weather when they do not necessarily have to.

**5.5 Deputy J.H. Young:**

I am sure we have got very excellent candidates here but I wonder if we could be advised about whether the Appointments Commission... or are there any rules about the retirement ages for some people. We are dealing with candidates with very long and distinguished service, I wonder if we have consistent arrangements in any way across these appointments generally. Particularly, as I understand, Jurats, I think, retire at 72, is it? I would just like to know are there any guidelines on these questions.

**The Bailiff:**

Does any other Member wish to speak? I call upon the rapporteur to reply.

**5.6 Deputy E.J. Noel:**

Members will know that I sat on a P.P.C. sub-committee with other colleagues and it is a matter that we did consider, the appointments that come to this Chamber for approval, and that sub-committee did report back to the main P.P.C. Committee along the lines that we thought that there should be the very minimum amount of appointments coming to this Assembly so that matter has been raised with P.P.C. and I am sure the new chairman and new committee will be looking at that in due course. In terms of Deputy Le Hérisier's question, it seems to be a case that we are damned if we do, damned if we do not. In the past we have not put details in and we have been criticised

for not doing so and when we do put details in we are criticised for doing so. It is one of those cases.

**Deputy R.G. Le Hérissier:**

Can I clarify, I was not referring to the individuals, I was referring to the judgments which are apparently totally private.

**The Bailiff:**

The question was about the decisions of the Commissioners of Appeal not about the personal details of these Commissioners.

**Deputy E.J. Noel:**

There is a valid reason for that and that is to maintain the confidentiality with the individual taxpayers concerned, regardless of what the Commissioners opine on the day. It is a private matter between an individual taxpayer and the Income Tax Department. To answer Deputy Young's consideration, I believe that is more of a matter that should be taken with the Appointments Commission to see that there is some continuity about retirement ages and the like. I maintain the proposition.

**The Bailiff:**

All those in favour of the proposition, kindly show? Those against? The proposition is adopted.

## **6. Draft Customs and Excise (Amendment No. 7) (Jersey) Law 201- (P.85/2013)**

**The Bailiff:**

We come next to the Draft Customs and Excise (Amendment No. 7) (Jersey) Law - Projet 85 - lodged by the Minister for Home Affairs and I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Customs and Excise (Amendment No. 7) (Jersey) Law. A Law to amend further the Customs and Excise (Jersey) Law 1999. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

This amendment has 2 different effects, both of which are of a technical nature. The first effect is to remove the ability of a person who is either suspected of carrying more than €10,000 into or out of the Island and who is about to be searched under the terms of Article 37, or the second category is a person who is about to be searched under Article 53(1) which is a general searching power for Customs and Excise Officers which relates either to looking for chargeable goods on which duty has not been paid or prohibited goods or restricted goods. At the moment both the provisions indicate that they have a right to go either to a senior officer or to a Jurat. Now, in practice there is always a senior officer on duty and therefore we do not think that the provision of going to a Jurat as a right of appeal against a decision to search should continue. So the first aspects of this simply remove the references to a Jurat so that the right of appeal in relation to a search is to a superior officer. Searches only take place where the Customs and Immigration Officers have reasonable grounds for a search and there are written guidelines in relation to this. The second effect is to extend the existing power to levy a penalty summarily not exceeding 3 times the level of duty payable on goods which have been imported or exported. That is existing powers under Article 65(1) of the law and what we are seeking to do here is to extend that so there is now a similar power, or will be a similar power, which applies to excise duties.

[14:30]

Now, normally of course this type of penalty is imposed when people are trying to bring things in or take things out and have not declared it. The excise duty one is so much more subtle and the best example I can give of this - possibly the only example I can give of this - is in relation to red diesel, which pays a lower rate of duty but is not meant to be used in cars, only in boats because of the lower rate. So if someone was found to be using this in their car they would have committed an offence and what is intended now would be a power for the summary making of a fine by a Customs Officer. They can alternatively be taken to court of course, but this is designed to deal with minor cases with relatively small amounts involved where it is not thought necessary to take them to court. Included in the paperwork is the human rights advice in relation to that particular power, which is quite interesting. The advice effectively is saying: "This is okay for Customs and Immigration Officers to have this because there is firstly a right of appeal to the Minister. The fact there is that is not okay from a human rights point of view because there is also a further right of appeal on to the court." That makes this provision okay. As I say, I we already have this power, we are simply seeking to extend it to a different category of case. I therefore move the amendments in principle.

**The Bailiff:**

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

**6.2 The Connétable of St. Martin:**

If I could just ask a question of the Minister. I did look at the word "superior officer" and I know it is written in the law and 'senior' is much better unfortunately but it does have virtually the same meaning. I am wondering if the Minister could tell us what senior officer is on duty and will this senior officer be on a standby allowance, assuming there will be less work or no work for the Jurat as such and there will be a call upon the senior officer of the department? This is especially under Article 37(c).

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

I notice on the bottom of page 4 there is a reference to a superior officer, I wonder if the Minister in his response could tell us if they are specially bred for the purpose or what exactly a superior officer is? Seriously, I do have a problem with this proposition because in my view the Jurat was an independent person that you could turn to, almost a built-in appeal system, which is now, in my view, being removed for expediency and I am not happy about that.

**The Bailiff:**

Does any other Member wish to speak on the principles? Very well, I invite the Minister to reply.

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

A superior officer would be an officer who is senior to the initial officer. Having said that, the note that I have got - I made some further inquiries today anticipating possible questions - seems to indicate that the first officer to make the decision would not be at the lowest level but one level up. Therefore this would be an officer of second level up. Such an officer is normally on duty 24/7, whether they are paid a call out allowance for that or not, I know not. But the fact is that we already have an officer fulfilling this particular function so it is not going to increase particular costs. I think the important thing is that it is not one officer who is making the decision but somebody further up is reviewing it if the person so wants. It is a right effectively to appeal. People very often will agree to be searched there and then. I hope that has answered the question. I am afraid that I have never really got my head around the names of all the different levels of officers within the Customs and Immigration Department so I apologise to Members for that. I

cannot give you the exact rank by name as I would be able to do if it was in the police force. I maintain the principles.

**The Bailiff:**

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

<b>POUR: 35</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy G.C.L. Baudains (C)		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Connétable of Trinity				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

**The Bailiff:**

Deputy Maçon, do you wish this matter to be referred to your Scrutiny Panel?

**Deputy J.M. Maçon:**

No, thank you, Sir.

**The Bailiff:**

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

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

I am going to propose them *en bloc*, not to go over the same ground again but just simply explain to Members what each one does. Article 2 relates to the change in relation to the search for money; Article 3 relates to the change in search for goods upon which duty has not been paid or which are prohibited or restricted; Article 4 is this wider power to levy a summary penalty, that is the first part and the second part is being added in a duty to notify to the Attorney General where a penalty has been inflicted; Article 5 is simply the citation which indicates it will come into force 7 days after it is registered. I move all the Articles together.

**The Bailiff:**

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

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

I most certainly do.

**The Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Bill in Third Reading, please show? Those against? The Bill is adopted in Third Reading.

**7. Planning Appeals: revised system (P.87/2013)**

**The Bailiff:**

The next matter is Projet 87, Planning Appeals: Revised System, lodged by the Minister for Planning and Environment. I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion – (a) to agree that a new Planning Appeals process to replace the present appeal provisions in the Planning and Building (Jersey) Law 2002 should be established to determine appeals against decisions made under the Planning and Building (Jersey) Law 2002 entirely on their merits, with the exception of deciding points of law arising from such appeals, with the new system consisting of an independent Inspector considering the case along with all the material evidence and reporting findings to the Minister for Planning and Environment who would then determine the appeal; (b) to agree that applicants for planning permission should be able to require a decision to be made if an application has not been determined within an identified timescale; (c) to agree that appropriate mechanisms and procedures should be established with the agreement of the Jersey Appointments Commission to permit the appointment of independent Inspectors to consider appeal cases and advise the Minister as appropriate, with the Judicial Greffe administering the appeal process and appointing an Inspector with appropriate skills and experience to consider each appeal; (d) to agree that the new appeal system should be designed to allow appeals to be considered either on the basis of written representations or by means of an Appeal Hearing and to agree that a fee may be charged for each appeal; (e) to request the Minister for Treasury and Resources to allocate funding from a source to be identified by that Minister for the years 2014 and 2015 for the Judicial Greffe to administer the process and engage the required Inspectors as appropriate, with the Minister for Planning and Environment then being accountable for public finance and manpower purposes; (f) to request the Minister for Planning and Environment to bring forward for approval by the States detailed

proposals on the structures and procedures for the new appeals process together with the necessary draft amendments to the Planning and Building (Jersey) Law 2002 to enable the new appeal process to be established.

### **7.1 Deputy R.C. Duhamel (The Minister for Planning and Environment):**

Right, I would first like to place on record my thanks to the officers and the people of the Greffe for the excellent - I think it was excellent anyway - report that accompanies the proposition. For those who have read it, you will certainly have come to the conclusion that this report lays out the thinking or the large quantities that were engaged in terms of the Minister for Planning and Environment coming to his conclusions on the proposals that have been put before you this afternoon. The former Chief Planning Inspector of England and Wales, Mr. Chris Shepley, in a review of Jersey's planning system in 2005 said: "The existence of an open, fair, impartial and accessible appeal system is in my view essential to the operation of the planning system. Its value is not just in resolving disputes objectively and efficiently, although of course this is crucial, but its existence also pervades the whole of the system, even when it is not used. The knowledge that it may be used is taken into account by the decision maker. Conversely the applicants will not appeal frivolously to a properly independent body but will do so only if they believe they have a good case. They will know that the body is not subject to influence and that all parties with an interest will have equal access to it." There have long been concerns over the lack of an appropriate system to address appeals against decisions by the Minister for Planning and Environment. This has not just been appeals for planning applications but all the other decisions, such as the listing of buildings, building by-law decisions and enforcement notices and so on that can be made. These concerns were recognised in successive reviews into the planning process. In 2008 the Third Party Planning Appeals Committee of Inquiry said that: "The Committee feels that an appeals commission would have been a more equitable and less daunting approach to planning appeals." In 2010 the Development Control Process Improvement Programme said: "There is wide support for introducing an independent appeal mechanism examining planning merits as exist in all other British Isles jurisdictions." In 2011 the Reg's Skips Committee of Inquiry said: "The present situation is manifestly unsatisfactory. People should be able to challenge, without significant ado, regulatory decisions that affect or curtail their rights to enjoy their property as they would and possibly too their business interests and even their rights to family life." Changes were made to the Planning Appeals Process in the 2002 law. These changes included the introduction of third party appeals against planning decisions in an attempt to simplify the Royal Court process. However, it is clear that process is still too complex, too expensive and too formal. This deters people from appealing and leaves a sense of frustration in the planning process as a whole. As Mr. Shepley rightly said, "the existence of a proper appeals process pervades the whole system and makes it more responsive and responsible in decision making." I want to introduce such a process that considers issues on their merits. A process that has clear and unbiased independence; a process that is accessible and much cheaper than at present and a process that is transparent and resolves appeals quickly and simply. Decisions by the Minister for Planning and Environment or the Planning Applications Panel could have a lasting impact on the landscape and character of Jersey and must be carefully considered taking into account the responsibilities to the community as a whole. This will be the same with any appeals process. The merits of each case must be at the heart of considerations. The sometimes complex technical aesthetic policy and legal arguments that are raised with appeals should be weighed by someone with relevant qualifications, experience and skills, but that does not mean to say that such people should be the final decision makers. The accountability of any decision maker should be clear to underpin the credibility of any new process and I am certain that final responsibility must lie with a democratically elected and accountable individual. This is the case in the U.K. and the Isle of Man and should be the case, in my view, in Jersey. I propose to establish a system that allows an independent, suitably qualified and

experienced Inspector to consider the merits of each appeal. The Judicial Greffe has agreed to administer the process so that it will be taken away from the Department of the Environment and ensure all parties are treated equally. There will be an opportunity to allow consideration of an appeal on the basis of written submissions or face to face at a hearing. All appeals will be considered in this manner. That means appeals against a building by-law decision or conditions attached to permissions, enforcement and other notices requiring action, the listing of buildings, places or trees, along with the more obvious appeals against a planning decision. There have been extremely limited appeals over these other matters in recent years. This is because the prospect of engaging with the Royal Court over such a matter is daunting. But the frustration of not being able to test a decision is not acceptable and anyone subject to a decision should have reasonable and easy access to challenge that decision. The same process will apply to all these appeals and with that will come better decisions, better service and better accountability. The single process will standardise the system and ensure equity across the board. It will also be the least complicated way to address appeals rather than having different rules and procedures for different types of appeals. Creating different systems for different types of appeal is inefficient, complicated for those involved and can be unfair on different parties. All interested parties will be invited to be involved in this arrangement and anyone who was involved with the original decision can reiterate their position. Comments received in connection with the original decision will automatically form part of the consideration by the Inspector.

[14:45]

So far as applications for planning permission are concerned, the established ability of first and third parties to appeal a decision will remain. Also retained are the same conditions as to who can make an appeal. After considering the issues and assessing the facts and opinions, the Inspector will then report to the Minister who will make the final decision in the light of the Inspector's findings. The Inspector's report to the Minister would be a publicly available document and if the Minister wished to differ from the Inspector's findings then the Minister would have to be very clear as to why that was the case. As with all administrative processes, there will remain an opportunity to ask the court to review the process and decision but this would be on a far more limited circumstances basis than at present. My proposition puts the merits of the case at the heart of consideration: it brings independence, both of assessment and process; it brings accessibility with a simple appeal lodging and process; it brings transparency with all documents freely available to all parties; and it brings accountability. What must not happen is that decisions are taken by non experts who are not accountable. Consideration of the merits of the case by people who have not got the relevant qualifications, experience and skills to assess the sometimes complex technical, aesthetic, and policy and legal arguments would not be appropriate. It will be unsatisfactory in itself but could also aggravate any feelings of injustice that may be caused by a decision to a party where the appeal does not go their way and ultimately undermine the credibility of the planning process. With the Minister deciding appeals there will be a knock-on effect to the way that the Minister functions. To make impartial decisions, the Minister will have to withdraw from the first tier of decision-making; that will mean not only on decisions themselves but any discussion or involvement prior to the first decision. Being involved at this stage would prejudice the Minister's position. Instead the Minister will concentrate on involvement in policy and strategy-making, including masterplans and development briefs. These documents will inform the first tier decisions. The new Ministerial role will require the Planning Applications Panel to make decisions on all potentially contentious planning applications without any reference to the Minister. Only if an appeal arises from a decision will the Minister become involved and then only after an independent assessment of the case by an Inspector. As well as introducing a system to deal more appropriately with appeals, I want to allow applicants for planning permission to receive decisions in a timely manner. At the moment there are targets for making decisions - 8 weeks for the smaller

proposals and 13 weeks for larger schemes - against which the department measures itself. Once these target dates have expired I propose to allow applicants to insist upon a decision within 28 days to move the process forward. An approval will satisfy the applicant, a refusal will allow the appeal process to commence. My proposition will establish an open, fair, impartial and accessible appeal system. It will allow not only the independent scrutiny of decisions but also crucially at the same time recognise the fundamental issues of sovereignty and accountability that a mature and democratically accountable planning process requires. The changes will still result in someone within the process not getting the decision they desire. A new appeals process cannot change this but it should go some of the way to make those involved feel that they have had a fair hearing and an involvement in the decision being reached. So, in summary, this proposal delivers an independently administered system and decisions by independent inspectors; delivers an equitable process for both first and third parties; is a system based on the planning merits of the case; is a timely and punchy process for quicker appeal decisions; is substantially cheaper to all concerned from the Royal Court process; provides for democratic accountability for planning appeal decisions; introduces a request to ensure decisions are made by the department in a timely fashion; covers all forms of appeals from planning to building by-laws to trees to listed buildings; allows both hearing and written representation appeals; removes the Minister for Planning and Environment significantly, removes the Minister from decision-making on planning applications and instead focuses the Minister on strategy and policy; and finally it removes the recent concerns over primacy of decision making between the Minister and the Planning Applications Panel. This proposal has the wider backing from the professionals involved in the planning process, from planning officers to architects to the development industry. It is a far better system than the one that we have now, it will be more accessible, cheaper, easier to use and more transparent. I therefore move the proposition.

**The Bailiff:**

Is the proposition seconded? **[Seconded]** There are 2 amendments to the proposition. The first one to be taken is that of Deputy Young. So I will ask the Greffier to read the amendment unless Members are content to take the amendment as read, it is quite long. Deputy Young, are you happy to take it as read?

**Deputy J.H. Young:**

Absolutely, Sir.

**7.2 Planning Appeals: Revised System (P.87/2013) - amendment (P.87/2013 Amd.)**

**7.2.1 Deputy J.H. Young:**

Everybody in the Island knows that our planning systems require urgent improvements and particularly our appeals system. I welcome the fact we are having the debate today and there is much of which I agree within the changes, but there is a fundamental difference. A sincerely held point of difference of opinion. My amendment addresses that. It appears at first sight to be complex and page 9 of my amendment sets out the amended proposition as it will be if my amendment is approved, and I would direct Members' attention to that one page. I think really when you read that amended proposition as it would be, my feeling about it - and I had this feedback from others - it is a commonsense proposal for a planning appeals tribunal, which had it come from the Minister himself would almost certainly have been approved by the Assembly as a no-brainer. I had hoped of course that this would be accepted. This is not the case and therefore I have to ask the Assembly's indulgence this afternoon to explain why I have to bring that amendment. The fundamental point is that the Minister has rejected the establishment of a Planning Appeals Tribunal, considering it to be unacceptable to decide appeals because the tribunal is made up of non-elected persons. But of course I did point out, however, the Royal Court who

have been deciding planning appeals for decades are also not elected. But the Minister has gone further in his revised system: he has proposed to decide appeals himself. Members who attended the presentation of the new appeal system on Monday - I think there were 13 of us there - will have heard the Minister's Chief Officer acknowledge that although the Minister's own proposal achieves much of what the Minister said, an appeal based wholly on planning merits, one which is accessible and affordable for the public. But he accepted that there are arguments against the implications of the Minister's proposal, there are valid alternate things to do other than appoint the Minister in the role of the appellate body. The Chief Officer admitted that there were advantages and disadvantages to the proposal and a debate was therefore needed on the future role of the Minister for Planning and Environment. Opinions differed and alternative views on the principle of accountability independence were valid. I would like to put on record my acknowledgment of the responsible way in which the Chief Officer of the department presented that to Members. Other than the appeals administration being done by the Judicial Greffe, which I wholly support and welcome, I disagree strongly with the Minister's claim that his own recommended process for deciding appeals is independent. The Minister is the person responsible to the States for all planning decisions, whether they are made by the planning panel, his planning officers, for the procedures they use, the policies themselves, the masterplans, all enforcement actions, historic building listing, protections of special places and so on. That responsibility, all these actions and decisions, are made in his name. That responsibility is simply not compatible with the Minister also making the decisions on appeals against those decisions. No matter how convoluted a procedure is proposed, I believe this fundamental defect cannot or should not be circumvented. So my amendment seeks to amend the Minister's proposals to substitute a planning panel to replace the Minister's role in the new system which would ensure absolute independence, remove any perception of a lack of independence and avoids any unacceptable impact on the future role of the Minister. The amendment that I have lodged says that a planning tribunal of 3 members will hear each appeal, they will have the right of decision, members will be drawn from a panel of a maximum of 10 members. Whereas under the Minister's proposed new system, appeals will be heard by one Inspector and I believe this arrangement of a single Inspector lacks balance. I think the Minister's own proposal accepts that this is lacking and he addresses the role of U.K. Planning Inspectors, where they are brought in and sit alone to hear appeals. Paragraph 2.10 in the Minister's report says: "Such individuals would lack local sensitivities." I agree. In Guernsey Planning Inspectors are brought in and they hear appeals but they have 2 other tribunal members which experience shows that they add balance and provide that local input into the appeal. My amendment proposes Planning Inspectors are appointed as part of the panel of 10 members, so I am not saying not have them but have them as part, plus a deputy chairman and chairman which is there for administrative reasons with other suitable persons - and this is the key thing - with appropriate skills and experience being appointed as members. I have not set out what those appropriate skills and experience might be, I leave that to be determined by the Minister. The Minister rejects, though, a tribunal made up with these other persons. The Minister's report says: "It would not be appropriate for what would be a decision-making body where the majority of members would lack the direct skills and experience of considering our planning applications." I think this is dismissive, certainly without even an attempt to decide on what skills and experience would be necessary and it is disrespectful of the skills we have in the Island, and the voluntary commitment which those putting themselves forward would offer us. In my experience, and it is pretty long experience of planning officers, they do not have a monopoly on sound judgment. I value their skills but they do not have a monopoly. The membership selected for the panel I propose will be for the Minister to recommend. He would have the choice of the mix of Planning Inspectors and other appropriate property-related skills and experience. I mention here people like architects, surveyors, people who are well used to working in property matters. I believe there are many such persons, those currently in practice in different areas and those retired from practice. I

have left the flexibility, as I have said, for the Minister to decide the mix. Of course the tribunal members would only be recommended for appointment only after a proper selection process run by the Appointments Commission to ensure their suitability, qualifications and ability. They would receive training to prepare themselves, as happens in Guernsey, from the various training boards, the tribunals, and they would develop proper procedures for conducting hearings. Of course this exactly follows what we have already in the tribunals, we have 3 social security tribunals, a mental health tribunal, a very successful employment tribunal and recently we have added the role of dealing with a discrimination law. They do provide access to justice, which is efficient, transparent, affordable and accessible and of course with virtually a rate of no challenge to their decision in the Royal Court. The key thing, all are independent of their Ministers who do not interfere with their decisions. Of course my amendment would create, if approved, a planning appeals tribunal similar to that in Guernsey, which has operated very successfully for 3 years. Administrative tribunals are well known in England, well proven; they have their own judicial service, provide training and they set standards of conduct which I submit such a tribunal would follow here. Of course in the U.K., as in Guernsey, the tribunal seek to apply the Franks principles of openness, fairness and impartiality and the Nolan principles of standards in public life. I regret to say the Minister's alternative proposals for a lack of independence simply do not meet these principles and the Minister's proposal is not independent or transparent.

[15:00]

The States have twice approved the setting up of a planning tribunal in 2002 when the planning law was approved and recently in March on the proposition I brought to the Assembly. I submit there is nothing in the Minister's proposal which justifies a departure from the principles. The Minister's proposal to withdraw from the responsibilities for applications I believe is contrived and creates an artificial illusion of independence. I think it seeks to circumvent Ministerial responsibility for planning matters and I believe it would distort the planning system rather than improve it. But, of course, I can understand some Members, perhaps disagreeing with the Minister's recent decisions, might feel tempted to go along with the Minister and his proposal to remove himself from application matters leaving all planning applications to members of the panel. But I submit this would lead to a decision-making vacuum by the Minister in setting planning policies, knowing he would never have to implement them himself and the panel would have to follow those policies and they would have no influence or participation in policy revision or setting. There are issues about separation of Ministers in the Planning Applications Panel's current processes but there are solutions to this which are less damaging than the Minister's proposal. Of course what we have got here is these are implications for all future Ministers for Planning and Environment. It is not about our present Minister; nor if we disagree with his decision; or it should not be about some blatant overreaction to the excessive influence and involvement the previous Ministers of Planning and Environment were said to have in planning applications: it is about the role we seek for the next Minister. To get this issue out of the way, I am being quite clear, I have no aspirations for this role, I want that to be clear. I am not doing this in disguise for any ulterior motive, this is about getting a sound process so that a new future Minister will have all the tools to do the job and a proper soundly based appeal process which is long overdue. We are too small a community to adopt a U.K. style Minister for the Environment operating remotely and out of touch from the planning system, making the Minister's role a back room theoretical role of setting policies only. I submit our people, our Islanders, we all expect a hands-on Minister to take the lead in shaping development in the Island and to shape and look after our environment. We are too small to do it otherwise. It may suit the U.K. with 400 planning authorities but not when we are one single community. We have one planning authority. Of course I hear the Minister cites the A.J.A. (Association of Jersey Architects) and the Construction Industry Council supporters but all I can say is having spoken to individual professionals and architects I have heard contrary opinions and it

has been suggested to me that the Minister has agreed with the A.J.A. to provide a pre-application advice service which will be capable of being relied upon. This, of course, is something which has long been needed and I have long advocated. I do not know whether this has influenced those bodies, given what they are now saying but I think it is too important a matter for short-term trade-offs. The Chamber of Commerce has indicated their views and their support for the viewpoint I am putting forward. I have very many professional and lay people who see the lack of independence in the Minister's proposals as a fundamental defect. One known local architect, a former Planning Inspector himself and with experience of conducting appeals, described the proposals for the final decisions to be made by somebody who has a key role in the planning process as ill-considered and dysfunctional. He expressed the view that if the Minister's proposals are adopted without amendment this system will lead to many mistakes and injustice. There will be an absence of checks and balances and the appeal system will lack transparency. He predicted that the system would need to be unpicked in the future if the amendment is rejected. Hopefully now the Minister might rethink. There are a number of particular arguments that I want to highlight. The Minister's report says that the Guernsey appeal load is supportive of the argument that under my amendment the number of appeals could not be supported. I have spoken to the Deputy Chair in Guernsey and they have advised they have the capacity to do double the number so that really does not hold water. Then there is a suggestion in paragraph 2.8 that the tribunal I propose would have excessive legal involvement. The reverse is the case, especially based on Guernsey: lawyers only ever become necessary because of the convoluted legal and procedural arguments over unreasonability that occur now, they would all fall away. Then we get to the key issue of accountability, democratic accountability. In the Minister's report - and the Minister said so today - a tribunal of unelected individuals overruling a democratically elected decision-maker is unaccountable. I pointed out the fact that this has been the case for decades with the Royal Court but I think it is wrong for him to say they are not accountable because in the event that the tribunal erred, made a mistake, by process or fact to the extent that their decision was considered unreasonable, I believe the Minister would be able to seek a judicial review of the tribunal decision in the Royal Court. Of course the Minister has the resource and wherewithal to do this. He would exercise his judgment if they have made a big mess of it, whereas under the Minister's proposals the thing turns the other way. Appellants would have to seek judicial review of a Minister's decision were there some irregularity or deficiency in it. Seeking a judicial review of a Minister's decision would put the appellant at serious financial risk and face potential ruin if they lost. In Jersey there is no protection from costs in such action, even if the judicial review was brought in the public interest. So in reality for ordinary people judicial review I would submit is not a feasible option. Of course the Minister also challenges that non-Planning Inspector tribunal members would have a conflict of interest and therefore should be ruled out. I think he overstates that issue. Providing the Minister appoints people of standing to the tribunal I believe conflicts can be avoided by members publicly declaring they are conflicted in any matter to which this applies and withdrawing from taking a role in it. This routinely happens in all walks of Jersey life. We cannot escape that in a small community: we have to look after our own affairs. If we applied the Minister's criteria to all public appointments we would have no honorary service. My amendment requires the chairman of the planning tribunal to carry out a leadership and co-ordination role to provide the Minister and the public with an annual report which would include information on recurring problems of planning policies or where policies are out of date or difficult to interpret. I believe this will lead to improvements in policy setting. I believe it will not be possible with the Minister's proposal for a single Inspector to report individually. I believe it would result in their work being unco-ordinated as far as policy consequences. So I think the Minister's proposed appeal system is loaded in favour of the Minister and will lead to injustices and arguably worse in respect of the independence than we have now. Of course the Minister then goes on to say he would have to have a very good reason to go against the Inspector's recommendation. Well, I think, yes, but the Inspector's reports

on Plémont and a recent one on the sheltered housing at St. Ouen, demonstrates in reality that the Minister simply would have to substitute the inspector's decision for his own. What does that mean? Well, our experience has been with single Inspectors' reports that they are not subject to challenge, complaint procedures are not available, attempts to make complaints or at least to open up issues with Inspectors have been rejected, their procedures therefore are not transparent, transcripts are not available and I think this really results in a system where the Inspector is unaccountable. They have not been prepared to answer questions, in effect they are hiding behind the Minister. My fear is that the Minister's proposal would make this the norm for all appeals: lack of transparency. Of course then the report clearly says: "Well, how would the Minister make this decision?" It will clearly be taken in secret because no one will know the basis of it. Incredibly paragraph 2.27 of the Minister's report says: "These decisions will be taken by the Minister without any interaction with the Department of the Environment." Without any. So this, therefore, gives the Minister, whoever he or she is in the future - this is not a personal thing - to have the personal opportunity to influence or interfere with the appeal decision in whichever way he or she chooses based entirely on their own personal preferences. This is simply not a fair process and it is the worst possible unsafe appeal system. It would fail any test of transparency. But there are even more threads to this. The report also says the Minister, while proposing to withdraw from planning applications as a means of seeking to circumvent this conflict or this role and lack of independence intends to maintain for himself or herself in the future the ability to cherry-pick the applications and refer them direct to the Inspector who then recommends the decision to the Planning Applications Panel. Is this consistent with the Minister's proposal to withdraw from application decisions, I ask? How will he make his referrals or what is it based on? Is it going to be based on his advice or is it his personal views? Oh, there is an application I think I am going to have a look at. Why? Then what does he say to the Inspectors? The Minister sets the terms of reference in effect, what does he say: "I do not like this, have a look at it" or what does he say? Then of course the Planning Applications Panel, what do they do? Do they have any real choice in this, under such a system? I think this personal involvement there is to simply remove any transparency from the appeal. I am getting close to the end; Members will be pleased. The Minister's proposal also is that the majority of appeals are taken on written representations and the purpose of this is quite clear, to save money. I believe this arrangement to be unsatisfactory as the department's submission - this is in the appeal itself - and we know this in practice is much more thorough and comprehensive than the appellants. Often the case is the appellant writes one letter and the department produces a very well-prepared document. If the hearing is on those documents alone it is one-sided, so no competition. Experiences in Guernsey are exactly that: that information is nearly always missing, key points are not covered and they are only identified in the hearings. They have come out of the hearings. But of course also the majority of appellants, what do they want? They want their opportunity to be heard. That is what this is about: to be heard. Of course they will put up with an unpalatable decision if they have had an opportunity to be properly heard and they believe the decision fair and soundly based. So to deny this to appellants is to undermine the whole purpose to improve the public confidence in the planning system that the Minister seeks to approve and we all want. So my amendment includes the proposal that the appellant should be able to choose either an appeal on the papers or a hearing subject to the chairman of the panel making sure that procedure is the right one. One final point on costs: I have set out in my report what I believe to be a modest additional cost compared with the Minister's proposal. If my amendment is agreed and the second amendment from Deputy Le Hérisier to continue with the rest of the consideration which will reduce the number of appeals is also approved, then this additional cost in mine will be reduced. But either way I believe the additional cost is modest and I propose my amendment.

**The Bailiff:**

Is the amendment seconded? **[Seconded]** Does any Member wish to speak on the amendment?  
Yes, Minister.

**7.2.2 Deputy R.C. Duhamel:**

It is difficult to know where to start. There is so much that has been said that is clearly wrong or takes a different interpretation and a deliberate misinterpretation of what is being put forward perhaps.

**The Bailiff:**

No, Minister, you cannot allege a deliberate misinterpretation. You will withdraw that, please.

**Deputy R.C. Duhamel:**

I will withdraw that. In responding to Deputy Young's proposition I would just like to briefly highlight how my department has formulated the work on the main proposition which we will come on to shortly. In proposing the appeal system that is before us, I have taken substantial professional advice from chartered town planners within the States who have a wide range of experience from jurisdictions around the world. I have visited my counterparts in the Isle of Man and in Guernsey and we have taken advice from other Inspectors and looked at the systems both in England, Wales, Scotland and Ireland. Principally what is being proposed is very much in line with the Secretary of State's position - in charge of the environment - within the U.K. and we have a similar model in the Isle of Man. I think we need to move in that direction because it is a system that works and it is a system that allows adequate emphasis to be placed on an appeal system which is professionally based and still retains the opportunity of the Minister to make cases for planning inquiries to be challenged on issues of Island-wide importance.

[15:15]

I think the way that is set out in the U.K. does exactly that. We are not passing over the responsibility; in fact, the Secretary of State retains the right to agree or disagree with these Planning Inspectors. In a lot of cases the decision-making is delegated and merely ticked off but the absolute right remains with the elected representative: the Minister or equivalent in charge of the department of the environment and planning system. We have also taken into account the views of other professionals involved in the appeals and development process and the feedback we have received - and it is all there for people to read - during the operation of our current first and third party systems. Inevitably, in being given the support of the professional bodies that I have alluded to, the Architects' Association and others, there have been differences of opinion within those bodies and organisations but the overall outcome is that they are supportive. Again, all of those documents are available to Deputy Young if indeed he has not seen them already. So I think it is wrong for him to promote a position where he is saying that on the basis of the one or 2 people perhaps that he has spoken to with professional qualifications who might well be one or 2 of those who took a different point of view, that that represents the consensus view of those organisations. It does not and I would like to dispel that criticism or inference. It has been the blend of the work, in speaking to all of the interested parties, that has led us to the professional solution which forms my proposition. The main response to Deputy Young is to provide a professional solution and not to try and water it down with lay members. We hold different opinions as to the use and relevance of appeal bodies or appellate bodies with volunteers coming forward but we do have a different opinion. I am not discounting the honorary and the voluntary work that is given to many other organisations within the Island and I think that is fair to commend the time and effort that those persons put into these organisations. Absolutely right. So we must not let that blind us to the issue. What is being suggested here is that instead of putting the appeals to a single professional Planning Inspector, who will not be the same Planning Inspector because there is a list of them to be drawn upon by the Judicial Greffe according to their whim and organisation, there will be a number of

professional persons who will be able to bring professional consistency into the merit-based systems that are being challenged. If we allow ourselves to have a body of lay people... and Deputy Young is suggesting maybe 10 or others. He is also suggesting that it be chaired by a legal person, thereby perhaps encouraging a legal process under that tribunal arrangement than perhaps would be otherwise. We are straying, or beginning to stray, into an organisational structure that starts to, in my mind, query whether or not the clear kind of judgment of cases to be judged on their merits is going to be able to work. This is a new system for Jersey and it is quite clear in my mind that whatever system is set up has to be absolutely consistent and there must not be any suggestions that due to the choice of members on a particular panel or the ability of an appellate body to choose the process by which they make their reference to for further consideration of decisions, that must not be allowed to happen. We have heard Deputy Young suggest that we need people to bring a local flavour to the decision-making in Jersey and I would put forward the counterproposal that that is exactly what we do not necessarily wish to bring forward. It is merits, and merits - unfortunately, or fortunately depending which point of view you take - are very, very different to local issues flavouring the type of decisions that we should be taking. It is a technical issue and I think it needs technical people who are completely independent of the Island who do not have any axe to grind or any professional associations or otherwise with the Island to be put in a position to make those technical judgments and assessments in an unfettered way. So I consider that Deputy Young's proposals lack the independence that I am proposing with these panel members identified also by the Minister or the chair and approved by the States. It also includes lay people in the process and my view and the view of my advisers is that they will be unlikely to demonstrate the relevant qualifications, skills and experience to weigh complex issues that are often raised. This will result in consideration not on the merits of the case, which is what the system is being designed to do. I think it will open up the perception or reality that unsuitable individuals are considering the issues with an inherent bias, either real or perceived, and that cannot be good. So in short I think that lay people would also be unaccountable for their decisions in a way that elected members are. Further, they would be brought into conflict with the elected States Members who made the first-tier decisions in the first place. This removes the democratic accountability from the process. It is my and my professional advisers' view that tribunals will be a more complex form in terms of administration and hosting. We are told that if there are likely to be some 200 appeals per annum - and nobody knows whether that will be the figure or not - then we have the position of the organising body having to pick 200 different groups of people to arrange the administration for all of those persons to come together. Certainly I do not think the cost of doing that is going to be less than involving one professional person or for a register of such professional persons that is held in the U.K. I think the co-ordination would be more difficult, particularly if the volume of appeals were to grow. Certainly my intention that the charging structure that is being proposed in order to offset the costs must be such that it does not represent a disincentive for anyone who wishes to appeal the decision on merit grounds to be in a position to do so. Certainly if we had thousands of appeals, the process that Deputy Young is suggesting would be cumbersome to say the least. I also do not believe that Deputy Young's amendment provides the clarity that my proposition does and is certainly not as streamlined. This amendment seems to continue to allow decision-making on applications by the Minister and the Planning Applications Panel and possibly together, and possibly overriding each other, which is a material effect. On previous decisions that the previous Minister for Planning and Environment made there is a criticism that has been expressed to me, not only by Deputy Young but by other Members of the House, that perhaps that Minister in question possibly strayed into making too many decisions and as a result of that we have had a number of Planning Inspector reports and other mechanisms put forward in order to curtail the decision-making of the Minister for Planning and Environment to such a level as that he is generally much, much less involved and that is what we are doing. In coming forward by proposing that the Minister is removed, and any successive Minister after me, from dealing with day-to-day planning

applications, I think that is entirely what is being asked for and it is entirely right that we should move in that direction. The role, although Deputy Young does not agree with it, of the Minister for Planning and Environment I think is more closely associated with focusing on strategic issues, on policy-setting and on the law. I do not think it is right necessarily that the Minister for Planning and Environment should be involved to the level that his system would suggest in working with the Planning Applications Panel to make lower-level, if you like, decisions. I do not think that necessarily will be the right way forward. It certainly would be out of context and out of the general kind of drift that other Members have been encouraging me to move in which is to limit the extent to which the Minister for Planning and Environment makes planning decisions and to concentrate on those 3 areas: strategic planning, policy planning and the legal aspects in order to do the first 2. The experience of Guernsey as the system to follow is, in my view, not the system to follow. We have a system in Guernsey whereby the decisions are not taken by the Planning Inspectors; he is just there as an adviser. It is being suggested that the lay people working collectively are those who do make the decision to bring the local flavour to the decision-making. As I mentioned earlier, I think a merits-based decision is not really based on the flavour of the decision-making in a particular place. We have looked further afield and, as I say, we did not really have to go particularly far because I think the system that we should be copying is the U.K. one. It is my view that as the Minister and as politicians we should look to the main principles of what we want the appeal system to deliver and that is that it should be independent, professional and open, cost-effective, planning-merits based, easy to use and timely. We should not be involving ourselves in trying to design intricacies of a system either most of us will not use or to be used in a form that is confusing, less streamlined and unsympathetic to the general drift of what is being asked for. We should rely as far as possible, but with the proper scrutiny of our professionals who have looked to professionals in other places, and merely what we are doing here is copying the U.K. as we do in a whole host of other places. A few other points: Deputy Young made heavy play about pre-application advice and saying that I was contriving a system of withdrawing from the planning decisions in order to come back later with pre-application advice which would perhaps, in his inferences, be doing the same thing. That is not the case, although I would agree with him that pre-application advice does need to be tidied-up for the department but not necessarily to the level that he was suggesting that pre-application advice should carry with it a decision that will be made by other parties making the decision that the application will be granted. He also made play that there will be difficulties if the tribunal erred. What is being proposed is that the decisions made by the tribunal are binding on the Minister and on the Planning Applications Panel. The system that I am suggesting at the moment would be able to be challenged. The Minister, in seeking to agree with the Planning Inspector's views as to the technical merits of the application or not, if he went against the advice that was being offered by the technical people as he would be able to do in any decision where advice is given, would have to find proper reasons, record those reasons and publish those reasons as to why he was straying outside of that advice. That is quite similar to what we do now. I do not think it is right to infer or imply as Deputy Young did that the Minister will be making decisions in secret - that is certainly not the intention of the proposition - and that no reports will be issued in order to give the reasons as to why the Minister is arriving at his particular decision.

[15:30]

The last point, I suppose, not to keep Members for too long, is that Deputy Young made an inference that the proposals that were being put forward were to be encouraging written applications in the main and that no hearings or limited hearing rights will be granted. That in fact is not the case. What we are saying is that there will be equal weight - or even unequal weight - applied across both sides as to the applicant's preference as to whether he would prefer to come in to do a written application or to have a hearing. We want to open up the system because the whole

point of a planning merits-based system is to be as open as possible and to give people their day in court, so to speak, or their day with the Inspector process, the opportunity of saying what they want to say without having to fund it through expensive legal persons who will be doing most of the arguing for them if it was a conventional court case. So, all in all, the system that I think we are proposing is the better one. Inevitably, there are differences of opinion, they are deep differences of opinion, on this particular one point. I think it must be right that a democratically-elected representative of the States be accountable for decisions that are being made and I think it must be right in this particular case that to use or over-use lay members or to set up a system that over-uses those persons and squeezes out the Minister to make decisions lower down, when in actual fact that, in my view, is not his particular major function of the job, is taking the wrong emphasis and placing the wrong emphasis on the Minister's job. I think really that in essence is the difference between us. It must be said that the biggest changes that the Deputy has made in coming forward with his system is to take my system by and large and to strike out "the Minister" and to place "tribunal". So in actual fact we are in agreement with pretty much everything that the department and myself brought forward in the main proposition bar that one change. I think we are right. I think that the system I am proposing will provide a better system. It still allows the Minister to be accountable to the House for whatever decisions he might make. It still openly allows a further challenge to the Royal Court on the issues of whether or not the Minister is being unreasonable or not in taking into account, or not taking into account, the extent that he has stated in his report, the Planning Inspector's advice. I think the underlying benefits over and above moving in this appeals direction is that it does allow the Minister and the decision-makers lower down, notably the Planning Applications Panel, to be in no doubt as to what they are supposed to be doing in terms of making the decisions and giving them the authority to make the first party decisions, streamlining the whole system to make sure that there is only one place that we go to decide on the appeal system that is going to be taken and allowing the Minister, as I said earlier, to be freed-up to the extent that he can look at the policy-making strategy setting in the way that is already done but to a greater degree. On that basis, I think I am urging Members to reject this amendment and would ask Members to support me.

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

I was one of the Members who supported Deputy Young's proposition P.26. I went against the Council of Minister's rules, if you like, on this one because I thought Deputy Young made a very good case on the day. But I am not going to support him today because he requested that the Minister speed up the process of review for an independent planning appeals process and was not prescriptive in how that should be provided. He did... and I will quote him from his proposition P.26 of 2013 on page 11, in case he does not have it with him, he says: "41. In this report I have made the detailed case for the replacement of the existing planning appeals system (i.e. to the Royal Court). I have not recommended the detailed structure, but set out some principles upon which the Independent Planning Appeals Tribunal should be based. I consider that this task is more appropriately carried out by the Minister for Planning and Environment, using the resources of his department." My point here is that the Minister for Planning and Environment has officers of high qualifications who have given him, in their opinion, best advice based on the review of schemes in other jurisdictions. They have chosen to use the scheme that is used in the Isle of Man. I do have the paper here from the Isle of Man which sets out their scheme. The officers have advised not to follow the Guernsey scheme which basically is Deputy Young's proposal. Now why would I say that the Isle of Man scheme is better in my opinion? Well, I have sat on the Planning Applications Panel, albeit for a short period of time. Those of you who were in the previous Assembly will remember that I made a bid to be the Minister for Planning and Environment at a very early stage of being a Member of this House which was rather perhaps foolish of me, but nevertheless I did. Why did I do that? Well my experience on the Planning Applications Panel - and I can see my

colleagues looking at me who were with me - is that it is not a very good process. Why is it not a good process? Well, the Minister quite rightly has made great play, not only in what he has said, but in his proposition, about a merits-based appeal system. Now what does that really mean? Well the answer is, is that lay people really only make their decisions subjectively. I recall that we had a member of the panel - and their ears will be burning soon - that did not like porthole windows. Now we would be told that he would have great difficulty approving a building with porthole windows. I am not saying that that was the only decision that would have brought him to that conclusion but those are the sort of subjective comments that did worry me as a member of the panel. We had other instances which I do not wish to embarrass any other Members but we do all have our preferences. Some people like dormer windows and some people like big gardens. It can go on and on. So being a member of the Planning Applications Panel is a very difficult process. You are not qualified and no Member of this Assembly is qualified to make real planning decisions. Those members on the Planning Applications Panel rely on the advice of officers. I hope it has improved since I was a member of the panel under the new Minister because, really, I will give you a typical day as a Planning Applications Panel member. You arrive and there is a rickety old bus and you climb on it ... **[Laughter]** you climb on it. If you are lucky - and I stress if you are lucky, because obviously the papers arrive late - you had a chance the night before to read a pile of papers about that high. Now nowhere in any of those papers was there a plan for any of the developments that you were about to see. Not one plan. So, I may be a lay member but I do have an idea what a plan looks like. So we would go out on site at a rapid speed across country lanes and arrive at some farm development in St. Mary, and I remember one in particular. The officer would arrive and it would be freezing cold and you would be standing there and he would get out all his plans. He would pull them all out and one person would be holding that one, another one down here, and he was saying: "This is where the development is and these are the ..." and then we would leave the site and we would never see that plan again. The only time you would see that plan again is when you arrive at the hearing when suddenly on screen are the plans, maybe not necessarily the ones you saw on that site because they probably blew away or they got dirty. So it is not a good process. Now, I am sure it is improved under the new Minister because, quite honestly, if I had become Minister I would have sat down with those panel members for 2 or 3 days before. I would have said to them: "Look, if you want to be on this panel, you have to give a lot of time and I cannot let you make decisions that affect lives of people just based on a quick *résumé* of the case, a quick site visit ..." if you are lucky because not all site visits were done: "... and advice of officers. You really are doing a very serious job here and you really have to take this into consideration." So this is the sort of system that we have. Now, why I have said all that is because I do not believe that the Planning Applications Panel process is robust and, therefore, you have to have a planning appeals process that is robust. You do not want all lay people. You do not want a former architect who used to think that using granite on every building was the only way to build in the Island. You do not want those sorts of people giving planning decisions or overturning decisions of the Planning Applications Panel. I am sorry, but you do not want that. What you want is a qualified Planning Inspector who has nothing to do with Jersey, who only looks at the merits of the case, i.e. he understands drawings, he understands all the implications of our Island Planning (Jersey) Law. Has anybody read the whole of the Island Planning (Jersey) Law? I defy anybody in this Chamber to tell me ... well, we have one ... who has read that from cover to cover. I hope the Minister has but it is a massive document and yet the Planning Applications Panel is having to make decisions against that document. One would expect that if we go with the Minister's proposal, we would have a panel of Planning Inspectors who would read that document, who would understand it because, let us face it, we do not all understand some of the detail about planning in this Island. So we would have experts. They would be, if we follow the Isle of Man process, the panel of Isle of Man Inspectors, appointed by the Council of Ministers, are usually affiliated to the R.T.P.I. (Royal Town Planners' Institute) and retirees from the Planning Inspectorate in the U.K., i.e. they are from

outside of the Isle of Man. So they have to be qualified. What is the point of appealing to somebody who is a lay member, who is a retired architect or retired surveyor when quite honestly they are not qualified to do a merits based assessment. I will give you an example, we have a health appeals tribunal in Social Security. Now, would you want to go to a health appeals tribunal on the basis that you are appealing about your illness or your disability, to a group of people who just happen to be interested in people who are sick. Would you want to or would you want to go to a panel that consists of retired doctors or people currently in the field of medicine or whatever? People who are professionals who understand these things. Not a group of well-meaning, retired, former architects or surveyors. That is not the sort of people you want to have the final decision. You want the experts. So that is why I am sorry but Deputy Young has not got the right solution to the problem that we have with appeals. Of course we need to have an appeals process and that is why I supported him. I am going to possibly upset you, Sir, but I will try not to. In Deputy Young's original proposition, he made reference to why the Royal Court was failing to deliver a satisfactory appeals process and he said that Jurats, who obviously form part of the planning appeals panel, are generalists and unlikely to have up-to-date and detailed knowledge of the Island Plan policies or the procedures of the Planning Department. Neither are they property specialists, nor do they usually have a proper professional background. That is exactly the reason why we want to use Planning Inspectors because if we create a panel of 10 lay members, we end up with the same situation that Deputy Young identified with the Jurats.

[15:45]

So in my unfortunate way, I have become quite emotional again but I do feel that Members, on this occasion, must accept that the Minister has had best advice, he has looked at the appeals process, he is satisfied with the advice of his officers that the Isle of Man and in fact the U.K. have a process of this that is right and proper and ultimately, it is right and we can all disagree with some of the decisions that are made by planning Ministers or committees in the past. It is ultimately right that the person who is voted in to that position should have the ability to reject the advice of a Planning Inspector following an appeal but would have to justify his grounds. He really would have to justify the grounds. It is absolutely unfair to use Plémont and St. Ouen - the recent one at St. Ouen - as examples where a Planning Inspector report is not suitable because they were done under a totally different process, not an appeals process and therefore it is not fair and right to use that. However, we may disagree with the final decision on Plémont, which I disagree with. That is not the point. The point is, we cannot start saying: "Well, the Planning Inspectors are useless because they did not stop the building at Plémont or did not allow the development at St. Ouen." They were looking at the Island Planning (Jersey) Law that they may have interpreted differently and as we know now, there will be a third party appeal going forward on Plémont. But that is a different matter. That is not for today. Today is about what is a robust appeals process based on merits. Merits is not something that unqualified people can decide. Thank you.

**The Bailiff:**

Does any other Member wish to speak? Yes, Deputy Power?

**7.2.4 Deputy S. Power:**

I will be brief because the Minister has said quite a bit of what I was going to say in relation to Deputy Young's amendment. I will just refer briefly to Senator Le Gresley's description of the planning van process. **[Laughter]** In actual fact, I think he has used a little embellishment in probably what he regards as the difficulties of site visits. Indeed, it can be difficult at times and when he points out that it is a difficult process or a slightly flawed process, the Planning Applications Panel process, and picked out on one Member who may have referred to portholes early in his career in the Planning Applications Panel but I have heard no reference to portholes in

the last 2 years. The thing is, once you have done 250 or 300 applications a year, and you have been on the Planning Applications Panel for 5 or 6 years, you realise that having handled 1,000 or 1,200, 1,400 or 1,600 applications and maybe half that in visits, that there is a certain pattern that you know will fit. Irrespective of whether you are standing in Rozel on a bitter February day, holding as we do a sheet of A1 or A2, and it is raining and the print is running off the drawings, most Members who have had a bit of experience do understand that process. The Constable of St. Mary is trying to distract me here, but I am going to ignore her. Once you have that experience, you realise that the process, in my opinion, does work reasonably well. In the years that I have been on the Planning Applications Panel, Members have not really said that they dislike the system. The bus is another story. We were promoted from an old bus to a new bus and in some ways the new bus is worse than the old bus **[Laughter]** because the seats are designed for children and it is quite uncomfortable. I will leave it at that. I will also say that there was another experience in Rozel about 3 years ago when the former Deputy of St. Peter and myself ended up under the bus because part of the back-end of the bus had detached itself and we had to reattach it before we could keep going again. In relation to Deputy Young's comments, I agree with what the Minister has said in that he agrees with the Minister in all respects in terms of the role that the Minister would have to evolve into, in terms of the role the Planning Applications Panel would have to evolve into, except he is substituting a tribunal for a panel of Inspectors. The Minister does use the plural word "Inspectors." He is not depending on one Inspector but a panel of Inspectors. At the moment... and I sat on the Committee of Inquiry into Third Party Appeals with Deputy Le Hérissier, and we are lumbered with a system in the Royal Court that is not easy to use. It is expensive, it is complex, it dissuades people from using the system and I know a number of cases where people did not appeal because of the daunting prospect of going to a Royal Court system, whether it is the informal system or the full system. In the Royal Court system, we do have Members, as Deputy Young correctly pointed out, who are non-elected. Some of them have an expertise in the law: they are not experts in planning. Indeed a number of decisions that have come out of the Royal Court in recent times have had a wide divergence in terms of how you interpret the Island Plan, as Senator Le Gresley just said. There is a wide interpretation of the Island Plan and how the Royal Court has made a number of decisions. That, to me, is another indication of how this system does not work. Deputy Young said, and criticised Deputy Duhamel, in what might be the composition, and yet, in his own recommendation - and I quote from page 7 of Deputy Young's amendment, the third paragraph down - he says: "The panel members should consist of a mix of U.K. Planning Inspectors to achieve professional oversight and other persons of appropriate skills and experience to ensure that each tribunal has a balance between Planning Inspector and the other 2 members. The mix of members selected for the panel would be for the Minister to decide in consultation with the Appointments Commission." So what Deputy Young is saying is that he is handing it back to the Minister, that the Minister comes up with a list of recommendations of people to run the tribunal, which would then be approved by an Appointments Commission or are vetted by an Appointments Commission. To me, a panel or a tribunal is a slightly more cumbersome methodology than what we have seen in the Isle of Man model. I did go to the Isle of Man a number of times but specifically to do with planning appeals with the Minister this year, this early summer, and we were both fairly impressed with what we saw and how the system works up there. Indeed, my own experience of friends who work in the U.K. is that the U.K. planning appeal process does work equally well. I agree that I think the Guernsey model is not one to be followed. Indeed I would say that some of Deputy Young's possible disdain of the inspectorate model, which would then report to the Minister, is the fact that he probably does not like what happened ... his own personal interpretation, of the Plémont decision which was a Planning Inspectors' recommendation to the Minister, has probably not agreed with him. I also take exception to a comment Deputy Young made. He said that the Minister's proposals, which show an artificial illusion of independence ... I do not agree with that. I do believe that as States Members, both on

the Planning Applications Panel and the Minister, we are elected to make decisions and I do not think this Minister - and indeed the template he is setting for future Ministers - is anything in any way ducking the responsibility that States Members have to make decisions, particular planning decisions. I think that the template that the Minister is suggesting at the moment is a good one. I have, and my colleagues on the Planning Applications Panel have, quite a number of years of experience and I think everything else that I needed to say has been said by the Minister and I will not be supporting the amendment.

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

I must rise to address or raise an issue with something Senator Le Gresley said, which, was in his quite entertaining speech where he questions the value of a tribunal made up of experienced individuals, which is what is being proposed by Deputy Young. Perhaps someone that hasn't spoken and is far more knowledgeable than I will confirm or otherwise that, indeed, we rely heavily on such tribunals, covering a whole range of topics which, indeed, are I believe some of the areas that perhaps the Minister for Social Security is responsible for and yet he seems to believe that in this case, it is not appropriate. I want to understand why is it not appropriate in this case when it is acceptable everywhere else? If someone would respond. Thank you.

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

Oddly enough, I was going to deal with the very point Deputy Reed of St. Ouen has raised and I will deal with it later. But I think the House needs to know that Senator Le Gresley may be driven by deep, personal feelings because he was injured quite severely in the planning van **[Laughter]** and it did lead to a hospital situation. That may have embedded itself in his mind and he has rather strong feelings about what happens when all those people de-van, so-to-speak, if I may mangle the English language. Yes, I was going to raise this issue that the Deputy of St. Ouen has raised. If you follow the logic of what Senator Le Gresley was saying, why have enthusiastic amateurs involved, lay people involved, at all. Why do you not go straight to the technocrat, i.e. the Planning Inspector, and get them to make the decisions. Why not? Why get all this sort of bumbling around with these loads of bumbling people in the back of a non-functioning van, rattling around with plans and so forth in windy weather, when you could have a technocrat who could probably take all the decisions off paper submissions. Because what we do have is a hierarchy of decision-making. It will in a small way be raised in my little amendment, but that is ... and the first stage are the officers, they make decisions and the current Planning Applications Panel has - as my good friend the co-equal Deputy of St. Clement will allude to - not been afraid to overturn those decisions. The decisions of technocrats, people who in Senator Le Gresley's book, because of their training and their experience, are perfectly equipped and yet the panel has been overturning them at quite a rapid rate. Matters have now settled down, but there was quite a turnover over those decisions because the panel said - and the Constable of Trinity may wish to intervene later - for example: "You are being too cautious. You are taking the rules too literally." Often decisions are based on a balance of policies that ultimately compete with each other, so the importance you give to one policy versus another, be it a percentage you have given your mind or whatever, is very important. The panel has said: "Well, we attribute different values to those policies, and here is why we attribute different values." It is all explained. It is all in a public setting where Members are told basically to put forward their reasons and why they reach those different reasons. So this idea that you have got this bunch of people mucking about with porthole obsessions for example is off the point. In any case, as has been said, that individual has moved from what you might call the maritime phase of his life, into other phases. The whole idea is you get the officers, they make decisions and they have taken an awful lot out of the decision-making process. Clearly the public like them when they approve their decisions; it is obviously when they do not that problems arise. The officers make these decisions. That has cleaned an awful lot out of the process and it has been accepted, but at

times they are too cautious. At times they do not balance in a way we think is acceptable. They do not balance the policy in a way we think that should be done. So the Planning Application Panel fills 2 roles. It is what you might call a *de facto* appeal from officers' decisions, where officers have turned down the public submissions, and it looks at decisions afresh. Occasionally it gets a reference as it did with the Co-op from the Minister. So the whole idea of a planning panel, as with other bodies in the States as the Deputy of St. Ouen is alluding to is you appoint people who you think are people of judgment; you hope after the right training they will apply that training. You hope they will study the Island Plan and come to a determination, often in a group debate, about the application of that Plan, the situations. But as Senator Le Gresley in his more lucid moments when he was not being bounced around in the van - with unfortunate consequences as we know - when that was not happening he knows that there are very good discussions about where the balance lies; where the particular emphasis should be on the policies that have been considered. So ...

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

Would the Member give way?

**Deputy R.G. Le Hérissier:**

Yes, I will give way.

[16:00]

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

Sir, I just wanted to clarify that I was in no way saying that the planning application process was not a good process. What I was saying is it is done by lay people and the appeals should be done by professionals.

**Deputy R.G. Le Hérissier:**

Yes, but if you argue that on the basis that the appeal process should be undertaken by a technically qualified person who it was implied, very, very strongly, is capable of making a much better decision than a bunch of enthusiastic amateurs struggling with plans, you are clearly saying that part of the process does not work. That is what Senator Le Gresley was saying, and he may have valid points but I think he ought to realise the logic of what he was saying. The other point I want to make - which has always exercised me and the Minister raised it - is the power of the Minister and I think a lot of Deputy Young's motivation may come from the fact that there were incredible worries in the last incarnation of the Minister for Planning and Environment, that he was too powerful in the sense that he was exercising discretion; there was a real danger he might have been getting too close to developers and so forth. Those were the real issues and I think I certainly sided with the pack role, and that was an issue that was worrying me more and more. Much as I admired a lot of the policies of that Minister like, you know, the trend to good design and so forth... I think although that may not be manifested fully in the way the role is currently occupied, we have to be prepared for that eventuality. I do not like the idea of one person, irrespective of who that person is, exercising what ultimately is subjective judgment. It is much better as Deputy Young of St. Brelade has said that there is wisdom in numbers. It is much better that that occurs, so that people can bounce ideas off each other. They can say: "Well, am I moving in the right direction?" and their colleagues can correct them. That is what I want to avoid and I simply feel, because of this tendency we have seen to micromanagement so often in Jersey Government departments, even though the Minister has taken a vow of self-denial that he will not be involved, except in the most special of circumstances and all the rationale will be given of why he chooses, for example, if he has to contradict a Planning Inspector's view, that danger exists. We have shown as a system that we are not very good at resisting it. I much prefer Deputy Young's proposal for a tribunal. I would like to ask him if he could address how the vote would be taken, if there will be a vote, or will the

lay people simply feed in their views and the Planning Inspector will still be the sole decision maker. I think it would be worth hearing what is going to happen. But it is said, for example, by the Minister: “Well, I have political accountability” but are we truly saying that in the No. 1 District of St. Saviour where the Minister is much loved and has topped the poll all the time, unless he does something unbelievably nasty or incompetent, will the electoral decision upon that Minister... in other words, the ultimate judgment of political accountability, be made upon the exercise of his planning role? I very much doubt it.

**Senator L.J. Farnham:**

Would the Deputy give way, just very briefly. I am sorry to harp on but just wanted to say, Sir, that is a very good example of why we need to retain Senators. Thank you.

**Deputy R.G. Le Hérissier:**

Well, oddly enough, much against the drift of my argument, I was going to have to concede that point perhaps, because quite clearly the electorate of No. 1 District St. Saviour, I do not think they will make their judgment on the performance of the Minister as the Minister for Planning and Environment. As I say, unless he has done something absolutely horrific or whatever... and I could not for a moment conceive of what that could be. So, I support on balance Deputy Young. I think there is a lot of fuss being made, unnecessary fuss about the role of lay people. Yes, you can get the wrong lay people; you can get people with irrational biases and so on. That is all right, but with training, with experience, with the discipline that a totally open process brings, I think it is quite possible to involve people at all levels of the process, including the one that Deputy Young is seeking to change; in other words, the appeal process. As I said, Senator Le Gresley has made a big mistake because he is suggesting we can make every decision a technocrat’s decision, let us get rid of everything. “Let us just give them all to technocrats”. That is the logic of what he was saying.

**7.2.7 Senator S.C. Ferguson:**

I have a few comments, some of which will probably reply to both the main proposition and the amendment, so if you will excuse me I will make them all together and then I do not need to stand up again.

**The Bailiff:**

Yes, they are very closely linked.

**Senator S.C. Ferguson:**

You will be spared. The first one is perhaps the Minister for Planning and Environment will confirm that the £148,000 that this is going to be put aside for this will be in his budget for 2014; it will be costed into it. Basically I think the local element must be considered and it is incredibly important. Every other country in the world is trying to bring more localism into government and here we are trying to centralise things and take it out of the hands of local people. I am sorry, it is not good enough. I would like to think that the Minister and the Deputy could perhaps negotiate to incorporate the best aspects of each plan. There is one thing which does occur to me, under either of the new systems the selection and training of the Planning Applications Panel will be crucial. The only other thing I like about both systems is that the court, with respect, is taken out of the system except *in extremis*. As I say, with great respect, the important thing is the planning approach is used not the architect’s vision which takes no notice of anything around about it, and not the legal niceties of the law, but how the whole thing sits together in whichever bit of the Island it is. I will, in fact, support Deputy Young in this because I think the localism is incredibly important because it is all right for the Planning Applications Panel, the Appeals Panel, the Minister, or whatever. They will float in and out but the neighbours, the people in the district have

to live with whatever is built there, and I think they must be brought into the equation and I think to have local lay people, they will be able to appreciate much more the feelings of the local neighbours. Thank you.

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

I really do not like disagreeing with everything that Senator Ferguson says but I am afraid to say that I do and I will just address a couple of remarks with her speech. Firstly, and this I am afraid may well wind her up, the budget is going to be afforded to the Planning and Environment Minister if the Assembly agrees this, and it is going to be from contingencies because that would be the only appropriate thing to do. Secondly, a brief history lesson if I may and I am afraid I am probably going to upset Deputy Young. I am not going to be inappropriate. The original Planning and Building Law was actually passed by this Assembly in 2001 - 6th of June 2001. **[Interruption]** It could not, however, be brought into force because the original cost of something called the Planning Commission was completely unaffordable. It was one of those classic issues which we have been discussing this morning of the States agreeing a policy and having no money. Hopefully we have gone away from that. Now, I have to say that of course the Chief Planning Officer that presumably recommended to the committee this law, that was of course a Mr. John Young. Now, I had the fortunate experience of having to take over from the Environment and Public Services Committee when former Deputy Dubras stood down. There was a vote of no confidence or something. My committee had to solve the problem, actually had to solve a right load of Horlicks of a problem. We had Island Plan problems, where only Deputy Hilton is remaining... perhaps we are only the people that had the fortitude to have survived. But the mess-up that we had to solve from a whole calamity of different issues; an Island Plan that simply had a number of amendments which were subject to ... I mean I know I had lots of problems of with Lime Grove House but that paled into insignificance compared to the amount of debate that we had about the committee being challenged on the 2002 Island Plan. It was an absolute mess. We also had a law that the old law could not be brought in because effectively the old Planning Commission could not work, would not work, was not affordable, all the rest of it. So I have to say thank you to the Royal Court to have discharged the functions of an appeal system because what the committee did in 2004, as soon as we could, we wanted to bring in the new law. We were working under the 1964 law. We had to replace the appellate arrangements. So what we did is, we did so with the Royal Court, and the Royal Court set up special rules and rules were made so that advocates were not the only people that could attend at the Royal Court and deal with the appeals. I am going to support what the Minister is doing, but I do not quite understand, to be frank, why the Royal Court system is not working because we put provisions in place to do it. I know there is a perception that the Royal Court is very expensive and has a great cost involved but I have been involved in a couple of appeals to the Royal Court and I think the Royal Court has done a pretty good job in dealing with planning appeals. So I think there may be an issue of perception, but the thrust of my arguments against what Deputy Young is proposing ... and if I may say I have looked at the original 2001 proposition of the Planning Committee, and it was then called a commission, but if I may say it looks remarkably like what Deputy Young is proposing today. It had commissioners. Those commissioners were not expert so I cannot help but think, and perhaps the Deputy can explain whether or not he has just simply now switched his position as chief officer, now he is in the Assembly and he is making the case for what he wanted as chief officer but ultimately did not get. I do not know; he will have to explain it. But all I know is that what was originally proposed by the committee did not work, would not work, and was languishing. We had the embarrassment of the law being passed by this Assembly for 4 years before it could be brought into force. Now, I know we have had jokes about buses and individual panel members, but frankly there is rather a big difference between them, and the panel acts upon advice. I hope it is not quite as Senator Le Gresley said. Certainly when I was on the Planning Applications Panel it did not operate like that.

We saw plans. Now, clearly, I hope things have improved. I got scolded by intervening in a planning matter in recent weeks. I hope it is rather better than he describes. But there is a fundamental difference between members of the Planning Applications Panel and lay members that would simply be forming part of a ... it was a commission now it is a tribunal, and that is that they are elected. I think there is a big difference. So I understand that you need to have Members of this Assembly making decisions in the first instance, but it simply will not do in my view to simply have a bunch of Islanders unelected. Yes, but they are only going to be appointed but I will not say do-gooders and all the rest of it; all the pejorative issues that you would have about a commission of Islanders. If you want an appeal system it has to be expert, and to that it has to be expert under the expert guidance of a commissioner in the Royal Court with Jurats that are trained and used to dealing with issues, or you have an expert body as the Minister is proposing. I will not accept it and I will vote vociferously against it and urge colleagues to do the same. We simply should not have an issue whereby planning appeals are dealt with by effectively substitute States Members that do not have a democratic mandate. We are ultimately accountable and the planning members do that, and, despite the jokes about the bus, they do a good job.

[16:15]

It is a difficult job that many Members of this Assembly have done. So, absolutely no to Deputy Young's proposals and also, if I may say, it costs more. An extra £75,000 for poorer decisions and done by unelected people. I will back the Minister's proposals fundamentally because they represent ... if there is a concern and if we do want an Inspectors approach that is the right way. So it is what happens in other places. It works in the Isle of Man; we should be backing the Minister and we should absolutely throw out the previous... This is a reincarnation of something coming forward in 2001. Twelve years later: it was wrong 12 years ago and it is wrong now.

### **7.2.9 Deputy J.A.N Le Fondré:**

Yes, I had not intended to speak and I was listening to Senator Le Gresley's comments and Senator Le Gresley would be delighted to know that he helped me make up my mind as to which way I was going to vote. Unfortunately, it is for Deputy Young. I think the point I would say is, hopefully trying to stand back from this, assuming that the ultimate aim of this gets approved, in other words either the Minister's proposition unamended or the Minister's proposition amended, gets approved by the Assembly, which I hope it will do, I think we will end up with a better system compared to what we have. It is kind of one fundamental issue as far as I can see which is about the issue of tribunal versus Inspectors. But, overall, I think that whatever we end up with will be an improvement on the present system. My experience of planning has been mixed. I have never had to deal with planning under the present Minister, but in the past I have been someone putting a planning application through, and also I have also been a significant lead objector on a significant development in the Parish, which a number of people are nodding because they all know exactly what I am referring to. Both times there have been issues on the process going through. It has not been a pleasant experience. I used to not have grey hair at that point, and I would argue it was the planning process not my youth, but anyway. But the point is that the process is definitely not ideal and on top of that any appeals process is definitely not ideal at the moment. My perception on the Royal Court process which, on the face of it, seems very good is the perception about the fear of cost. In other words, if one brings an appeal and one has the risk of losing, or presumably if one was bringing an appeal as a layman against a developer and one loses or the developer appeals, does one then get dragged into a full legal process? It is a perception issue, I do not know if it is accurate or not. But there is certainly a nervousness about appeals coming through. Equally if one looks outside the States, we have both got the Chamber of Commerce who I believe support Deputy Young, whereas I understand the A.J.A. supports the Minister. So there is no clear guidance from one way or another. What persuaded me are 2 issues, Senator Le Gresley focused significantly on -

in fact a number of people have - this tribunal of lay people. Yet, Deputy Young's amendments, in my interpretation of this, specifically says the panel to comprise ... Sorry, I will start at the beginning: "It is an appropriate mechanism with the agreement of the Jersey Appointments Commission to permit ..." sorry, and anyway as a tribunal and the particular bit I wanted to focus on: "To comprise a legally qualified chairman", that is very important whichever way we go: "a deputy chairman and 10 other persons including qualified and experienced Planning Inspectors and other people." So to me and all I can say is that this is an opinion and I fully expect to be shot down probably by opponents of the amendments. My opinion is that in certain roles people will get a particular mind set because that is their day-to-day job. It is no criticism; that is what if one is dealing with planning issues all the time. That is the experience that comes through from the day-to-day job of dealing with the Island Plan. So to me it would do no harm to have the experience of a professional Planning Inspector, blended with the influence of an appropriate layman. It is a slightly fuzzy argument but it is just, to me, that just gives a slightly broader opinion. Particularly, as I envisaged the role of the legally qualified chairman would be to ensure that the particular bias and opinion would be filtered out. As I said, to an extent, provided something gets approved by this Assembly today, I will be pleased because I think it will be an improvement. My balance is to support Deputy Young's amendment but equally I will not shed too many tears if it goes through unamended. Thank you.

#### **7.2.10 Deputy J.M. Maçon:**

I have to say I like elements of both schemes. I think there are good parts of both of them and when Deputy Young lodged his initial proposition I thought how I would not want a total panel of experts because I think sometimes there is something the Planning Applications Panel, the experts can be in a world of their own and certainly do not respect the feeling of the community when it comes to an application. I think when we are dealing about the Island, the community is very important and that is why I like the idea of not having the Planning Inspector just on his own. I like the idea of more than one person doing that, making that decision. I like what Deputy Le Hérissier said about the advantages of having lots of people looking at that application and not being one single person. On the other hand I totally agree that the realm of ultimate decision of planning applications and everything should stay with the Minister as final port of call. So where does that take me? I will continue to listen to the debate and I could be criticised for not bringing the amendment at the time. Just to comment on a few things. I just like to clarify that I have read the Island Plan cover to cover. I have not read the Planning and Building Law. So, when Senator Le Gresley asked about the Planning Law I did not think about the Island Plan because they are 2 different documents. But I have read it from cover to cover including the exciting bits on waste disposal and all that type of thing. I will not refer to it. Basically I think what we should talk about when we are referring to the Planning Applications Panel is the amount of reading that we have to do beforehand because we cannot forget that in that process there is huge documentation we have to read before we go out on site visits, which does draw Members' attention to certain issues, boundary disputes, all that type of thing, with the property of neighbours. This brings me on to the next point which is the Planning Applications Panel has a very low overturn rate when people do appeal. I know there have been some applications where we knew they would be going to Royal Court, and we treated them especially carefully, and because of the way that the panel dealt with the application going back sometimes 2, 3 times to a site, the Royal Court upheld our decision as being reasonable. But there is a slightly different approach in why it is not quite right to compare the current system with the proposed system if this changed to a merit-based understanding. At the moment the Royal Court has to decide upon in the legal sense on the understanding of what the reasonableness of the decision is, whereas this is looking at the merits of the individual planning policies. Now the problem is, as an earlier speaker has said, in the Island Plan there are some policies which it makes very clear the level of weighting that certain policies should be given.

These are such as Coastal National Park zone, Green Zone: for example it makes it quite clear how much weighting these policies should be given. You then will get some other policies where individual officers and Members have to take a stance about how they should be weighed-up. There is not a formula to say why this policy should be given more weighting over that policy. That is the advantage of having lots of people making that decision because between them, usually you will get a balanced decision, whereas it is much more difficult when you have just got one person making that decision, either the Minister, an Inspector or whatever. That is part of the problem when looking at it. I have approved applications with portholes on, though I certainly made a point of them as they come along, because upon reading the Island Plan what the gist of it is, it says that: "Developments and applications should be in keeping with the character of the buildings in that area." Now that includes the different details that are on different buildings. I would make the point though since we pointed that out there has been a lot less applications with portholes on, so it is nice to see there is that feedback between the regulator and the architects, which I think is good, because that is part of the process. It is important that both sides learn from the processes that we have got. So I will carry on listening to the debate because I can see good elements in both at the moment. I will wait for Deputy Young to sum up, and it is a pity perhaps parts of it cannot be taken separately but I think it is all woven together so I do not think we can do that. But I just want to say regardless I think both the department and Deputy Young should be congratulated for quickening this particular thing because we do have a lot of Islanders who are incredibly scared at thinking about lodging an appeal - a third party appeal or whatever - to a planning decision even if they feel very strongly that the wrong decision was taken. Equally - and I raised this at the presentation and the department has given assurances about this but I wait for finer details - is that we must also be cautious about vexatious appeals, because we have some people who will feel very strongly about their properties and their home but they will never be happy with the decision that planning has made, no matter how fair it is, no matter how in accordance with the planning policies. Those individuals may always feel aggrieved and it is very important therefore that whatever the appeals mechanism is, it has to have a balance between making sure that legitimate and fair applications are put through and being able to filter out those ones which are vexatious or which just will not go anywhere because at the end of the day we have got to make sure that public money and time is apportioned out fairly, appropriately and efficiently. But I do think that the department is aware of that and has taken that on board. Thank you.

#### **7.2.11 Senator L.J. Farnham:**

I take a leaf out of Senator Ferguson's book. I might speak for a few minutes but it will avoid me speaking on the main proposition, and I welcome the proposition largely because being able to appeal planning decisions on the merits of an application rather than at present only where the decision was unreasonable could bring clarity and focus to the whole planning decision-making process. This, of course, enables a whole application being reconsidered afresh, being assessed on the applicable material planning considerations instead of being restricted only to considering if the decision-making process was adequate. The particular virtues of the Minister's proposition, Sir, could be summarised as follows. Firstly, the appeals are decided on merits of an application based on material planning considerations using some commonsense application of planning policy. It is a simple layman's process, non-legal and non-judicial, much easier for the appellant to represent themselves or if they wish to be represented by a consultant or professional. Timely appeals: the flow chart shows that the new appeal process to a decision will be 2 to 3 months, most welcome. It removes the Minister for Planning and Environment from initial planning decisions as at present taken by the Planning Applications Panel or senior officers under delegated powers and relieves the Minister from potential lobbying pressure. It resolves any potential tensions between the Planning Applications Panel and the Minister, and the panel will become the primary decision-making authority while the Minister becomes the executive decision-making authority over the most

contentious cases. Other decisions made by the Department of the Environment become appealable. It will encourage, I think, a better and more considered pre-application advice and policy formation. Turning more directly to the amendment of Deputy Young, I find the arguments for the Minister for Planning and Environment having received an independent Inspector's report and recommendations taking the final decision very compelling because there is a synergy between the initial decision-making process and proposed appeals process insofar as at the application stage the Planning Department's recommendations to the Planning Applications Panel, and at the appeal stage independent Planning Inspector recommendations to the Minister for Planning and Environment.

[16:30]

This is important because the final decision at each stage falls on to a democratically accountable body or representative. This ensures the fundamental issues of sovereignty, and accountability, which a mature and democratically accountable planning process demands. There are perhaps a couple of caveats or questions. The Planning Inspector's report and recommendations are published, or should I say they should be published so available for the appellants and potential public scrutiny. A question - and the Minister may have to answer this - in cases where the Minister makes a decision different from the Inspector's recommendations albeit expected to be very rarely, does the appellant have a right of further appeal to the Royal Court, for example, on the basis that it might be an unreasonable decision? This could be crucial to the proper operation on a planning appeal system envisaged by the proposition because these provide transparency and are very important because they also circumscribe a Minister for Planning and Environment's ability to overturn any Inspector's recommendations. In his report, Deputy Young envisages the Minister for Planning and Environment retains involvement with the initial planning decisions in stating the following: "The Planning and Building Law places the entire responsibility for all planning application decisions on the Minister. All such decisions, whether taken by the Minister, delegated to his officers or the Planning Applications Panel, are made in his name and require legal authority. He has the opportunity to intervene in these decisions at any stage in these circumstances. It cannot be right that the Minister also seeks to appoint himself as the final adjudicator of appeals." What he misses is that under P.87 is that the Minister for Planning and Environment would delegate all first decision-making powers to the Planning Applications Panel or the department, so the Minister would not be involved in taking decisions. The Minister for Planning and Environment would not be involved in taking decisions on applications before any appeal, contrary to what Deputy Young suggests. Deputy Young later goes on to say that leaving first decisions to the Planning Applications Panel would abdicate the Minister for Planning and Environment's duties, but this clearly misunderstands the current system where, unless the Minister for Planning and Environment intervenes or calls in an application, all applications are decided by the Planning Applications Panel or the department under delegated powers. Deputy Young proceeds to subsequently state the present 2-tier arrangement of holding separate Ministerial Hearings and Planning Applications Panel Hearings has given much rise to criticism, but then proceeds to suggest this system, which he says is discredited, should be continued by suggesting that rather than abdicating from application decisions, there is a very strong case for the Minister to take a greater part in the decision-making and benefit other members by chairing the full Planning Applications Panel to consider the most contentious applications. So, Deputy Young's amendment, while criticising Ministerial influence in deciding planning applications proposes the Minister has greater influence in taking the first decision on all planning applications, in an attempt to make the proposal seem workable. Clearly, we cannot have a system, as proposed by Deputy Young - as much as I admire Deputy Young and his knowledge on the issue - where unelected laypersons and Planning Inspectors take final appeal decisions without any further right of appeal on planning applications. This comprises, in my

opinion, an autocratic system, not an improvement, and not a democratic system of government, and to that end I am sorry, but I cannot support Deputy Young's amendment.

**The Bailiff:**

Does any other Member wish to speak upon the amendment of Deputy Young? Yes, Connétable of Trinity.

**7.2.12 Connétable J.L.S. of Gallichan of Trinity:**

I did not intend to speak in this debate, because I was more concerned with Deputy Le Hérisier's amendment. I think it is fair to say that if you are on a planning panel, and it is a very small community, there are some very hard-held views on what should be developed and what is not developed, and, of course, in an area where we are putting a quite high density of property, there are some very strong opinions from neighbours and from overlooking, and all these sorts of things. But I am not going to go into all of that. All I would say is, the Planning Applications Panel is there for a purpose and in a lot of cases, I know Senator Le Gresley is with us on the Planning Applications Panel and his views are always forthright and also very influential, sometimes on panel decisions. However, I believe the Planning Applications Panel in some cases uses a lot of commonsense. It is very easy for officers to find a reason - multiple reasons in some cases - for nothing to be approved. It is quite amazing. You will find it is contrary to N1, N2, all these things come along. Actually, when you visit the site, sometimes these things are so finely balanced, and even the planning officers will tell us: "We did not know which way to go on this," and this is where, as a planning panel, I think we do a service to the Island, and in some of these cases - and I will support Deputy Le Hérisier - I think these should come to the Planning Applications Panel as an R.F.R. (Request for Reconsideration) but I am not going to go into that, because that is Deputy Le Hérisier's. All I would like to say is, because we are elected ... and Senator Le Gresley is quite right, I have not got any planning knowledge at all. Obviously, I know what plans are, I have been on the panel almost as long as anyone else, but at certain times you are there, you know what is going on, there are games played. You hear that people come with 5 houses on this site; you know that is just the first feeder, they want 3. So you get to know what is going on, and it is one of those things that I think the Planning Applications Panel is there to give commonsense, sometimes overturn decisions. It is essential that when it comes to the appeals, it should be someone who is qualified. We overturn decisions that are made by planners who are qualified. It is fair comment, and I think that should be done, because in some cases it is so minor that people cannot understand why they are not approved. A planner is no different to other human beings; they also have their likes and dislikes and eventually... and I think Deputy Le Hérisier was correct this year, there were many things that the panel were overturning and now the officer is now approving them because it is a waste of time bringing them to Panel because the panel is going to overturn them. So they have seen the light. **[Laughter]** It is one of those things. I understand where they are. They say: "I do not like that sort of fencing." I am sure if we brought a design for fencing to this House, we would have 25 different views on what a fence should be, and all I would say is, I am going to say that the panel is there to adjudge for the local population, but when it comes to it, if we do not overturn an R.F.R. then I think it should be done by someone who is qualified. I do not think it should go to another group of people for their view. I think the panel is elected; we are democratically elected by the people of this Island. It is up to us to take the first brunt, but after that it should go to someone who is qualified. I will not be supporting Deputy Young.

**The Bailiff:**

Does any other Member wish to speak? Very well, then I invite Deputy Young to reply.

**7.2.13 Deputy J.H. Young:**

I would like to begin by thanking all of the 11 Members who have spoken, and obviously the opinions seem to be strongly divided. I think I would like to start by following the Constable of Trinity's remarks. I think he summed up for me the challenge that is before us in finding this new system; that the planning policies that we are working to in the Island Plan which will be the judgment of the facts of the matters, the facts of the applications, against those planning policies, is not going to be clean-cut, black and white decisions, if you like. They are all going to be finely balanced, and as other members of the Planning Applications Panel say, whoever makes these decisions is usually faced, on any application, with anything up to 10 different policies to balance, to try and put a priority under one policy against another. So, I think that does require the exercise of subjective judgment which the Planning Applications Panel do very well. I have listened to the panel I think many, times, I have witnessed how the panel clearly get to the nub of the matter very quickly and overturn the technocrats' judgments. I think it is absolutely right what Deputy Le Hérissier and others have said, and Senator Le Gresley. It is an illusion to think that you can have some expert parachuted in to sit there and make technocratic judgments on these finely balanced local policies and try and come out with the judgment of Job, as it were. It is not real. The best way you can get decent, balanced decisions is by having more than one person making those judgments and I think that is what we see. The evidence is there in the Planning Applications Panel. It does it very well and I think that is why I believe that the final appeal process should not include a judgment by one person alone. That is the basis of my proposition. The intention of having a mixture of Planning Inspectors who have this technocratic background, with people who have experience, common sense, who can bring their awareness of local circumstances ... I am not saying they use special influence but they understand the reasons for our policies much better, I think, than those that do not have a local mindset. They put that information... they can balance out and create a situation where we have soundly-based decisions at the appeal process. I fear that having a process of one single technocrat will not prove to be satisfactory. The proposals I have put forward have obviously drawn on my previous lives, and I have had quite a few. I had 25 years as a public servant and 13 years of those years administering the planning system. I was not, contrary to what Senator Ozouf has said, the Chief Planning Officer, I was the Chief Executive and my job was to manage the whole process to make sure it worked. I think what we have got here is a choice between, if you like, a theoretical proposal to have a technocratic system, or we can have a practical one, based on experience, which has got local elements within it as our sister island has done. The Minister made great play that he had based the system he has chosen on the Isle of Man. Of course, I did not hear the Minister explain that in the Isle of Man the first place planning decisions are not made by local representatives, by elected people; they are made by a panel of non-elected people. Therefore, that system suits the Isle of Man really quite well. They have chosen to have lay people make first decisions and then they have the Planning Inspector at appeal, reporting to their Minister. I think that if the Minister is clearly recommending that we adopt the Isle of Man system, we should understand that that is their process, which is fundamentally different from ours. Our process is to put the lay elements and to put that, and our first place decision-making process, in the Planning Applications Panel, and that is fairly right. The Minister also says he is adopting the U.K. system. I have read the annual reports for the Planning Inspectorate, and of course the Minister there in the U.K. is dealing with, as I said, over 300-odd separate decision-makers and though, in theory, the Minister can interfere in the Planning Inspector's decisions, they do not. The only applications where there is interference is in things like runway extensions, Heathrow and Gatwick Airports and so on; on major public interest projects. Effectively, the Planning Inspectorate in the U.K. decide the overwhelming majority of applications at appeals, completely outside of the political system. There is no involvement there. So, the Minister says we want a professional system. We must have that planning input, but I think it needs to be counterbalanced. The Minister says I am trying to bring in legal people. My thoughts on this is that the legal person

is there to ensure that the way in which the tribunal runs its affairs has got a proper sound process of a fair hearing, and it is absolutely process-related and not to be partaking in the actual judgments.

[16:45]

I did find that this kind of dismissing of the qualities of local people, people of substance can bring, very depressing, I am afraid. I think, as a small community, we have to create systems where we run our own affairs and we have got amazing skills in the Island, and I think as long as there are safeguards there and so on, then they can be involved in these systems. I have heard that the Minister argues that the proposals are too complex, they lack clarity. I do not think they do. I think the area that other Members have raised as well... and as Senator Farnham mentioned about the role of the Planning Applications Panel. I mentioned that in the report because I have long thought that having 2 separate structures with the Minister and Planning Applications Panel deciding planning applications is problematic because the applications tend to shuttle between one body and the other and this causes delays and is seen as uncertain and bureaucratic. My thought would be that it is quite entirely possible for the Minister to restructure those arrangements; he does not need to impose this bureaucratic, technocratic decision-making to solve that. That can be solved in other ways. I have tried to deal with Senator Le Gresley's points. I personally prefer the balance of tribunals rather than completely professionals, and mention was made of the Jurats. I think there is a good parallel there. I am convinced that, although I have been very critical of the Royal Court and I think nearly all the problems arise from the fact that the grounds for appeal have been on unreasonability, and I think the Jurats have made a contribution... I agree with Senator Ozouf - and there is not much I agree with what Senator Ozouf had to say - but I do agree the courts have done a decent job in keeping the system going and going well in terms of the professional side, if you like, apart from the fact that they've been inaccessible and costly and the judgments were based on unreasonability and not on the basis of planning merits, which we all share the need to move to. I cannot close without responding to Senator Ozouf. Obviously, I must have seriously upset Senator Ozouf this morning in my reference back to be on the receiving end of really what I thought was a not very well-veiled personal attack on my record while I was Chief Officer, suggesting that I had reincarnated proposals that had failed and so on. Absolutely not. The period when the Minister for Treasury and Resources - Senator Ozouf - took office, that followed my being the Chief Officer under the presidency of 6 different committees, successfully. When, of course, the Senator left office, then my 2 planning departments were merged with T.T.S. (Transport and Technical Services) so I agreed to take redundancy in order to facilitate that. I have gone all through the minutes of what happened after I departed and I certainly did not see any records of mess ups and so on that have been referred to. I think what I did see was that there was clearly recognised an issue that the proposals that were agreed originally in the Planning Law, which were based on substantial consultation, technical advice and so on - which was not my ideas translated, this was me facilitating ideas that came from experts and the community at the time - the problem was that estimates were put of the number of appeals and the cost of those appeals, which were, frankly, too high. My report last March owned up to that and said they were too high. So we spent a number of years without the resources because the bids being made were too much. I do not accept those insinuations at all. So, with that, I think, absolutely I am in Members' hands. I support the Minister's intention, I think. Deputy Maçon was absolutely right. I think at least I can say I believe the process of arriving at a new system has been speeded up and I think the right issues have come out. I personally feel very, very strongly that we do not need a technocratic solution of a single Inspector-based system. We want a panel and the tribunal, with lay involvement. With that, I leave it to the Assembly and I am in their hands. I ask for the appel.

**The Bailiff:**

Appel is asked for in relation to the amendment lodged by Deputy Young. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 12</b>	<b>CONTRE: 24</b>	<b>ABSTAIN: 0</b>
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator P.F.C. Ozouf	
Connétable of St. John	Senator B.I. Le Marquand	
Connétable of St. Brelade	Senator F.du H. Le Gresley	
Deputy R.G. Le Hérissier (S)	Senator I.J. Gorst	
Deputy J.A. Martin (H)	Senator L.J. Farnham	
Deputy G.P. Southern (H)	Senator P.M. Bailhache	
Deputy of St. Ouen	Connétable of St. Helier	
Deputy J.A.N. Le Fondré (L)	Connétable of Trinity	
Deputy of Trinity	Connétable of St. Clement	
Deputy J.P.G. Baker (H)	Connétable of St. Lawrence	
Deputy of St. Mary	Connétable of St. Mary	
	Connétable of St. Martin	
	Deputy R.C. Duhamel (S)	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy E.J. Noel (L)	
	Deputy T.A. Vallois (S)	
	Deputy A.K.F. Green (H)	
	Deputy J.M. Maçon (S)	
	Deputy G.C.L. Baudains (C)	
	Deputy of St. John	
	Deputy S.J. Pinel (C)	
	Deputy R.G. Bryans (H)	

### **7.3 Planning Appeals: Revised System (P.87/2013) - second amendment (P.87/2013 Amd. (2))**

#### **The Bailiff:**

Then there is the second amendment lodged by Deputy Le Hérissier, and I will ask the Greffier to read that amendment.

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

Page 2, a new paragraph, after paragraph (a) insert a new paragraph as follows: “(c) to agree that, notwithstanding the introduction of the new appeals system the current system of Request for Reconsideration shall also be continued for decisions made by planning officers under delegated powers with the reconsideration of the application being undertaken by the Planning Applications Panel, whose decision in these cases shall be final, subject always to the normal appeal process” and renumber the remaining paragraphs.

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

I was just thinking about this and it could be argued that this falls away but I think it is worth making the point and I will look forward with interest to what the Minister for Planning and Environment says because this is an anomaly that has certainly annoyed me for quite a time. Basically, as I explained, what happens if an officer makes a decision and you do not agree with it, you get what the department calls a free bite or a free appeal. You put your application in front of the Planning Applications Panel. As the Constable said they essentially act as a ‘Court of Appeal.’ It is quite a successful system. It leads to a loop between the officers and the Planning Applications

Panel. They get to know our thinking through overturned decisions essentially and I think we have come to a better understanding, certainly recently, of each other. But it is a very important defence for an applicant who feels - of course, the decision by the officer is essentially a paper decision - they want to present their case. So the full panoply of the panel is triggered. They come there with their representatives, if they have any, and they make their case. The department makes its case and then the panel makes a decision. But what has really surprised people because I do not think they quite realised what was going on, they go through all this pain because it is a very stressful ... a lot of people do not like appearing in public in what could be but is not a confrontational situation thanks to expert chairmanship. They go through all this pain then all of a sudden they are told: "Subject to the approval of the Minister." A process occurs in the department of some kind, a consultation occurs. We did have a protocol where the Chairman goes to see the Minister and says: "This is what has been decided. These are the reasons for why it was decided" and so forth. But there is this ability of the officers to press their case and then this case, yet again goes forward. It goes to the Minister. The Minister makes a decision and obviously there have been some changes and there have certainly been some issues that have been more around not the precision of the decision so much as the struggles with policy. The glasshouse policy was a classic and perhaps the co-equal Deputy of St Clement will address this issue. The other one is the tests applied to employment on the site where there is a site which currently offers or should be offering employment and if we were to acknowledge a change of use that employment will be removed and what steps were taken by the applicant to try and continue employment on that site. There have been some real big policy debates and struggles and the panel has said to the department: "You really ought to sort out the policy but until you do, we are going to give the decision in favour of the applicant." That has really been the case because we do not feel that the policy was, for various reasons clear enough or was pinned down enough. So it is a very, very traumatic experience for an applicant to find that, having gone through all this they find: "No, it is not over yet. I am sorry, it is not over." What I am saying is let us put an end to it. The Panel makes a decision, assuming R.F.R.s will continue as I think they will but I will wait for the Minister's word. Assuming they will continue and then if the person does not like the decision made by the panel, it is against them, then they simply go along with the new appeals procedure. I am saying I want that clarified and until that is clarified I stand by this proposition.

#### **The Bailiff:**

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

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

I think Deputy Le Hérissier - it might well be explainable or understandable - displays a different interpretation of the system that is employed for the panel making decisions. It has been explained on many, many occasions and it works as this. If indeed, applications are made to the Planning Applications Panel with an officer recommendation and the Planning Applications Panel are in a position to want to go against the recommendation of the officers, who in the main are there to ensure that the Island Plan is being adhered to as far as possible, then the failsafe system that was put in is that those decisions are not made by the Planning Application Panel. The Planning Application Panel signals its intention to make that decision and then there is a cooling-off period where those decisions are referred to the Minister for Planning and Environment, who decides whether or not the straying from the advice in Island Plan terms represents a significant policy change or not. If, in the case that the Minister decides that it is not a departure of major significance to inform or help to inform a change in the policies then indeed the decisions will pass back to the Planning Applications Panel and they make the decision. In those terms it is not a bad system, but I think to tie that into the suggestion that we have to come forward and continue Requests for Reconsideration, which are something quite different - this is where decisions that

perhaps have been taken by officers are then further appealed to the Planning Applications Panel for a different decision. If there is a likelihood, as I think in all cases would be the case, that a decision taken by officers, if it was deemed by the applicant to be considered to be the wrong one, if there is a right for further consideration to an appellate body which is the Planning Applications Panel on the grounds in the applicant's mind that they might get a more lenient interpretation of the Island Plan recommendations that their first application had been rejected on, then we find ourselves in an awkward position whereby the Planning Applications Panel is being maybe preferred to be the decision-maker as opposed to what might be the decisions taken by the officers. Is it quite clear in my mind that we have to have a system that whichever decision-making body makes the decision that we have an appeals system that this House is agreed to or about to agree to, hopefully, that challenges both decision-making bodies.

[17:00]

If a decision that is made by officers is deemed to be, by the applicant, the wrong one for whatever reason then there should be a system of appeal on merits to the Planning Inspector to decide whether or not there are circumstances under which that decision should be reversed or overturned and equally, decisions that have been passed to the Planning Applications Panel to make, if indeed a decision is taken there by a Planning Applications Panel and the applicant feels that that should be again challenged, that should necessarily imply the same appeal system. The process that I have proposed seeks to make this appeal system less complicated and Deputy Le Hérisier's amendment simply adds an unnecessary complexity and potential confusion back into the process that perhaps we have got more than one way of deciding decisions, which I think is wrong. It is a clean and far more transparent system that once an administrative decision is made, that the decision can then be appealed and I do not think we have to introduce what has been termed by officers as a faux appeal into the process before a formal appeal. It does not make sense and I agree with that. Members must be aware that the Request for Reconsideration - R.F.R.s - were a response to the existing difficulties, previous difficulties of the current appeals process and the need and acceptance to try to offer something easier for applicants by way of appeal. My new process will remove those difficulties and therefore I would put forward that we do not need the R.F.R. route anymore. The system has no basis in law and I am simply asking that the same decision-maker reconsiders the decision. In addition, R.F.R.s are not available - and this is a major point - for third parties. This sets them at a disadvantage even though the law allows for the same rights for third parties. I want a clean system. I want it to be a simple system. I want it able to be applied to all the decision-making bodies involved and I think the assurance that Deputy Le Hérisier is looking for is contained in the body of the main proposition, whereby I am suggesting that the Planning Applications Panel be put forward with the capacity to be the primary decision-maker for those decisions that will be referred to them. We do have a system of delegation and I think the system of delegation obviously, by virtue of the fact that that Planning Applications Panel would not wish to consider all applications - and I think that is wrong - will continue to make decisions but I think as far as appeals process goes, there must be one clear cut way to make appeals in both ways. The plea I make to the House is again, that professional thinking has come forward with a considered solution. It is fair and the research has been done to ensure that it suits as many people as possible and is tailored to the Island. I would not wish us, at this late stage, having seen the success of the afternoon so far, to create a hybrid which could be argued as being neither fish nor fowl. I would encourage Members to have faith in the Minister for Planning and Environment, in myself, for bringing forward this considered proposal in general and to reject the amendment by Deputy Le Hérisier, which will over-complicate the system.

**Deputy R.G. Le Hérisier:**

Can I ask a point of clarification? Is the Minister saying in those areas of delegated decision-making by officers, if an applicant is not happy with the decision they will now go straight to his new appeals process?

**Deputy R.C. Duhamel:**

Absolutely.

### **7.3.3 Deputy S. Power:**

It is interesting that as we evolve through this debate this afternoon, the members of the Planning Applications Panel that I have had messages from in the last hour have got a quite clear view on this. It might be useful for Members to realise that when the Planning Applications Panel sits once a month, we sit sometimes for up to 6 to 7 hours and I think, as States Members, they are fairly demanding public meetings. In that day, sometimes up to 50 per cent of our agenda can be R.F.R.s, Requests for Reconsideration of an officer decision. To me, that means that that is a fairly significant part of our work. What I would like Members to try to understand is that the Request for Reconsideration process is deemed to be a fairly important process by the applicants within the planning process. As Deputy Le Hérissier has rightfully said, to walk into a public meeting with 6 suited gents and one lady Constable can be a fairly daunting process but if we give those applicants the right of what I would call a softer appeal, in the Request for Reconsideration, it seems to be working and that is why it seems to be an important part of our decision-making process. Deputy Le Hérissier referred to the post-mortem process at the meeting following the Planning Applications Panel meeting. I do go to meet the Minister, the Director of Planning and the Chief Officer and account for the sins of the Planning Applications Panel on the previous Thursday. I have to say that the Minister rarely overturns a Planning Applications Panel decision, whether it is an R.F.R. or a straight decision. We have, in the last 2 years, made a number of significant changes to an officer recommendation that the Minister for Planning and Environment has been happy with. My view would be - and it seems to be the majority view of the panel but they will speak for themselves, I am sure, after me, or some of them will speak - is that the Request for Reconsideration of an officer recommendation is a local process and it gives almost the applicant in Jersey a '2 bites at the cherry' process. He can come to the Planning Applications Panel for a Request for Reconsideration and then ultimately, if he is not happy with that or she is not happy with that, the applicant is not happy with that then they can go to what the Minister would regard as his new appeal process. I say this, and I am a very loyal servant of the Minister but I do believe in this particular case, Deputy Le Hérissier has some merit in his amendment. I will listen to the rest of the debate and listen to what my fellow Panel members and colleagues say but there is merit in the R.F.R.s. There is merit in the R.F.R.s being considered by the Planning Applications Panel and then going on to the appeal process. Thank you.

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

I merely rise because I wish to ask a question of the Solicitor General. That question relates to a comment from the Minister in his speech when he said that Requests for Reconsideration have no rights in law. That is also my understanding of the position. If we - and I hope we do - today approve the Minister's proposition, under the first part (a) he requests that we replace the present appeal provisions of the Planning and Building (Jersey) Law 2002 with a new Planning Appeals process to be established to determine appeals against decisions made under the Planning and Building (Jersey) Law 2002 entirely on their merits. If the Minister gets that approval today to go ahead and bring a proposal to change the law, what I would like to ask the Solicitor General is if we retain the R.F.R. process, will that be contrary to the law that we will be requesting the Law Draftsman to instigate and on that basis, could an applicant challenge the decisions or the views of an R.F.R. process? I hope I have explained that as best I could.

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

The answer depends, in my view, on whether or not this second amendment is approved by the States today. Clearly if it is approved then the R.F.R. system will be retained, if I may use that phrase, and no doubt the law will be drafted accordingly to retain it. Obviously if States Members do not pass the amendment then clearly the Minister's original proposition will not feature this currently informal R.F.R. decision.

#### **The Bailiff:**

If I understood the Senator's question correctly - and correct me if I am wrong - I think he wanted to know if the law is passed as per the Minister, whether the R.F.R.s, being an informal process, will then be prohibited and have to end or whether they can still continue?

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

Yes, that is also the point, yes.

#### **The Solicitor General:**

In my view, they would not continue because the new law would feature the panel taking the decision at first instance. My view is that unless the amendment is passed the law will not feature this informal process.

#### **The Bailiff:**

Do you want to speak now, Senator?

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

No, Sir. I just wanted to rise to thank the Solicitor General. Thank you.

#### **The Bailiff:**

All right, but if you want to make a speech, you ought to make it now.

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

No, Sir. I do not want to make a speech.

#### **The Bailiff:**

Very well. Speak now or forever hold your peace.

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

May I just offer a further question to the Solicitor General? I just do not understand. This is an informal process in which the Request for Reconsiderations that currently exist are not within the law, as I understand it. If the current arrangements for Request for Reconsideration of a planning officer's decision going to the panel does not feature in the law, the fact that the Assembly may well switch the appellate body from being the Royal Court to the Inspector, may I just ask respectfully why the informal process would no longer be permitted?

### **7.3.7 The Solicitor General:**

I am being asked to comment on this without seeing the draft of the law, so it comes with that caveat, but if you are changing fundamentally the role of the panel and the Minister, so you are putting the panel forward as a body of first instance, a decision-maker at first instance and you are making the Minister the formal appellate body then it seems to me you are fundamentally changing the roles of the panel and the Minister. You are defining the procedures between the 2. You are eliminating the informality between them. I say all this but I have not seen a draft of the law. It

may be that there may yet be scope to somehow see an informal procedure but it is rather difficult to see it without seeing what the law would look like.

**The Bailiff:**

I understood the assumption to be still that decisions would be taken by officers which have been delegated by the panel so some decisions will still be taken by officers. I think the question is if the law is amended could there be an informal R.F.R. from the officers to the Planning Applications Panel?

**Solicitor General:**

Yes, Sir.

**The Bailiff:**

It could?

**Solicitor General:**

Yes.

**The Bailiff:**

That answers your question.

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

Thank you. I did not wish to put any difficulty on the Solicitor General but that is my understanding and we have not seen the law but, yes, that can be done. The decision of first instance can be delegated to officers. Currently it can be the Minister and the panel. In this arrangement, it is only going to be the panel. The Minister is recusing himself permanently from that.

**7.3.8 The Connétable of Trinity:**

I will be supporting this and really I think if everyone who comes to a Planning Applications Panel, the first thing we do at a meeting is decision confirmations. Those decision confirmations are what the panel has overturned at the previous meeting. Somehow or other the Minister decides on that list but he does not overturn them all because there is an element of variation. But these are all decisions that were made by an officer. All the R.F.R.s are refused so there is not a chance for those applicants to go to anyone apart from going to the new appeals system. Why should an ordinary person who wants to put a flue on the top of their house not do so ... we had one last month, a flue refused. Then the Environment people and the Health people realised every other house had a flue in that road so they overturned the decision. Surely commonsense prevails.

[17:15]

That would be an ideal thing to bring to the panel because it had been refused by one of the officers and they looked at it again and they overturned the decision. It had to be overturned by our Panel. It seems ridiculous to go to start getting an appeals system for something as minor as that. I would just say that in the old days, certainly with the previous Minister, if the panel approves something it was never changed. He never queried that. He accepted that the panel is a group of 5 or 6 or 7 of us and he took the view that if the panel have passed it and they have gone against the officer's decision, that was sacrosanct and that was the end of it. I just think that somewhere along the line I have got no problem in some ... we have obviously now some real good ones like we have: "Is this somewhere where people can work in?" But you get a hotel who comes to the end of its life ... this has had employment for numerous amount of people. We can knock it down and put houses there but a dilapidated old shed which is not fit for purpose, because somebody worked in there 10 years

ago, we have to look at that again to say: “Should this be in employment?” and they have to jump through all sorts of hoops. They say: “No, this is fit to knock down.” That is not the point. It has to go through all the tests and rigour to make sure that this employment part may still be of some value to the Island. I understand all the criteria and the panel do, but sometimes you come and say: “Is this commonsense or not?” This is why the Planning Applications Panel say in some cases, some of these things should be reviewed. The glasshouse is the classic. Pass one glasshouse, you will have everyone who has a glasshouse saying: “Well, if you have passed 10 houses there and that group of glasshouses why should I not have some as well?” There has to be some sort of guideline for the panel. It is very difficult. We have people in front of us who say: “Well, I have got 4 grandchildren. I would like 4 houses.” Well, that is wonderful. Would we not all? This is one of those things that it is, in a small community, to some people, a great, great worry and I think the panel, to be fair, the Chairman ... I was Chairman before ... they are people who are very nervous but they can put their case to us and we do listen and it gets quite emotional for people. I think, to be fair, the way we handle it, I think is a perfect way to get ... most of those appeals on what the officers would refuse would never go to further scrutiny. I will be supporting Deputy Le Hérissier on his amendment.

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

I think for those Members probably not familiar with the work of the Planning Applications Panel or the Minister or the officers’ work, it might be worth knowing that the reconsiderations that we were referring to are usually of a very minor nature. One recently was should there be a glazing bar on a window? Are we really thinking that we should refer that straightaway to an Inspector with all the delay and expense involved? I think not. It is not unusual for an application, which an officer or officers have refused that when it comes back and comes to the panel, because it was finely balanced the officers have changed their mind and said that they suggest the panel should approve it. Again, I ask, should such minor issues really need to go to an independent Inspector? There is another benefit, which can easily be overlooked. Some of these decisions are often finely balanced. One policy conflicts with another one and it is a question of judgment and they have just gone this way and the next time somebody else might have gone the other way. Because of these finely balanced decisions, if it does come back to the Planning Applications Panel as an appeal, quite often the discussion that takes place between the officers and the panel results in a refining of the policy which may or may not have been a problem in the first place and that hopefully in the future will result in less appeals coming to the panel. It helps the applicant and it helps the officers and it also helps those who may be objecting because I have always said as far as planning issues are concerned when I am determining them, I try to be wrong 50 per cent of the time. That way I know I have got it about right, because if you approve something you upset the objector and if you do not allow it you have upset the applicant, so you cannot win whatever you do. I urge Members to support Deputy Le Hérissier’s amendment.

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

Just a quick query. I wonder if the proposer would be able to include this in his answer? About how much of your time percentage-wise, roughly do you spend on R.F.R.s?

### **The Bailiff:**

Does the Minister?

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

Does the panel spend on R.F.R.s? Because if there is a lot of time being spent on this it would suggest either shortcomings in the processes or obstinacy on behalf of applicants. It sounds to me from what the other members of the panel have been saying we do have shortcomings in the process. If we are spending a lot of time on it, I think it needs addressing.

### **7.3.10 Deputy J.H. Young:**

I support this amendment notwithstanding the fact that my amendment was lost. I still think it has got substantial merit, in fact, more so now that my amendment is lost because the R.F.R. is going to be the only non-technocratic judgment that first party appellants are going to get. Often these cases, some of them are, as other Members have said, quite straightforward. This is a very quick process. It is simple. They get balanced judgments being exercised and they get all the good things about having a group of people who use commonsense to make decisions. It has got no cost and hopefully it should go ahead. While I am on my feet I have got the opportunity of also saying that apparently I have had the opposite of the ring binder problem. It appears that I was not present for the vote on the amendment which was lost, I would like to say: "Well, had that not happened, I would be, naturally, voting for my amendment." [Laughter] But since I have lost it, to put the record straight, I do not know what happened. I might have been a bit confused by having to respond to communications I was getting in response to the remarks that Senator Ozouf made about my past and so on. I had to deal with those comments, which were extremely unfair but never mind. I am supporting strongly Deputy Le Hérissier's and hope that we can salvage something from this with what we end up with.

### **7.3.11 Deputy R.G. Bryans of St. Helier:**

I will be brief. I am a panel member and I think the reason I am rising is just to let Members know my particular feeling about this amendment. I will be supporting it. I have read the Island Plan, I confess, not all in one sitting. There were cups of tea and sleeps in between but I did get all the way through it. All the panel members have articulated the problem in excellent detail, I have to say, so I do not want to add too much to it. Deputy Young has speeded up the original proposition so I think well done to him but I think Deputy Le Hérissier with his amendment has sharpened up the procedure and has removed some of the deeply felt frustrations that we as a Panel feel when we are sitting looking at members of the public bringing these appeals to the panel. I will be supporting the proposition.

### **The Bailiff:**

Do any other Members wish to speak?

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

I do not agree, notwithstanding my questions to the Solicitor General. I think there are problems in relation to this. The first thing is that if, by definition, an officer decision is likely or should be - certainly I have not been part of decision-making for a number of years - a more technocratic decision-making issue in relation to a clear issue of policy. If the policy is clear in relation to something, then it is a matter that an officer should deal with and an officer can determine it. It should not be the subject of effectively a political interpretation because it should be relatively clear. I can see why Planning is saying that generally speaking, delegated matters are really the technical interpretation of policy. Officers do not have delegated responsibility for passing large, fanciful buildings, as we have seen some interesting pictures of in the last few weeks. Those are issues for political determination. These are technical, relatively low-level applications that should be appropriately dealt with by officers and frankly, it is appropriate now we have agreed - or hopefully we are going to agree - effectively an expert hearing by Inspectors, it is appropriate that it is almost matched by a technocratic appeal process. I would also say that there is a problem in relation to this, that third parties do not have the same right and that is not right. Third parties cannot exercise a Request for Reconsideration. It is only for applicants, but once you put it into the Planning Applications Panel domain it is completely difficult. It is a delegated responsibility. It should be technical and the rehearing effectively should be a technical rehearing. I know that politicians ... of course, we are gathering as States Members. We like to make decisions ourselves.

I suppose we like to overrule officers. It is very tempting to overrule officers but we should have confidence in planning officers in their technical interpretation of what we should be giving as clear policy and that should be a technocratic and, unless nothing is wrong, it seems almost technocrats are pejorative and wrong. Well, technocrats are experts and a Planning Inspector is an expert and will challenge that effectively low-level consideration. I can imagine that what will happen is that an appeal by a delegated decision effectively will be bundled up and given to the Inspector for review and that almost de-politicises it, puts expert interpretation on it and I think that we should be listening very carefully to the remarks. I do not always agree with Deputy Duhamel but I think he is right and I think we should not overly politicise effectively what are technical and technocratic decisions. I think we should vote against this.

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

I wonder if I might just correct something which the Senator has said possibly inadvertently? He mentioned a third party not having the right to address the panel on an R.F.R. but of course if a third party had been involved in the first place the officer would not have decided it.

**Deputy S. Power:**

May I make a point of clarification on what Senator Ozouf just said? Very briefly, he referred to the policy and the problem is the policy is not clear and the Constable of Trinity referred to problems we have with employment land ...

**The Bailiff:**

I am sorry. This sounds like a second speech.

**Deputy S. Power:**

The problem is the policy is not clear and that is what the Planning Applications Panel does, try and interpret as best we can.

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

Just very briefly because I was going to echo something of what Deputy Power was just trying to say there in his pseudo-second speech. The issue often can be that certainly the officers are the technically capable people but often they are at a loss as to a fine balance because it is not one policy saying this is what we must do. It is several different policies interfacing and we, as the panel, pick up and support often and sometimes overturn the decisions of the officers because they are very clear to us. They will say to us on many occasions: "This is a finely balanced judgment. This is what we are recommending but it is very, very finely balanced." As a Panel, of course, there are more of us. We have got diverse backgrounds. We look and we have a Panel hearing. The public come. They speak. We have a site visit. We see the plans. I would like to mention that because the plans are all now scanned on the Internet. We all have them on our devices. It is not a question simply of laymen versus technocrat looking at one clear cut policy decision. The policy is a network. It is a matrix of different things and we are there to help the public through that.

**The Bailiff:**

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

**7.3.13 Deputy R.G. Le Hérissier:**

I thank all the Members who spoke and in particular, if I may, the Planning Applications Panel members who have made some excellent contributions and have explained the dilemmas. If we lived in this paradise of Senator Ozouf's where technocrats just gave entirely predictable decisions we would never have to come to the States most of the time. We would just tick boxes. It does not work like that. He knows the planning system. He has struggled with some very big issues. Even

at officer level, they are taking quite big decisions now as a lot of you well know. Very big decisions. They are not only about the position of flues on houses. They are often how many houses you can build on a site and so forth. That quite frightens people and therefore that makes the panel even more important as a body of appeal.

[17:30]

I think the Minister is quite right: “I want to simplify the system. I am on the way now because I got through against the first amendment” but he may rue the day he said that because what he has got, as the Constable of Trinity and people like him said, a very good informal system where people are saying: “Look, this does not make sense” or, as the Constable of St. Mary said there is an awful lot of things here that have to be balanced out and perhaps it is tilted in the wrong direction. Here is a quick way of correcting that situation which does not take away the final appeal to the new appeal system. It does not take that away. If you, as a person, still want to appeal, you can go all the way but people will be very, very upset if they lose this informal system which I think is, I have to say, very well handled by the Chairman. He puts people at ease. He gives everybody a very balanced role in the procedure and so forth. If the Minister, on the grounds of spurious logic, tries to get rid of that he will be undermining the process, quite frankly. You have got a good system that is working. It may be undermined eventually by the appeals system. Maybe everybody will go to full appeal at some point but at the moment they do not. To answer Senator Ferguson’s question and other Members may have a clearer idea than me but when we started this new Panel, I would say at least 50 per cent were appeals but it has reduced to about a third now, I would say. It has reduced to about 33 per cent because there is a greater understanding between the panel and the officers. As the Constable of Trinity said, they know when to push it and when not to push it or when the panel will express dissent or we will say, as Deputy Baudains said: “Look, the policy is not clear here. We can go either way and we will if necessary.” On that basis, I would like to move to the vote.

**The Bailiff:**

Do you ask for the appel? Yes. The appel is called for then, in relation to the amendment of Deputy Le Hérisssier. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 24</b>		<b>CONTRE: 13</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator P.F.C. Ozouf		
Senator A. Breckon		Senator A.J.H. Maclean		
Senator S.C. Ferguson		Senator B.I. Le Marquand		
Senator F.du H. Le Gresley		Senator I.J. Gorst		
Connétable of Trinity		Senator L.J. Farnham		
Connétable of St. Peter		Senator P.M. Bailhache		
Connétable of St. Lawrence		Connétable of St. Helier		
Connétable of St. Mary		Connétable of St. Clement		
Connétable of St. John		Deputy R.C. Duhamel (S)		
Connétable of St. Brelade		Deputy J.A. Martin (H)		
Connétable of St. Martin		Deputy K.C. Lewis (S)		
Deputy R.G. Le Hérisssier (S)		Deputy T.A. Vallois (S)		
Deputy J.A.N. Le Fondré (L)		Deputy A.K.F. Green (H)		
Deputy S.S.P.A. Power (B)				
Deputy E.J. Noel (L)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				

Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

**The Bailiff:**

It is 5.30 p.m. but it is a matter for Members then, whether to continue. If we do continue, we return to the debate on the main proposition but Members may feel that everything that could be said on that virtually has been said. Do Members wish to continue to complete this item?

**Senator L.J. Farnham:**

Could we have the appel, please, Sir?

**The Bailiff:**

Are you serious? [Laughter]

**Senator L.J. Farnham:**

If the Minister would agree ...

**Senator S.C. Ferguson:**

Are there many people expecting to speak now, Sir?

**The Bailiff:**

I do not know how many people are expecting to speak on the main proposition.

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

I am just wondering if I propose the adjournment and test it by that, Sir?

**The Bailiff:**

Very well. Do Members want to give any indication of how many wish to speak during the main debate? One, 2 ... very well. Then the adjournment is proposed. Very well. You ask for the appel on that? The appel is called for. If you wish to adjourn now until tomorrow you vote pour. If you do not, you vote contre. The Greffier will open the voting

<b>POUR: 13</b>	<b>CONTRE: 25</b>	<b>ABSTAIN: 0</b>
Senator A. Breckon	Senator P.F. Routier	
Connétable of St. Peter	Senator P.F.C. Ozouf	
Connétable of St. Lawrence	Senator S.C. Ferguson	
Connétable of St. Mary	Senator A.J.H. Maclean	
Connétable of St. John	Senator B.I. Le Marquand	
Connétable of St. Brelade	Senator F.du H. Le Gresley	
Deputy R.G. Le Hérisier (S)	Senator I.J. Gorst	
Deputy S.S.P.A. Power (B)	Senator L.J. Farnham	
Deputy G.C.L. Baudains (C)	Senator P.M. Bailhache	
Deputy of St. John	Connétable of St. Helier	
Deputy J.P.G. Baker (H)	Connétable of Trinity	
Deputy J.H. Young (B)	Connétable of St. Clement	
Deputy of St. Mary	Connétable of St. Martin	
	Deputy R.C. Duhamel (S)	
	Deputy J.A. Martin (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy K.C. Lewis (S)	

		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy S.J. Pinel (C)		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		

**The Bailiff:**

I take that as a continuation, at any rate, to the end of this item of business. Very well. Who wishes to speak then? Does any Member wish to speak on the proposition?

**7.4 Planning Appeals: Revised System (P.87/2013) - as amended**

**7.4.1 Deputy S. Power:**

I am very happy to confirm that I am happy to support P.87. I am glad that we have kept the R.F.R. process as an interim, even if it may not last for ever. I think we will have a better planning appeal system with the Minister's report and proposition. The experience that Panel members have shown in what they have said in this debate in the last hour or so shows that this interim soft touch process is important to Panel Members. Five or 6 of the 7 Panel Members have supported it and I have no hesitation now in supporting P.87. Thank you.

**7.4.2 Deputy J.H. Young:**

I did vote for the adjournment to give me a moment to at least think out ... the problem I have now is that the objective of the substantive proposition is sound. Unfortunately, I think the means of doing so is still seriously problematic. I think the vote we have just had on the second amendment, I fully agree and I find massive inconsistency between the two. The second amendment clearly endorsed all the things that I think were being argued ... I certainly argued against, that the substantive proposal is seeing a technocratic appeal as the solution to everything where in reality our policies are ambiguous. They are confusing. They are contradictory and they are not capable of this technocratic, straightforward, easy solution and to have those based by people who parachute into the Island with no balancing input into the matter I find deeply unsatisfactory. The choice I have is: Is the damage limitation of the approval of the second amendment good enough? I fear not because the point made by Senator Ozouf is correct, that that certainly will iron-out some of the problems for first parties, that is, applicants who have had their applications rejected but it, of course, will do nothing for third-party appellants. They will not have the common sense judgment of lay people. They will only have the technocratic judgments. Planning officers are excellent at giving you analyses but these judgments require other people. For that reason I am disappointed in it. I think it is an opportunity lost to create the Tribunal thing. It is inconsistent with the way we treated other businesses. I am fairly depressed with the view taken about the lack of benefits of ordinary lay people in these sort of systems. I hope this is not a precedent for when we set up other administrative tribunals, as I believe we must, to alleviate the work of the Royal Court and allow the Royal Court to concentrate on important matters of litigation in criminal law, civil litigation and so on. These sort of things really should not be in the Royal Court. That was a good process but unfortunately for me, the means of doing it is spoiled and therefore I am not going to support, particularly as my vote got missed on the amendment, I am going to have to record my vote against this.

**7.4.3 Senator L.J. Farnham:**

Very, very quickly, I was very surprised by the result of the amendment being passed. I might be being a bit confused but Requests for Reconsideration now being considered by the Planning Applications Panel, fine, but surely there are going to be a lot more appeals now, rather than

R.F.R.s so if an R.F.R. is stopped at the panel process and appeal will just follow. Correct me if I am wrong. The Minister perhaps could.

**The Bailiff:**

Does any other Member wish to speak?

**7.4.4 Deputy J.M. Maçon:**

In response to Senator Farnham the point is the R.F.R. process is currently free whereas there will be a fee to the appeals process. Therefore I do not think it likely that we will see a drop off of the R.F.R. process in comparison. I hope that helps.

**Senator L.J. Farnham:**

I would propose a fee be introduced for the R.F.R.s as soon as possible in that case.

**The Bailiff:**

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

**7.4.5 Deputy R.C. Duhamel:**

In the light of the last decision we are quite likely to see, as it evolves over time, perhaps even an increase, at least for the short-term period, of Requests for Reconsideration against planning officer decisions but I am happy with the way the House has voted and with all of these things, the proof of the pudding will be in the eating. We are designing a system which we hope, according to the arguments put forward, will deliver a speeded-up system that is appropriate to Jersey and to the people who will be using it in the ways that have been outlined. If indeed, the experience of running this new system is that there are shortfalls or deficiencies then there will be further Requests for Reconsideration no doubt, not of the individual small aspects, but for the whole thing. The whole system can be re-tailored in the light of that experience. I do not think I am as pessimistic as perhaps some Members who were on the opposite side of the vote than they perhaps would have liked to have been. Before I propose the whole thing in total, I would like to thank all of those Members who have displayed a willingness this afternoon to be involved in a discussion which has done this House fairly proud in that we have been able to look at the meat of the issue and to toss the ideas about to derive a certain element of intellectual satisfaction from it even though perhaps there have been some disappointments about the outcome of the vote. Planning is not everybody's cup of tea and indeed, some of the issues that are expressed within the Planning Law indeed for those Members who do not busy themselves with the day-to-day running of that particular law, perhaps are not as *au fait* with but I do thank again all Members for showing support of, or at least a willingness of wanting to get to grips with the discussion which is something that Deputy Young wanted to happen. In that respect we have had a useful debate and we do have an outcome which, at some point in time, if it does not work, will inevitably be amended. With that in mind, I do not think there are any other points. The meat of the issue was discussed in the 2 amendments. I would like to put forward the final proposition *en bloc* and ask for the appel.

**The Bailiff:**

Very well. The appel is called for then in relation to the proposition of the Minister for Planning and Environment. I invite Members to return to their seats. The Greffier will open the voting.

<b>POUR: 35</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator P.M. Bailhache		
Senator P.F.C. Ozouf		Deputy J.H. Young (B)		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				

Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérissier (S)				
Deputy J.A. Martin (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				

**The Bailiff:**

There is one matter left on the Order Paper. That is the Organ Donors' Register - Projet 89/2013. Deputy Le Hérissier, do you still wish this to be debated or do you wish to defer it or what?

**Deputy R.G. Le Hérissier:**

Oddly enough, the Minister for Health and Social Services and myself do agree on one part of it but I think the other part does need a little bit of debate so I think it is best left over. I have discussed with Deputy Maçon: best left over until next sitting.

**The Bailiff:**

You are willing to defer it to the next sitting? [**Approbation**] Very well. In which, case I invite the Chairman of P.P.C. to speak to the future business.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**8.1 Deputy J.M. Maçon:**

I wear a different hat now. Yes, so with that I would like to inform Members that P.89 will be deferred for the first item of business on 24th September; that P.91 - Public Sector Reform - by Deputy Baudains has been deferred from 24th September to 22nd October pending discussions with relevant parties. Also the Minister for Social Security has informed me he would like to defer the

Long-term Care Scheme - P.99 - from 8th October to 19th November. Also just to clarify that the comments on the reform proposal debates will also follow that accordingly. There is one other item which I would like to propose or make Members aware of, is that on 8th October, the Privileges and Procedures Committee is asking the Assembly that we intend to lodge an in-Committee debate based on R.105 Machinery of Government Review Sub-Committee final report so that we can gauge Members' opinions on that report, which Members should have by now.

[17:45]

It is a chance for them to speak to that. We will inform Members about how we are going to proceed by email to clarify that process.

**The Bailiff:**

Anyone wish to make any observations? Chief Minister.

**8.2 Senator I.J. Gorst:**

Yes, if I could. On Monday I did distribute an email to all States Members saying that I would be asking for a reduction in the minimum lodging period for P.96. It could have been scheduled for the sitting starting on 24th September but due to its lodging on 15th August, it would need that sitting to have been a 3-day sitting and it does not appear that it will be and therefore got moved to 8th October. For all the reasons that I outlined in my email, I feel that that would be detrimental and can comply with Standing Order 26(7) and therefore I ask that Members allow for it to be debated on 24th September.

**The Bailiff:**

Very well. Do you wish that matter to be dealt with now, Chief Minister, so that everyone knows?

**Senator I.J. Gorst:**

If I could, Sir, yes.

**The Bailiff:**

You are making the proposition that, notwithstanding it is how many days short?

**Senator I.J. Gorst:**

Two days short.

**The Bailiff:**

That you wish Members to agree to debate it on 24th September. Is that proposition seconded? **[Seconded]** Does any Member wish to speak on that?

**8.3 Deputy G.P. Southern:**

I just thought I would remind people in relation to a Minister asking for a shortened lodging time that when the next Back-Bencher comes with a late proposition that we are equally generous with them.

**The Bailiff:**

Yes. I remind Members of the terms of the Order, as I usually do.

**Senator I.J. Gorst:**

I did remind Members ...

**The Bailiff:**

“The proposition relates to a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate.” Does any other Member wish to say anything? Then all those in favour of allowing that Project P.96 to be taken on 24th September kindly show? Those against? It is agreed to be taken. Very well. Is there any other matter any Member wishes to raise? In which case, do Members agree to take the future business as set out on 24th September as amended by the Chairman of P.P.C.? Very well. That concludes the business of the Assembly, which will reconvene on 24th September.

## **ADJOURNMENT**

[17:48]