

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 16th NOVEMBER 2016

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[9:30]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

1. The Bailiff:

Good morning to all. I hope I will be forgiven for saying just a few things about yesterday's debate and vote. I could not say them earlier because I did not want to be seen as trying to influence the outcome in any way at all, but it seems odd to come back in today as though nothing occurred yesterday at all. The first thing I wanted to say is that it is a pleasure and a privilege to be here, sitting in this really quite uncomfortable chair. It is a privilege, because the Bailiff's job in this Chamber is to serve the Assembly, not any one of you personally, but all of you collectively as the representative democratically elected voice of our Island. Neither I nor the Deputy Bailiff, nor my immediate predecessors, have ever had any doubt about that. The second thing follows on from the first. The debate about the role of the Bailiff has gone on now for some 5 or 6 years. Of course the issue has arisen previously from time to time, but the debate has recently been more intense. It is your right to have it that way. I want to be absolutely clear about that and I make absolutely no criticism at all for it. Indeed, I thank you for your restrained speeches yesterday, in the sense that they were largely about principle and practice and not about personalities. But I can also tell you from here that the impending debate has to some extent inhibited me from doing the whole job of Bailiff. Because the Bailiff serves the Assembly as its President, his or her ability to be useful to it depends to some extent on what Members will allow him to do or want him to do. Some Members spoke yesterday about how in other jurisdictions the Speaker is more proactive in promoting the Parliament. I want to say publicly and to you all that I am completely comfortable about doing that, not promoting policies or individual politicians, but promoting democracy. It is not in any way incompatible, in my view, with being the Island's Chief Justice, because the Royal Court, with this Assembly, is the guardian of the rule of law, of which one strand is the supremacy of the legislature. I hope Members will be ready to accept that offer, because in me and in the Deputy Bailiff you have willing servants, if you want them. Finally, perhaps I can add this: many jurisdictions have different constitutional structures. They are the product of history; not tradition, but history. When we talk about ours, whether it is in the Island or abroad, we - and when I say "we" I mean States Members, I mean the media and I mean Islanders generally - can either talk it up or we can talk it down. We can be proud that our history takes us to where we are or we can be apologists for it. To my mind, it is not a question of being out of step with other countries, but rather, as a small jurisdiction with limited financial and human resources, achieving the same objectives, including having a completely independent Speaker in this Assembly in a slightly different manner. I am immensely proud of this Island of ours and it is an unbelievable honour to be her Bailiff and to preside in this Assembly. **[Approbation]**

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

2. The Assistant Chief Minister - statement regarding television licences for people aged over 75

The Bailiff:

Senator Ozouf, I understand you have a statement to make about television licences.

2.1 Senator P.F.C. Ozouf (Assistant Chief Minister):

I apologise that due to illness in the London Office, the statement was not available to the Greffe for delivery yesterday morning, so I thank you for the opportunity of making it now. I am making this statement in response to Deputy Tadier's proposition of P.117/2016 regarding age-related concessions to television licence fees for Jersey residents. I am making this statement in order for Members to question what is a matter of public importance, and it follows Deputy Mézec's original written question of October 2015. I wanted to provide Members with the update on what the Government has been doing in this area, and in particular the linked issue of the issue of the BBC Charter renewal more generally. As Members will know, the Charter forms the constitutional basis for the BBC, sitting alongside the framework agreement that adds the level of policy detail. Collectively these 2 documents set out the public purposes for the BBC. They guarantee its independence and they cover its various duties and funding. Both apply to Jersey and both expire at the end of the year. To ensure that Jersey's relationship with the BBC remains clearly defined from January, therefore the States of Jersey officials have, since 2015, been in regular dialogue and discussion with the BBC and its interlocutor department, the Department for Culture, Media and Sport, known as D.C.M.S. These discussions have covered various subjects within the broader context of the Charter renewal. However, I can confirm that officials were tasked with ensuring that the BBC continues to treat the Island fairly with regard to funding for T.V. (television) licence concessions and that also Jersey receives a high level of service provision from the BBC in future in terms of radio, television and other services, indeed such as live coverage, albeit on radio, of this Assembly's deliberations. In early discussions, it was established that the agreement between the U.K. (United Kingdom) and the BBC regarding age-related concessions to the T.V. licence only applied to people over the age of 75 in the U.K. and not the Crown Dependencies. As Members will understand, this is partly due to the fact that the Social Security systems of the jurisdictions are separate and distinct. Until a format agreement has been finalised with the BBC, I cannot confirm the full outcome of these discussions. However, it is worth noting that officers from the small digital policy team and the London office have developed a very strong working relationship with their counterparts at both the BBC and D.C.M.S. over the course of the past year. I can say that both parties have been receptive to our requests. I am also happy to advise that, where appropriate, these discussions have been conducted on a pan-island basis with representatives of Guernsey and the Isle of Man to ensure an equitable approach across the Crown Dependencies.

[9:45]

In recent months, meetings between States of Jersey officials and the D.C.M.S. and the BBC took place on 16th December 2015 and 17th December 2015 with D.C.M.S., 27th April 2016 with D.C.M.S., 19th May 2016 with the BBC, 16th August 2016 with the BBC and D.C.M.S. and on 4th November 2016 with D.C.M.S. I hope that this goes to some extent to answer the question by Deputy Tadier. Perhaps it was disappointing that the Deputy did not seek to even ask or email me directly about the progress that was being made and instead simply lodged a proposition, which is of course his right. I look forward to providing further information once an agreement between the States of Jersey and the BBC has been finalised. This will be, I hope, before the end of the year. In the meantime, and subject to the caveat that I have already mentioned, I thought that this statement was required, because I could then answer questions that Members may have on this important issue of public policy.

The Bailiff:

Are there any questions for the Assistant Chief Minister? Senator Ferguson.

2.1.1 Senator S.C. Ferguson:

Given that members of the population in Jersey have to pay the full £145 annual fee for having a television set rather than subscribing to the BBC, why do the BBC not consider that it would be fair

to provide the free licences for the over-75s? We are paying the full whack. Why should we not get the benefits as well as the payment?

Senator P.F.C. Ozouf:

The Senator is right, in the sense the background to this is that the Chancellor of the Exchequer in the U.K. - of which I offer no criticism or approbation or whatever - basically put to the United Kingdom, for better or worse, and had free T.V. licences universally applied for over-75s and that was paid for out of taxpayers' money. Some people described it as a sleight of hand to move that cost. It is not a casual cost; it represents approximately 20 per cent of the budget of the BBC. To put that 20 per cent cost on the BBC without any other change to the way the BBC raises its income would cause massive issues to the BBC. I think Members will understand that the BBC has a commitment to Jersey with its own radio broadcast. Maybe Members do not like what it says sometimes, but we have an open and free and fair democracy and there is effectively a dedication to the British Broadcasting Corporation in Jersey, of which we are fortunate. We did not want the unintended effect of saying: "Pay for over-75 licences" and then effectively lose the benefit that we have from the BBC. That is the reason.

2.1.2 Deputy M. Tadier of St. Brelade:

I make no apology for bringing a proposition, because after my 8 or so years in the States I know that that is what you need to do sometimes to get results. I do not think we would be in a position to have this statement today were it not for that. I look forward to the fuller statement being brought at the end of the year. My question is: I note from the text that it is couched in very cautious language. There is talk about getting a fair deal for the Island and an equitable approach across the Crown Dependencies, but of course "fair" is subjective. Can the Assistant Minister give us an assurance that when talks are happening there is somebody there saying: "We expect and want the BBC to give free T.V. licences to over-75s in Jersey to ensure a level playing field and we will accept nothing less than that"? Has that position been put forward to the D.C.M.S. and to the BBC on behalf of Islanders?

Senator P.F.C. Ozouf:

You spoke well, Sir, if I may say, with your remarks to the Assembly about how matters evolve. We have evolved into a system of ministerial government in this Assembly. I am sorry, but I have to say to Deputy Tadier his proposition is, frankly, unnecessary and unhelpful, in my view, because does he not understand that this is a delicate negotiation and you cannot just go in with hobnail boots and say to the BBC: "Pay over-75 licences"? Many people would question as to whether or not it is sustainable in the longer term for age-related benefits, universal benefit licences, to be affordable. This has been a taxpayer-funded benefit in the U.K. The problem has been shifted to the BBC and that is now having to be dealt with by the BBC. Of course we are going to want to have equality for Islanders and people who pay the £146, but we have to be realistic. We are living in a world where there is an increasing problem - or advantage, a fantastic thing - about people living longer. Is it possible in 10, 20, 30 years' time to see that there will be free T.V. licences if the licence fee continues as it is for everybody? Do you want to pay millionaires to have a licence fee together with people on low incomes? Are there people on other low incomes that would benefit? I think the Social Security and income support system should be paying for these, but that is what you do. Is it sustainable? His proposition, if he would just come and ask, he would get the answer, but he does not. He wants to put a proposition in to say: "Look at me, am I not great? I am solving the problem." It is not fair.

2.1.3 Deputy M. Tadier:

If the proposition is necessary, then it is on the table. If it is no longer necessary, it can be withdrawn. The Minister is conflating 2 issues. When he talks about the long-term sustainability

of the T.V. licence, giving free T.V. licences non-means tested, that is the BBC's choice, that is the U.K. Government's choice. It has nothing to do with the Minister for Social Security over here. All we are saying is that if the BBC are to introduce free T.V. licences for all over-75s in the U.K., then should that not apply to British citizens and licence-fee payers across the British Isles, who need to pay for a licence to watch television otherwise? There must be a level playing field. Would the Minister seek not to conflate the issues and to be very clear in making that representation to the relevant bodies in the U.K.?

Senator P.F.C. Ozouf:

Let me correct the Deputy. He did not need this proposition to get the Government of Jersey and the London office to work. We have been working, as this answer is clear, right from the start to preserve the rights of the output of the BBC, the valued output. We want a plural media. We do not only want the *J.E.P. (Jersey Evening Post)*, we do not only want the BBC, we want ITV and we want basically good quality, high-quality broadcasts for our own Island democracy, which covers the deliberations and the discussions here. Basically ...

The Bailiff:

Minister, you are being asked whether you would accept the comments which the Deputy has just made.

Senator P.F.C. Ozouf:

No, I do not accept them. I think they are jolly unhelpful and if he would just ask rather than put forward propositions. The problem with the Deputy's policies are, they run out of other people's money.

The Bailiff:

That is not in order. Deputy Lewis.

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

Would the Assistant Minister inform the Assembly what the situation is in the Isle of Man and indeed the other Crown Dependencies?

Senator P.F.C. Ozouf:

It is a very good question. The situation with the Isle of Man is somewhat different. My understanding is that their Government, immediately after their election, has made a decision to fund licence fees from general revenues. I would draw the attention of the Deputy to the different arrangement that the BBC has. There is no BBC station. When the BBC local radio was set up, as I think Deputy Lewis will know, we have the BBC here, whereas the Isle of Man set up Manx Broadcasting Corporation, which again I make no observation, but I note that there is a significant cost to the taxpayers of the Isle of Man of that. I do not quite understand exactly what the recent decision with the Isle of Man is, but certainly we are working hand in glove with Guernsey and of course we always take a Crown Dependency approach.

2.1.5 Deputy T.A. Vallois of St. John:

Could the Assistant Minister advise why it has taken a proposition to be lodged for him to make a statement to the Assembly informing us of what was going on?

Senator P.F.C. Ozouf:

If Ministers were to be making statements on everything that they are doing, then this Assembly would be sitting every day. There was a comment - I think made by the U.K. Prime Minister and others - about Brexit, that you do not want to give a running commentary. Effectively, when you

are in delicate, difficult, challenging negotiations, which means that there is a real problem to be solved, then sometimes you do not want to say that you are engaged in those discussions, policy under development. That is the reason why. The proposition, I would have told, off the record, to Members of this Assembly who I trust - everybody in this Assembly I trust - and I would have said what the situation was, but it is not something that I can announce because it has not been finally agreed. However, I am giving the strongest message that I can that proactive work, positive work, respectful work has been done and I hope to get a good solution for our Island community.

2.1.6 The Deputy of St. John:

A supplementary, sorry. If that is the case then, Assistant Minister, with regards to what you have just stated, why could the Assistant Minister not wait for the actual debate on the proposition rather than making the statement?

Senator P.F.C. Ozouf:

Because it has been put into the public domain, because there have been comments made in the media. The media, of course they will run stories about the fact that we are not doing something. Deputy Tadier puts a proposition in and it gets a response, as it must - and it is his right and he can do what he likes, I do not say that - but I just say that effectively I hope I am giving the very clear important information to Members, this has been a delicate and sensitive negotiation. If one would have opposed the cost of licence fees without a discussion about the Charter, there could have been an unintended consequence of, for example, the BBC considering its investment in Jersey and its radio output and the perhaps almost disproportionate benefit that we get from the BBC output in Jersey, with their commitment with the radio station and now C.I. (Channel Islands) broadcasting and their nightly news. One would not want to have had an unintended effect. One needs to work with people. I know that is very much in the Deputy's style: work with people, not against them.

2.1.7 Deputy R. Labey of St. Helier:

I do not believe that the Channel Islands get the full range of BBC services, despite locals paying the full licence fee. Is that the Assistant Minister's understanding also?

Senator P.F.C. Ozouf:

I think the Deputy is speaking there ... certainly the full range of services is accessed on the new digital output. That, I am afraid, is an issue of our proximity to France, whereby everywhere else in the United Kingdom had a switchover, where you could have analogue and digital and we had to do it overnight because we have one of these issues. We are near France and they have frequency services. We have to have our own bandwidth, which means that we do not get those services, but those services are available online. Because we have now a fibred community, we can get those services delivered faster and better than anywhere in the U.K. when everybody gets fibre, so we can deliver that signal in a different way in future. So they get them, just not through the aerial.

2.1.8 Deputy M. Tadier:

The Assistant Minister makes great play of the fact that we have a radio service in Jersey which he thinks is quality; we will not go too much into that. But is it not the case that the licence fee is not paid for the benefit of listening to radio, it is for the T.V. production? Of course I appreciate that money gets spread around, but you do not have to pay a T.V. licence to listen to the radio in Jersey; you do have to pay a T.V. licence to watch television, whether that is live or streaming. Is that not the case?

Senator P.F.C. Ozouf:

Does Deputy Tadier not understand that effectively the licence fee is the funding that the BBC gets to run its broadcasts, TV, online, radio? We in Jersey have our own BBC and I am delighted - as I

have spoken to Senator Bailhache, the Minister for External Relations - you can now look in the i-thingy and you can press the button, where we do not look like a regional radio station, we look like a proper bit of the United Kingdom, like Scotland or elsewhere. We are privileged, I think, to have the BBC. I think there is a clue in the title, the British Broadcasting Corporation, and we are British Jersey, and of course they provide a whole range of services. The licence fee will evolve. I do not think the licence fee will be the licence fee in future. It will have to change. A universal single payment for T.V. and everything else, together with all the other challenges with competitive media, is not something ... and will the BBC in the longer term be able to afford over-75 free T.V. licences? Politicians love to promise things, but you run out of other people's money.

2.1.9 Deputy M. Tadier:

Does the Assistant Minister agree with a constituent who has emailed me, who says that if the States, our States, decide the BBC has to fund the service and change the law accordingly, as in the U.K., the BBC have the following options: first, to withdraw completely from the Channel Islands, which means that everybody would receive the service on satellite free? They might try and restrict satellite bands to exclude the Channel Islands, but if Guernsey still get it, that would be impossible. Second, to go along with it, so the U.K. would basically extend the free T.V. licences to Jersey, or thirdly, they would have to introduce some kind of encrypted free set service?

[10:00]

Does he agree with my constituent that 2 is the most likely scenario, that they would simply ... because it is the BBC and not 'UKC', that if we are British citizens paying the licence fee, it should be extended to Jersey? Are those the 3 options that the Assistant Minister thinks are on the table at the moment?

The Bailiff:

You have one minute, Minister.

Senator P.F.C. Ozouf:

I have no comment to make, apart from the comments I made earlier about the fact that I will be making an announcement in a proper way after discussions with the BBC. That will be defending the interests of Jersey, but also celebrating the output of the BBC. I hope Members have been informed about these issues in a way that perhaps I would have hoped that they would have been in a month's time, after the negotiations have finished.

The Bailiff:

All right, thank you. Can I just ask the Minister for Digital whether "i-thingy" is a technical term?

Senator P.F.C. Ozouf:

I do apologise, Sir, you are quite right. iPlayer I think is what it is called. I do apologise, Sir, iPlayer. Obviously you are more technically minded than I am, Sir.

The Bailiff:

Probably not. Very well, the Chairman of the Public Accounts Committee has a statement to make.

3. The Chairman of the Public Accounts Committee - statement regarding the Committee's review of travel and accommodation expenses

3.1 Deputy A.D. Lewis of St. Helier (Chairman, Public Accounts Committee):

The Public Accounts Committee has reviewed the use of public money for travel and accommodation expenditure incurred by senior officers of the States of Jersey. The spending of public monies should require the highest levels of probity, hence the need for stringent codes of conduct and financial directions. There was justifiable public concern when it appeared that expenditure for some international trips may not have been procured with due regard for use of public funds. Members will know that the Chief Minister's Department conducted its own review, which concluded that there was no widespread misuse of procedures, but that improvements could be made. The P.A.C. (Public Accounts Committee) agrees that there has not been widespread misuse. However, it concludes that the Chief Minister's Department investigation did not go far enough to identify or highlight the instances of seemingly blatant disregard for the spirit of the code of conduct by certain officers. My committee believes that the culture of some departments pushes the boundaries of what the public would consider acceptable conduct. The P.A.C. explored the chief officers' attitudes to the guiding principles of the code of conduct. I will just state it to you: "Does the action feel right? Could it be justified to those outside the States? Could I be compromised in my dealings with others as a result of my intended action? Could such a purchase be considered extravagant or wasteful of public resource?" There is a belief in some departments that they do not need to strictly adhere to the guiding principles of the code of conduct, simply because the Island receives a good return on investment after officers have attended global networking events. However, the P.A.C. believes that there should be no exception to striving for best value for the public purse. The P.A.C. concludes that expensive business class or fully flexible tickets are rarely justified. It found that a minority of officers made little or no attempt to seek more cost-effective options. It is difficult, if not impossible, to justify the expenditure of certain trips, which unfortunately undermines the very hard work done by other departments to always act in the best interests of the public. The P.A.C. was particularly concerned that in one department, a high-cost itinerary was undertaken over 3 consecutive years, with little or no exploration of real savings. The P.A.C. also discovered that there were 1.5 million loyalty points centrally accrued on States business which officers had little or no knowledge of how to redeem for the benefit of the public. Furthermore, the P.A.C. was shocked to discover that there was no robust procedure in place to redeem personal airline loyalty points accumulated by individual officers. The most worrying consequence of this is that it leaves officers vulnerable to accusations of impropriety. The P.A.C. also noted evidence concerning the use of the centralised booking system. The core reasons for having a central booking system is to reduce officer time and resources, provide value for money and a clear audit trail. When asked if the system provided these benefits, the majority of officers said it did not and expressed a low opinion and lack of trust in the system. In fact, one officer went further and blamed the high cost of trips on the system providing limited options. When challenged, he advised that he had sought cost differentials between flight options between fully flexible flights and business class tickets. The P.A.C. considers that comparing fully flexible flights to business class flights is like deciding whether to purchase a Rolls-Royce or a Bentley, whereas most chief officers would explore the price differentials of reasonably-priced cars. The P.A.C. concluded that although the booking system may have faults, it cannot and should not be blamed for an officer's overriding duty to secure value for money. It is not the P.A.C.'s function or intention to name and shame departments. In fact, it wishes to commend the Chief Minister's Department for already taking action to address some of the weaknesses identified. It considers that this represents behaviour that a learning organisation should adopt. However, it does not want the Chief Minister's Department to write a whole new set of financial directions or a raft of prescriptive directives which could then be interpreted in different ways by different departments. Rather, the P.A.C. urges the Chief Minister's Department to adopt a common sense principle-based culture, embodying the best practices of the majority of chief officers. We hope that the report and the recommendations contained within it will reassure the public that taxpayers' funds which are spent on trips are undertaken with full and careful consideration of best value for money. I would

like to thank my Committee, particularly the lay members that give us their time so willingly, and the officer that helped create the report and the hard work they did and commend all the departments that co-operated with our review.

3.1.1 Deputy S.Y. Mézec of St. Helier:

Early on in the statement made by the Chairman, he referred to the culture of some departments, which the Committee believes is what contributed to some people acting not within the spirit of the code of conduct on this issue. Would the Chairman agree that one of the things that reinforces that culture within these departments is the fact that publicly, the Council of Ministers has not gone far enough to criticise them for acting in the way they have done and led them to believe that they can continue to do this, simply because they will always get away with it under this Council of Ministers?

Deputy A.D. Lewis:

I am reassured by the Chief Minister that behind the scenes some difficult conversations have been had and that cultural change is well on the way. We have written a number of other reports that identify cultural issues within the States of Jersey that cover a number of matters. I am encouraged that that is changing, but it does not change overnight. I hope that reports like this, statements like this, and media attention which has also been generated by this helps change that culture over time.

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

The Chairman of the P.A.C. says that his panel does not want to name and shame. The truth of the matter is the public have no confidence in the Government to bring in change on this type of thing. I think the public have a right to know which departments have been abusing the system. It would have been a far more effective report had they named which departments had been abusing the process and then the public could see, as time goes forward - as the States could - whether steps have been taken to curtail that type of abuse.

The Bailiff:

Was there a question there?

Deputy M.R. Higgins:

Does the Chairman not agree, Sir?

Deputy A.D. Lewis:

No, that is a matter for the States Employment Board. The purpose of our report is simply to highlight procedural inefficiencies or deficiencies and make recommendations and suggestions how that can be avoided in the future. I hope that the Members feel that in the report we go far enough to explain what those procedures and systems could look like. I am assured by the Chief Minister's Department that many of those recommendations are being taken on board. It is not the place for the P.A.C. to start acting like the States Employment Board and criticising individual officers, many of whom work extremely hard for the States of Jersey, but just a few have unfortunately not followed the full code of conduct in its entirety and some financial directions.

3.1.3 Senator S.C. Ferguson:

I note the comment that the departments have made no efforts to deal with the air miles. Has it not occurred to the States Employment Board or the Chief Executive that such behaviour, collecting air miles, does cause a dysfunctional reaction with the staff, because they will always go with a particular airline if that is giving them air miles, which presumably some of the staff are using? If they are using air miles that they have gained through work for private purposes, is there no system of paying the States for the use of those air miles? Have you found any evidence of ...

The Bailiff:

Through the Chair, Senator.

Senator S.C. Ferguson:

Sorry, Sir. Yes, I should know. Has the P.A.C. not found any evidence of this? Has it asked about it?

Deputy A.D. Lewis:

Yes, very much so. It is in the report. If you read the section on the accumulation of loyalty points, we have discussed it in some depth and made some recommendations. At the moment there is no simple, easy way of redeeming the points for the benefit of the public purse and separating personally collected points from points collected through business travel. That is a deficiency in the current system. Also, we recommended that there should be a contractual obligation to disclose the points you obtain and the very fact that you have a loyalty card. At the moment, we were told that data protection prevented the staff from being asked for that information, but if it becomes a contractual obligation, which we are recommending, then they will have to disclose that they have a loyalty card and they will have to disclose how many points they have accrued. They can then be separated from their personal gain points and their business points are then used for the benefit of the public purse. I can cite an incidence recently whereby Education have used points to drastically reduce the cost of their trip to China for educational purposes by using the points, but the system was not in place for them to do that but a few months ago.

3.1.4 Senator S.C. Ferguson:

I find that strange, because I do understand that a particular Member of this Assembly collected a considerable number of points during his working career and in fact he donated them to the Overseas Aid Commission so that they could use them to go on their trips. Why is this not being considered?

Deputy A.D. Lewis:

The system allows that to happen right now. The points can be transferred to somebody else's account; any of us can do that with any points now. The problem we have is that if you want to make bookings through the current system using loyalty points for business purposes, that is much more difficult, but donating them to a third party is easier. That is a deficiency in the current system which the Chief Minister's Department say they are going to find a system to adjust that so that we can use accumulated loyalty points to reduce the cost of travel, because they are worth a lot of money. That 1.5 million points is worth about £200,000, so that should be contributed to the cost of business travel. Currently the system does not permit you to do that, but you can donate points to whoever you wish.

3.1.5 Deputy R.J. Renouf of St. Ouen:

The Chairman has spoken about receiving assurances, and in his report he commends the Chief Minister's Department for already taking action to address some of the weaknesses identified, but I would like to ask the Chairman whether he can say that the P.A.C. have seen a programme that is robust and workable and enforceable and which addresses all of the weaknesses identified.

Deputy A.D. Lewis:

No, currently we have not. That is the purpose of the report. There are a number of recommendations in there, and the normal course of events the department who are most responsible here, which is the Chief Minister's Department, will respond to that report and the recommendations contained in it. We would like to see - and we normally do - from all

departments a programme of implementation of the recommendations or a very good reason as to why they are not going to implement those recommendations. I await with great interest the Chief Minister's Department's full response to that report and I hope that Members will then be even further assured that the Chief Minister's Department has considered them and has decided, I hope, to adopt all, if not most of the recommendations.

3.1.6 Senator P.F.C. Ozouf:

May I welcome the statement by the Chairman and the committee's conclusions and the work on it, and also the comments about the principles-based approach. I have lived with this issue right from the start, because I was on that Cape Town trip, and suggestions have been made about my own comments about that. Will the Chairman say that he will, at some point in his term of office, look again at the cost of travel and look at the value for money? He understands, not a result of his work, but as a result of the things that were done and the expenses and all the rest of it, that the unintended consequence is that good people doing hard work for the States are now frightened of getting their names on the front page of the *J.E.P.* because they are, effectively, travelling, just the fact that they do travel.

[10:15]

It will send a very clear and unequivocal message out that, as we are now building our trade and international relations around the world, they are going to be needing to, and we want our officials, and others, to travel, but obviously prudently. That is important to economic growth. Will he give that assurance that there should be no worry for people doing their job properly? Just for the avoidance of doubt.

Deputy A.D. Lewis:

The P.A.C. and Members here have absolutely no problem with the Minister and other officers travelling the world spreading the great story about Jersey; absolutely no problem with that at all. That does not, however, mean that they cannot follow the rules absolutely to the letter, and that has not happened in recent times. When the public then criticise them for it, they consequently lose sight of the benefits that are accrued from making these trips. That is the concern. The Assistant Minister himself was criticised in the media this week about his own travel. I would like to see the Assistant Minister publish a report on his travel as to what he has achieved during that period. If he has a report, please, publish it, because then the members of the public, and this Assembly will fully understand his work and what he achieves from spending that money. Reporting back on these matters is important, and following the rules is important. Do both those things and there is no reason why we should not continue the great work that he, and other Members of the States do while travelling overseas. That should and must continue, but that does not mean he should not follow the rules.

3.1.7 Senator I.J. Gorst:

I would like to thank the Chairman for his report; I think it is fair and balanced: it praises where praise is due and criticises and challenges where it is due. One of their particular recommendations which I find interesting is moving to a principles-based approach. I wonder if the Chairman could say a little bit more about that, because I think the result of such a recommendation is that you have a centralised system, like we currently do, but you almost need to have a tier-2 approach system, where you can be more flexible, because there are benefits from people's personal cards that can be delivered to the value of several thousand pounds. Also sometimes an individual P.A. (personal assistant) or secretary can book something far cheaper and quicker, and change it, providing they are working within the principles. But, for the majority of travel, you still need the centralised system. I wonder if the Chairman could say a little bit more about how he sees that working in future.

Deputy A.D. Lewis:

Yes. We have been slightly critical of the centralised booking system, but it was not fully within our remit. The reason why we have mentioned it is because officers mention it to us in public hearings, being very critical of themselves. I have met with the Chief Minister and his officers since, and there is talk about a 2-tier system. We should not be slowing officers down from making arrangements simply because the system is difficult at times to use. We must be presenting best value. We saw little evidence that the current system provides better value for money, a quicker, more efficient service, or a good audit trail. There is no issue with people making direct bookings with suppliers, providing the accounting system allows you to do it, in other words, there must be a code for every booking that the JD Edwards system we currently use in the Treasury can recognise. When we asked for information about the booking system and transactions that have been made, we had a real problem trying to get information from the Treasury, because it was not even coded currently significantly enough. So if you go away from a centralised system without a good I.T. (information technology) system for the management of the funds, then you have got a real problem. So we need to fix the Treasury system first and then it will enable Members and officers to make individual bookings and attain better value and still account for the funds. What we cannot have is one almighty mess of transactions done on credit cards and charge cards, and the like, without a good Treasury accounting system to manage the funds. That is when it goes horribly wrong. I do not think centralised booking systems necessarily work as well as some would say. There are some advantages, but there should be a good audit trail, value for money and saving money. At the moment, we saw little evidence it was doing any of those things, so a lot of work needs to be done to ensure that is the case moving forward.

3.1.8 Deputy G.J. Truscott:

Does the Chairman think the Government reacted quick enough? We have financial challenges: we have frozen benefits, we have introduced voluntary redundancies, we have got all these things, and yet did they send the message, or do you feel they were slow in sending the message, to the workforce to say: “Well, everyone should be travelling economy class rather than business class”, and that there really should have been a tightening right at the beginning, effectively, that austerity was taking place?

Deputy A.D. Lewis:

I must commend most officers for taking exactly that line already, the majority do. There was a small instance of a number of departments that do travel significantly that were not abiding by the guiding principles of attaining best value for the public purse and putting the public first. They were living in a little bubble that was not necessarily the same bubble that everybody else was in. That has been highlighted, rightly so, and that has now changed. I think the Chief Minister did react quite quickly; the Chief Executive, for example, immediately said that any travel over a certain value had to be signed off by him, not by the accounting officer, who was taking out the expense, which was wrong. They had subordinates signing off their travel expenses. That has changed. I do not think that model is sustainable, but it changed straightaway. So they did react, and I think officers were concerned about public perception, more so than ever before. The culture of understanding the impact of freedom of information applications had not quite got through to some officers. They are living in a goldfish bowl, more so than ever before, therefore they must be aware of the implications of freedom of information applications. That does drive cultural change. There are some unintended consequences from that, which is what the Assistant Minister mentioned, but in the U.K. they have been living with this for a long time; it is new to Jersey and we need to adjust our culture so that we do react quickly to those types of attentions and hopefully minimise them in the future.

PUBLIC BUSINESS

4. Zero-hours Contracts (P.92/2016)

The Bailiff:

Connétable, I am afraid we are left with 4 seconds, so you are too late. That brings question time to an end on those 2 statements. We now come to P.92, Zero-hours contracts, the proposition of Deputy Mézec, and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion - (a) that “exclusivity clauses” in zero-hours contracts should be prohibited; and (b) to request the Minister for Social Security, in consultation with the Employment Forum, to bring forward within 6 months for approval by the States the necessary draft legislation to give effect to the proposals.

4.1 Deputy S.Y. Mézec:

The issue of zero-hours contracts and the role that they do play, or that they should play in our economy, is one which has been a hot topic for several years now and, as time has gone by, we have learnt more about their prevalence in our society, we have learnt more about the struggles that many people with these contracts face, and we have seen countless examples of where they are clearly being used inappropriately. We know that many of these people struggle to make ends meet, they find it impossible to plan ahead when their income varies so much from week to week, and we have heard stories of people who are already on the bus down to work when they get that text message from the boss telling them that there is no work for them that day. I myself have met people who worked in finance firms doing an ordinary working week, 9.00 a.m. to 5.00 p.m., 5 days a week, but are on a zero-hours contract; get out of having to fulfil the statutory requirements that come with having a full-time contract. I have met people who work 12-hour days in the care industry but only get paid for a fraction of that time because the employer claims that travel time does not count as working, so they will not pay them for it, which, at the end, means that they are technically being paid less than the minimum wage. I have also met people who have taken on zero-hours contracts on the promise that they will get more hours when they take that job up, only to then be sanctioned by income support for taking on work which is considered more volatile. But I also have to say that I have met people on zero-hours contracts who are perfectly happy with them, who felt that they suited their particular employment needs and was mutually beneficial with their employer too. Many of us in this Assembly have expressed views at election time about this issue and many of us have said that we were concerned about the inappropriate use of zero-hours contracts, which we wish to see something done about. So far in this electoral term, the current Government has done nothing whatsoever to address this issue; in fact, under this Government, the proportion of workers on zero-hours contracts has gone up. Half of the new jobs created in the past 6 months have been zero-hours contracts. While in the U.K. only 2 per cent of jobs are zero-hours, in Jersey it is 12 per cent, and rising. The Government boasts that Jersey has record levels of employment, yet it whitewashes the fact that we also have a record population because of their complete failure to enforce any controls at all, and that the jobs being created are not of a quality that any of us should be prepared to settle for as acceptable. Now, I said to my electorate that I supported a crackdown on the abuse of use of zero-hours contracts, including specifically the abolition of exclusivity clauses. So, when the Health and Social Security Scrutiny Panel announced that it was going to do a review on this subject, I thought that would be a helpful and positive step towards encouraging the Government to take the necessary action it needs to protect workers who are currently not getting a fair deal. I thought that would be the most effective vehicle for achieving change. Their report makes for interesting reading, and it makes many positive

suggestions about what can be done to improve the situation for these workers. But what we have heard from the Minister in response to these recommendations was a statement, which I believe could be summed up in 3 words: “Cannot be bothered.” They are focusing on other work: “It is not a priority, it is a bit complex and, well, we are just not that fussed.” I do not think that is good enough, and so I have lodged this proposition on what should be the easiest aspect of this issue in the hope that the Assembly can give directions to the Minister that it is a subject which we believe should be higher up on their list of priorities, and it is something that we want to see action on. I have picked this single recommendation from the Scrutiny Report about abolishing exclusivity clauses, because it should be non-controversial. I hope that, by targeting the low-hanging fruit, we can start making progress and eventually then move on to the more complex areas and, step-by-step start making a difference. There is virtually unanimity across the board that these clauses are wrong and unjustifiable. We have the local branch secretary of Unite the Union and the President of the Chamber of Commerce singing from the same hymn sheet on this subject. In fact, the comments which have been made by the Minister for Social Security herself in the Scrutiny hearing on this subject are the same as my own personal views, yet the Minister has chosen not to proceed with acting on what the Scrutiny Panel has recommended and, instead, wants to kick it into the long grass. She said that there is no evidence that these clauses exist in Jersey and are being used, and she has lodged an amendment to this proposition which makes the case for that. The problem is, it is just not true. Her amendment references the comments of the Scrutiny Panel’s report, which, admittedly, does not provide a direct quote of concrete evidence about the use of exclusivity clauses here. But what there has been no reference to were the results of the 2014 Annual Social Survey, which included questions on zero-hours contracts, at the behest of the Government, which reported that a fifth of the people on these contracts claimed that exclusivity was a problem. If that is statistically accurate, that is as many as 800 workers who are affected. I call that a problem, and that problem is exacerbated by the fact that these people are going to be, of all workers, the most unlikely to kick up a fuss about it, because they will be worried about being punished by their employers for complaining about their terms and conditions, not get the hours, not be able to pay the bills and potentially even ending up getting sanctioned from income support for the way they would have behaved. Now, I am sure Members will have their own views on the role that zero-hours contracts should or should not play in our society and our economy, but there has been virtually unanimity across the board that exclusivity clauses are wrong. So I am making the case against specifically those clauses. I know that there is an amendment to come from the Minister for Social Security, which I have comments to make on, but I will wait until we are in that debate before making comments on that amendment. I hope on this issue of principle that the Assembly can reflect what seems to be the view across the board in wider society that these clauses are exploitative and wrong and that they should be banned. I make the proposition.

4.2 Zero-hours contracts (P.92/2016): amendment (P.92/2016 Amd.)

The Bailiff:

Is the proposition seconded? **[Seconded]** There is an amendment brought by the Minister for Social Security, and I ask the Greffier to read the amendment.

[10:30]

The Greffier of the States:

(1) Page 2, Paragraph (a) – After the word “prohibited”, insert the words “, subject to sufficient evidence that exclusivity clauses are being misused in zero-hour contracts in Jersey”. (2) Page 2, Paragraph (b) – For the words “, in consultation with the Employment Forum,” substitute the words “to direct the Employment Forum to consult, and the Minister”; delete the words “within 6

months”; and after the word “proposals” insert the words “when the Employment Forum has the capacity, sufficient evidence has been presented, and law drafting time is available”.

4.2.1 Deputy S.J. Pinel of St. Clement (The Minister for Social Security):

This is a complex issue, and I am disappointed I was not given the opportunity to discuss it with Deputy Mézec before he lodged the proposition. We could have, perhaps, reached a more positive solution. I thought long and hard about how to deal with the proposition and I hope that Deputy Mézec will accept my amendment. As I said to the Deputy yesterday, I agree with the principle of the proposition but, unfortunately, it is not possible for me to accept it as currently worded. That is why I have lodged the amendment, which will allow the Employment Forum to continue to review family-friendly rights as a priority over the next year. This is a longstanding commitment that I have carried forward from the previous Minister for Social Security, and I have always said that the current basic level of family-friendly rights should be extended. Should my amendment be rejected, that important work will be delayed until 2018. The Employment Forum simply does not have the capacity to consult on both issues in 2017 as well as undertaking the minimum wage review. The members of the Forum give a great deal of their own time to perform this important honorary role, and their workload is already at full capacity for 2017. If a problem with exclusivity clauses had been demonstrated, either in Deputy Mézec’s proposition or in the Scrutiny Panel’s review, I would have been more happy to consider making this a priority instead. The evidence that I have received from a range of organisations, detailed at the back of our amendment, and industry representatives, shows that local employees will not benefit from a ban on exclusivity clauses. The Jersey Chamber of Commerce does not see exclusivity clauses being used by employers; they already advise their members not to use exclusivity clauses and they consider that legislation is not required. The Jersey Advisory and Conciliatory Services said no issues have arisen with the use of exclusivity zero-hours contracts, and that, to quote: “Legislating against such clauses is unlikely to have any significant impact.” J.A.C.S. (Jersey Advisory and Conciliatory Services) provides employers with a template for zero-hours contracts. They have decided to specify in their template that zero-hour employees are permitted to work for other employers. I quote from their document: “This document sets out the terms and conditions that apply when you have accepted work from us, however, nothing in these terms prevents you from accepting work from another employer.” This amended template will ensure that there is clarity in the terms of employment, and it is now available on the J.A.C.S. website. I think many people would agree in principle that, if an employer offered no hours of work but stopped a person working elsewhere, that would be unfair. However, agreeing with this sentiment does not mean that we must change the law immediately. My amendment, first of all, ensures that we would follow an appropriate procedure. I would direct the Employment Forum to consult, they would consult the public and then make a recommendation. If they recommend a law change, I would request law drafting and then seek States approval. My amendment also accounts for the potential complexity of the law drafting. It is not as straightforward as it sounds. First of all, we would need to create the statutory concepts of a zero-hour contract and an exclusivity clause within the law, and then we would need to provide for anti-avoidance and enforcement measurements. It might appear that there is no harm in making this change, even without any evidence. Our law is currently simple and appropriate for Jersey. More red tape brings a cost to employers, particularly small businesses. 80 per cent of our businesses in Jersey are classified as small businesses with 5 employees or under. If employers wish to avoid complexity in the law, some might make other arrangements, such as fake self-employment, with no employment rights at all. The U.K. has recently seen a rise in these types of insecure arrangements, such as gig work; Uber is an example of this. Although this debate is about the narrow issue of exclusivity and it is not about zero-hours contracts generally, I would like to emphasise that, unlike the U.K., our Employment Law already gives zero-hour employees the full range of employment rights. These include holiday pay, redundancy pay, minimum wage, family-

friendly rights, and protection against unfair dismissal. I amended the Employment Law in 2015 to ensure that this was the case. My amendment today would ensure that we do not prioritise new legislation on the off-chance that exclusivity might be a problem in Jersey, and that we enable the promised review of family-friendly rights to continue, as planned, in 2017. During that time, we will actively keep zero-hour contracts under review through the labour market data. The Statistics Unit has agreed to include more information on zero-hours jobs within the manpower report. I have also committed to regularly publish more detailed information on zero-hours contracts obtained by looking at the manpower and contributions data together. If my amendment is adopted, I will look at zero-hours contracts as the next priority, after the family-friendly review is complete. We know that Jersey is behind the rest of the world, other than Guernsey, on maternity rights, and it is my first priority to rectify that. I propose the amendment.

The Bailiff:

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

4.2.2 Deputy S.Y. Mézec:

I thought I should speak early on in this debate, just to lay out my position in relation to it, and suffice to say, I will not be supporting the amendment, and I hope Members reject it. The very simple reason why I do not want Members to accept this amendment is because it essentially in its wording gives a wonderful get-out clause to do nothing. It uses language that talks about: “Sufficient evidence” that exclusivity clauses are being misused. Well, what does that mean? That is entirely subjective. Who it is down to? It is not down to the Assembly, it will be down to a Minister and, if this amended proposition is accepted, it would make it very difficult to then bring a subsequent proposition to this Assembly to instruct her to go ahead and do something when we think that sufficient evidence is there, but on which the Minister disagrees and says: “There is not sufficient evidence.” So that, I think, is my primary reason for opposing this amendment: that it does nothing but enshrine the status quo. Right now, the position of the Minister for Social Security is that she can go ahead and do something to crack down on the exploitative use of zero-hours contracts, or she can choose not to. If the amended proposition is passed, that situation remains exactly the same and there is no compulsion on her or her department whatsoever to do anything. I think that it is a much better way forward to stand up and say: “No, we are casting a very clear verdict: we want action to be taken on this specific point and we would like it to be done relatively soon.” The Minister has said that there is a priority to deal with all sorts of other things but, of course, the problem is, just because you say something is second on your list, does not mean that when you finish the thing that is first on your list you then move on to the second thing, because times change, new issues come up, things can overtake it. This amended proposition allows us to be in a situation where this could theoretically never be dealt with just because, oh, something else comes along, oh, another thing comes along, and it does not get dealt with. This amended proposition would do nothing but enshrine the status quo, as things are, and I do not believe that we would see any meaningful action early next year to see tangible improvements to the working conditions of these people on zero-hours contracts. It does bug me when we talk about getting this sufficient evidence when we have had the Jersey Annual Social Survey of 2014, which asks questions on zero-hours contracts, because the Council of Ministers ask it to, and it came forward and said that a fifth of the people who responded on zero-hours contracts said exclusivity was a problem for them. I just wonder what more are we going to get, or what is going to be considered sufficient if a fifth of people on these contracts saying it is a problem is not sufficient enough to say it is a problem. The Minister referred to red tape for businesses and, of course, I sympathise with that argument. I want to have an economy which is dynamic, which is efficient, and where opportunities are being created for both businesses and employees so that they can all

get on in life and, if there is anything Government can do appropriately to regulate the economy to help them, or to step back when it is necessary, or to make interacting with the government more slick and efficient to help them, then of course, I support that and I am happy to see red tape cast aside when that red tape is inhibiting businesses' opportunity to grow. But I think the problem here, and the stats that I have seen certainly in relation to how zero-hours contracts are used in the U.K., is that the businesses which exploit them do not tend to be the small and medium enterprises, they tend to be the much bigger businesses where there is not that face-to-face relationship between the boss and the worker. With smaller businesses the relationships often tend to be better because there is a closer working relationship, there are better communication streams for the employee to the employer when they are having a problem for it to be considered. Those smaller businesses often have to offer decent terms and conditions and pay to their employees so that they can get good employees to come to them so that they do not end up just going to the larger corporations, which are able to act in a very different way, and often act in a very uncompetitive way to those small businesses. I do not accept this red tape argument as being one which holds much sway here, because, frankly, it is an argument always to do nothing: "Oh, we cannot possibly regulate exploitation because that will impinge on businesses' ability to grow." Well, no, I do not agree with that. We should have appropriate regulation where necessary to make sure that workers do get a fair deal and to make sure that businesses have the infrastructure in place that they need to succeed and not simply say: "Well, we are never, ever going to look out for working people who have got a rough deal." I think that shows being on the wrong side here. I do not agree with that point. On the basis that this amendment is a green light to do nothing, I hope Members will reject it and, instead, we can have a debate purely on my unamended proposition to decide yes or no. Do we do something about this or do we say we are not prepared to crack down on the more exploitative elements of zero-hours contracts, a topic which many members of the public are seriously concerned about, a topic which is affecting the quality of life of many people in our community, and I hope we can have that debate as it is. If there is a genuine problem with the 6-month deadline that I have put in that amendment, there is nothing to stop the Minister doing what Ministers frequently do, which is that they do take up a piece of work with a timeframe, and when something happens, something unforeseen crops up and they realise that they are not able to meet that deadline, well, come back to the States and we will talk about it. If there are good reasons for that, we are all very understanding and accommodating people; we will be prepared to listen to that. If the Minister wants to say: "Well, sorry, 6 months is not good enough, 8 months would be better", well, I would be prepared to listen to that, as long as there is a good case for it. I think that is the more sensible way to go about it and I think that is what will end up producing a tangible difference to these people. I hope Members will reject the amendment.

4.2.3 Deputy R. Labey:

May I first reassure you that, when I attended the recent C.P.A. (Commonwealth Parliamentary Association) conference in Canada earlier this year, I would like to think that I blazed a trail for Jersey and was a very good ambassador, even to the extent that, when we touched on the subject of the mechanism of the Speaker, I kept my personal concerns to myself and to use the modern vernacular, it was my pleasure to 'big you up'. As far as you personally or your Deputy occupying that chair I want you to know that you have my complete confidence and the privilege is all ours. **[Approbation]** On to zero hours and my view is that it is simply an unfair opportunity to undermine employee conditions that has no justification. It primarily allows exploitative or lazy employers to get away with abusing their workforce with little evidence to suggest extra jobs are created and if the Minister has evidence to the contrary I would like to hear it. Otherwise it is just another legal loophole to con the workers.

[10:45]

4.2.4 The Deputy of St. Ouen:

I have to say I believe the Minister's amendment is an unacceptable amendment. It takes what is a straightforward proposition and in part (a) of the amendment it introduces a caveat that the prohibition of exclusivity clauses should be subject to sufficient evidence without saying to us what would be deemed sufficient evidence and who decides the evidence is sufficient. Simply prohibit them, yes, but subject to sufficient evidence. What on earth does that mean? In part (b) of the amendment it seeks to amend the proposition to say that the Minister should bring legislation to the States when sufficient evidence has been presented. I find that so disappointing. It means that the Minister alone wants to decide when sufficient evidence has been presented and if the Minister feels the evidence is insufficient then presumably the matter can never be returned to this House. I regret to say that we on the Scrutiny Panel know where the Minister is coming from here because in response to our Scrutiny Report the Minister did not believe that zero-hours contracts or exclusivity clauses were causing any sort of problem in the Island. The Minister declined to take any action at all over zero-hours contracts or exclusivity clauses save for the amendment of guidance that is available through J.A.C.S. to employers. I am sure all reasonable employers and good employers on this Island observe industry guidance and good industry practice. It is not those employers we are criticising here. It is those unscrupulous employers who would seek to place people on a contract with no guarantee of work and then limit their ability to seek other income. Zero-hours working is a huge issue for this Island and it is this Assembly that needs to weigh up evidence upon it and decide on this question. I submit it is not for the Minister to have the power as sought by this amendment to decide whether or not sufficient evidence is presented to her. As a servant of this Assembly it disappoints me that a Minister should propose an amendment that takes away that ability to decide whether the evidence warrants any legislation and instead wants to be an arbiter of it all. It is my submission that we do have evidence that is sufficient already to bring before us. This Assembly has already discussed contracts that contain an exclusivity clause. Was it not a year ago or more that we were concerned about workers who were being employed to lay fibre optic network in this Island? Those workers were engaged on a prestigious contract that was let by a publicly-owned body, of which we, the States of Jersey, are shareholders. It was a contract to deliver public good to make the Island leaders in our digital future. Those workers digging up the roads, putting those cables in were engaged on zero-hours contracts and moreover there were exclusivity clauses in those contracts. I have one of those contracts here. I will read short extracts: "Please note this is a zero-hours engagement. Work may be offered from time to time depending on the needs of the business but there is no guarantee of work. You are under no obligation to accept the work offered." Then in the depth of the small print: "While working for the company and/or its client you must devote your whole time and attention to the activities within your role profile [or job description in other words] or as otherwise instructed by the company and/or its client unless prevented from so doing by sickness or injury." That is an exclusivity clause, a refinement ...

Senator I.J. Gorst:

Sir, it is a point of clarification and not a point of order so I will ask whether the Deputy is prepared to give way.

The Deputy of St. Ouen:

I will give way.

Senator I.J. Gorst:

Sorry, I am confusing myself. It is not the Deputy I wished to give way. I wish for the Solicitor General to consider whether the statement the Deputy has just made that the clause he has read out is an exclusivity clause. It is simply a clause that says while working for the company, i.e.

employed on the job, they must give their full and complete attention to the work, not that they cannot work for somebody else at the same time.

The Bailiff:

Thank you. The Deputy of St. Ouen, please continue. The Solicitor General will no doubt think about that question which is coming his way.

The Deputy of St. Ouen:

I think the following clause in the contract may clarify that issue because the following clause says: “You may undertake other work during the course of the engagement as long as you agree suitable arrangements with your engagement manager in writing in advance. In the event that your other work proves to be detrimental to your work with the company it may be necessary to review matters.” So, yes, this is a requirement that while engaged on this contract the employee must devote his full time and attention to the job and if the employee felt he was short of hours and he had not been given enough work by this company, by any company, then if they want to go out and seek other work they have to ask permission. They have to approach in advance and seek an approval from their employer and that can only be agreed in writing in advance. This is a controlling employer seeking to abuse their dominant position. We have that example of what has gone on in the Island in the past because that employer, I understand, is no longer working in the Island. But there are also other pieces of survey evidence, some gathered by the Minister herself and reported in the Jersey Annual Social Survey 2014, which Deputy Mézec has alluded to. Those questions in that survey were asked at the request of the Minister and the question was: “Is being allowed to work for another employer while on a zero-hours contract a problem, not a problem, a slight problem or a significant problem?” It was not a problem for most people because, yes, for a lot of people zero-hours contracts do work well. But 17 per cent said it caused slight problems and 2 per cent said it caused them significant problems. Therefore not being allowed to work for another employer while on a zero-hours contract is affecting 19 per cent or one in 5 of people working on those contracts, one in 5. It is disappointing when the Minister has set out in her amendment her views of other bodies she has not also included those statistics that she had sought and that she holds within her department. It is not mentioned in her amendment. We now know there are over 4,000 people working on zero-hours contracts as their main source of income. I do not include the greater number who may have been using it to supplement their income but for me those 4,000 or more are the main worry. We had a discussion yesterday in Question Time about the precise figure and I am glad the Minister, as a result perhaps of my questioning, has arranged with the Statistics Unit that we can get more information about those people and the Minister’s department itself will, we are told, be providing those figures. But even if we take the figure of 4,000 in June 2014, even though we know it is greater now because the number of zero-hours contracts has gone up and the Statistics Unit calculated 4,700. But if the Minister does not accept 4,700 let us take 4,000, which is the figure given in the annual survey of person’s in full-time employment on a zero-hours contract. That is about one in 12, I believe, of the economically active population. That is 1,000 people who have some sort of difficulty with not being able to work for another employer. The question in the J.A.S.S. (Jersey Annual Social Survey) was worded whether you have a significant problem or a slight problem and the Minister may wish to discount those who said it was only a slight problem. But that still leaves 2 per cent who said for them it was significant. 2 per cent of 4,000 is 80. Is the Minister saying we should not legislate for 80 people who feel that not being able to work for another employer is a significant problem for them? Is 80 too small to have regard to? But let us wait a minute. Is it limited to those 80 people? The survey was taken at one point in time in 2014. Eighty said it was causing them a significant problem. Why would they say that? Most likely because at that time they were saying their employer was not giving them enough hours to provide them with an adequate income and was causing them that

problem. But ask the same question 3 months later. The situation may have changed. By that time their employer may have more work and may be giving them more hours so it is no longer causing those 80 perhaps or some of them a significant problem. But there may be other employees by that time who had their number of hours cut down and those employees begin to feel they have a significant problem. At different times different people will find it a significant problem, meaning it will affect quite a large number of people over a period of time. We have a second piece of survey evidence and that is the Scrutiny Panel survey we conducted of employers and employees. The Minister in her report correctly states that none of the employer respondents to our survey reported using exclusivity clauses. That does not surprise me. I would expect that anyone wishing to engage in that sort of survey would not admit to that but also be responsible employers. But the Minister does not refer in her report to the part of the survey the employees filled in and that does throw up some evidence. Again, I do not know why the Minister was selective in referring to only one part of the survey when she had dealt with the evidence from the Scrutiny Panel in her response to our report. It should be remarked that the employees who responded to our survey were not the employees of the employers who responded. Around 150 of employee respondents had zero-hours contracts as their main job and 16 per cent of those reported they were never allowed to work for another employer. Not a huge statistical number but it is still some evidence. We also asked and had information from people who are no longer on a zero-hours contract but had previously worked on a zero-hours contract and about 16 per cent of those said that at that time they were in a contract it was a concern to them that they were never allowed to work for another employer. We have as evidence 2 surveys each producing evidence that employees do feel restricted by not being able to work for others on zero-hours contracts. We have the very fact that zero-hours contracts numbers are wholly out of proportion in Jersey than numbers in the U.K.; 12 per cent of all jobs here as against perhaps 2 to 3 per cent in the U.K. The U.K. felt it necessary to introduce legislation to curtail misuse there and why should we not think there is the potential for misuse occurring in Jersey? I wish it were the case that we could say all employers were paragons of virtue and would never impose exclusivity clauses. The Minister seems to suggest that also just because we do not hear of it but I regret I do not share that optimism because employers here appear to be using zero-hours contracts very indiscriminately. It seems to me for too many it has become an automatic business model. You take on new staff, you put them on zero-hours contracts, the employer has more control, the employees are likely to be more compliant because of their vulnerability, it keeps them in a state of insecurity and rarely addresses the true nature of the work they do, which might be regular hours or it may turn into regular hours. There is a mechanism for addressing and converting the contract into something it should be, which is to provide employees with certainty of employment and income. Do we need more at this stage when we know there is that potential for misuse?

[11:00]

Is it necessary to seek further evidence? What further evidence could we obtain? A consultation process will receive responses from the Chamber of Commerce and the Institute of Directors and the like and we know what their practices are. They adopt good practice and they urge their members to adopt good practice. But what evidence could we draw and obtain from businesses who do not belong to the Chamber or the Institute of Directors and who are unlikely to come forward as businesses and give evidence of the use of these clauses? What evidence would we get from zero-hours contract workers who are likely to be low paid workers, the majority of them young and struggling to earn an income? I am afraid they did not engage much with the Scrutiny Panel. We had no or perhaps very few individual submissions. They do not engage with us generally as politicians or this Assembly, do they? Will they engage with civil servants conducting a consultation? We know how difficult it is to reach those people but we also know how vulnerable they are and how open they are to exploitation. We know that possibility arises. They are entirely

dependent on their employers giving them work. They may not like the work they have or the contract they have but they are not going to complain because they risk their livelihoods. These people will not put their heads over the parapet. Even if they are promised anonymity it does not really work. They fear it will get back to their employer so they put their head down and they get on with their job because the bosses hold all the cards and the employees have little options. It occurs to me that this type of working could be seen as a form of bullying. We protect people from bullying in schools. We protect people from bullying online but it is a source of regret to me that this Council of Ministers appears to have no interest in protecting employees from this sort of bullying in the area of employment. I would say we do have evidence of misuse and it is right as a matter of principle that this Assembly should prevent employers taking advantage of a situation, particularly with the prevalence of zero-hour contracts in our Island. It seems to me our Employment Law should provide the protection and to agree this amendment brought forward by the Minister and to ask her to make the decision over whether evidence exists is a completely improper way of proceeding. It removes a decision that can properly be made by this Assembly and I would urge that we reject the amendment.

4.2.5 Deputy K.C. Lewis:

In a previous life, as we say, I was in the cinema business for many, many years and we always used to get a rush every year from tourism. Tourism was very good in the old days and we used to take on students who were returning for the school holidays or perhaps from university break of about 6 weeks. They were glad of the work and we were glad to have them but every single one of them had a contract of employment and was paid a very fair salary. Being a bit old-fashioned I have always believed in a fair day's work for a fair day's pay. Zero-hours contracts I have never really been in favour of even though we all want Jersey business to thrive. But zero-hours contracts with the exclusivity clause I see as nothing more than economic slavery. This is something I will be supporting. I will support the proposition but I will not be supporting the amendment.

4.2.6 Senator P.M. Bailhache:

There was much in the speech of the Deputy of St. Ouen with which one could agree and I think he is quite wrong to suggest the Government has no interest in or concern for the interests of employees. This is a very good example of an instance where both the Minister and the proposer of the motion want to arrive at the same destination. No one believes that exclusivity clauses in a contract of employment are fair or acceptable but I would liken the Deputy to an impatient bullock standing at one end of a park with the Minister wanting to get to the exit at the other end. The Minister is proposing to take the ordered path through the park while the Deputy wishes to charge straight for the exit, crushing the rose beds, obliterating the camellias and knocking over the children's climbing frame as he goes. Creating a zero-hours provision in legislation is not easy and nor is it easy in the context of the Jersey Employment Law, I believe, to create a provision rendering illegal exclusivity clauses. Of course it is not impossible. Of course it has been done elsewhere and of course it could be done here. But we need to be clear what we are talking about in terms of exclusivity clauses. The illustration given by the Deputy of St. Ouen seemed to me arguably not to be an exclusivity clause. I understand an exclusivity clause to be in terms: "You shall not work for any other employer while you are employed in this zero-hours contract" and that was not the example the Deputy gave. It was a perfect example, it seemed to me, of why one should take time and take the orderly route through the park to arrive at the destination at which we all seek to arrive. We have an Employment Forum which is composed of very sensible employer and employee representatives and others as well and I think all Members can have trust in that Forum. The Minister told us the Forum is considering a whole range of family-friendly rights at the moment, so which is more important? Is it more important that the Forum should concentrate on exclusivity clauses or should the Employment Forum concentrate on the broader range of

family-friendly measures it is considering at the moment? It seems to me this Assembly ought to be able to rely on the Employment Forum to take the sensible route through these issues. If the Employment Forum is satisfied that there is evidence that exclusivity clauses are a problem for employees then personally I have no doubt at all that the Employment Forum will draw that to the attention of the Minister and the Minister, when that is drawn to her attention, will instruct the law draughtsmen to prepare the appropriate legislation. That is the broad purpose of the amendment that has been brought by the Minister. It seems to me that given that we all want to arrive at the same conclusion the question is only whether we rush forward in an unseemly way, careless of the other things the Employment Forum is considering at the moment or whether we take the orderly route to arrive where we want to get.

4.2.7 Deputy S.M. Brée of St. Clement:

Essentially this amendment is asking a very simple question. Do you agree with exclusivity clauses or not? Do you really need sufficient evidence to say: “No, I do not agree with exclusivity clauses”? Fundamentally there is a principle at stake here. You either support the use of them in whichever form they may appear or you do not. Why do you need sufficient evidence to make that choice? I cannot see any argument for saying: “I will only vote against the use of exclusivity clauses if I have sufficient evidence they are being misused. I am quite happy for them to be in a contract.” Well, I am not. I disagree with exclusivity clauses completely irrespective of whether or not there is sufficient evidence that they are being misused. The other issue I have with this amendment is if this Assembly agrees to this amendment we are effectively removing the decision-making process from this Assembly and handing it fair and squarely to the Minister because it is up to the Minister to decide whether or not there is sufficient evidence, not us. We are handing over responsibility to the Minister and going: “You decide. We do not want to know any more about them.” I am not happy with that because to me, allowing the Minister the authority to decide an exceptionally important principle is handing over our responsibility. Perhaps if this Assembly does agree to support this amendment then we are saying the Minister knows best. That to me is possibly moving down a very, very dangerous path. We are saying because we accept the principle of ministerial government we have at the moment we will not question the actions of any Minister and we will hand over our responsibility quite happily to the Minister. This is not about sufficient evidence. This is an attempt to delay the principle we are going to be debating in the proposition, which is: “Do I agree with exclusivity clauses?” Therefore I think in order for us to have a sensible and open debate on the proposition as lodged by Deputy Mézec we have to not support the amendment.

The Bailiff:

Solicitor General, you are asked by the Chief Minister as to whether the contract the Deputy of St. Ouen read out in its entirety contained what amounted to an exclusivity clause.

The Solicitor General:

I heard the Deputy. Obviously I have not seen this contract and when a court is considering contracts of employment clearly it looks at the contract as a whole. I have only heard excerpts from it as read out by the Deputy. At risk of giving a lawyer’s answer I think it depends on the definition of exclusivity because on the one hand, as Senator Bailhache said in his speech, having heard those excerpts from the contract the Deputy read out it could be argued that there is provision within that contract to agree with an employer that the employee can work for another employer. So, therefore it is not an exclusivity provision. On the other hand, when I look at the English legislation which has amended the English statute prohibiting exclusivity contracts in zero-hours contracts, then the excerpts that I heard the Deputy read out would be caught by the English legislation which is obviously not in force here. But the English legislation has gone to the time and trouble of defining

what an exclusivity contract is, and reading the English legislation it provides that any provision of a zero-hours contract which prohibits the worker from doing work or performing services under another contract, or under any other arrangement, or - and then this is the important part - prohibits the worker from doing so without the employer's consent, is unenforceable against the worker.

[11:15]

So it seems to me that second qualification would probably catch that contract which I heard you read out, or the bits of it that I heard you read out. To that extent, I repeat the point that it really does depend on the definition of exclusivity. I would suggest that if this Assembly were minded to go down that route it would need to go to the time and trouble of defining what exclusivity means, because otherwise there will be arguments as to what exclusivity means. For that purpose I would suggest there would need to be consultation with employers, employment bodies, and it will take time if the Assembly is minded to go down that route. It will need to be carefully thought out so, in my submission, it is not just a simple matter of banning exclusivity clauses. I think part of that process you would need to define what an exclusivity clause is. I hope that assists.

4.2.8 Deputy M.J. Norton of St. Brelade:

Much of today's discussion on the exclusivity clause has veered into talking about zero-hours contracts in general, which is not what the proposition and this amendment is about in any way. It is part of it but it is not about whether you like or dislike or whether you are in favour of or whether zero-hours contracts are a good thing or not. Yet most speakers have spent quite a bit of time talking about that. For the record, I am not a great fan of zero-hours contracts, contrary to what social media would have me say. They do need looking at. The Minister for Social Security has already said it is on the agenda. It is not at the top, it is on the agenda. Family friendly time is being taken up at the moment, and rightly so. Listening just to the excellent legal advice we have just got there, this amendment is offering and asking for 2 things: it is asking for evidence, a contract, prevalence of contracts, contracts that say "exclusivity", contracts that suggest exclusivity. Yet we have seen little of that at all. Little evidence at all. In fact - and rightly so - if you talked to the likes of the Chartered Institute of Personal Development, the C.I.P.D., or if you talked to the likes of the Chamber of Commerce, their very good members of course would say: "Well, we have not seen any such contracts among our members at all." But then you go to the Jersey Hospitality Association: "To the best of our knowledge, exclusive zero-hours contracts are not being used by our members in the hospitality industry." You go to the Jersey Farmers Union, not only do they say they are not acceptable - which I agree with, they are not - they also say: "Furthermore, we do not find it anywhere, we are not aware of their use." So let us go to somebody that would certainly have seen the problem of exclusivity if it was there, the Jersey Advisory and Conciliation Service, J.A.C.S. Now, surely they will have had tribunals, surely they will have had people coming in and saying: "Look what is in my contract. This is unfair." They say: "Therefore, while it may have previously been an issue in the U.K., which has not been redressed by legislation changes, from the apparent lack or number of such issues in Jersey we would see it being effectively legislating against such a clause is unlikely to have any significant impact." Now, I do not particularly think that we should ignore this at all. In fact I think we should look at exclusivity. But the Minister is asking for time and for evidence, so is J.A.C.S., so is every employer. If there is evidence there let us deal with it. If there is not evidence there, why? Why are we spending so much time? Deputy Mézec only yesterday was castigating the Chief Minister for wasting time when we could be getting on with important things, and yet he is being offered an amendment here that providing you have got evidence, and we are hearing that there is evidence, well if there is, fine, bring it forward and let us just have a realistic timeframe. I have had discussions with the Chairman of the Health and Social Security Panel, recent discussions where we have discussed the 6 months' time that is being asked in the original proposition. He acknowledges that 6 months is not realistic with the

amount of work that needs to be done, and on hearing further evidence of the consultation and the time it would take and the complication of this, it will take more than 6 months. Why would you then vote for something that has to be done in 6 months when we know it is not realistic? Even Deputy Mézec, the proposer of the original amendment, himself says: “All right, I kind of get it that you will not get 6 months.” The Minister is saying 12 months, with evidence. It does seem to me entirely reasonable and appropriate for the Minister to bring this amendment. It is absolutely correct that evidence - if apparent and warrants the change in the Employment Law - should be pursued. If there are instances then this amendment will come into force. So if there is evidence the original proposer has no need not to accept this amendment, nor does anybody else. All this amendment is saying is, look, if there is evidence, if there is time, we are voting for that. It is appropriate, fair, realistic, reasonable and right to give the Minister the time to bring this forward, to give Law Officers time to draft any exclusivity contract, and it is also right to ask for enough evidence to mean that we should do such a thing and change the law. With the lack of evidence and with the lack of time it would just be a nonsense to move on from this amendment. I support this amendment and I hope that other Members will do so too.

4.2.9 Deputy M. Tadier:

I think there is a reason why it is clearly quite difficult to stop the overlap, and clearly many of the arguments for the amendment will necessarily be ones that might be used in the main debate. That is because essentially what this amendment does is it tries to take the wind out of the sails of what is a very simple proposition. I was pleased that the Deputy in front of me, Deputy Brée, put his finger on the nub of the problem. If you are in favour of exclusivity clauses and have no problem with them, or in fact think that they can or should be there because they serve a useful purpose, then you do not support this. But if you cannot see the evidence ... and interestingly I do not know whether the evidence is being put forward for any sensible use of an exclusivity clause. So I think the burden of proof really needs to be the other way around, and there has been no evidence that I have seen presented to us why you would want to have an exclusivity clause in a zero-hours contract. If you did want an exclusivity clause you have a fixed term contract. If an employer says: “I want your loyalty” and in order to do that: “Fine, give me a fixed term contract and I will work for you solely, exclusively, and loyally.” But it has to work both ways. So the burden of evidence is the wrong way around. Deputy Mézec does not need to provide sufficient evidence, the evidence for how on earth could an exclusivity clause possibly be of benefit reasonably in most circumstances, that is where the evidence is lacking. We do make decisions and sometimes we say: “That group of people are pro worker and this group of people are pro employer” and of course there is going to be an element of that in any Assembly. We must remember of course that we are the Legislature so it is not simply a case of automatically referring things out to a Minister to consultation when it is quite simple. We are the ones who have to make political decisions about what is right and wrong and we are the Legislature and we can decide which laws are good and which laws are necessary. When I talk about being even handed, it is interesting to remember that the Minister for Social Security - I will say at the drop of a hat - brought a piece of legislation to the Assembly saying that we want to extend the period of unfair dismissal from 6 months to 12 months. She did that, brought it to the Assembly, had a majority and won it even though not only was there no evidence for that, but in fact there was evidence and recommendations to the contrary saying that we did not need to move it to 12 months because there was no evidence that the 6-month period was insufficient. Yet the Minister chose to go with her political instinct, which is fine. I think it might have been one of her election promises, and she moved swiftly to do that and bring it to the Assembly, which is exactly what Deputy Mézec is doing. This is one of his more recent election promises, perhaps even going back. I certainly know he was saying on the senatorial platform and, you know what, everybody on that platform was saying: “Yes, absolutely, exclusivity clauses, quite wrong, zero-hours contracts, we have got to crack down on the abuse, but there is

absolutely no reason why we should have exclusivity clauses in a zero-hours contract.” Nobody has put that argument forward either, and so I think this stalling tactic clearly shows that there is no political desire from the Minister for Social Security to tackle this issue. That is fair enough, she has her own political direction, there is other work. But we as an Assembly need to decide whether or not that is what we feel about this issue, and it is quite a simple one. In the interests of being even handed, by all means there might be times when we need to make sure that we do not create too much burden and red tape for employers, but in this case, zero-hours contracts, there is nothing in the law to exclude exclusivity clauses. Now, what was interesting I thought when the Scrutiny Chairman read out that letter, it is quite clear that the intention of that is slightly oppressive towards the worker. So you read that contract and it is quite clear that: “You are working for me, mate, and if you want to go somewhere else then you have to come and see me and if I do not like it then you cannot go and work for somebody else.” Now, I always thought that the zero-hours contract had to work both ways; that is the whole point of a zero-hours contract. We are told that they work very well for some people. They work for the employer but similarly they should also work for the employee. If there is not a symmetry there, for the person to phone up and say: “Look, I need you with one hour’s notice, come and work” that is fine, but similarly the worker should be able to say: “I am afraid I cannot come into work today” and in fact should not need to give a reason for that, and that reason might well be: “Well, I have got a better job offer so this week I have some piecemeal work on the building site for a week which is paying me £15 an hour, I am not going to come in and do this job for 10 hours at £10 an hour.” It goes without saying. This is the reality on the ground that people like Deputy Mézec are trying to resolve. Now, this idea that you wait until you have got sufficient evidence for something to be a problem before we put it in law is not, I do not think, sensible. There are lots of things that we have in law, and it is ultimately there to stop bad behaviour, and it may well be that 90 per cent of the working population and bosses are not using them and those on zero-hours contract are not being used. But we often make laws to defend against the minority who abuse those, and that is common sense. We would not say: “There have been no murders in the last 5 years so let us get rid of the law, it seems completely unnecessary. There is no evidence that murder is a big problem, okay, there might be the occasional one here and there, but it is too much red tape, is it not for citizens to have to worry about this, and we might not have the law drafting time.” I know that of course is an extreme example but how much more important when it comes to work legislation because we know that people do have to work and we know that zero-hours contracts are on the rise. I see this as very much being both pre-emptive and forward thinking because we know that we have a high prevalence of zero-hours contracts, just under half of the jobs that were recently created are zero-hours contracts. Those on zero-hours contracts by and large do not tend to have the same level playing field of power, they might often be lower paid, they might not necessarily be speaking English as their first language, and they might be in a precarious living situation where they do not know where their next job is coming from or where their next wage packet is going to come in and how much that will be. So I think the request here is that we simply put something in the law so we know what can and cannot go into a contract. It seems sensible that we do that, we already do that with the contracts for standard work.

[11:30]

We do that in housing, do we not? We say: “This is what you must put in a contract. This is what you are not allowed to put in a contract.” That is simply what we need to do here to provide clarity for everybody: “You must have this in the contract but you must not have a clause which says you must only work for us.” The precedents have been set, the U.K. did this in May 2015 and that was not a radical government that did it, that was a Conservative government which saw that it was an issue, even though they have a lower prevalence of zero-hours contracts. They said: “Yes, it is absolutely right that we do this, we will put it in there.” So at least we have got something to work from and it may well be that needs to be tweaked, but by and large we do not need to reinvent the

wheel on this. So I think it is unfortunate that the Minister is making heavy weather of this. By all means, let us proceed to the main debate. In fact, she has put a triple lock in it, so when Deputy Norton stood up and said: “Well, she is just asking for evidence” no, the actual term is sufficient evidence. As the Chairman of the Scrutiny Panel said, that is a very subjective term because some Members you can give them all the evidence they want but if they do not believe something then it will never be sufficient or good enough evidence that there is a problem out there. So essentially what we have got here is a triple lock. It is saying, well, first of all let us consult on it, then let us put to the Employment Forum and when the Employment Forum has capacity ... do they have capacity? We do not know whether they do. Is there going to be an offer of capacity from the Minister for Social Security or from Ministers to that Forum to help them do the work? We do not know that, it is unlikely. Then we have the sufficient evidence presented and, of course, when there is law drafting time that is available. We do not put that clause into any other request, we do not say: “Yes, we will do this when there is law drafting time available.” That goes without saying, does it not? It gets added to the queue and then when it has been drafted it comes back, so it seems that there are so many unnecessary hurdles that the Minister is putting up here to really blunt this proposition. So I do not think we should be supporting it all. Let us go to the main debate, let us have a good debate, but let us bring our law up to date, moreover. We have, arguably, lots of protection for employers but we have very little legislation in place and protection for some of our most vulnerable workers out there, and that cannot be right.

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

Listening to this debate, it just feels like both sides really need to listen to each other a little bit more. It seems that neither what Deputy Mézec is trying to achieve nor what the Minister is proposing really seems to fit to what either side really wants to achieve. The Deputy of St. Ouen gave a really, really good speech to stress the evidence which the Minister wants in order to justify the amendment might be incredibly difficult to find for some very understandable reasons. On the other hand, the Minister is coming back and saying this might open up quite a big can of worms which might lead to quite a few technical issues, which causes knock-on effects to other things that the Minister wants to achieve. It seems a bit unfortunate that perhaps there was not a lot more discussion between the 2 parties in which a better solution could have been arrived at. Because I do not want to be one of those Members that says: “I could not possibly vote for this, I could not possibly vote for that” and throw it all out because I do try to be a Member with a can-do attitude, because at the end of the day what I am concerned about is what is best for the ordinary people of this community. I do not want to go as far as perhaps referring this to the Minister because I know how frustrating that can be for a Back-Bench Member, but I do accept that there might be unintended consequences around the issue of perhaps what could be done, because I know in previous contracts that I have had there have been clauses, for example, in that you cannot work in the same field for the next 5 years, depending where you have been with a certain employer. So it depends how it is going to be structured and how it is going to be done under the Employment Law. It is very difficult for me, as a Member looking at this, and I look forward to the Minister’s summing-up, because we do have an employers’ market at the moment, still recovering from the financial crisis despite the figures that we might hear about 2 per cent growth here or there. It is still that situation and I agree with the Deputy of St. Ouen, 12 per cent of our working population being on 12-hour contracts; that is nothing to be held up as a good thing in this day and age. So neither option that has been presented to me really seems to be quite the right way forward and I think perhaps, maybe, more discussion about the exact wording of how to go forward to produce the better things for our Island community might be a more sensible approach than trying to have this us-and-them attitude, which seems to be present at the moment. I know it is very difficult when you are a Back-Bench Member and you want to try to push something forward because you feel really passionately about an issue, but at the same time perhaps on the ministerial side, when

you do have an army of civil servants, perhaps a bit more help could have been offered, given, at the same time. I know we are all incredibly busy Members, so at the moment I will wait for the Minister to sum up, and of course I will listen to Deputy Mézec when we move on, but I appreciate that neither solution seems to be quite right with what we are being asked to vote on and I just ask perhaps another way forward can be presented to us.

4.2.11 Deputy D. Johnson of St. Mary:

I can identify with much of what the previous speaker said. I think when I came into the Assembly this morning I was inclined to vote in favour of the proposition as it originally was rather than the amendment. I think perhaps the most meaningful contribution made this morning to my mind is that from the Attorney General who has pointed out that the term “exclusivity clause” has not been identified and that needs to be identified before we can put legislation forward. Save to what the Minister says and the proposer says, my inclination at present therefore is to go with the amendment to allow more time to consider that aspect in particular.

4.2.12 Connétable L. Norman of St. Clement:

Indeed Deputy Maçon’s speech was quite refreshing after some of the more morbid ones we have had this morning on this issue. But I do agree with what Deputy Tadier said, we are really making very heavy weather of this about something, which really basically, when it comes down to it, we all agree. We all agree that exclusivity clauses in zero-hours contracts are not only inappropriate, they are basically wrong. But we hear from the Minister that the issue is not really a problem at the present time and I had a meeting with my Constable colleagues, with the Chief Officer of the Jersey Advisory and Conciliation Service, who confirmed that it is not an issue. They are the people who ought to know, as Deputy Norton said a few moments ago. I think the difficulty, as I understand it, that the Minister has, for bringing the amendment and not accepting the proposition as it is, is basically administrative, because, if this proposition were adopted as it is, then other important work where there really are issues and problems would be delayed and, if that happened, then the Minister would be criticised by the very people that are bringing this proposition, quite rightly, for not bringing it. Now, this is not a matter of amending a law, as we have heard, it is a matter of creating a new one. So, irrespective of all the amount of consultation that would have to be done and everything else, it certainly would take a long time for this to come into effect and, as I have said before, and as the Minister has said, would delay other important work. This is probably being far too hopeful, but if the Minister would withdraw her amendment and Deputy Mézec would withdraw part (b) of his proposition, then we could all agree that exclusivity clauses in zero-hours contracts should be prohibited and then the Minister would have a direction from this Assembly to bring in the appropriate law in the appropriate timescale, or indeed if Deputy Mézec could just withdraw the time limit in his part (b) because we all agree that it is wrong. If they exist they are wrong. But we really are making very heavy weather of this and if something like that could be done we could all agree unanimously that they be prohibited. What we cannot agree; what we will not be able to establish, is what the timescale should be.

4.2.13 Senator S.C. Ferguson:

Yes, I agree with both the previous speakers, although I would put the problem further back in the development stage, because the problem to be solved is why are there so many zero-hours contracts and zero-hours contracts that are exclusive? Is it perhaps because the Employment Laws need to be reviewed?

The Bailiff:

That is off the subject, Senator.

Senator S.C. Ferguson:

No, the reason, it is not, with respect.

The Bailiff:

Tell me why it is on the subject. On the face of it we are talking about the amendments made.

Senator S.C. Ferguson:

We are discussing the Minister's amendment to delay things. We are discussing the Deputy's proposition to rule them out of court. Basically they are both talking about the symptoms and not about the cause.

The Bailiff:

Senator, I think we are talking about a question of process, which is what the amendment is about. To the extent that you need to talk about the substance in talking about the process, of course you may do so, but we are talking about the process.

Senator S.C. Ferguson:

Yes, well I think really, if we are going to alter the process, I do not agree with exclusive contracts because effectively they take us back 200 years to the old Hiring Affairs or, in rather less time, to the dogs. On that basis, I agree totally with the proposition. But any amendments to the zero-hours contracts have to be fair and balanced and, if they are going to be fair and balanced, you have to look at both sides so that, in effect, I think we should put it back into the realms of discussion and, as the previous speaker has said, the Minister and the Deputy should perhaps have more meaningful discussions, and I am not sure which way I am going to vote on it.

4.2.14 Deputy G.P. Southern of St. Helier:

Before I refer directly to the amendment, I just want to wait for a minute with the vision I have of the Deputy of St. Ouen as an impatient bullock, steam coming from his nostrils, waiting to get out of the field. Here is the most patient of men, he has me as his Vice-Chairman, he must be ...

Senator P.M. Bailhache:

I hope I did not mislead the Assembly; I was referring to Deputy Mézec as the impatient bullock.

Deputy G.P. Southern:

That is more understandable, the young bullock on my left perhaps, yes. But the fact that he has involved himself in this particular issue is not necessarily straightforwardly as a Back-Bencher. He has picked up on the evidence, limited though it is, the evidence produced by our Scrutiny Panel. I can see that we have problems here. Now the suggestion has just been, if the Minister would withdraw her amendments, then perhaps we could get on to the main amendments and perhaps Deputy Mézec might choose to withdraw paragraph (b). This comes from the Constable of St. Clement. I think that is certainly, since we seem to have come to an impasse, a way forward and I would encourage both the Minister and Deputy Mézec to consider that as a way forward. Having said that, that would mean that the work that needs to be done would be done. We would be accepting in principle that exclusivity clauses in zero-hours contracts should be prohibited in principle. It takes out the 6 months, which we are told is one of the problems, the time-limited nature of it, and it enables the Minister appropriately to work on that as she saw fit. We can keep her feet to the fire quite readily as we go through time and it will not drift off into the mists of time because the impatient bullock on my left will make sure that something happens in a reasonable time I am sure.

[11:45]

But the amendment actually is one that says to the impatient bullock: “We are not leaving the paddock full stop.” Because what it asks is impossible: “We would need sufficient evidence that exclusivity clauses are being misused in zero-hours contracts in Jersey.” Well the fact is, turn the page, and what we get is there is no legislation that says there is a misuse at all because the work that needs to be done: “Define definition of a zero-hours contract.” In our Employment Law we have no definition of zero-hours contracts full stop: “Define definition of an exclusivity clause.” So we have seen that it is not that difficult because the U.K. have done it in a fairly concise way and would catch the example that we got for Gigabit Field Force operating 18 months ago, which, under U.K. law, would have been not enforceable. So it is not that hard to do, we just need to start doing it. Then we have the circumstances in which zero-hours contracts are not permitted to be exclusive and those in which it might be exclusive, so we have some work to do, but not enormous amounts of work I would have thought, given that we have examples only across the way. But to attempt the impossible by proving that which is not illegal, there is no definition of misuse, I would argue that having an exclusivity clause in a zero-hours contract is intrinsically automatically a misuse because it does, as my colleague to the left says, alter the balance between the employer and the employee and that balance has to be maintained, it must be free to take hours or to offer hours as people see fit. That is why it is zero-hours. But the evidence is there that we have some of this misuse among a growing number of zero-hours contracts, something of the order of 12,000. That is a significant portion of our workforce. If one looks at the Scrutiny Report on which this is based, we find the employee survey: “Are you allowed to work for another employer under the terms of your zero-hours contract?” “Yes, always.” About 35 per cent. “Yes, sometimes.” About 19 per cent, one in 5. “No, never.” Around 17 to 18 per cent. So employees say it is happening. Employers: “Under the terms of your zero-hours contract, are your employees allowed to work for another company?” Almost 80 per cent say: “Yes, always.” But 20 percent say: “Yes, sometimes.” Some of those times they are not and that means that exclusivity clauses are being used. Employers are saying sometimes, employees are saying significantly more than the employers, but they are definitely being used. That is their understanding. So the evidence is there that this is something that needs to be done. There are any number of ways in which zero-hours contracts can be used inappropriately. One of those inappropriate uses is to tack an exclusivity clause on to it and alter the balance so that the employee does not have the same freedom as the employer to offer or take work. That is the reality. While the Minister has produced her own set of quotes from various bodies, I just want to remind you where we started from, and the Minister for Social Security herself, back when we did this in June or July this year, the Minister for Social Security said: “I would not agree that there should be exclusivity.” Nice and short. The Chief Executive of Jersey Chamber of Commerce: “I think in answer to your question, Deputy, we find it very difficult to justify or even support an exclusive zero-hours contract. I cannot think of a reason why one would think that it would be acceptable. So, in answer to your question, should we replicate U.K. legislation, I cannot think of a reason why we would not at the moment. They seem to be the ones that caused most public and moral outrage and I understand why.” That is from the Chamber of Commerce. From the President: “They have been made illegal in the U.K. and I would 100 per cent agree with that. That goes right against the fair concept of the zero-hours contract and, if you have a zero-hours contract, there should be no exclusivity contract in it.” Prospect, the union, who also made a submission, said the following: “Our position is that we have serious concerns about the use of zero-hours contracts and the impacts on full-time staff. For example, the impact on pension rights and the ability to secure mortgages and loans. We believe use should be proportionate, relevant and only used when there is clear justification. In addition, contracts must not contain a clause restricting employment, a whole time and attention clause.” This is part of the conversation, a whole time and attention clause is read widely as an exclusivity clause, you should be able to work for other employers. I think the evidence is there. I think with a bit of moderation on both sides I would encourage the Minister, with Deputy Mézec’s co-operation, I would be

encouraging both to go forward with the principled decision that exclusivity clauses in zero-hours contracts should be prohibited and get rid of part (b), get rid of the amendments, and agree a way forward.

The Bailiff:

Minister and Deputy Mézec, until such time as you both reveal your hand, the Assembly is going to continue debating the process that is to be adopted and therefore, as I understood it, the suggestion was that just out of part (b) the words “within 6 months” should be removed and, Deputy, or the whole of part (b) to be removed if the Minister withdraws her amendment.

Deputy S.Y. Mézec:

From my perspective I am happy to move along like that. That to me seems a sensible way forward and I would be happy to go with that,

4.2.15 Senator I.J. Gorst:

If I may, I was just moving between seats in the Chamber, if you are asking the mover of the main proposition and the Minister about her amendment, I have just been in conversation with the Solicitor General and I would like to ask him a question about whether the result of those 2, that proposal that the Constable of St. Clement made, which seemed extremely reasonable on the surface and I was encouraged by that, however I would like to ask the Solicitor General whether he feels that leaving in place an agreement of this Assembly to simply remove exclusivity clauses on zero-hours contracts and saying nothing else at all might cause unnecessary uncertainty and in itself cause other problems.

Deputy G.P. Southern:

Is that not a decision that the Chair can make?

The Bailiff:

It is always a pleasure to hear from the Solicitor General.

The Solicitor General:

In response to the Chief Minister’s question, I would simply say, if part (a) of Deputy Mézec’s proposition is left to proceed on its own, without part (b), that does still leave the issue of the definition of what is an exclusivity clause, which I alluded to when asked the question in response to the extract of a contract that the Deputy of St. Ouen read out. So, while it might be a statement of intent as to how the Assembly wishes to proceed, we are still left with the potential uncertainty created by what exactly is an exclusivity clause, which is being prohibited, and it could lead to uncertainty among both employers and employees as to whether their contract is prohibited or not. So I simply raise that as a potential concern if the Assembly proceeds down this route.

Deputy M. Tadier:

Just a question to the Chair following on from what the Attorney General said. It is presumably the case that both (a) and (b) are in order, that they have been passed, and that similarly it has always been possible for one part to succeed and one part to fail, so I do not think (b) follows from (a) so it would be entirely possible for (a) to get through and (b) to fail and therefore for an in-principle decision to be made and that does not impinge on any future work that needs to be done defining exclusivity clauses, which is incidentally in inverted commas there. So I would have thought that is a political decision to be made by the Assembly and then any future work would need to be subject to the Assembly and the Minister holding her to account.

The Bailiff:

As a matter of process I agree with that. Minister, you have heard from Deputy Mézec, as and when you are able to help us in relation to this matter, no doubt you will, and in the meantime, if you are not, then the debate will continue.

Deputy S.J. Pinel:

I guess the public are very confused, as are the Assembly, about all of this. We have agreed totally in principle that exclusivity clauses are not an option. I spoke to the Deputy yesterday. So, in principle, it is just the wording of the proposition that is very difficult for the department to follow through because, as the Solicitor General has given his advice, what is an exclusivity clause, and in part (a) of the proposition the word “prohibited” is difficult because in some cases it is essential. If you are looking at a bank, for instance, where you do not want somebody moving to another bank with their clients, there are simply some situations where these clauses are necessary. However, I thank everybody who has spoken on this, and the main thrust of our amendment was not disagreeing with the principle, it was the matter of time.

The Bailiff:

Minister, I am not asking you to make another speech, you have the opportunity to sum-up later on, I am just asking you whether, in the light of what has been said, you wish to withdraw the amendment. If you do not, we will continue with the debate.

Deputy S.J. Pinel:

Sir, if Deputy Mézec withdraws part (b) of his proposition, I am happy to withdraw the amendment. **[Approbation]** But I do wish to express my concern about the prohibitive part of part (a).

The Bailiff:

The withdrawal of the amendment at this stage needs the leave of the Assembly, if that is a proposition, before we go on to ask anybody else to speak, then please make it. Do you seek leave of the Assembly to withdraw the amendment?

Deputy S.J. Pinel:

Yes, on the condition that ...

The Bailiff:

On the condition. That is made plain, yes. Is that seconded? **[Seconded]** Nobody wishes to speak I take it? Those in favour of adopting that proposition? The appel is called for, the proposition is whether to give leave to the Minister to withdraw her amendment against the undertaking from Deputy Mézec not to proceed with part (b) of his proposition. I ask the Greffier to open the voting.

POUR: 42		CONTRE: 1		ABSTAIN: 0
Senator P.F. Routier		Senator A.J.H. Maclean		
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				

Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

4.3 Zero-hours contracts (P.92/2016) as amended

The Bailiff:

Very well, then we return to the main proposition and this has been proposed and seconded. Does any Member wish to speak on the main proposition?

4.3.1 The Very Reverend R.F. Key, B.A., The Dean of Jersey:

I thought it might just be helpful if, as somebody who has an exclusivity deal as part of their terms of engagement, if I were to offer a brief comment.

[12:00]

The difference is of course that I am not on a zero-hours contract or even a Sunday-only contract, as some Members might feel, it is just that because it is a full-time, many clergy would say somewhat more than full-time, occupation, therefore the exclusivity is there, but so is the full-time stipend. On the basis of a labourer being worthy of his hire that seems to me to be an excellent deal, which, as a matter of ethics, exclusivity profoundly contradicts.

4.3.2 Senator A.J.H. Maclean:

In part, I was going to give an explanation as to why I voted against the withdrawal of the amendment and that is quite simply this: the points, which I thought were extremely valid, raised by the Solicitor General, I know he has been elevated to Attorney General recently in the views of

some Members, he has been referred to as Attorney General, he is of course a Solicitor General, but thank you for his advice. That is about the definition. It does concern me that the proposition as it remains prohibiting exclusivity clauses within the zero-hours contracts is potentially in and of itself a problem. I think, and I have little doubt that all Members here disagree with the misuse of exclusivity contracts, clauses within the zero-hours contracts, but the definition is important. There are cases, as the Minister partly alluded to, where there is a requirement to have conditions within a zero-hour contract protecting areas. For example, you could have someone on a zero-hours contract working at a bank doing a particular function that you do not want going to a competing bank doing the same function at the same time, for obvious reasons. So I do feel that first of all there is proper use of zero-hours contracts; there is clearly some improper use, I think it is the minority, but nevertheless it is not acceptable and I think all Members within this Assembly accept the fact that the misuse of zero-hours contracts is wrong. My concern about now accepting Deputy Mézec's proposition part (a) is that it removes the flexibility that the department would need in looking at the evidence and crafting the way in which quite appropriately zero-hours contracts and these types of clauses, the exclusivity clauses, are used. So I would just add that in the U.K. we are in this Assembly often told that we blindly follow U.K. legislation and that is a terrible thing, but in this case of course we are being told we are being very slow not looking at the good practice and the good moves that have occurred in the U.K. in terms of dealing with zero-hours contracts and particularly the exclusivity clauses. However, if we look at the U.K., they have not been 100 per cent successful, the new legislation that they have introduced has seen the progression of new arrangements being put in place by employers, such as 'gig work' that has come to the fore and an increase in self-employment. So there are ways in which employers are finding to get around the changes that the U.K. have made, which is not good, and there are loopholes in the new legislation that the U.K. have, for example you can hold, in the U.K. as an employer, an employee on a one-hour contract and as long as he has, or she, a one-hour contract per week, then effectively there is no zero-hour contract in place. The U.K. are clearly aware of this issue but I am using it as a point that the matter is complex, it is very technical in terms of employment contract, and I think that was at the very heart as to why the Minister and the Department of Social Security wanted to take their time and do the job properly, looking at this matter, dealing with areas where there is clearly abuse, but ensuring at the same time that they protect local businesses that quite appropriately use both zero-hours contracts and appropriate exclusivity clauses within those contracts and I think that piece of work is right, and that was the reason why I thought the amendment should not have been withdrawn. What I would have liked to have seen happening is both parties withdrawing and in fact both parties having a discussion. I think we are pretty clear from this debate, it has been a useful debate insofar as Members are now very clear in explaining their concerns about the misuse and let the Social Security Department proceed on with the prioritising of the work they are doing. They are doing the very important family-friendly legislation, which needs to continue, the Employment Forum are working hard in that area, and it is important that is not derailed in any shape or form. So I would just have and hold up a word of caution about Members accepting just part (a) in this proposition, which is very clear about prohibiting the use of exclusivity clauses within zero-hours contracts until we have a definition. Until the work is done and we look at the appropriate definition of what that means, I think it would be wrong to accept part (a). I think it would be very wrong to do that, but I do think the department and perhaps the Minister can stand and give confidence to Members that her department is going to move forward in progressing changes to make sure that abuse is dealt with and I think that is the appropriate way forward.

The Bailiff:

I wonder if I can I just give some guidance from the Chair, just for the avoidance of doubt, proposition (a), which is left, is not a piece of legislation. It is a resolution that exclusivity clauses in zero-hours contracts should be prohibited and no doubt the debate now focusing on what

exclusivity clause might mean or might not mean might be helpful for the Minister and for the proposer in the debate reaching a conclusion on whether the proposition should be accepted or not. But it is important Members recognise it is not a piece of legislation.

4.3.3 The Deputy of St. John:

Thank you for making that specific point. I am purely standing here because I am absolutely dismayed about how this has been handled this morning, I really am, especially after listening to the Minister for Treasury and Resources just speak who was the one who came to this Assembly and asked us to agree a waste charge without any information: “Do not worry, agree it, and we will bring back the details later.” So it is good for the goose but not for the gander. I think it is completely wrong. What the Chair has just stated to us is that this is not legislation, but in principle do we believe exclusivity clauses should be within zero-hours contracts, and I believe that they should not be in zero-hours contracts. It bothers me when I hear Ministers on the one hand turning around and saying: “We need evidence, prove it to us, prove it to us, show us the evidence, we need to go out and find evidence”, but yet when they are provided with evidence they still do not do anything with it. Then we get told: “We do not have the time, we do not have the money”, but that was the point in having a contingency fund. So it does not matter what you try and put in place to assist everyone to work together as a team, because clearly we are not because we have ministerial government, it just gets pushed in your face. It is important that people just stand up and say: “Look, I do not agree with what Deputy Mézec is saying, I think there should be exclusivity clauses, I think this because these reasons”, not make some haphazard argument as to why this Assembly cannot send the message out to the public of Jersey that we believe this is not the right thing to do. It is important for all of us to go and sit down and speak with the Minister for Social Security or even have another briefing or even have another workshop and to explain what we mean by exclusivity, why it is not right, how it should or should not work. That is important. But what we are being asked here now is whether we believe that should be in the zero-hours contracts. So I support that. I can now, it is like one of those light bulb moments, when all of a sudden it is, wow, I now know why the public see us in the way that they do. I just do not have the words for it. We all talk about working together, we all talk about listening to each other, but we are not really doing it and it is really sad. So, on that basis, Deputy Mézec, I support you, thank you for bringing this and I thank the Minister and Deputy Mézec for agreeing to come to this compromise. **[Approval]** I just ask that we get on and vote.

Senator A.J.H. Maclean:

May I just make a clarification please, it is just on the previous speaker? I just wanted to make it absolutely clear, to clarify that in my earlier speech I was not giving the impression that I agreed with or approved of exclusivity contracts, what I was simply saying was that there is a definition matter. We need to understand the definition of what an exclusivity contract is and, by accepting this proposition, that means we are prohibiting all exclusivity clauses within zero-hours contracts.

4.3.4 Deputy J.M. Maçon:

Just on the amendment, I think I can allay a few Members’ concerns because, if we do adopt this, it allows the Minister to go through the normal legislative process, to go through a Green Paper stage, do you remember what they were? Do you remember what a White Paper stage is? So if there are concerns out in the community that perhaps the wording of legislation needs to be done in a certain way and perhaps with some very niche examples there might need to be a bit of flexibility around this, I do not see any Member of this Assembly finding that unreasonable. So I think some Members are trying to say that there is going to be a mass panic out there in the community if we adopt this, well it is not legislation, we are just taking an in principle decision and that the Minister is going to be asked to go away and go through the normal legislative process and, if there need to

be some exemptions, then the Minister will come forward with that evidence and I think, being reasonable Members within this Assembly, if that can be produced that is the way we will proceed. So I do not quite buy into the mass concern and hysteria that might be there because, if we go through those normal processes, I think it will be dealt with quite reasonably and, again, I hope that we can move on and vote with this and it will be a good day for all of us.

4.3.5 Deputy G.P. Southern:

While accepting this acceptance in principle is a way forward, but entails a good deal of work, which I would expect more or less to be done, it would be reasonable to expect it to be done in the next 18 months before we all change places or whatever, or return to our whatever. I do not know where that was going really. Work does need to be done. The fact is we do not even have a definition of zero-hours contract in the Employment Law. Until we do, the Employment Law cannot be made to properly protect those workers. Equally, we do not have a definition of an exclusivity clause, nor circumstances when they should be not permitted. That is the reality. That work needs to be done, it needs to be done in a reasonable length of time, in order that we should improve the protection for our workers. Remember that this is, as Deputy Mézec said, the low-hanging fruit, this was obvious, this is something that nobody would support. There are other mechanisms by which zero-hours contracts are being abused. The reason why we received very little evidence of abuse of exclusivity clauses is because, if you go and challenge that and you are a zero-hours contract, your hours could be zero tomorrow is the reality. So the workers do not challenge because they know very well they could be reduced to zero and not have a job tomorrow because they have no protection. That protection needs improving. This is the first step, one of several I would suggest, which also come out of the work we did in the last 6 months.

4.3.6 Deputy M.R. Higgins:

I will be brief because I have agreed with what most of the previous speakers, since you made your clarification of what we are doing. All I would say is I do not think there is a single person in this House who could justify exclusivity clauses, except with the one exception I think where Senator Maclean mentioned trade secrets or there is information that is highly prejudicial if it went to another similar employer. However, the point is, we should be making a stand on this and we should make it quite clear to the public.

[12:15]

There is no legislation, we are asking the Minister to go away, and I hope not 18 months, I would hope within 12 months or even less than that she can come back and come back with some legislation to deal with the abuses that are there. What I would say is that let us get to a vote on this, we have made heavy weather of the thing, and let us come around and say we condemn this type of contract and we want to see some change and let us leave it at that. I would hope that we can bring this to a conclusion very shortly.

4.3.7 Senator L.J. Farnham:

I think that my points were answered. I was going to just ask for clarification on the definition. Following Deputy Maçon's helpful speech, I believe that can all be thrashed out in the process to follow.

4.3.8 The Deputy of St. Ouen:

I too believe we really are making heavy weather of these issues about definition. We conducted a Scrutiny Review over several months, we spoke to the Minister, we spoke to several employee and employer representatives, no one ever said to us: "There is a big area of doubt over what exclusivity means." The Minister did not raise the issues that she is now raising today. It seemed to me that we all knew by instinct almost that exclusivity clauses means that it was a clause

preventing a zero-hours worker from seeking work from any other employer, and everyone understood it that way. We had documentation from the House of Commons, not just the legislation, but its briefing papers, its advice to M.P.s (Ministers of Parliament), there is other material because in the Republic of Ireland and New Zealand they have similarly banned exclusivity clauses. So all that is out there and do we not have an excellent law drafting team in this Island that has put together world-leading legislation identifying what a Trust is, our Trust (Jersey) Law and regulating financial services as world leaders, which other jurisdictions have been pleased to copy. So, if this is capable of being done, and I do not believe that is going to present too much difficulty. The examples that are being put out over: “Sometimes you might need an exclusivity clause because somebody working at a high level in an organisation might hold confidential information and therefore cannot go and share it with another employer.” That is not about exclusivity; that is about competition, and that sort of difficulty would be caught and put in a contract with an anti-competition clause because what you are doing is you are seeking to prevent damage to the commercial interests of the employer. It has nothing to do with exclusivity because that high-level employee with that confidential information should be able, if he wants to, to go and work stacking shelves in the supermarket on a Saturday, and that is what an exclusivity clause would prevent him or her from doing if that exclusivity clause was there. So we should not confuse the 2; I think there are very few instances where an exclusivity clause might need to be still allowed. But let us work on that. This is what the proposition now means that we agree a prohibition. I do not understand why the Minister is concerned about the word “prohibition”, the English legislation used the word “banned”, the exclusivity clauses are banned. But now let us go ahead and do the work and I likewise congratulate and thank the Minister and Deputy Mézec for coming to this point where we can agree a way forward and I hope Members will support the proposition as amended.

4.3.9 Senator I.J. Gorst:

Jobs, jobs, jobs, I was quoted as saying a number of years ago, and this Minister has carried on the work that I started, the subsequent Minister encouraged, and she has done exactly the same. Jobs is about work and this Government, contrary to what the mover of the main proposition and his colleagues might say, has spent millions of pounds in getting people into work and helping work with employers to create jobs because we know the independent evidence says that work is good for us. It is not fair to criticise this Minister or to criticise her excellent staff who advise on Employment Law, her excellent staff who day in, day out, get hundreds of Islanders into work. They are doing a first-class job and they should be supported. I see frowns on some Members. Hundreds of people, through the work and the effort of this Minister’s department, have jobs today that they did not have last year, 6 months ago, a month ago, and she is to be congratulated and so is her department. But we in this Assembly, and she, recognises that they have to be good jobs, they have to be reasonable jobs, and we want employers to act fairly and appropriately within the law. She again has put thousands of pounds into J.A.C.S. to support employers, to make sure that employers know how they should be treating employees, be that from the issuing of contracts, be that from the entitlement to holiday pay, be that to maternity issues, there is support there. This Minister is on record and this Government is on record as saying that it seems to us that exclusivity clauses in zero-hours contracts are not appropriate. How can they be? Because we want to see people in work. There are reasons why zero-hours contracts are appropriate because they match employers’ needs with employees’ needs, and that is what they should be used for. But they should not be used as an excuse by an employer to avoid their obligations under the Employment Law. Some employers are doing that without realising that the law still catches them because of the work that the department has done. Members here have said today: “The department has done nothing with Employment Law.” I think the mover of this proposition, I see him still nodding his head to that statement, despite the fact that statement is not a correct analysis of the work that the

department have done, because they have made adjustments to the 8-hour rule so that zero-hours contracts were covered. That is an improvement in the benefits available to Islanders who are on zero-hours contracts. They have put the extra money into J.A.C.S. as well to support employers and employees who find themselves on such contracts to ensure that both know what their obligations, their rights and their responsibilities, are. But if, in matching the employers' requirements with the employees' needs, that should be done in a fair, in an open approach, that gives benefits to both employee and employer. I think every Member would recognise it is quite difficult to see where the benefit to the employee is if they have a contract that does not guarantee any work any day of the week and yet at the same time they are not allowed to seek work elsewhere. That would not be and is not aligned with this Government's policy. The Minister is also criticised for people on income support, encouraging them, supporting them, to get extra work, so the proposition ... I see you frowning, Sir, because you think I am going off-track slightly. But it is a basic reason why the intention that zero-hours contracts should not have exclusivity clauses is perfectly aligned with the work that this Minister, her department and this Government, absolutely support because we want as many people who are fit and able to work for as long as they possibly can. It is good for Jersey, it is good for the economy, it is good for the individual, and it is good for the individual's family. So do not let the mover of this proposition criticise falsely the Minister because that is not fair when we see all the work that she is undertaking. But, as the Solicitor General said, you look at the description of what exclusivity means and what bits of a contract it might capture, and that will be important, it is not quite as straightforward as my own Deputy tried to suggest, I know why he suggested that because he is a great supporter in seeing this change, but there is a complexity there that needs to be dealt with; that needs to be understood and needs to be drafted appropriately. I know that the Minister, along with all the other workload that she has in her department in making people's lives better in the work environment, will go away and her staff will now take the intention of this Assembly and carry out the necessary work and bring forward any necessary changes to this Assembly in due course, following the appropriate process.

4.3.10 Deputy M.J. Norton:

It is a pleasure to follow the Chief Minister. I did not quite hear him. The point I wish to make has already been made, so I will be extremely brief. A definition of exclusivity definitely needs to be moved forward, as has been said by many, and a definition of zero-hours contracts needs to be defined as well, and we need that sooner rather than later for everybody's sake I think. It has been mentioned there may be some examples of a zero-hours contract where exclusivity would be necessary. I tend to agree with the Deputy of St. Ouen that there are other ways in contracts around that and I agree with my colleague to my right here, Deputy Brée, in a conversation that we had, that if it does not fit in a zero-hours contract for exclusivity, well offer them a different contract, variable-hour contracts, part-time contracts, fixed-term contracts, there are many other contracts available other than this one. If it meant, by exclusivity being prohibited, that zero-hours contracts were reduced because of this, then so be it, because I think that would not be a bad thing either. I support part (a) and I will be supporting Deputy Mézec in this.

4.3.11 Deputy M. Tadier:

I am pleased to follow my St. Brelade colleague because I think he put it well. I do not think anybody has come up with an example of where exclusivity clauses in zero-hours contracts can be justified and of course my notes say, well, if it is that important, even on a zero-hours contract, of course you can be doing very highly-paid, highly-skilled jobs on a zero-hours contract, you simply have a non-disclosure agreement, confidentiality clauses, the standard, so that you might be working in parallel and of course you keep the information secret and act professionally and of course that is not being prevented here. Of course we all know what exclusivity clauses mean in the literal sense, we know the lexicographic definition, if that is the word, we know the dictionary

definition of what it means, but of course we do need to put it into law, there is no legal definition because it is not in the law and we do need to have legislation that covers zero-hours contracts. It is probably worth saying now and the Chief Minister I think took the opportunity perhaps to make it slightly more partisan when we were enjoying a nice moment of calm bipartisanship in the Assembly, but then of course we do not like it to last too long. Because I think the comments more generally about where work legislation sits does need to be addressed. There are still certain things that Jersey workers do not enjoy that counterparts in the U.K. or in Europe do enjoy. So this is just one of those things that we are trying to rectify. Another example of course is the working-time directive. What is the maximum period of time that we think is acceptable for people to work, whether that be as a nurse, a doctor, or as a waitress or elsewhere, and what is the minimum break periods that they should have, either for lunch, for tea breaks, but also between shifts. I know certainly in some care homes in the Islands, and sorry to go off piste, but it is just to contextualise slightly in the context of work legislation and the fact that there is more work to do, and we must always be on the ball. I know certain carers who do amazing work in this example in a residential care for the elderly, who tell me: "What time are you checking off tonight?" "At midnight and then I have to come back at 8.00 a.m. in the morning." These are not uncommon practices and that may or may not be combined with zero-hours contracts and so I would find it very difficult, especially in those jobs that are so physical and so demanding and also so valuable socially to all of us, that you might have people getting home with perhaps 6 hours' sleep, if that, and then getting ready to work and not necessarily being at their best in the morning. So we do need to look at work legislation across the piece. Perhaps one of my concerns is that do we give enough resourcing to our law-drafting team, because we often hear: "This is going to take such a period of time to bring this back." Especially when it is something that we seem to unanimously agree is correct to do and we know that there is different prioritisation that is given to law drafting.

[12:30]

It seems to me that in this instance that the practical thing to do, even though consultation is good, when it is something that is so obvious and that nobody can really disagree with, do we really need to spend money and resources on a lengthy consultation period, perhaps asking the J.A.C.S. to do this work, where it might be better seconding somebody to say Social Security, saying there is a bit of money for law-drafting purposes and we would like you to bring someone in specifically to draft this piece of legislation, which relates to that. It might be a much more cost-effective and quick way of doing that. I just put that on the table, it may be politically naïve to suggest that, but it might be completely viable and save all of us money in the long run and speed things up, because it is important I think that in Jersey we do have a well-resourced law-drafting team. I think the reason that when the Chief Minister stood up and says of course we need good jobs, I am glad that he has put that on record because that has not always been the message that has come forward from the Council of Ministers more generally, because we have had the Minister for Economic Development standing up and saying about: "All jobs are good jobs." That is on Hansard. He said that: "I believe that all jobs are good jobs." That was in response to a question on zero-hours contracts and precarious working practices. That is clearly not the case, not all jobs are good jobs, and certainly when they have an exclusivity clause in them that is not a good job, so I am glad that the Chief Minister at least has put on record that he wants to see good jobs being created, whether they are zero-hours or not. We have also had comments of course that when the tide comes in all boats rise, from the Minister for Treasury and Resources, and that is not the case either, is it? We know that in fact in Jersey the tide comes in and many boats, if they have a hole in them, end up sinking and struggling to keep their hulls above water. So I think just to put that in context, but I think we are all united here today in wanting to see something being done that is positive, but we must guard against the fact that we make an in principle decision, great, but we need to hold the Minister's feet to the fire because she is the only one who can bring new legislation back to the Assembly, no one

else, and we need to make sure that is done in a timely manner, of course appreciating the fact that it may take some time.

4.3.12 Deputy G.J. Truscott:

I think it was British Telecom that said it pays to talk and I think, if there is any kind of criticism, and this is to everybody really, if Deputy Mézec had come to the department, we would have probably avoided this whole debate today, because we were up for the proposition. I am the Assistant Minister for Social Security and it is just often we have this conversation and I was very kindly handed the responsibility, the political responsibility for the Back to Work initiative at the department and I am really going to take this opportunity to sing their praises, because I have 70 staff that daily work with the unemployed, talking to employers, and doing a fantastic job. I mean, in a year, they have put in over 2,000 job placements, driving down unemployment; they are doing a most magnificent job. One thing I would like to say is that we were seeking evidence, and quite rightly too, insomuch as that we have not laid sight on one contract, physical contract, this has all been hearsay, it would have been just nice to see some physical evidence rather than anecdotal or whatever, but I have also got to say that one of the overarching aims of Social Security is to enable people to gain financial independence and maintain it. If we had have detected at any time any mechanism being used by an employer that would stop people gaining financial independence then we would have put a stop to it straight away. Currently we have got 400 individuals that are basically underemployed. Now, we are constantly on to them, encouraging them to get more work but not one time did we get the pushback to say that: "Well, I am on an exclusivity contract, I cannot go out and find work." Not one. That is 400 people and there was no evidence whatsoever. I will let the Minister sum up and I am pleased we have got to this situation here today, thank you.

4.3.13 Senator P.F.C. Ozouf:

Sometimes there are moods which are unshakeable in terms of affecting our Island. We spoke earlier and your own remarks about the conversations that we were having yesterday about the Bailiff's position. There is a global movement going on around the world about effectively globalisation, jobs, and the problems of politicians. This is directly linked to this debate, which is why I will support the amended withdrawn proposition. But I want to also reinforce the fact that the solution to economic growth is not to turn away from globalisation, from economic liberalism, it is effectively to make it harder. I refer Members, if I may, to the speech of the United Kingdom Prime Minister at the Mansion House where she said: "Liberalism and globalisation have delivered unprecedented levels of wealth and opportunity. They have lifted millions out of poverty. They have brought nations closer together, broken down barriers, and improved the standard of living and consumer choice. They are underpinned by the rules-based international system that is key to global prosperity and security, which we must protect." She also said these people often are on modest to low incomes, living in rich countries like our own, the United Kingdom, that see their jobs being outsourced and - at the heart of this debate and why we are having it - is where wages can be undercut. They see their communities, she said, changing around them and they do not remember agreeing to that change. She said in conclusion, and this is directly relevant to the dilemma that this Assembly and other Assemblies and democracies around the world are facing, is that she said she believes: "Liberalism and globalisation must continue to offer the best future for our world and we must deal with the downsides and show that we can make the twin forces work for everybody. Because when you refuse to accept that globalisation in its current form has left too many people behind, you are not sowing the seeds for its growth but for its ruin." She said finally that the true mark of leadership is: "Not standing inflexibly, refusing to change and still fighting the battles of the past" which I somehow think the left-wing agenda sometimes does, trying to battle from the past: "But adapting to the moment, evolving thinking and seizing the opportunities ahead." That is what we should be doing. I am not against rules and I am not against what we now

have is that effectively exclusivity clauses should be prohibited. But at the same time we must not send out the message that effectively onerous Government regulation and not having flexible job markets is the solution to providing opportunity and incomes for our Island community. We have to put protections in place, we have to be thoughtful, but we cannot basically turn ourselves against the forces of the rest of the world and say that there are not issues of competition and innovation and needing to compete. Reform can look at me with sighs, they can say they do not like economic liberalism, they can say all the things that they want and ...

Deputy G.P. Southern:

If I may ...

Senator P.F.C. Ozouf:

Well, they are clearly remonstrating, the cameras only look at me when I am talking and I am talking and I am not giving way.

Deputy M. Tadier:

I suspect Deputy Southern wanted to raise a point of order which is to do with relevance, which I am happy to raise as well.

Deputy G.P. Southern:

It is a point of order, sir.

The Bailiff:

I think what was being put to you, Senator, was that you were diverting from what the purpose of the proposition is and perhaps you could come back to it.

Senator P.F.C. Ozouf:

Yes, so the purpose of the proposition is to send out a message that we are pro-growth, we are economically liberal, that we will understand what the real concerns are at the heart of this, which is effectively there have been too many people who do not feel as though they are being part and being beneficiaries of the world of globalisation. You are seeing that around the world; in the debate in Brexit, the Trump election, et cetera. People have come to the ballot box and they have said: "We are not part of it. We are not part of this growth in terms of prosperity." This is absolutely relevant to this debate and it is relevant to the context in which we are approving this. Yes, we are going to approve a zero-hours prohibition; yes, we are going to do exclusivity clauses, but we are not sending out a message where we are going to have inflexible labour markets which are at the centre of effectively creating the jobs and opportunities for our Island communities which are competitive. We have to share the proceeds of growth, it is apparently a crime now - not a crime in your court, Sir - but it is a crime to say that you are against certain issues of flexible labour markets. It has to be a balance. We have had a debate which reflects that balance, we have to listen to the class of people in Jersey which are really concerned that they do not believe that they have been the beneficiaries of what has been the benefit of an unprecedented amount of growth and prosperity, and that has to be shared. But that is not about transferring and being a Robin Hood and simply taking from the rich and giving the poor, it is as the former Prime Minister of the U.K. said, it is not about the gap, about the richer, richer, being the poorer less poor ...

The Bailiff:

Exclusivity clauses, Senator.

Senator P.F.C. Ozouf:

This is at the heart of this debate. It is sending the right message out that we are approving this for the right reasons and not simply putting back in place proposals which restrict labour markets. It is in the spirit of that, that I warmly accept this proposition but not if it is sending out a message that we are simply going to row back the tides of globalisation, economic liberalism, and free labour markets and jobs for all.

4.3.14 Connétable C.H. Taylor of St. John:

This is the third debate in which we have been pushing very hard at an open door. Effectively the one thing it has convinced me more than anything else is that perhaps we should all be honorary politicians because then we would have jobs to go home to and get on with it, instead of spending our time debating away, pontificating, instead of getting down with the real business we need to do. Can we please get on with the vote?

The Bailiff:

Does any other Member wish to speak? It not, Deputy Mézec, do you wish to speak at length? It seems you have the Assembly with you.

4.3.15 Deputy S.Y. Mézec:

Members will be delighted to know that I am not going to speak at length. I agree almost entirely with what the Constable of St. John just said, that many contributions to this debate have been absolutely superfluous, including the frankly embarrassing grandstanding from Senator Ozouf and the Chief Minister, which I will not be engaging with. This is an open door, we know what is right, we know what is wrong, I call for the appel.

The Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is limited to part (a) of Deputy Mézec’s proposition, that exclusivity clauses and zero-hour contracts should be prohibited, and I ask the Greffier to open the voting.

POUR: 43		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of Trinity				
Deputy K.C. Lewis (S)				

Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

Senator A.K.F. Green:

Sir, before we adjourn, we have a workshop for States Members on the Future Hospital and some 20 Members have accepted that invitation. Can I open the invitation to those who declined maybe because they had other appointments that might have changed? Even if you have not accepted we would be very pleased to see you there.

The Bailiff:

Before we adjourn can I just announce that there are 2 propositions which have been lodged? The Draft Opticians (Registration) (Amendment No. 2) (Jersey) Law amendment, lodged by the Minister for Health and Social Services, P.120; and an amendment to P.110, Future Hospital: preferred site, lodged by the Connétable of St. John.

LUNCHEON ADJOURNMENT PROPOSED

[12:45]

The Bailiff:

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

LUNCHEON ADJOURNMENT

[14:16]

5. Draft Criminal Justice (Young Offenders) (Jersey) Law 2014 (Appointed Day) Act 201-(P.98/2016)

The Greffier of the States (in the Chair):

We resume with the Draft Criminal Justice (Young Offenders) (Jersey) Law (Appointed Day) Act, which is P.98, lodged by Deputy Moore. If I can ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Criminal Justice (Young Offenders) (Jersey) Law 2014 (Appointed Day) Act 201-. The States in pursuance of Article 33 of the Criminal Justice (Young Offenders) (Jersey) Law 2014 have made the following Act.

5.1 Deputy K.L. Moore of St. Peter (The Minister for Home Affairs):

In July 2014 this Assembly debated the Criminal Justice (Young Offenders) (Jersey) Law of 2014, then in May of this year we debated the Criminal Justice (Young Offenders) (No. 2) (Jersey) Law. The No. 2 Law amended the 2014 law. Both were unanimously adopted, for which we are grateful to the Assembly. Now, I am asking the Assembly to consider and adopt both P.98, the Appointed Day Act, that will bring the amended 2014 Law into force in 7 days' time, the P.99, the regulations that bring forward consequential amendments to existing legislation, and P.100, the regulations that provide for the establishment of a placement panel to determine the appropriate place of detention for a child or young person on remand or sentenced to youth detention. While we will vote on each proposition I will speak about them all collectively, which I shall do now. As you may recall, the 2014 Law is amended by the No. 2 Law and is intended to replace the 1994 Young Offenders Law. The primary aim of the 2014 Law is to solve a very real problem, the mixing together of 15 to 17 year-old males with 18 to 20 year-old males in the young offenders' institution, and the placement of 15 to 17 year-old girls in the women's prison. The 2014 Law provides a solution by establishing a placement panel with powers to determine the most appropriate place for detention, and by allowing the place of detention to be either the prison, the Young Offender's Institute, or Greenfields Secure Children's Home, depending on what the panel considers to be in the best interests of the young person who is to be detained, and the best interests of any of the young people who are detained in the same facilities that are under consideration. This Assembly has previously readily recognised that Greenfields, which is - as I am sure the Assembly will recall - an 8-bedded secure children's home, will in many cases provide a much more appropriate setting in which to look after and support the rehabilitation of young offenders. The amended 2014 Law will also bring forward 3 other key changes, the first change being that the 2014 Law will provide that all 17 year-olds who commit a lesser offence will be treated at the same time as 16 year-olds and will receive a maximum 12-month sentence, except in relation to driving offences. A 17 year-old who has the right to drive will have also associated responsibilities, so if they are mature enough to drive they are also mature enough to be sentenced as per other young adult drivers who are aged a little older, 18 to 21. The second change relates to the status of children or young people who are on remand or detained. Under the amended 2014 law they will all be treated as looked after children under the care of the Minister for Health and Social Services as opposed to the Minister for Home Affairs, regardless of whether they are in Greenfields, the Young Offenders' Institute, or indeed the prison. This ensures that our focus is on the needs of the child and not the deeds of the child. The third change relates to the panels' powers to determine the place for detention for all children or young people who are remanded or sentenced. The panel, who have knowledge of the circumstances surrounding the life of each child or young person, will be able to decide whether it is appropriate for them to spend all or part of their sentence in Jersey, without recourse to the U.K. Secretary of State; unless of course the panel determine that their needs cannot be met in Jersey and they should, therefore, be detained in a U.K. facility. P.100 brings forward regulations made under part 4 of the 2014 Law which provide for the appointment and removal of panel members, rights of appeal, and matters relating to the constitution and governance of the panel. In summary, the panel will have 5 to 10 members appointed by the Minister for Home Affairs. Those members will be either probation officers, employees of the Education Department, employees of the Health and Social Services Department, or others who have the skills, knowledge and experience to ensure they can help to determine the place of detention. Assuming these regulations are adopted today, a recruitment campaign will commence in the next 2 weeks, proactively reaching out to independent

members of our community who wish to sit on the placement panel in a voluntary capacity. The regulations also provide that appeals against decisions of the panel will be heard by the Minister for Health and Social Services as opposed to the Minister for Home Affairs, reflecting the fact that - as previously stated - from the 2014 Law coming into force, all children and young people detained in Jersey will be treated as looked after children under the Children (Jersey) 2002 Law. Any child or young person, or any person with parental responsibility for them, can appeal to the Minister for Health and Social Services if they are aggrieved by the panel's decision. On hearing an appeal the Minister can direct the panel to reconsider their decision, but cannot overturn or substitute the panel's decision. To do so would cut across the legal requirement placed upon the panel to review each placement on a 3-monthly or monthly basis. If the Minister had the power to overturn the panel's decision a situation could arise whereby the panel makes a decision, the Minister overturns that decision, the panel then reverts to its original placement decision at the next 3-monthly or monthly review. So in conclusion, the bringing into force of the 2014 Law, alongside the Regulations that provide for the establishment of a placement panel, will provide us with a better system for determining the place of detention for children and young people. It will allow us to focus on the best interests of children and will help us to better meet their needs and support them to become full and contributing members of our community. Thank you.

The Greffier of the States (in the Chair):

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

5.1.1 Deputy J.M. Maçon:

Just to put on record from a Scrutiny perspective, to thank the way in which the Minister and the department did approach the panel to update us on the progress of this legislation. We found that very helpful and we would just like to put that on record to say how much we appreciated that approach. I can also confirm that from a Scrutiny point of view we have had no States Member contact us to flag up any concerns with the legislation, and also no members of the public who have done that as well, just so Members know. Thank you.

5.1.2 Senator P.F. Routier:

I really would like to put on record the fact that this legislation is going to improve the way we look after children. We have had difficulty in finding appropriate places for children in the past and I think what we are proposing now is going to be much, much better for many children, unfortunately if they do have to use the services. But certainly if their lives require them to have additional support I believe that what we are proposing today is going to be very appropriate and I support this wholeheartedly.

The Greffier of the States (in the Chair):

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

5.1.3 The Deputy of St. Peter:

I thank the speakers for their kind and supportive words. It just leaves me, for the reasons stated, to recommend this Appointed Day Act to the Assembly. If adopted the 2014 Law will come into force in 7 days' time. I ask for the appel.

The Greffier of the States (in the Chair):

The appel has been called for. Members are invited to return to their seats. I ask the Greffier to open the voting.

POUR: 37		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				

Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Clement				
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				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

6. Draft Criminal Justice (Young Offenders) (Consequential Provisions) (Jersey) Regulations 201- (P.99/2016)

The Greffier of the States (in the Chair):

So we move on to the Draft Criminal Justice (Young Offenders) (Consequential Provisions) (Jersey) Regulations and I ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Criminal Justice (Young Offenders) (Consequential Provisions) (Jersey) Regulations 201-. The States, in pursuance of Articles 31 and 32 of the Criminal Justice (Young Offenders) (Jersey) Law 2014 have made the following Regulations.

6.1 The Deputy of St. Peter (The Minister for Home Affairs):

These Consequential Provision Regulations and the purpose of the Regulations is to replace in existing legislation references to the Criminal Justice (Young Offenders) (Jersey) Law 1994 with references to the 2014 law. I commend the Regulations to you.

The Greffier of the States (in the Chair):

Are the Regulations seconded? **[Seconded]** Does any Member wish to speak on the principles? In which case, all those who are in favour of the principles kindly show. Those against? The principles are adopted. Does the Education and Home Affairs Scrutiny Panel wish to scrutinise the regulations?

Deputy J.M. Maçon (Chairman, Education and Home Affairs Scrutiny Panel):

No, thank you.

The Greffier of the States (in the Chair):

How do you wish to propose the Regulations, Minister?

The Deputy of St. Peter:

I think *en bloc*, please.

The Greffier of the States (in the Chair):

Are they seconded? **[Seconded]** Does any Member wish to speak on the Regulations? In which case, those Members who are in favour of the Regulations, that is 1 to 18, kindly show. Those against? The regulations are adopted. Third Reading, Minister?

The Deputy of St. Peter:

Yes, please.

The Greffier of the States (in the Chair):

Does any Member wish to speak in Third Reading? In which case, those who are in favour of adopting the Regulations in Third Reading kindly show. Those against? The Regulations are adopted.

7. Draft Criminal Justice (Young Offenders) (Placement Panel) (Jersey) Regulations 201-(P.100/2016)

The Greffier of the States (in the Chair):

We can move on to the Draft Criminal Justice (Young Offenders) (Placement Panel) Regulations, the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Criminal Justice (Young Offenders) (Placement Panel) (Jersey) Regulations 201-. The States, in pursuance of Article 22 of the Criminal Justice (Young Offenders) (Jersey) Law 2014, have made the following Regulations.

7.1 The Deputy of St. Peter (The Minister for Home Affairs):

I have already spoken to these Regulations in my previous speech. Just in essence, they provide for the establishment of the Placement Panel under the 2014 law as adopted by the Assembly. I commend these Regulations to you.

The Greffier of the States (in the Chair):

Are the Regulations seconded? [**Seconded**] Does any Member wish to speak on the principles?
 No, in which case those in favour of the ...

The Deputy of St. Peter:

Can I ask for the appel, please?

The Greffier of the States (in the Chair):

The appel has been called for. This is on the principles of the regulations. I have given a chance for Members to come back to the room, if I can ask the Greffier to open the voting.

POUR: 37		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Clement				
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				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy A.D. Lewis (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

Does the panel wish to scrutinise the regulations?

Deputy J.M. Maçon (Chairman, Education and Home Affairs Scrutiny Panel):

No, thank you.

The Greffier of the States (in the Chair):

How do you wish to propose the Regulations, Minister?

The Deputy of St. Peter:

En bloc, please.

The Greffier of the States (in the Chair):

Are they seconded? **[Seconded]** Does any Member wish to speak on the Regulations? If I can ask those who are in favour of the Regulations to kindly show. Those against? The Regulations are adopted. Minister, Third Reading?

The Deputy of St. Peter:

Yes, please.

The Greffier of the States (in the Chair):

Does any Member wish to speak in Third Reading? Members who are in favour of adopting the Regulations in Third Reading kindly show. Those against? The regulations are adopted.

PERSONAL STATEMENTS

8. The Connétable of St. John - statement regarding the Hospital Relocation Sub-Panel

The Greffier of the States (in the Chair):

We were going to have, I think, a statement from Senator Ozouf, but before then I have had a request for a personal statement from the Connétable of St. John, which it might be convenient to take now, Connétable?

[14:30]

The Connétable of St. John:

I was still writing it but I think I know what I have to say.

The Greffier of the States (in the Chair):

We can wait until after the Senator if you wish to.

The Connétable of St. John:

I am on my feet now if that is all right.

The Greffier of the States (in the Chair):

Yes.

8.1 The Connétable of St. John:

I wish to inform the Assembly that I have resigned from the Hospital Relocation Sub-Panel. The reason is very simple. The proposition was lodged late and the very short period in which the Scrutiny Panel had to examine in detail such an enormous and vast project has meant that the panel has been unable to produce their report in ample time. As a result, I brought a private Back-Bencher's amendment to this proposition because the panel has not had a chance to debate it in full and to go through the normal process. It is wrong for me to remain on the panel while making such

an amendment and, therefore, to save any embarrassment and to make a clean sweep I decided it was best in all interests to stand down from this office, but the blame must lie quite fair and square on the failure to provide information on time in a due process to Scrutiny. Scrutiny cannot work in a fortnight. This has been going on for a long time and Scrutiny must have sufficient time to produce their reports so Back-Benchers can read, as it were, the Scrutiny Reports, make up their own minds and make orderly progress and make amendments as and when and if necessary. I should also add I would like to thank the Scrutiny officers and the Chairman, who unfortunately is not here at the moment, for their enormous support. I know it is wrong to name an individual officer so I shall not, but the officer who was working with the Scrutiny Panel went way beyond what I would define as normal duties and I would like to thank them and have that on the record.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

9. The Assistant Chief Minister - statement regarding the Jersey Innovation Fund

The Bailiff:

We are going to take next the statement to be made by the Assistant Chief Minister in relation to the Jersey Innovation Fund.

9.1 Senator P.F.C. Ozouf (Assistant Chief Minister):

Members will recall my earlier statement in June regarding the operation of the Jersey Innovation Fund and the loans granted by the fund. I now wish to make a further statement to provide Members with progress on the fund. I am conscious that there has been a great deal of media speculation about the fund. The facts are that Economic Development asked for the J.I.F. (Jersey Innovation Fund) to be established in 2012. After a detailed Scrutiny review, the proposition was amended and the fund was finally approved by this Assembly on 1st May 2013. For those Members who were not in the States at the time, I have circulated the statements as attached, which is already on the record. I have sent Members the Hansard from the debate for their reference. After May 2013, some changes were made by the Economic Development Department. Obviously, there is a difference between political policy determination and the implementation, which is the responsibility of accounting officers. Both of these functions Economic Development were responsible for until November 2014 when I was asked by the Chief Minister to take on the political policy lead for all innovation matters. This was envisaged then as a temporary arrangement. Although I was not technically part of Economic Development I was appointed as an Assistant Minister for Economic Development in relation to the J.I.F. There was a very long delay and the States only finally approved the transfer of functions in December 2015. The J.I.F. was legally transferred to the Chief Minister's Department from 1st January 2016. However, officials, i.e. implementation, has remained in Economic Development and is involved to date. It has been suggested that we now align the accounting officer responsibilities with the political arrangements and I am in discussions with officials about this at the moment. In my statement to the Assembly on 14th June 2016, I set out a number of actions that I wanted to take in regard to J.I.F. I subsequently instructed officials to engage specialist accountants Grant Thornton to review the Logfiller loan immediately and to review all other loans. This process began in July 2016 and is ongoing and this ongoing review and recommendations have resulted in the directors placing Logfiller into voluntary liquidation. Notwithstanding the provisions in the States accounts, the States has registered a claim for the full amount owed, including interest, and upon advice continues to reserve its position in respect of all interests in that company. The liquidation will now follow due process and I will update Members when additional information becomes available. My instruction to officials in June was that detailed reviews should be undertaken for each of the loans and in all aspects of the fund. I was determined to ensure that no stone would be

left unturned to establish the facts around how loans were granted and administered. The Comptroller and Auditor General is also now under way with a review into J.I.F. and I welcome that. I will ensure full co-operation and look forward to the conclusion of her work. The Public Accounts Committee will then no doubt act and wish to respond to her findings in the normal way. It is also right that I await professional advice from Grant Thornton on the need for future provisions that should be made in the 2016 accounting year, although Members should also note the volatility of start-up businesses and the manner in which businesses' fortunes can change rapidly for good and for bad. Members should be assured that action is being taken to provide support to the businesses concerned in order to maximise the chance of recovery of the balances of the outstanding risk of loans, and it is important that we do not precipitate a loss in confidence in the J.I.F. borrowers or in the counterparties with whom they are transacting or negotiating contracts. Given the delicate balance of the existing loans and the need for ongoing professional support, I shall be asking Grant Thornton to assume operational management of the loan book. This work will be supervised by a group of senior officials to protect our continued interests and to ensure that all rights are properly preserved. To achieve proper alignment of political and officer responsibilities I confirm to Members that the accounting officer responsibility for J.I.F., as I said earlier in the statement, should now move to the Chief Minister's Department and I can also confirm to Members that no further loans have been given or considered or granted since I made the statement. Also, the chairman, Advocate Tim Herbert, has indicated in February that due to other commitments he will be standing down from the board. I would like to take this opportunity of thanking him for his work. An interim chairman will be appointed from the current board members and I will be working with the Jersey Appointments Commission to that end. I am meeting the board of J.I.F. on Thursday. Credit markets are now in a very different place from where they were when the fund was set up, and consequently new recommendations as to what should happen with the remaining substantial balance of the fund and the future of the fund will follow in the new year in order to continue the original objective of boosting innovation and meeting this Assembly's original expectations and aspirations. I should also say that J.I.F., albeit important to sort out, is only one part of the vital wider work on innovation overseen by our economic adviser. I hope Members have questions on this matter, that is why I am making this statement, and I am always happy to discuss either in this Assembly or outside any aspect of the Fund.

The Bailiff:

Right, time for questions. Deputy Kevin Lewis.

9.1.1 Deputy K.C. Lewis:

Would the Assistant Minister inform the Assembly as Logfiller are now in voluntary liquidation what are the chances of recovering the payments?

Senator P.F.C. Ozouf:

I have said I will update Members of that. The States has reserved its position. I cannot add anything at the moment.

9.1.2 Deputy A.D. Lewis:

I do not wish to pre-empt the C. and A.G.'s (Comptroller and Auditor General's) review and, indeed, my own committee's view, however, I just wonder if the Assistant Minister could answer the following. What process was in place with the Innovation Fund for follow-up once money had been granted? Was that process implemented; in other words, reporting back? Also, does he think it is appropriate that when funds are dished out, after some thorough investigation of whether it should be or not, it should be given all in one go? I understand that that has happened on a couple of occasions. I wonder if the Minister could answer those 2 questions.

Senator P.F.C. Ozouf:

I think the chairman was asking me to be drawn on the conclusions of the report that the C. and A.G. and indeed our own reports are examining at the moment. All that the Innovation Fund has done is not to be criticised. I know I have seen cartoons of me being on logfillers and all the rest of it sometimes, and I think we need to be very clear about the responsibilities of politicians and the responsibilities of officials. I think this report is almost going to be a sort of a landmark of that responsibility. Whose responsibility is it? Policy and implementation. The chairman raises important issues, but I really do not want to comment until the C. and A.G. has reported. As of now, that support is being given to business, I can tell him that.

Deputy A.D. Lewis:

All I was asking was what was the process of follow-up. I assume that there was one.

Senator P.F.C. Ozouf:

I can say from my responsibilities there is follow-up now. I want it to remain for the C. and A.G. to report. I am not going to be drawn either way. It is not for me to say on something that is being reviewed.

9.1.3 Deputy M.R. Higgins:

Can the Assistant Minister tell us a number of things? We know there have been a number of failures. What are the other businesses that currently we have loans outstanding to? How are they doing? In fact, I will leave it at that for the moment and may come back with another.

Senator P.F.C. Ozouf:

It is a difficult question for me to answer. I want to be as open as I possibly can, but one of the difficulties there has been is that the Logfiller loan and the difficulties there clearly happened as a result of a leak. The figure that is in the public domain is incorrect, I can say that. It is not £400,000, it is £500,000 for that, and that is in the States accounts. They knew about that. I know there are groans around the Assembly, but that is out in the public domain and I have sent Members the extract from the States accounts of that. It is £500,000 plus rolled-up interest, so it is about £673,000. We are going to see more write-offs, so I am not going to comment. I am looking at every single one of those loans. There are no more loans being issued. Credit markets have changed. We are going to make this work and I will update Members when I can and when it is prudent and safe to do so. I am not going to cast aspersions on any of the companies because it would be wrong to do so. A careless word could lose a company a contract and that would be wrong. I hope the Deputy understands.

9.1.4 Deputy G.P. Southern:

Yes, on side 2 under: "Future Administration of the Loan Book" can the Minister just clarify the opening statement that says: "Given the delicate position of the existing loans"? Are those loans plural, so more than Logfiller, or not? Are they several loans and, if so, why are they in a delicate position?

Senator P.F.C. Ozouf:

The one loan that has been written off is Logfiller. There will be no doubt further provisions made in the 2016 accounts and I will update Members when I can about that. The reason why I have sent round the Hansard is that I think Members such as Deputy Higgins and other Members said: "Look, when you are dealing with innovation funds, these are businesses that cannot be banked." We were dealing with credit markets that were even not lending money. There will be failures. That failure is not necessarily something wrong. It should not be criticised because innovation is difficult, it is

risky. All acorns will fail. Some will bloom beautifully and create great businesses. Some will fail and there should be no surprise of that. This Assembly was under no illusion that there would be failures and, indeed, celebrating ... in fact, I think it has almost been said will I resign, will I hold responsibility for a failure of an innovation thing. My responsibility as a Minister is to make sure that the matters are held and dealt with properly and also to hold - but also with the Public Accounts Committee and the C. and A.G. - officials to do their job.

9.1.5 Deputy G.P. Southern:

If I may have a supplementary, I did not get an answer. May I hold you to account and say please answer the question of how much, to whom and what the nature of the delicacy of those loans is? That is the key.

Senator P.F.C. Ozouf:

I think I have said that they are all businesses that are in a difficult situation. These are all businesses which would not have got finance from banks in the time in which they were lent money. The total amount of capital outstanding is £2.12 million. Interest payments to date are £373,000. Logfiller has been written off to £624,000 and we still have £5 million of the fund initially put in. Those are the facts. There are 6 loans. One is going to be repaid, others we are reviewing all the progress of them, but I am not going to make any comments about them. I would urge Members to not encourage the media to make comments about businesses.

[14:45]

An ill-judged comment could effectively cast the company and cause them difficulties. We do not celebrate failure. We love doing it sometimes and we should not.

9.1.6 The Deputy of St. John:

Could the Assistant Minister explain why he has engaged specialist accountants when we have Internal Audit and C. and A.G. and what he means between political policy determination and implementation, please?

Senator P.F.C. Ozouf:

Good question. Grant Thornton are almost the only firm in the Channel Islands that deal with liquidations. The Internal Audit Department is a controlling department. They do audits. They do not do management. I think the challenge is that the States would not really ... we do not, many of us in this Assembly I do not think, believe in nationalisation. We do not want to nationalise banks. Running a loan book requires specialist management of banking. It is about lending money and then making sure that it is lent out properly, perhaps in a staged payment arrangement, controls are put in place, monitoring put in place, all the questions I was previously being asked. That is why we are asking Grant Thornton to carry out that. I should also compliment Jersey Business for the actions that they have been taking. Internal Audit and the C. and A.G. have an audit role, which is different from management. The Deputy herself worked in a bank so she knows what bankers do compared to internal auditors.

The Deputy of St. John:

Sorry, just a follow-up: he did not answer about ...

Senator P.F.C. Ozouf:

I apologise, yes. I think it is really important that we establish some facts. I am willing - as are all Ministers and everybody that stands in this Assembly, which is trusted with responsibilities - to take responsibility for the things we are responsible for. We are responsible for policies. We look to our officials to implement those policies and almost sometimes this is increasingly blurred. That

is why we have the P.A.C. that holds officials to account and Corporate Services and, in my case, Deputy Brée's panel. He holds me politically accountable. He is going to hold me accountable for the political policy issues and where there is a blurred line, then I think we need to deal with this in the same way that we were dealing with questions this morning on travel expenses. Officers are accountable under the Public Finances Law. They have responsibilities. They are personally accountable for implementation. Ministers are responsible for policies, subject sometimes to this Assembly's approval, and we need to be clear about this so that we can have the right responsibilities in the right place. But it does not mean sacking people. It does not mean celebrating failure. It does not mean witch-hunts. It means being clear about who is responsible for what and making it happen and putting the correct controls in place.

The Bailiff:

Can I mention to Members that there are 4 Members who have not yet had the opportunity of asking any questions. There is 5 minutes left. Senator, be quick in your answers. Senator Ferguson.

9.1.7 Senator S.C. Ferguson:

What gave the Executive the idea that the fund should be transferred to the Chief Minister's Department? This is the second example of failure of due diligence within a department. What actions are being taken?

Senator P.F.C. Ozouf:

The Chief Minister can answer himself. I think that he wanted to put innovation because it is more than just the fund. Innovation, digital, financial services and competition brought together is greater than the sum of the individual parts.

Senator S.C. Ferguson:

No, he has not answered the questions.

9.1.8 Deputy R.J. Rondel of St. Helier:

Perhaps on a positive note, would the Minister be able to give us examples of companies that have bloomed beautifully so far in financial terms?

Senator P.F.C. Ozouf:

There are lots of companies that have bloomed beautifully and they are not only companies that have been having grants given by the Innovation Fund. That is what innovation is all about. It is about creating the signposts. There are many businesses that came to the Innovation Fund that have been dealt with by Jersey Business, by Economic Development, that have gone on to find the plentiful funds that are there. I think what we have learnt is since credit markets were not working in 2012 there is a plentiful amount of funds but it is about getting the right business plan, and where a business is going to fail that we say: "Stop that, move on to something else, to something that can be funded." There are many successes and I will report as soon as I can, but I cannot report on the 6 businesses at the moment.

9.1.9 Deputy C.F. Labey of Grouville:

My question was on the same lines as Deputy Rondel. I think it would be extremely helpful to put this into context if the Assistant Minister could tell us about the successes of the Innovation Fund, Stumpy Dog for instance, and other successes this fund has had.

Senator P.F.C. Ozouf:

The Deputy is tempting me. Of course, Stumpy Dog is a great example of that and as soon as I have permission to say it ... she has mentioned it and I hope it is okay. I know they are a success. There has been huge success in businesses being set up through the good work of Locate Jersey, Jersey Finance, Digital Jersey. I walk around and see businesses on a day-to-day basis which are starting up and doing world-beating products in Jersey.

The Bailiff:

Three minutes left, Senator. Deputy Labey.

9.1.10 Deputy R. Labey:

Back to Logfiller, the Assistant Minister has graciously accepted responsibility. Where does his fault feature on the timeline?

Senator P.F.C. Ozouf:

I have been very clear, Ministers are responsible for policy. Officers are responsible for implementation. That is being reviewed and tested. That is what I want to understand. I have signed, as other Ministers previously have signed, Ministerial Decisions upon advice, not because we want to put £1,000 in the free market at Newmarket. It is because we act upon advice. Is that advice right and has it been followed through? That is the crucial question and we are going to see that answered in the C. and A.G.'s report who I have full confidence in.

9.1.11 Deputy S.M. Brée:

Will the Assistant Chief Minister clarify whether or not by virtue of the fact he should be asking Grant Thornton to assume operational management of the loan book, by virtue of the fact that the chairman of the J.I.F. board is standing down in February, whether or not the J.I.F. board will continue to exist?

Senator P.F.C. Ozouf:

There should be no aspersions cast upon the chairman of the Innovation Fund, Advocate Herbert. He has discharged his work beyond the call of duty, I think. He indicated to me in February, well before anything was under way in relation to the difficulties. The board will continue but it is going to evolve. We are going to bring down the board in terms of numbers. I will inform the Scrutiny Panel of what we are going to do and bring forward our proposals about getting it working better. The world has changed. We have to move on and we are going to make innovation work. We are going to continue growing the economy, record numbers of work. How has it happened that the Minister for Social Security has jobs for people in Jersey? It is through innovation, so it is working in a sense.

9.1.12 Deputy M. Tadier:

In a previous statement to this Assembly on 14th June, the Minister told us there is a 50/50 chance of failure, so a bit like flipping a coin in other words, 50 per cent chance you win, 50 you lose. What conditions have been put in place in the past, and if they were not why were they not, to make sure that when a company is successful that the taxpayer and the fund gets the benefit from that; not simply in the creation of jobs, of course, but by paying back some of their success and sharing their profits with the original sponsor?

Senator P.F.C. Ozouf:

The question is well made. I do not understand why the equity thing has not been done, but there is an equity trigger that could be used and I am looking into that at the moment.

9.1.13 Deputy A.D. Lewis:

The Minister referred to banks not lending and the Innovation Fund stepping in where they cannot. Banks would normally ask for guarantees of some kind. Is the Minister saying that there are absolutely no guarantees in place for these types of lending or are there some guarantees? Do the recipients of the loans have any skin in the game, as he has described it in the past?

Senator P.F.C. Ozouf:

They have the skin in the game of their time, their effort, their reputations, and these are businesses that would not have got bank funding. Let us be clear. That is the facts. In fact, these businesses would not have been banked, but sometimes great ideas with people with no assets need to be supported and that is why we need to create the culture of success. I take the message of this Assembly. I think I have 20 seconds. I cannot answer anything else, but I will come back and roll out successes about exactly all the things that have been done. We should not just focus on the negative. Yes, there are issues here. We will learn from them, but there is a great deal more that has been done good than has been done bad.

The Bailiff:

That last question, Senator, asked whether or not guarantees were taken. Is that the policy, to take guarantees?

Senator P.F.C. Ozouf:

Where possible, yes. We are looking at every single loan, but these businesses are not businesses that could have provided guarantees because otherwise they would have got their funding elsewhere. Let us not rewrite history. Members knew what they were doing. They were told. Deputy Higgins and other people said these were unbankable propositions but were potentially great innovative ideas to great jobs and growth. Let us be clear. Let us not rewrite history and blame people unfairly for decisions that were being made in good faith. Let us hold the right people to account, not the wrong people to account.

PUBLIC BUSINESS - resumption

10. Draft Financial Services Ombudsman (Case-fee and Levy) (Amendment) (Jersey) Regulations 201- (P.101/2016)

The Bailiff:

That brings the questions to an end. We now come to the Draft Financial Services Ombudsman (Case-fee and Levy) (Amendment) (Jersey) Regulations, P.101/2016, lodged by the Minister for Economic Development, Tourism, Sport and Culture. I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Financial Services Ombudsman (Case-fee and Levy) (Amendment) (Jersey) Regulations 201-. The States, in pursuance of Articles 6 and 26 of, and paragraph 4 of Schedule 2 to, the Financial Services Ombudsman (Jersey) Law 2014, have made the following Regulations.

The Bailiff:

Minister, do you wish to propose the principles?

10.1 Senator L.J. Farnham (The Minister for Economic Development, Tourism, Sport and Culture):

The office of the Financial Services Ombudsman was required to make recommendations to the Minister for changes to its funding structure following the end of the 2015 calendar year. Given it

has only now been in operation for a year ... in fact, it is the one-year anniversary today. It was 16th November 2015 that the office of the Financial Services Ombudsman opened for business. It is now proposed that the equal sharing of operating costs between Jersey and Guernsey should continue until the end of 2018. By that time a sufficient volume of complaint data will have been accumulated to reasonably permit consideration of other funding structure options. It is all in the report, but just for Members' benefit the current arrangement is the costs of the levies are distributed 50 per cent by Jersey and 50 per cent by Guernsey. That is a system that has worked well in its first year and we are asking to extend it for another 2 years.

The Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the principles kindly show. Those against? The principles are adopted. Deputy Brée, does your panel wish to scrutinise these regulations?

Deputy S.M. Brée (Chairman, Economic Affairs Scrutiny Panel):

No, we do not.

The Bailiff:

Do you propose them *en bloc*, Minister?

Senator L.J. Farnham:

Yes, the full Regulation *en bloc*.

The Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the Regulations kindly show. Those against? The Regulations are adopted. Do you propose them in Third Reading?

Senator L.J. Farnham:

Yes.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak? Those Members in favour of adopting the Regulations in Third Reading kindly show. Those against? The Regulations are adopted.

11. Draft Sea Fisheries (Inshore Waters) (Amendment No. 2) (Jersey) Regulations 201- (P.102/2016)

The Bailiff:

We now come to the Draft Sea Fisheries (Inshore Waters) (Amendment No. 2) (Jersey) Regulations, P.102/2016, lodged by the Minister for Environment. I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Sea Fisheries (Inshore Waters) (Amendment No. 2) (Jersey) Regulations 201-. The States, in pursuance of Articles 2, 5 and 29 of the Sea Fisheries (Jersey) Law 1994, have made the following Regulations.

The Bailiff:

Minister, propose the principles.

11.1 Deputy S.G. Luce of St. Martin (The Minister for Environment):

Members will, I hope, remember a debate at the start of the summer concerning bass stocks. My 2 propositions this afternoon are just a continuation of the measures to preserve those stocks and with Members' leave I would like to address the preamble to both propositions at this time. Bass is not only an important commercial fish species but also a recreational fish that arouses great passion here in Jersey. But, and I cannot stress this enough, we must keep at the forefront of our minds the fact that current measures are needed, indeed are imperative, to ensure that future generations, our children and grandchildren, and our commercial fleet of fishermen can all enjoy fishing for the bass in the years and decades to come. Not only are we still catching too many bass to allow that stock to maintain itself at a sustainable level, we are still perilously close to a point where we will be below what is known as the maximum sustainable yield biomass trigger, the level of fish required to maintain sustainability. Put plainly, we are nearly at the point where even if we stopped fishing for bass completely there will not be enough stock left to get the stock back to a sustainable level. Back in June I proposed a package of measures to protect bass stocks, measures that were debated and approved by this Assembly. The package included an increase in the maximum size of bass, limits on the lengths of nets set on the beach, measures to control the amount of fish taken, and the amount of gear that could be set. I was thankful to Members for their comments during that debate and took away the message that Members fully supported the protection of our fish stocks. Indeed, some Members, Deputy Tadier particularly, did not think that I had gone far enough. I make no apology for coming back today with further changes to those Regulations in such a short timespan as I gave an undertaking to do so if the situation required. Indeed, during the debate back at the beginning of the summer I said the following: "I would say to Members that I am not unaware of the indiscriminate way that nets and trots catch fish and I will not hesitate to reduce the length of nets or the number of hooks further.

[15:00]

It is really difficult to strike a balance, but I would say this. If evidence comes forward to show there is a disconnect between the bag limits, the length of net and the number of hooks, I will not hesitate to come back to the Assembly and change it." Consequently, today I am bringing 2 amendments to the Regulations to the Assembly that I feel continue to improve the management of bass. First, an amendment to the Sea Fisheries (Inshore Waters) Regulations and, second, to the Sea Fisheries (Inshore Trawling, Netting and Dredging) Regulations. Since the debate in June, the most recent scientific advice on the bass stock has been published by the International Council for Exploration of the Sea, I.C.E.S., the official scientific body that advised the E.U. (European Union) on fish matters such as these. On 30th June 2016, they stated that the recommendation for catches of bass in 2017 was a reduction for both the commercial and recreational sectors to zero. Indeed, in the press in the U.K. recently I spotted this, an article headlined: "Now sea bass is too endangered to put on the dinner table." I cannot pre-empt what decisions will be made on an E.U.-wide basis or at a local level concerning the future of the management of bass, but what I can do is to be in the best position possible to act in a timely fashion should it be required. Both the amendments today propose simply to allow the Minister to amend the amount of fishing gear set on the beach by order rather than by amendment to the regulations but, to be absolutely clear, if these amendments are approved today I would intend to sign a Ministerial Decision to move as soon as I can to a zero limit for both trots and nets set from the beach. I have considered the very real concerns expressed by scrutiny and other Members to the issue of Ministerial Order rather than amendment to a regulation and the perception that orders are potentially subject to less scrutiny. While I acknowledge that fact, in this instance I am convinced it is an appropriate method. This House has debated and approved the concept of limiting the amount of fishing equipment a fisherman can set

on the beach. The exact numbers simply reflect best evidence available concerning the state of the stock. I can give my assurance that I would not - and I cannot think a future Minister would either - act without taking the advice of officers, the Marine Resources Panel and the relevant stakeholders. Indeed, the Marine Resources Panel advise me on all decisions I take in this regard. These amendments today are simply an improvement to getting the right thing done in the most efficient and timely manner. We often refer to red tape and demands of State taking our time, but I see this as a small step in reducing some of that red tape and I hope Members will agree. To move to the specific proposition, Amendment P.102/2016, the amendment should read simply: "In regulation 3(e)(a) of the Sea Fisheries (Inshore Waters) Regulations 1998, after the words 'exceeds 50' there shall be inserted the words 'or such other number that the Minister may specify by order'." I hope I have provided Members with an appropriate summation of the principles in my speech and I move those principles.

The Bailiff:

Are they seconded? [**Seconded**] Does any Member wish to speak on the principles? The Deputy of St. Mary.

11.1.1 The Deputy of St. Mary:

By way of clarification, these measures do, of course, refer to recreational fishermen. Members may recall that when the raft of measures was considered in the Assembly last June, Members had received shortly beforehand a whole series of emails from fishermen concerned at the fact that they were being, what they would call, discriminated against, whereas the commercial sector was not. My understanding from conversations and discussion at the last public hearing between the Environment Scrutiny Panel and the Minister was that if the E.U. so recommend, that the bass limit should be reduced to nil, then the Minister would similarly invoke that restriction on commercial licences again as from 1st January. I would appreciate it if in his summing up he would clarify that.

11.1.2 Deputy M.R. Higgins:

The previous speaker raised part of what I wanted to. I think if the bass stocks are in the danger that he says then we have to support these measures and I definitely support it. However, I am concerned that commercial fishing does continue. I have noticed that if you go into a restaurant there is no shortage of sea bass on the menu, nor is there any shortage of sea bass in the supermarkets. So either there is a shortage or will be a shortage. If the commercial fishermen are still - and I use this term loosely - hoovering up what bass stocks there are, then surely we should be thinking about bringing in curbs on commercial fishermen. I hope the Minister again will expand on his actions in that regard.

11.1.3 Deputy G.P. Southern:

One question to ask first is: what is the volume of commercial bass taken versus the recreational take? Because I think that makes a difference. Secondly, I am agin it. I lost it there for a minute. Yes, if this is moving from regulation to order then I am against it, I am agin it, because there should always be opportunity for this House to debate something that is not a proven immediate instant act that the Minister must take at any one time to avoid a regulation and bringing it to the House, albeit briefly, so there is no need for orders. Orders versus regulation restricts the capacity of this House to consider matters.

11.1.4 Deputy A.D. Lewis:

I am pleased to say I caught a bass this year. I had not done for a long time. Actually 2, and I put them back because they were undersized. So, they are there, which is great and that is partly due to the efforts of the department that the Minister oversees. However, I got some interesting feedback from a recreational fisherman who catches a lot of bass, in fact has had about 200 this year and

released virtually all of them. What he was doing was assisting with a tagging programme and he did that for quite a long time and got absolutely no feedback from the department at all as to what the results of the tagging programme was. So I would like to know from the Minister is the tagging programme still going on and is it giving the results that he needs to find out, particularly with reference to recreational fishermen who tend to be fishing more in the gullies in their canoes and so on, not out with trawlers in the deeper water? From my own experiences of those fishing grounds, they are alive with fish, I think because they are hiding from the trawlers, they are in the rocks, so I do hope that further restrictions are not imposed on the responsible recreational fishermen, many of whom are returning the bass straight back to the water, as tempting as it is to eat some of them. Many of them are undersized and you can only eat one at a time, although perhaps there are Members here that would like to try to do more than that. I just wondered if he could confirm that the tagging operation is still going on and why those that volunteered and participated with that process have not been kept informed as to how it was going.

11.1.5 Deputy K.C. Lewis:

I am just curious as to whether the Minister was aware of the bass sold in local fish shops and restaurants. What is the percentage of locally caught bass and how much is imported from elsewhere if at all?

11.1.6 Deputy M. Tadier:

Deputy Andrew Lewis is clearly a better fisherman than I am, but I did catch my first bass this year after the new limits had come in and it was by accident. I was actually going for mackerel and I caught it on the yan, which has the 3 hooks on it. So in some ways I was quite pleased to do that; in another way I felt slightly bad because when I got the bass up it was slightly small. It was about 40 centimetres, so it shows that the new limits in this particular bass's case were helpful because that bass was returned to the water where it would not have been under the old limit. But I was concerned because the bass was not showing much movement at first and one imagines that any other fisherman might think it is dead, I might as well keep it and put it in the bag anyway and take it home because it is wasteful to do otherwise. Thankfully, I did not have to face that dilemma for too long because the bass came back to life and I put it back in the water. Hopefully it survived but I have no way of knowing that. So I think that emphasises to me partly the importance of this issue that the regulations do make a difference hopefully to that bass's life and to the stocks in general, but it does reiterate the concerns that I had in the first debate, which I expressed. Now, if you have 50 hooks there and you have potentially 50 bass on there, of course, but it could be anything from zero to 50 being caught, being left for any length of time, we do not know what the chances are of those bass surviving. It may well be that they are sturdy creatures but we do not know. Obviously, the longer they are hooked ... apart from some suffering that it will entail, the key thing is obviously the stocks. It does not seem to me right that we have any set hooks on a beach when they are indiscriminate and that argument has already been had. So part of me is absolutely supportive of doing whatever we can to reduce the indiscriminate killing of bass, many of which will be undersized anyway. I think from that point of view we all come from the same point of view and certainly the Minister does. But I do have to follow up that. Not a constituent of mine but somebody who is a keen fisherman did reiterate to me, not so much on the bass front but just the fact that if this is being made by order rather than by coming back to the Assembly necessarily, which the order will not have to, of course, then where does that leave this consultation? When I raised the issues in the past saying that this does not go far enough, we should ban hooks altogether, and of course this would allow the Minister to reduce 50 to zero if he wanted to, so he could presumably put a line out there with zero hooks on it, which would be a pointless exercise of course, it would allow the Minister to do that. We were told: "Oh, this is a great Jersey past-time and tradition and we should not make sweeping changes without consulting with the public." Of

course by putting this into an order rather than into any other format to come back to the Assembly, we would not even be able to have the debate ourselves and the public would not be able to have that debate either. Nonetheless, my overriding concern in this is not one of procedure, although I think it is necessary to put that on the record, because I think generally we should be not giving up our autonomy as an Assembly unnecessarily. But I think on this particular issue my concern lies with the fish stocks for future generations, for the fish of course but also for humans. So I will be supporting this principle but I would say ... I would like to ask the Minister if he could reiterate what the commercial limits are for bass stock because it seems to me that if we do not take action on whether it is set nets, lines and, in particular, commercial limits, and ban them altogether, he said that even if we stop fishing now bass is still endangered, then it seems to me that the question is why is the Minister bringing about this enabling amendment today rather than telling us that he wants to move to a zero position, which we could hopefully all decide upon and have an informed debate about.

11.1.7 Deputy R. Labey:

Of course I absolutely support the Minister's efforts to conserve bass stocks but I wonder if the Minister or his department have any figures for either the numbers or the tonnage of bass caught in nets and trotlines as well as those landed by rod and line, and what they are. I wonder how has the Minister analysed the economic benefit of shoreline fishing as this form of fishing usually provides a fresh fish direct to local households for consumption as free food. Has the Minister studied the impact of sport fishing in the Island and can he provide details of its value. Jersey has regularly staged fishing competitions that attract anglers from outside the Island. Very often the anglers bring family members and stay for several days ensuring that the economic value to Jersey is considerable on a per fish caught basis. How does sport fishing feature in the Minister's strategy and when it comes to commercial fishing, which I think the House in general is very worried about, where catches can be offloaded at foreign ports, can the Minister indicate what the direct value to Jersey is with commercial fishing? I suspect this is a very dubious area, especially as commercial fishing must be the main contributor to the depleting fish stocks.

The Bailiff:

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

11.1.8 The Deputy of St. Martin:

I will try to address all those concerns as they were put to me and I will start in reverse order and address Deputy Labey.

[15:15]

Certainly he raises an issue about landing locally caught fish and shellfish in foreign ports. Not regarding the social security implications, and certainly the crew and captain has to reside in Jersey to pay social security, that is done in such a way as that the receipts from those landings on foreign ports return to the Island is very important to try to link the economic side of fishing to the Island. I work very hard to make sure that Jersey boats continue to do that. It is very important that that happens. Commercial versus the commercial amount that is allowed to be taken, I can tell the Deputy that certainly there is a ban or there was this year, and one of the difficulties is that in the last 2, 3 years the limits change annually from the E.U., which is one of the reasons I am seeking to move faster because I have been frustrated almost continually. Even bringing these amendments today I had hoped to do that before 15th October, because that is the date that the trotlines can be set from. I did not even manage to do that. The commercial limits this year, we had a 6-month ban across the board, apart from a small window for netting, and then in the second 6 months of the year the commercial fleet can start to fish. But I have to tell Members that while in the past we may all have enjoyed quite a lot of locally caught sea bass on menus in local restaurants that those

people that prosecuted that type of amenity have not done that successfully in the last 2 or 3 years because the volume of fish is just not there. Going out and trying to catch bass on a hook and line might have been enjoyed in the past, it is just not possible to make a living out of that any longer. When it comes to the volumes, Deputy Labey also asked me about the volumes coming from nets and trots and the volumes coming from the shore fishing. It is not the volumes that I am looking at here. What I am saying to myself is, and I go back to Deputy Tadier's point, I now have some more evidence to show that these stocks are in further decline and what I am concerned about is the recreation fisherman who sits on a rock can take one fish. The bag limit is one fish. While at the moment the limit of the person who sets the trots or the nets on the beach ... trots, for example, 50 hooks, and Deputy Tadier has already mentioned, the ability there to catch potentially 50 fish when your neighbour is sitting on a rock and he can only take one fish, and of course the other problem about the indiscriminate way that trots and nets work is that by the time you get back to them, the tide has fallen, there is a reasonable chance that those fish may be dead. How wasteful of a resource would it be to go down to your 50 hooks and find you have 10 fish and only be able to take one home? The rule is one fish. Deputy Tadier spoke about resilient fish, and, yes, one of the reasons we do have an ability to take one fish as a rock fisherman or a boat fisherman with a hook and line, is that the Jersey local sea bass is a very strong fish. It has the ability to be caught and to be released, unlike some other species which almost the moment you have them on the boat they will die or the rock will drop from exhaustion. Bass is very resilient. It has good percentage resilient rates and if you put it back it will survive. Again, Deputy Tadier, order versus regulation, and I understand that some Members will not be happy about the possibility that I take power and have the ability to move quickly under order whereas normally I would come back to regulation. But these 2 particular amendments today are only concerning 2 things: the number of hooks set on a trotline on the beach and the length of net set from the beach. Those are the only 2 things, and again I say I have been hugely frustrated by my inability to move as quickly as the E.U. regulations have moved. That is one of the reasons why I seek Members' leave to reach these amendments today. I am just looking at my notes here. Deputy Kevin Lewis, the amount of fish sold locally, and I would say also to Deputy Higgins, it is important when you read your menu if it says "local sea bass" or "sea bass" there is a very subtle difference and quite often - increasingly more often - sea bass on a menu will not be locally caught because there just are not the amount of fish being caught locally. Certainly this article in the paper from the U.K., which I referred to, is saying if you want to eat sea bass, that is fine but buy farmed sea bass. Certainly restaurateurs prefer farmed sea bass because they can buy the size that sits on the plate and they can buy 20, 50, 100, all exactly the same. They are easy to use, easy to cook. They sit beautifully on the plate and that is what they would prefer. There are not very many sea bass being sold locally unfortunately and the whole idea of these amendments is to try to preserve the stock for the future, so in the future we will have more locally caught sea bass. Deputy Andrew Lewis mentioned the tagging programme, and I have to say to him that we are not continuing with that at the moment. While we tried very hard the results were not great. It was a very costly exercise to do but something we have managed to work out is that fish do swim vast distances in some of the evidence that we have before us. The fish come down from the North Sea to here and similarly fish in the Irish Sea will swim down nearly as far as the Bay of Biscay. Deputy Southern asked about ... he said he was unhappy about again taking some regulations and allowing me to have the order. But I would say to him, as I said in my speech, I take all my advice and all my recommendations from the Marine Resources Panel and I certainly would not be looking, and I am sure any future Minister, to move without a recommendation from those. Again, a note here from Deputy Higgins. The reason we do not see very much sea bass caught locally is because it is just not commercially viable anymore. Certainly the people who were successful with it 5 or 6 years ago they may try for a day or 2 these days, and they soon give up. I think that is about it, and I hope Members found my explanations satisfactory and I would ask for the appel.

The Bailiff:

There are 2 Members at the back who do not.

Deputy G.P. Southern:

Just one question not answered, which was the volume of commercial take versus recreational take.

The Deputy of St. Martin:

I do not have that information in my brain. I will let the Deputy have the numbers.

The Bailiff:

All those Members in favour of adopting the principles, kindly show.

Deputy M. Tadier:

Can we have the appel please?

The Bailiff:

The appel is called for and I ask Members to return to their seats. The vote is on whether to adopt the principles of P.102 and I ask the Greffier to open the voting.

POUR: 40		CONTRE: 1		ABSTAIN: 0
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
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				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy of Grouville				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy A.D. Lewis (H)				

Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

The Bailiff:

Minister, do you propose the 2 regulations *en bloc*?

The Deputy of St. Martin:

Yes, please, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the Regulations kindly show. Those against? The Regulations are adopted. And in Third Reading, Minister?

The Deputy of St. Martin:

Yes, thank you, Sir.

The Bailiff:

Seconded? **[Seconded]** Does anyone wish to speak? Those in favour of adopting the Regulations in Third Reading kindly show.

12. Draft Sea Fisheries (Inshore Trawling, Netting and Dredging) (Amendment No. 3) (Jersey) Regulations 201- (P.103/2016)

The Bailiff:

We come now to P.103, the Draft Sea Fisheries (Inshore Trawling, Netting and Dredging) (Amendment No. 3) Regulations and I ask the Greffier to read the citation of the draft.

The Deputy Greffier of the States:

Draft Sea Fisheries (Inshore Trawling, Netting and Dredging) (Amendment No. 3) (Jersey) Regulations 201-. The States, in pursuance of Articles 2, 5 and 29 of the Sea Fisheries (Jersey) Law 1994, have made the following Regulations.

The Bailiff:

Minister, do you propose the principles?

12.1 The Deputy of St. Martin (The Minister for Environment):

I have very little to add to the preamble of the previous proposition. The one we have just voted on was to allow myself, the Minister, to change the number of hooks set on the beach by order and this proposition is purely to allow me to change the length of net that can be set on the beach by order. Once again the setting of a net between rocks and gullies in our inshore waters is indiscriminate and once again when the tide has gone out and you return to that net, maybe in the middle of the night, it is quite possible that a lot of the fish that are in there may not be alive and as a recreational fisherman you are only entitled to take one fish home and that is not the best use of resources. The

only thing I might say is that as with the trots, many of these nets are set in the south-east corner of the Island and there has been some reference already to the fact that there are some fish still there and that is great because that is the area of the Island where we see a lot of our young fish in a really important area to build up the stock. The amendment before you, P.103, is purely to allow the Minister to change the amount of net that is set in those areas and others by order. So I propose the principles.

The Bailiff:

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

12.1.1 Deputy K.C. Lewis:

Following on from what the Minister just stated regarding being a very wasteful process, is it not a case for phasing out these particular nets altogether?

12.1.2 Deputy M. Tadier:

I was wondering whether the Minister might give an undertaking to the Assembly to reassure at least the one Member, but maybe other Members who have got concerns, about the order being used rather than regulations, that he will give advance warning at least to the Scrutiny Panel before making any future order so that the relevant panel can look at it, but preferably to States Members. I know of course that there is the usual 14-day period for orders before they come into force, which would be there as a safeguard anyway, but it might be good if the Minister could give that undertaking. I do not want to stray too far from this actual specific, which is quite limited, but I think obviously it does focus on the preservation of bass stocks. I was quite interested to hear that although it probably stands to reason one does not always click the fact that there is lots of farmed bass out there - as there is farmed salmon and other types of fish - which presumably then do not need to meet the size limits for ones coming out of the sea because the aim is not the size limit, it is to do with preserving sea stock. That is an interesting reminder but it does beg the question whether in the future a more holistic approach to saving bass stocks should not simply be to put these regulations in but to ban the sale of unfarmed sea bass because it seems slightly contradictory if the global position is to try and preserve stocks. Not just in Jersey or Guernsey but around our waters if we can import non-farmed sea bass, which might have been caught in Scotland or elsewhere, bring it to Jersey for sale in our supermarket and that is obviously affecting bass stocks in the sea which are still being consumed. So there is a bigger issue here and one would of course hope that that it would be the individuals who, without the need for legislation, would think about the long-term sustainability of what they eat, not simply in terms of seafood, although that is perhaps a key issue, there might be other steps that the department can take to be proactive. For example, when it comes to seeing whitebait in a restaurant, which is a generic term, often they consist of some species of fish which are very endangered already and I think people do not always know what they are eating, if they had more information and there is perhaps a joined-up approach that the Minister could take with other departments to make sure that we all eat sustainably. As I have said before, I am concerned that we are making these, in effect, not aesthetic changes but small changes which will have hopefully some effect but leaving the commercial fishermen out there, and that is where the real damage is done, of course, when you are allowed to take huge amounts of fish. Also it is difficult to regulate that sometimes when these things take place far out to sea and perhaps at other ports. So I just put those thoughts on the record. But I for one would like to see these nets banned altogether preferably, and the hooks as well. I would be interested to know whether a temporary ban for a few years might also be an option which would still of course allow recreational fishing, which could still have an economic benefit, even though I have always found it slightly bizarre to catch fish and put them back. That is not how I was brought up. It was done for subsistence but I appreciate that the key thing here is to preserve the stocks. It could be a

win/win in the sense that if we can keep the stocks up but also not to get rid of a past-time which the Island has enjoyed for many decades and centuries then that could be something to be looked into.

12.1.3 Deputy A.D. Lewis:

I just wonder if the Minister could answer this slight conundrum. I know that when consultation took place when these restrictions were going to be imposed with the likes of restaurants, who favour small bass because they can fit them all on a plate. Now you will hopefully see filleted bass so that it does fit on the plate because a 42-centimetre bass will not fit on a plate. However, how do you distinguish and how do you police restaurants who are serving the end product and differentiate between a farmed bass and a locally caught bass? I am not suggesting we suddenly have lots of bass police, far from it. It must be hugely difficult to police. I was just wondering how the Minister intends to police this. With rod fishermen, for example, the majority that I know are very responsible and want to see stocks survive and return into the water.

[15:30]

But in the case of people trying to acquire locally caught fish and then sometimes saying it on the menu and sometimes not, how do you know whether that farmed fish, which is under often 42 centimetres, is from local waters or not? Perhaps it is a conundrum that is not worth further investigation because it would be hugely difficult and expensive to police. But an interesting question, I hope, nevertheless. I know restaurateurs were concerned about this because they like to put a whole bass on a plate and a 42-centimetre bass does not fit on a plate.

12.1.4 The Deputy of Grouville:

Possibly this should have been addressed in the previous proposition, in which case I apologise. But could the Minister give any indication as to how long we are going to have to comply with E.U. regulations? Complying with moral duty to keep sea stocks is one thing, and I applaud the measures he is bringing in for our sea stocks, but I would just like to know is it 2 years that we have got to comply with these E.U. regulations or what plans are in train post-Brexit?

The Bailiff:

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

12.1.5 The Deputy of St. Martin:

I thank the Deputy of Grouville for the question about Brexit but I cannot, I am afraid, offer her any definite words as to where we are headed other than we would very much like to enjoy the situation we have at the moment. Whether that continues into the future I do not know. How long will these restrictions last? Again, if the stocks recover and the recommendation in the E.U. is to increase the amount of fish that can be taken I will be only too happy to follow suit. One of the difficulties I have is that if I decide not to follow the E.U. regulations on the catching of bass, for example, it would not be impossible that I might impose a complete ban on the Jersey commercial fisherman who might find himself fishing 4, 5 miles off our shores alongside a French fisherman who has no restriction or little restriction. I find it very difficult or I would find it very difficult to ask local fishermen to fish at different recommendations of those that their French neighbours are working under. To address issues raised by Deputy Tadier, Deputy Andrew Lewis and maybe the Deputy of Grouville as well, it would be the easiest thing in the world for me, and in some ways I hope that when we get to 1st January we find that the E.U. recommendations for the catching of bass is zero, both for recreational and for commercial fishermen because that will be by far the easiest thing to police. There will be no fish caught locally and the only fish that you will be able to see on menus will be farmed. I would hope that that would be fairly easy to spot. I take the point that Deputy Andrew Lewis makes. The policing of this is not easy. It is time consuming and costly. There

may be a possibility at some time in the future that we would look to licences to buy fish or licences to sell fish, but there are ways that we can approach that to make sure that fish are being sold properly. Deputy Tadier: advance warning. Yes, I would be only too happy to give an undertaking to the Assembly that not only would I warn Members but I would also speak to Scrutiny before I made any changes. I have mentioned the long-term sustainability of all fish stocks and I would hope that we would all do whatever we can to preserve those stocks. Catch and release is certainly something that we must look at it. In the past we have had some wonderful publicity in fishing magazines from fishermen who come over here to catch bass in the south-east corner. I would like to take this opportunity, if I can, to thank all those recreational fishermen who prosecute the idea of catching fish and releasing them. They fish for the sport and the enjoyment of catching the fish, not the taking of the fish home and eating. We have very, very many local fishermen that do that. Finally, I just address the point that Deputy Kevin Lewis made. I would reiterate it would be much easier if the ban is altogether but I do have this difficult decision to make at all times about traditions. I come from a traditional Jersey family and I understand 100 per cent the traditions that families have taken over the very many years and the way they have caught their fish. But the way I look at it these are measures I hope are going to be short-term measures and they are going to allow those families in future generations to continue to catch these fish in the ways they have in the past. So I say to those people who say: “You are taking away my family’s right, the traditional way we have caught fish” I say to them: “This is a short-term measure and let us hope that these measures put us in a situation where your future generations of your family can continue to catch fish in those ways as well.” I will leave it there. I hope I have answered Members’ questions and I would ask for the appel.

The Bailiff:

The appel is called for. I invite Members to return to their seats. The vote is on whether to adopt the principles of P.103, the Draft Sea Fisheries (Inshore Trawling, Netting and Dredging) (Amendment No. 3) Regulations and ask the Greffier to open the voting.

POUR: 43		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
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				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy of Grouville				
Deputy of Trinity				
Deputy K.C. Lewis (S)				

Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

The Bailiff:

The Deputy of St. Mary, 2 things. The first of them is I apologise for not asking you on the last occasion if you wanted to scrutinise the Regulations. I hope you did not. And you do not wish to scrutinise these? Thank you. Minister, do you wish to propose these Regulations *en bloc*?

The Deputy of St. Martin:

Thank you, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the Regulations kindly show. Those against? The Regulations are adopted. In Third Reading, Minister?

The Deputy of St. Martin:

Thank you, Sir.

The Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting in Third Reading kindly show. Those against? The Regulations are adopted.

13. Jersey Appointments Commission: reappointment of Commissioner (P.106/2016)

The Bailiff:

We now come to P.106, the Jersey Appointments Commission: reappointment of Commissioner lodged by the States Employment Board and I ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion - in accordance with Article 18(1) of the Employment of States of Jersey Employees (Jersey) Law 2005, to reappoint Professor Edward

Sallis, O.B.E. (Order of the British Empire) as a Commissioner of the Jersey Appointments Commission, until 31st October 2017.

Senator I.J. Gorst (The Chief Minister):

Could I ask Senator Green to act as rapporteur?

13.1 Senator A.K.F. Green (States Employment Board - rapporteur):

This is a straightforward proposition. As it says, it is about the reappointment for one year of Professor Edward Sallis. Those that know Professor Sallis know that he had an outstanding academic career which was recognised by Her Majesty in 2010 by the award of the O.B.E. in the New Year's Honours list. Professor Sallis has been a member of the Commission or a commissioner for nearly 4 years now and we are proposing now to extend it just for one more year to tide us over a very busy period for the Commission. I do not think I can say much more other than Professor Sallis has been an outstanding member of the Commission.

The Bailiff:

Is the proposition seconded? **[Seconded]** Does any Member wish to speak? Those in favour of adopting the proposition kindly show. Those against? The proposition is adopted. That brings Public Business to an end other than the arrangement for public business for the next meeting; Chairman.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

14. The Connétable of St. Clement (Chairman, Privileges and Procedures Committee)

The arrangement of public business is proposed as per the Consolidated Order Paper. I should remind Members that the next sitting is on 29th November but we have a special sitting on the day after, on 30th November at 9.30 a.m. for the farewell sitting for His Excellency. The Privileges and Procedures Committee have asked me to propose that on the continuation from the 29th should be at 2.15 p.m. on the 30th, however some other Members have suggested to me that 11.15 a.m. might be more appropriate in that we would give ourselves an extra 90 minutes for debate. It is up to Members, but there is a tremendous amount of business or substantial business down for the 29th, and I suspect that whichever time we choose we will go into the third day if all of the items that are on the Order Paper remain on the Order Paper. I am in the hands of the Assembly as to which time they would prefer to sit again or continue the sitting on the 30th. I would be grateful for some guidance from Members.

The Bailiff:

Chairman, do you wish to make a proposition then we just take a straight ...

The Connétable of St. Clement:

The proposition I was asked to make by the Privileges and Procedures Committee was 2.15 p.m., therefore that is what I have to propose.

The Bailiff:

If Members wish to reconvene at 2.15 p.m. on 30th November, if you wish to reconvene earlier than that then you will vote against. If you agree with that you will vote for. Those in favour of the proposition kindly show.

Deputy M. Tadier:

Can we have the appel please?

The Bailiff:

The appel is called for. Do Members know what they are voting for? If you vote for you are voting to reconvene at 2.15 p.m. on Wednesday, 30th November.

Deputy A.D. Lewis:

We are just wondering on the benches here as to what was the reason for that? Why we are not sitting in the morning?

The Bailiff:

We are sitting in the morning. We are sitting at 9.30 a.m. and that is the special sitting to say farewell to His Excellency, following which we will adjourn so His Excellency can say goodbye to Members in the Royal Square and to any members of the public who happen to be there. That probably will be finished by 11.00 a.m. or so. So the question is whether we reconvene immediately, say about 11.15 a.m., or whether we come back at 2.15 p.m. in the afternoon, which is the proposition of the Chairman.

Senator L.J. Farnham:

Can I propose an amendment to the proposition that we come back at 11.15 a.m.?

The Bailiff:

If you like, but frankly if Members just vote against, if they are not happy with 2.15 p.m. then we will assume that is going to be 11.15 a.m. The appel is called for. Can I put it this way? Vote pour if you want it to be 2.15 p.m., vote contre if you want it to be 11.15 a.m.

POUR: 3

Senator A.J.H. Maclean
Connétable of St. Clement
Deputy M. Tadier (B)

CONTRE: 38

Senator P.F. Routier
Senator P.F.C. Ozouf
Senator I.J. Gorst
Senator L.J. Farnham
Senator P.M. Bailhache
Senator A.K.F. Green
Senator S.C. Ferguson
Connétable of St. Helier
Connétable of St. Peter
Connétable of St. Mary
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Deputy K.C. Lewis (S)
Deputy E.J. Noel (L)
Deputy of St. John
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)
Deputy S.J. Pinel (C)
Deputy of St. Martin
Deputy R.G. Bryans (H)
Deputy of St. Peter

ABSTAIN: 0

Deputy R.J. Rondel (H)
Deputy S.Y. Mézec (H)
Deputy A.D. Lewis (H)
Deputy of St. Ouen
Deputy S.M. Wickenden (H)
Deputy S.M. Bree (C)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy of St. Mary
Deputy G.J. Truscott (B)

The Bailiff:

Very well, the States now stand adjourned until 9.30 a.m. on 29th November.

ADJOURNMENT

[15:41]