

# STATES OF JERSEY

## OFFICIAL REPORT

THURSDAY, 18th JANUARY 2018

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[9:31]

**The Roll was called and the Greffier of the States led the Assembly in Prayer.**

## **PUBLIC BUSINESS - resumption**

### **1. Bellozanne Sewage Treatment Works: odour emissions (P.115/2017)**

#### **The Bailiff:**

The Assembly now turns to P.115: Bellozanne Sewage Treatment Works: odour emissions, lodged by Deputy Andrew Lewis. I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion – (a) to request the Minister for Treasury and Resources to allocate funds of up to £4.5 million from contingency to the Department of Infrastructure as and when funds are required, to ensure that full attention is given within the proposed new S.T.W. (Sewage Treatment Works) project to odour mitigation, include the covering of the P.S.T. (primary settlement tanks); (b) to request the Minister for Infrastructure, in conjunction with Environmental Health, to commission a full independent study into how emissions from the plant affect local residents and businesses, including full consultation with those most affected; and (c) to request the Minister for Infrastructure, in conjunction with Environmental Health, to undertake continuous monitoring of odour emissions from the S.T.W. site once all approved mitigation measures have been implemented, and to make appropriate provision for the cost of such monitoring in the next and subsequent Medium Term Financial Plans.

#### **1.1 Deputy A.D. Lewis of St. Helier:**

Before I start, I understand that there is an amendment been lodged by the Minister for Infrastructure and the amendment of which I am quite prepared to fully accept. So I am not sure if I should declare that right now or whether I enter into my spiel now and then go on to the amendment.

#### **The Bailiff:**

You have declared it and it is for you to propose your proposition. We will then go to the amendment.

#### **Deputy A.D. Lewis:**

Thank you, Sir.

#### **Deputy G.J. Truscott of St. Brelade:**

I just want to inform Members, I have an interest in the area so I will be abstaining in this vote. I own commercial premises in the odour zone, effectively, so I feel it inappropriate that I vote in this matter.

#### **Deputy A.D. Lewis:**

The smell at Bellozanne has blighted the lives of my constituents for decades. The District affected is densely populated. It is a residential area, also home to 2 schools and a hotel. Many of you will be familiar with the unbearable smell, which sometimes engulfs Bellozanne Valley on warm days or less windy days resulting in residents having to keep windows and doors closed to prevent a build-up of the stench within their homes. Washing cannot be dried outside for fear of smelling later. It is no wonder that some local children have been ridiculed because their clothes contain an unpleasant aroma. According to some residents, the release of odours often occurs at night. In summertime when residents sleep with their windows open their homes fill with the stench of sewage. There is much history to this issue, with many of my predecessors campaigning for solutions. This culminated

in a petition being lodged by the former Deputy Ben Fox in 2006. The result being overwhelming support from States Members in this Assembly to instruct action to be taken and funds allocated. However the planned 'cover and treat' techniques were not within the funding parameters of what was then T.T.S. (Transport and Technical Services), so it was not until the Budget of 2010 that funds were allocated. After this, although some improvements were made, they have now been overwhelmed by the ageing of the current sewage treatment works and its increased workload. The application to replace the current outdated system has been welcomed by my constituents. Advance technology will quell the smell, so it was hoped that this once in a lifetime opportunity to build a new sewage treatment works would include every possible piece of technology to mitigate the unpleasant smells that have blighted the neighbourhood for so long. However upon greater scrutiny the planning application by my constituents have proposed that the plant appeared to have some fundamental flaws, which led to concerns from residents that the new plant may well make the situation worse for some nearby residents. The odour modelling map that is attached to the proposition today clearly indicates a shift of the odour footprint due to the positioning of the replacement primary settlement tanks. So if Members turn to the page containing the predicted footprint you will see that it now encompasses a newer area to the east, never before affected by the odour, which contains further residential homes that are likely now to be affected. A study undertaken by Odournet states that the largest single contributor to odour emissions are the primary supplement tanks, which account for approximately 40 per cent of the total emissions from the site. However, when giving evidence at the Planning Committee, the consultant from Odournet said that: "The primary settlement tanks will produce up to 60 per cent of the odour emissions." Due to local residents' concerns emanating from D.f.I.'s (Department for Infrastructure) planning application, these residents decided to commission their own independent experts and legal advisers at great personal expense to evaluate the odour issue, as it was seen to be too technical to defend as lay persons. This resulted in 2 specialists of world renown both agreeing that elements of D.f.I.'s planning application with regard to its odour emissions was deficient in not properly addressing neighbour's concerns. D.f.I. claimed that the new plant will result in an 18 per cent overall reduction on the effect of odour emissions in the greater residential area, and stated that some residents will notice no change at all. This area appears to be based on the fact that due to the repositioning of the plant the odour map now has reduced impact on some residents but increased impact on a slightly less densely populated area within the affected zone.

[9:45]

Therefore D.f.I. appear to justify the emissions from the new plant on the basis that the odour nuisance would affect a smaller number of properties. So this is no different analogy that bullying less people justifies bullying in the first place. However, I would have to add that there has been no bullying from D.f.I. D.f.I. have been extremely co-operative on this matter. Members will be aware that the Planning Committee hearing in September 2017, the Committee refused to approve the application of the new sewage treatment works unless settlement tanks were capped to reduce odour emissions. The chief officer of D.f.I. stated that the cost of undertaking such additional works would be in excess of £4 million. Monies that had not thus far been allocated to the budget for the new project, the new sewage treatment works. The chief officer also cited concerns about the challenges involved in the maintenance regimes of capped tanks. However, in their report Arup confirmed that sewage treatment works in the U.K. (United Kingdom) in at least 6 locations all had covers on their primary settlement tanks. While it may be the case that maintenance of covered plants is more difficult it is clearly possible and appropriate, as evidenced by the installation at numerous works elsewhere in the U.K. and further afield. There has always been an expectation from my constituents that the primary settlement tanks would be covered as part of any future odour mitigation works. In fact this was promised on more than one occasion as far back as 2006. At the aforementioned hearing, D.f.I. suggested that they would look to cover the primary settlement tanks and other measures at a

later date if adverse odour emissions persisted. However, this approach has a twofold risk, in my opinion. The officers involved in the project today may not be there in plus 5 years' time when the site works are forecast to be completed and when the issues are most likely to arise. Furthermore, D.f.I. had advised the Planning Committee during the public meeting in July 2017 that they did not currently have those funds or any funds set aside for this extra work. Furthermore, at the Planning Committee meeting the Constable of Trinity, Philip Le Sueur, expressed concerns regarding the uncertainty of the required additional funding. Consequently he favoured covering the tanks as soon as they had been constructed to avoid any uncertainty in the future regarding funding. That is very much the view of my constituents. I, and my constituents, are grateful for the time and attention the Minister and his officers have given us to fully discuss this matter. I am particularly pleased that other efforts have been made in recent times to improve the quality of life of residents in the vicinity of the plant, such as the removal of the incinerator plant, the recycling facility and the scrapyards, which has significantly reduced noise and traffic movements in the area. So our residents are most grateful for that. In the past, investment has been made trying to mitigate the scourge of the Bellozanne smell, but when discussing this with officers, they confirmed to me that there has not to date been any effective monitoring of the smell. So it was not possible for officers to advise how effective past works have been. I therefore thought that it was essential, both for the department and for the public purse, that proper monitoring of odour emissions is put in place so that any improvements can be measured and continue to be monitored. A robust odour management process must include an unbiased and independent third party utilising monitoring equipment at various locations around the perimeter of the site, with particular reference to residential neighbourhoods, with resultant data being publicly available. It is therefore important that full consideration is also given to part (c) of my proposition. This is not just about mitigating the smell. It is about making sure that it is properly monitored so that any investment we make is properly monitored and we know whether it has worked or not. In conclusion, after decades of exposure to noxious smells, my constituents deserve better. To achieve this, the Minister requires additional funding, hence my request the Minister for Treasury and Resources makes funds available during the construction process of the new plant, as and when it is required. Unfortunately I notice the Minister for Treasury and Resources is not here at the moment but I hope he is hearing this from somewhere. I am advised that there is more that can be done to mitigate the smell and now is the time to do just that. It is clear from the modelling exercise undertaken by independent experts that the covering of the primary settlement tanks could reduce the overall odour footprint by up to 50 per cent. In fact, during the public planning meeting to determine the application D.f.I.'s consultant, when questioned by the Committee, confirmed covering the primary settlement tanks would eliminate up to 60 per cent of odours. The result of the primary settlement tanks being covered and other measures taken will not only mitigate the odour zone by half, it ensures hundreds of homes, 2 schools, a hotel, among many other commercial premises, are certain to be removed from any odour zone. Surely, this is exactly the type of improvement expected of a modern facility rebuild. I therefore ask Members to support this proposition so that finally this Assembly, after talking ... I was going to use a particular word here, but we have talked a lot this week about lots of things, but I have hopefully stated a case here, together with the Planning Committee's feedback and numerous experts, that there is a real opportunity here to mitigate this smell in a densely populated area once and for all, for ever. It is a small Island we live in. We have to have these sorts of treatment works somewhere and they are inevitably going to often be in a residential area because that is the closest point for people to access it. It makes it a lot simpler engineering-wise rather than having it in the middle of nowhere. That is why it is where it is. But it is a densely populated area. For years we have not got to grips with the smell. Now is that opportunity. So after decades a solution can be a reality. Acknowledging they exist to do it. The Minister and his team have worked very hard on this. They simply do not have sufficient funds to complete the job in its entirety. I am asking Members today to seriously consider

my proposition and vote in favour of it in order that we can finally put it to bed, so that other people in my District can go to bed and not wake up with a terrible smell.

**The Bailiff:**

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

**1.2 Bellozanne Sewage Treatment Works: odour emissions (P.115/2017) - amendment (P.115/2017 Amd.)**

**The Bailiff:**

We come to the amendment of the Minister.

**The Deputy Greffier of the States:**

1 Page 2, paragraph (a) – (a) After the word “allocate” insert the word “additional”. (b) After the word “Infrastructure” insert the words “, whilst maintaining current M.T.F.P. (Medium Term Financial Plan) funding for the department’s Rolling Infrastructure Vote,”. (c) After the word “required” delete the words “, to ensure that full attention is given”. (d) For the words “to odour mitigation, include the” substitute the word “for”. (e) After the word “(P.S.T.)” insert the words “, and for addressing odour issues in the sewerage network, including at First Tower”. 2 Page 2, paragraph (b) – (a) For the word “Plant” substitute the words “Bellozanne S.T.W. and First Tower pumping station”. (b) After the words “most affected” insert the words “, and to request the Minister for Treasury and Resources to allocate funds for such a study”. 3 Page 2, paragraph (c) – (a) After the word “undertake” delete the word “continuous”. (b) For the word “site” substitute the words “and First Tower sites”. (c) For the words “all approved mitigation measures have been implemented” substitute the words “P.S.T.s at the new S.T.W. have been covered and any odour mitigation works required at First Tower have been completed”.

**The Bailiff:**

Minister, Deputy Lewis has indicated that he will accept your amendment. I do not know the extent to which the amendment is going to be controversial but may I suggest that you are as brief as possible in introducing it and we will see where we go.

**1.2.1 Deputy E.J. Noel of St. Lawrence (The Minister for Infrastructure):**

I will take that into account. I would like to just remind Members that in the paper for my amendment, it sets out the combined proposition from Deputy Lewis and the amendments so Members can see how it reads once amended. That is on pages 2 and 3. As Members will be aware, the planning application for new sewage treatment works at Bellozanne was submitted in early 2017 and Members will know that that was ultimately refused by the Planning Committee on the basis that the proposed development, in particular the proposed location of the 3 primary settlement tanks to the eastern boundary. The Department for Infrastructure wants to ensure that it is a good neighbour to local residents and I believe that over the years we have demonstrated that we are, in fact, a good neighbour and that we have taken into account and done the mitigation measures as proposed by the former Deputy Ben Fox in 2006. This includes initial odour mitigation works on the existing plant, a new sludge treatment platform and the relocation of obviously the old incinerator, the household recycling centre, the public green waste, and all those facilities to La Collette. The clinical waste incinerator is in the process of being relocated as well as the scrapyards. Members will be assured that D.f.I. do take their good neighbour policy seriously and we do everything we can to be a better neighbour. This has resulted in a significant reduction in odours already and indeed in traffic issues, as Deputy Lewis has already mentioned, in the last decade. There are a number of reasons why covering the primary settlement tanks was not proposed in the application and why an appeal of the planning refusal was subsequently lodged. Principally, the technical studies carried out at Bellozanne included

that the primary settlement tanks did not need to be covered and the environmental impact assessment indicated there would be an overall reduction of some 18 per cent in odour generated from the new plant. The reason for that stance is our Financial Directions makes it extremely difficult for an accounting officer to recommend to a Minister spending in excess of £4 million on something that may not address the odour issues, and that is the conundrum that my department are in. However, given the concerns of odour generation of the primary settlement tanks expressed by local residents D.f.I. have made further submissions to the planning process in which we offered to implement a comprehensive odour monitoring and management regime following the commissioning of the new plant with regular reporting on the results. This could be used to justify whether or not the primary settlement tanks, at a later date, do need to be covered because we are not certain that the odours that are experienced in the First Tower area do come from the S.T.W., and in particular from the primary settlement tanks. Hence the amendment has gone in to expand that area and to expand that we want to look at the sewage network, and in particular, the pumping station at First Tower and the link between that and the S.T.W. There are several possible outcomes from the planning inquiry and from the hearing ... I am just trying to shorten this. Overall, I welcome the Deputy's proposition and I appreciate that he is accepting this amendment. The 2 main reasons why I wanted to lodge the amendment was I want to give us the *vires* to look at the rest of the sewage network and, in particular, the First Tower pumping station. But also to ensure that my department had the funding to do that, but also had the funding to cover the tanks if we needed to without eating into our rolling vote. It is something that when I became Minister we took on as a department a significant amount of risk in the capital programme and my Council of Ministers' colleagues realised that we were taking on a significant amount of risk and agreed that if any of those risks materialised that extra funding would be provided and that we would not have to use the rolling vote, which is there for maintaining our roads and our sea defences along those lines. One example has been the clinical waste incinerator that we originally were going to export the clinical waste under our proposals; that was not allowed under Defra so the additional funding has been provided to relocate that to La Collette. This is a similar situation. The amendment to Deputy Lewis's proposition is to ensure that D.f.I. have effectively new monies to cover this risk that was not anticipated when we accepted the capital programme. I hope Members can support both the amendment and indeed Deputy Lewis's main proposition.

#### **The Bailiff:**

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

#### **1.2.2 Deputy A.D. Lewis:**

Just to reiterate something that the Minister has just said. He was concerned about it being best use of public funds.

[10:00]

Was it an accounting officer's correct action to make such a judgment call when there was no guarantee that it would mitigate the smell? I have been quite careful in my proposition to state that it is "up to" an amount. It is not saying we need to spend £4 million. It is quite possible with the investigation the department is now undertaking and the measurement systems that are now available, which were not available 10 years ago, that it may cost a lot less than that. Furthermore, I am not talking about just capping the primary settlement tanks. My proposition goes on to say "including that" not exclusively. I fully acknowledge that there are other areas of the estate that are causing issues with the smell, including the actual sewage system, which is in St. Aubin's Road and Victoria Avenue, and other areas I have become aware of from the engineers at D.f.I. in recent months. So it is not about spending money we do not need to spend, so I fully accept the Minister's concerns on that matter. But also the important thing here is that we settle this once and for all. But we do not

take away from D.f.I. funds that they desperately need to spend on other things too. So this is the main crutch of the Minister's amendment, in that he has a current rolling vote, which works particularly well and if that was removed he would not be able to do, for example, pothole repairs, sea wall defences that come down, which has happened recently, and so on. I would not like to see that happen so I am not attempting to interfere with that at all, and this is the way the Minister can ensure that this is new money, effectively, if it is required, up to £4.5 million. It is not eating into much needed funds that his department requires to do the rest of their work. D.f.I. has probably taken some of the biggest budget cuts of all departments in recent times. So they are working a very, very tight ship already, so this is why this needs to be new funds and that is why my proposition states that, and why the Minister is endeavouring to protect that position by asking for this amendment.

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

May I speak to both the proposition and the amendment, Sir?

**The Bailiff:**

No, I really would like to get the amendment out of the way, if I can put it that way, because it does not seem as though it is going to be very controversial, and if that is so then we can vote on it and then we can speak on the main proposition.

**Deputy K.C. Lewis:**

They are very much interlinked, Sir.

**The Bailiff:**

But do you oppose the amendment?

**Deputy K.C. Lewis:**

Yes, Sir.

**The Bailiff:**

You do?

**Deputy K.C. Lewis:**

I do. Sorry, I am voting in favour of the amendment.

**The Bailiff:**

If that is the general view can we just go to a vote on the amendment? We have got a lot to discuss today.

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

Can the Minister just confirm that under these proposals the sewage treatment plant, or the area that is generating we believe the odour in the area, is going to be capped from the beginning? Or are you saying that if funds are available then we will cap them if necessary. So just clarify that particular point for me please?

**The Bailiff:**

Deputy Kevin Lewis, if you wish to speak I certainly do not wish to stop you speaking but please contain your comments to the amendment.

**1.2.4 Deputy K.C. Lewis:**

Absolutely. I fully support the amendment - I will be supporting both - but I fully support the amendment. As the previous Minister for Transport and Technical Services I know there has been a

great problem with funding and this is something that desperately needs doing and I fully support this, and I support the Minister for Infrastructure in obtaining funds to do this. But I will save my comments for the main proposition.

**The Bailiff:**

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

**1.2.5 Deputy E.J. Noel:**

I happy to reply to ... I think the main response is to Deputy Higgins. We do not know where the odour is coming from. We believe, the latest research to be done, the odour is coming from the First Tower pumping station, hence the expansion of the original proposition to include the First Tower station and we believe that we can solve that issue relatively inexpensively. If that does solve the issue then there will not be a need to cover the primary settlement tanks. If it does not solve the issue then we will have to cover the primary settlement tanks but, Members will know, I am not one for spending taxpayers' money unnecessarily and we are appreciative of Deputy Lewis's proposition but as amended it gives us effectability to tackle what we believe is the actual source of the odour as opposed to do something that means we would have spent in excess of £4 million and the odour still be present. I hope that answers the Deputy's questions.

**Deputy M.R. Higgins:**

Can I just seek clarification of the point? I appreciate what the Minister has said. The investigation into the smell of the pumping station, let us say it is the source, is this work going to be carried out before we start commissioning and building the actual tanks themselves, in which case we would all know whether there is a necessity to cap the tanks.

**Deputy E.J. Noel:**

It is happening now. We do not wait for something to happen, Sir. We are investigating that source currently.

**The Bailiff:**

All Members in favour of adopting the amendment kindly show. The appel is called for. I invite Members to return to their seats. The vote is on the Minister's amendment to the Bellozanne Sewage Treatment Works: odour emissions proposition. I ask the Greffier to open the voting.

<b>POUR: 35</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator I.J. Gorst				Deputy G.J. Truscott (B)
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
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 J.A. Hilton (H)				

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 R.G. Bryans (H)				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy P.D. McLinton (S)				

### **1.3 Bellozanne Sewage Treatment Works: odour emissions (P.115/2017) - as amended**

#### **The Bailiff:**

We return to the main proposition, as amended by the Minister. Does any Member wish to speak?

#### **1.3.1 Deputy K.C. Lewis:**

As I mentioned previously, this odour problem has been going on for many, many years. Originally there was not much in the valley but obviously it has been built up and people need places to live. The old sewerage plant has served the Island very well indeed but obviously it is time for a new one, which is well in hand. One of the problems we will encounter is it will be much more efficient and odour will be less but because of the siting of the new plant, which will be slightly further east, the odour plume itself will also be going further east towards town. I think Members might have trouble looking at the black and white map, which is in their books, but if they look very, very closely they will see under the old scheme the odour plume came very close to Haute Vallée School. Under the new scheme where things have moved slightly to the east the odour plume will cover at least half of Haute Vallée school, including the cafeteria, which is completely unacceptable. It will alleviate some problems far to the west, but as I say, it is absolutely essential that the capping takes place to reduce this odour to a manageable level. I will not repeat anything that is said previously, but this does have my full support.

#### **1.3.2 Deputy E.J. Noel:**

I would just like to thank Deputy Andrew Lewis for bringing this proposition and for allowing me to amend it and for accepting my amendments. As I mentioned before, D.f.I. want to be a good neighbour. We are a good neighbour. In some respects this issue was inherited by myself from my predecessor and I am pleased that during my term of office we have managed to address it.

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

I should say first of all that I have been a resident of First Tower for almost 40 years and I can vouch for the smell we have endured over that period of time. It was worse obviously when the incinerator was there. But the residents of this area have suffered over the years from it. I am pleased ... I am going to support obviously the proposition, and I can understand why the Minister for Infrastructure has gone along with it now - although he opposed it originally - it was the funding problem. I do

think that by putting the onus on the Minister for Treasury and Resources to come up with the funds to help alleviate the problem is the correct way of doing it. So I have sympathy for him because of the problems he has had within his department but funding will come from the Treasurer and I would say to all Members, when you decide to vote just bear in mind how would you feel if you lived adjacent to this and for 40-odd years you have had various smells, the worst ones coming from the sewage works, and in the past it was a battle to get funding for capping. Deputy Ben Fox, I think the residents of the area owe a great debt of gratitude to him for his efforts on this. He also spotted when the department left out the funding. They agreed to fund it and do away with the smell and then I think it was the Medium Term Financial Plan he discovered they had deleted it and was instrumental in getting it back in. So we are now into a new stage, and I am pleased to see that the Minister is prepared to deal with it and investigate fully the smells in that area, and I hope all Members will support this proposition because you would not want it in your back garden, I can tell you.

#### **1.3.4 Deputy S.M. Wickenden of St. Helier:**

I am glad to follow the previous speaker because my residents in St. Helier 1 are getting the smells of where we have moved everything down to La Collette. We have got the green waste because we cannot possibly have composting smells in the country. Everything has been moved down to my residents. We have the incinerator that has that lovely green coverage - no, it has not - and the likes. This is still £4.5 million to be spent on a small number of households on this Island and it may not even fix the problem. I will be supporting it because I think it is heading in the right direction. But we have just moved a lot of the odours that the First Tower residents were dealing with into town, into my residents. The Minister for Infrastructure says: "We try to be a good neighbour" and I know it has to go somewhere. But I would be remiss if I did not stand up for my residents and say: "We have shifted most of it down into town" and my residents do have to smell the rotting vegetation a number of times around their areas and it is a big problem for them. They mention it an awful lot. I do not think there is a lot we can do. We cannot cap the green waste area at all. It is just going to happen. There is a concern about the price of the money, if it is not going to fix the problem, that we are going to spend £4.5 million, but I wanted to stand up for my residents too.

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

Briefly, I just stand to say that I agree totally with the comments made by my other colleagues in No. 3 and 4 District, Deputy Andrew Lewis and Deputy Mike Higgins. This is a problem that has been in existence for many decades and this is a solution to improve the lives of the residents of First Tower going forward. So I would ask Members to please support this proposition.

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

What I am slightly confused about is how T.T.S., or now D.f.I., cannot be sure where the smell is coming from given the fact that we have had Member after Member standing up saying that this has been a problem for decades and when a solution has been asked for, and I know that it is something that has been discussed with our Scrutiny Panel, we were quite interested to hear that the thoughts that there is no point in spending money on the covers if it is very expensive and it is not going to be effective. That seems obvious hence the amendment and hence the position of the Deputy who is bringing this. But I would say how long does it take to get to ascertain where the smell or the majority of smells, because of course they could be emanating from different locations? It could be some come from Bellozanne Valley but most comes from First Tower or *vice versa*. We should have that information already. It is indicative, especially following the speech from Deputy Wickenden, that there is a disparity between the words that are spoken by this Council of Ministers, and even previous ones, because they have St. Helier as a strategic priority. It was not our Strategic Plan that we drafted, it was the Council of Ministers own Strategic Plan and they decided, just before the election and probably just before the hustings for St. Helier, to say: "Oh, we want to make St. Helier a strategic

priority and invest in it” but of course we know the reality is that all of the rubbish and the facilities that nobody else wants in the Island end up being dumped in St. Helier. It is the St. Helier constituency representatives who end up having, at some point, to stand up and speak for the majority of constituents who are, let us face it, under-represented in this Assembly now and historically. Of course it would be too simple a political pot shot to say that it is a direct consequence that places like the sewage treatment works always end up in St. Helier because we do, unfortunately, or rather realistically, have to take into account the topography of the Island we know that Bellozanne is in a valley so, in a sense, it is logical for pumping purposes you do have a sewage treatment works there. But nonetheless we have the green waste facility, which has been referred to, in La Collette.

[10:15]

So we are concentrating all the undesirable facilities, if you like, in a very tight area, and that is because those St. Helier voters and the people who live in St. Helier and the outskirts of course, which is becoming increasingly urbanised right into St. Clement, do not have the voices that they should in this Assembly. My other concern is that what if some of this £4 million or so is spent trying to ascertain where the smell emanates from, remedial works at First Tower area, and then we find out that is not affected, and that money does need to then be spent at Bellozanne, and that there is not enough money left in the pot and of course in a few years’ time, with inflation, the prices will only go up and then of course another Member has got to come to the Assembly and say: “Minister, we need more money for this mitigation.” I do not necessarily offer any solutions, unfortunately, but just some considerations in that regard. But why is it that we find ourselves in this situation at the last moment, if you like, when we should have had this information a long time ago to know where these smells have been coming from. If anyone can help me, incidentally, I was prompted to remember a Jersey cartoon called *Eugene Le Bean*, which I think was published in connection with Germain’s plum-mixed tobacco, and there was an old Jersey guy with a pipe and a cloth hat, something to that effect, with a beard. Probably a fisherman type ... *Gene Le Bean*, that is the one. *Gene La Bean*, I think it was a contraction of Eugene, but *Gene Le Bean*. If anyone can tell me where to get hold of a copy of that, because it does talk about the Bell of Bellozanne in that and it talks about, I think even the Bellozanne pong, and that is many decades ago. So it is documented there and it is still a problem that we are grappling with today.

### **1.3.7 Connétable A.S. Crowcroft of St. Helier:**

Some Members in this Assembly have the habit of trying to pluck defeat from the jaws of victory or of putting essentially a negative slant on what is a positive story. While I do not disagree with the analysis of the previous speaker in terms of the lack of parity in voting rights for St. Helier people and indeed the history of Bellozanne, I do think it is important to recognise the good work that has been done, first of all by Deputy Lewis of St. Helier, particularly the work of a small number of residents who have met regularly. Some of them have done an extraordinary amount of work, really rivalling the expertise of certain officers working for the States. Members of the public that one would dearly love to see in this Assembly because they are so passionate about their environment, they are so knowledgeable about their subject, and one wishes that they would consider running for public office. I do thank very much the residents who work with Deputy Lewis and the Deputies and the West of Town Community Association for their work on this. It has been a long road which of course the former Deputy Ben Fox started upon, and we are now hopefully reaching the conclusion of. I would still prefer to see the primary settlement tanks covered. I think retrofitting is always expensive. But I am guided by the advice that we are receiving and Deputy Lewis is happy that this is the way forward. So I do commend the Minister for coming on board with this, and it does look like we are ... as I say, as we were yesterday indeed, we are looking at a success story. We are looking at successful lobbying, successful work by elected Members, and ministerial ... perhaps a change of mind. I think there has been a change of heart in the Minister and I welcome that. Of course

Bellozanne to me, and to many people, in recent history is the reason why the sewage treatment works are there is because the Parish of St. Helier sold the valley to the States of Jersey in the 1950s. I am not going to go on about that, but a point is worth making that that sale was done on the basis that the Parish of St. Helier would never be charged for its waste disposal. That is why we are where we are with the sewage treatment works, and I think that is an important point that I would like to make. It is a good story and I hope that Members will get behind this amended proposition and give it their full support.

**Deputy M.R. Higgins:**

Can I just question the speaker? I think he made an error when he was speaking. He mentioned the West Park Association. I think he should really ... we are talking about the First Tower Community Association who include some of the people that we have talked about here as being almost rivalling the experts elsewhere, so full credit should be given to those. I hope the Constable will agree to that.

**The Connétable of St. Helier:**

I accept I should have mentioned the First Tower Community Association as well as the West of Town Community Association, thank you.

**The Bailiff:**

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

**1.3.8 Deputy A.D. Lewis:**

I thank Members for their positive comments about this and the Minister's words as well. Deputy Kevin Lewis mentioned the siting of the new plant and the way it would be reorganised. It is important for Members to understand that the new works, it is a huge investment and it is going to be moved in a direction of some residents that were not in the odour footprint before. Those particular residents woke up one day to find a map on the Planning website that said the sewage works were suddenly much closer than it was before. The Minister has tried to reassure them that with technology, despite being closer, it would still not be a hazard, but they then went on and committed their own experts to look at this more closely and did come up with some slightly different information to that of the D.f.I.'s advisers. They have spoken and met and agreed to differ and accepted each other's observations as well. So it has been a very healthy consultation process and I thank the Minister for that. I also must absolutely thank one particular individual that has driven this forward for several decades. These are sort of headlines that she managed to create over several years, and that is Judy Beaumont, who has [**Approbation**] worked tirelessly on a number of things, charitable and otherwise, not least the smell that she has been affected by but it was not just her she was fighting for, it was all of the residents in the area. So the footprint will change, so mitigation has become more important now than ever before. Deputy Wickenden: further work does need to be done to mitigate the smell, and we have spoken about that. But the number of residents he suggested was not that great. First Tower is one of the most densely populated areas of St. Helier. It affects a lot of residents. So I am surprised that he did not acknowledge that. It is a densely populated area. I do accept that there are new disturbances for those that live in the Havre des Pas area but I understand that measures have been taken to mitigate that smell as well. I perhaps would like to talk to the Minister about another occasion as to how the green waste is affecting the lives of others in that area. It is important to acknowledge that more could be done there perhaps. Deputy Tadier, the reason why this has not been tackled to date, perhaps in the way it could have been, and the reason why this really needs to be done now, and we can make the investment now and be more confident that the effect will be going in the right direction, is because for the first time ever technology is now available to monitor the smell. So money has been spent in the past and we did not know whether it was effective or not. So it is important to acknowledge that part of this funding can be spent on technical equipment to monitor the smell. So if, for example, the First Tower emissions that are

occurring at the plant that the piping, which is hidden in the First Tower itself, if that is causing the problem we cannot measure it at the moment. The Minister has not got the funds and the equipment to do it, but the equipment is available. Up until recently... Members may laugh at this, but the way that the smell was detected and measured was by a smeller having their nose calibrated and they would stand in a location and smell. I know that sounds remarkable but that was how advanced technology was. It has now changed but we have not got the equipment in place yet and the Minister wants to put it in place and this funding will help do that. As far as representation is concerned that Deputy Tadier mentioned, all the District 3 and 4 Members are here today, and 3 of us have spoken. We are well represented in our District. There are 4 of us and that particular District of St. Helier is currently well represented. Some may say, and I have said in the past, there could be an extra one. At the moment we have 4 active Deputies and our constituents I know feel that they are well represented. Thank you for my fellow Deputies for supporting this. There is £4.5 million “up to” mentioned in my proposition. It may well not be anywhere near that. With the work that the department is doing now that is quite possible. However, the reason why I put £4.5 million was because D.f.I. have already said that it will cost them up to £4 million to potentially cap it and put the other equipment in to mitigate the gases that are created when you cap a primary settlement tank because it becomes a dangerous environment for workers to clean and maintain. So this costs more than just simply putting a lid on it. But there is another £500,000 there that can be spent on monitoring, it can be spent on equipment that needs to be put into place potentially at First Tower area, so we mitigate the smell from the vents there. So there are other additional funds if required to spend on that area. So that is why it is £4.5 million, up to. But it may well not come as close to that. I do hope that Members can feel that this is that once in a lifetime opportunity. We are going to be blessed with a brand new sewage treatment works. I want it to be the most state of the art works that we can possibly have. The Minister could not quite do that with the budget that he had before. Hopefully he can go that little bit further now if he needs those funds as the project progresses. Decades ago people came to Jersey to look at our ultraviolet treatment works from other small Islands around the world because it was state of the art. It was one of the best in the world. That was decades ago. I want people to come and do the same thing again and say: “That is how you do it in a densely populated area. That is how you do it in a small Island that has great green credentials.” I am sure the Minister wants to do that too but he cannot quite do it yet with the funding that he has got. This enables him to do that so I would urge Members, please, please, for the sake of my residents, and many of you that drive along Victoria Avenue on a nice still summer’s day and suffer the pong, wind up your windows or put your scarves around your mouths if you are on your pushbikes, you will not have to do that anymore if this is implemented fully. So please support this proposition and we can solve it once and for all.

**The Bailiff:**

Those Members in favour of adopting the proposition ... the appel is called for. I invite Members to return to their seats. The vote is on the amended proposition for Bellozanne Sewage Treatment Works: odour emissions and I ask the Greffier to open the voting.

<b>POUR: 36</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator P.F.C. Ozouf				Deputy G.J. Truscott (B)
Senator I.J. Gorst				
Senator L.J. Farnham				
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. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy J.A. Hilton (H)				
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 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 L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy P.D. McLinton (S)				

**The Bailiff:**

I give notice to Members that the Social Housing in Jersey: introduction of a regulatory framework, an amendment to P.120, has been lodged by Senator Ozouf.

**2. Draft Data Protection (Jersey) Law 201- (P.116/2017)**

**The Bailiff:**

We now come to the Draft Data Protection (Jersey) Law, P.116. I shall ask the Greffier to read the proposition, and I am asking the Greffier to preside.

**The Deputy Greffier of the States:**

Draft Data Protection (Jersey) Law 201-. A Law to make new and consolidated provision relating to the protection of natural persons with regard to the processing and free movement of personal data and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

Advances in data generation storage, transmission and analysis have transformed the way we live our lives. From the manner in which we communicate with friends and family to how we manage our financial and business activities, data has become the currency of our everyday lives. Beyond being a central feature of those personal lives data increasingly powers our economy. It acts as the grease in the wheels of both business and government. A key input that enables them to develop and

improve the products and services we value as customers and as taxpayers. Take our financial services sector, international in scope and yet personal in nature, it relies on unrestricted data flows and access to our information to offer tailored services to customers around the world. It is therefore vital that we get the rules on data protection right. While the Data Protection (Jersey) Law 2005 has of course served the Island well it is no longer fit for purpose. While the generation and transmission of personal data have increased exponentially, the protections and rights individuals have over its use have remained static for over a decade.

[10:30]

In recognition of this transformation, international standards on data protection are being modernised. The European Union will introduce the General Data Protection Regulation and Law Enforcement Directive in May of this year, affording European citizens greater control over their personal data. As I will explain later, this is critical to Jersey. As the world moves on so must we. This draft law, together with the next law, aims to give Jersey a data protection regime that is fit for this new reality. It is the result of an extensive programme of research and consultation. This included the receipt of expert advice, engagement with the Island's business community and discussions with international stakeholders. We have also engaged very closely with the Economic Affairs Scrutiny Panel whose input has significantly strengthened the draft legislation and have held briefings with States Members and with the Comité. Together this draft law and the next paves the way for Jersey to enjoy the highest standards on data protection. They give Islanders more rights over their data, empowering them to choose and know how their data is being used, at the same time they clarify when businesses and public authorities can use our data to develop innovative products and improve services. They also ensure that law enforcement agencies can use our data where appropriate to protect citizens. The purpose of this draft law is, therefore, threefold: firstly, to provide equivalent protection to the European Union's General Data Protection Regulation and Law Enforcement Directive, enabling data to continue flow freely between Jersey and the E.U. (European Union) member states; secondly, to enhance Islanders' rights in respect of their personal data; and, thirdly, to give businesses, public authorities, charities and individuals confidence and clarity about how they can use our personal data to improve the lives of our community. I will now go on to speak about each of these 3 principles. Equivalence with the General Data Protection Regulation and Law Enforcement Directive. In May of this year the European Union's General Data Protection Regulation and Law Enforcement Directive, as I have said, will come into effect in E.U. member states. They will replace the 1995 Data Protection Directive, which set data protection standards for member states during the infancy of the internet. The G.D.P.R. (General Data Protection Regulation) will refresh those standards, such that they reflect an age in which data transmission is the lifeblood of our economy and social lives. Meanwhile, the Law Enforcement Directive sets parameters for the processing and ...

**Deputy G.J. Truscott:**

Sorry, Chief Minister, to interrupt. We are inquorate.

**The Greffier of the States (in the Chair):**

I am trusting Deputy Truscott has counted that we are inquorate. I would ask Members to come in from the coffee room to ensure that we become quorate again. Thank you very much.

**Senator I.J. Gorst:**

I realise it is a very dry subject but it is a very dry subject that is incredibly important to the way we live our lives and how information is held about us and our families and our community and how we prepare our legislation so that all citizens can continue to enjoy the freedoms that they do while at the same time knowing that their data is being handled appropriately. As I was saying, the Law Enforcement Directive sets parameters for the processing and movement of personal data used for the prevention, investigation, detection or prosecution of criminal offences. Although, of course, we

are not, as Members know, an E.U. member state, the G.D.P.R. and Law Enforcement Directive matter to Jersey. Like the 1995 directive before it, the G.D.P.R. provides that, except for in certain limited circumstances, data may only be transferred between member states and third countries where the third country in question ensures an adequate level of protection for personal data. Jersey, of course, is a third country for these purposes. The Data Protection (Jersey) Law 2005 was constructed to be substantially identical to the 1995 directive. As a result, Jersey received an adequacy decision from the European Commission in 2007. This, in effect, authorised the continued free flow of data between member states and Jersey. This draft law is necessary to maintain this adequacy status so, together with the following law, it provides essentially equivalent protection to the G.D.P.R. and Law Enforcement Directive. That is to say that while our draft laws are not identical to the G.D.P.R. and Law Enforcement Directive, and they do not have to be, they provide an equivalent level of protection for citizens. Where possible we have tailored the draft law to fit the local context. However, we have applied such derogations prudently, given the need to capture the core requirements of the European framework. Failure to maintain continued adequacy with the G.D.P.R. would jeopardise the continued free flow of personal data to and from E.U. member states. This would have detrimental economic consequences, particularly for our financial and business services sector and our emerging digital sector. It would also result in people in Jersey not having the same rights in respect of their personal data to people in the E.U. In the case of the Law Enforcement Directive, failure to achieve adequacy would negatively impact law enforcement. Adequacy is important to enable our law enforcement agencies to share intelligence with European counterparts. Securing adequacy with the new European regime is, therefore, at the heart of both of these 2 laws. The draft law has been written in such a way as to be appropriate for Jersey, as I have said, but essentially remain consistent with both of those 2 directives. Incidentally, the U.K. Government have indicated that they will seek something akin to adequacy status as they leave the European Union. Jersey is one of the first non-E.U. jurisdictions to prepare its G.D.P.R. equivalent legislation. Secondly, enhancing Islanders' rights. A further motivation for the draft law is the need to enhance the rights of Islanders in respect of their personal data. As the transmission and analysis of personal data increases so too should our ability to choose and know how it is used. Recent data breaches at giants like Deloitte, Uber, Bupa and Sony remind us that we are entitled to know that our data is being used and secured appropriately, especially when so much of that data is sensitive in nature. The draft law, therefore, bolsters and enshrines the rights of the individual, mirroring again the G.D.P.R. and Law Enforcement Directive in that regard. It ensures that people in Jersey have the same level of rights and protections over their personal data as people in Europe, United Kingdom or our other fellow Crown Dependencies. Notably, the draft law introduces new rights such as the right to be forgotten, which entitles data subjects to have their data erased when certain circumstances prevail, and the right to portability, which entitles data subjects to receive their data and transmit it to another controller. The draft law also makes data controllers and processors more accountable, requiring them to implement appropriate technical and organisational measures that ensure that personal data is used securely in accordance with our wishes. Furthermore the rules for obtaining consent to process data have been strengthened. Under the draft law, consent must be positive, specific and given in a clear and accessible form. These are just some of the ways in which the draft law will strengthen the rights of Islanders in respect of their personal data. Thirdly, confidence and clarity. As I said, a third objective of the draft law is to give businesses, public authorities, charities and individuals confidence and clarity about the circumstances in which they can use our personal data to innovate. Given that data has proven to be a stimulant for economic growth and job creation, this transparency is absolutely essential. For businesses, the draft law is about understanding what data they have, securing that data and managing it effectively to identify new opportunities and develop new products and services. The draft law is also important for opening up access to international markets. It is likely that the G.D.P.R. will become the global gold standard for data protection and because the draft law is consistent with G.D.P.R. it will support the ability of our local businesses to

sell beyond our shores. Moreover, while the draft law introduces new obligations on controllers and processors, local organisations could gain a competitive edge in international markets by demonstrating high standards of data protection. Organisations that show they care about citizens' private data rights could earn more custom in the long run. We have, as I have said, engaged extensively with the local business community in developing the draft law. They have been overwhelmingly supportive of our policy goals in respect of data protection. Local businesses recognise the criticality of modernising our data protection regime and achieving consistency with the E.U.'s framework. In closing, therefore, this draft law is critical for Jersey. It is vital for business as it will enable data to continue to flow freely between Jersey and E.U. member states and clarify how it can be used to develop innovative products and services. It is vital for citizens as it safeguards and extends our rights in relation to personal data - that is data about us - that might be held, stored or processed about us and permits law enforcement agencies to use that data, where appropriate, to protect us and it is vital for our international standing. It will cement Jersey's status as having a leading data protection regime, strengthening further our reputation as a trusted place to do business. I recommend the principles of the draft law to Members.

**The Greffier of the States (in the Chair):**

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

**2.1.1 Deputy L.M.C. Doublet of St. Saviour:**

Just briefly - and I am sorry if I have missed this; I was trying to follow - can the Chief Minister briefly, in his summing up, let the Assembly know if there will be any improvement to the way that States departments share data with each other and how this relates to the Tell Us Once initiative? Will it make things easier for people communicating with States departments?

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

I think the Chief Minister may want to address the Assembly on the question that will be, no doubt, in many Members' and Islanders' minds, that the original intention was to be having the objective of a common Channel Islands Data Protection Law. While I commend the Chief Minister in having to take on this additional responsibility, which I think would have fallen to me to deal with - in fact, I brought the original Data Protection Law to the States as a member of Finance and Economics and this is the law that replaces it - I think he should, if I may ask him, explain why there has been a divergence in the approach for Guernsey versus Jersey. I certainly have read this and have not been involved recently but commend the work that has been done by officers in delivering what the Chief Minister quite rightly said is of fundamental importance. If we did not get this in time, to cut to the chase, we would lose our finance industry. We would no longer be able to compete or offer goods, and in this case services, to European markets if we did not have it, so the importance of this, as the Chief Minister has said, is absolutely fundamental. But it is a shame that we will have a divergent approach across the Channel Islands with the same businesses operating in both jurisdictions now effectively having 2 different laws. I know the answer, I think, to this question, but is there any hope that this could be changed in future? I know there is no alternative now but to pursue this ... and I think this is a good law and an excellent draft, the work has been well done, but nevertheless I think we need an explanation as to why there has been that divergence and if he does see any prospect of a re-convergence in the future.

**2.1.3 Deputy S.M. Wickenden:**

Firstly, I would like to welcome this draft law and certainly the Global Data Protection Regulation that has been set out. Everyone knows that is a big key thing for everyone right now and all your information is everywhere. If you do anything online your data is there and you want to make sure that it is being protected and that it is being protected at a global level. I think that is excellent for everyone in the world.

[10:45]

I would like to congratulate and thank the team that has been working on this global data protection. It has not been an easy road to make sure that we are compliant, to make sure that all the businesses in Jersey are aware of what is going on, that they know what they need to be doing to make sure that they do not fall foul of the law. I just want to thank the team for their hard work and I hope everyone in this Assembly can get behind this law and approve it.

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

I simply wish to record that, as the Chief Minister mentioned in his introduction, the Economic Affairs Scrutiny Panel did have the benefit of a presentation on this issue. We fully appreciate the significance and importance of it and we shall, therefore, be supporting it.

#### **2.1.5 Deputy J.M. Maçon of St. Saviour:**

Like many other Members, I am supportive of this legislation. In particular, I welcome the aspects around the right to be forgotten. The Minister outlined that that would only be in certain circumstances and I wonder if when the Chief Minister is summing up he could give more detail as to those circumstances when the right to be forgotten is applied. It is a mixture of things. We know in recent times that tweets or things dug up from years and years ago are being used against people when perhaps they had different views at the time. It is important that things like information that may have been done online at a previous stage in one's life may come to a point where perhaps it should be removed because it no longer reflects what that individual is. I would really like the Chief Minister, for the record, just to explain the circumstances of the right to be forgotten, how it works.

#### **2.1.6 Connétable S.A. Le Sueur-Rennard of St. Saviour:**

I am a little bit confused. That is 2 days I have been confused. The lady who was looking after the data protection has left and gone to Guernsey. Senator Ozouf has said that we are not the same as Guernsey. Does that mean ... although we are patting ourselves on the back that we have got it right, why did the lady leave us and go to Guernsey? If you could just explain it to me I would be very grateful, because I just thought we were going to do it as the Channel Islands and we are obviously not, so I would just ask to un-confuse myself, if you could, young man. Thank you. [Laughter]

#### **The Greffier of the States (in the Chair):**

I am not sure "young man" is parliamentary and possibly not accurate, frankly.

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

I beg your pardon, Sir.

#### **The Greffier of the States (in the Chair):**

There are 2 separate draft laws in front of the Assembly. This one deals with the data protection regime. The next one is the data protection authority and that is where that question arises, although they are interrelated. I would ask the Chief Minister to bear that in mind. I am sure he will.

#### **2.1.7 Connétable C.H. Taylor of St. John:**

There are just 2 issues I have. The first is the Chief Minister says this is the gold standard. It is the European standard and the European standard is not always the gold standard. Are there other standards around the world that perhaps we might be aspiring to? The second issue I have is I think it reasonable to say that certainly 90 per cent, if not 99 per cent, of breaches are due to absentmindedness or lack of education. There are the occasional deliberate breaches where hacking and so on is involved. What measures are available if those miscreants are ever caught?

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

Generally, I am supportive of any legislation that is going to increase the right of the public to have their data protected. The important reality is no matter what protection we have there are people all the time breaking into files and they are being exposed. The truth of the matter is it is not just criminals. It is also governments, because governments have data and despite all the laws we have supposedly to protect us from intrusion from them, they do it anyway. Just to give you an example of that, in the past before 9/11 the Americans did not have the power to tap phones of American citizens and they complied with that law because they used G.C.H.Q. (Government Communications Headquarters) and the Canadian authorities to do it for them, so although they were technically following the law, in reality they were not. I am just trying to say that no matter what legislation we bring in, people will still be accessing our data, whether for good - we hope that governments are doing it for good - or criminals. There are a few things that I would like to ask the Chief Minister to explain. On page 9 of his proposition, the second paragraph after the tinted box that is entitled "Summary" mentions 2 work schemes to be used in developing this law, the second of which was to assess what the Island could do above and beyond to gain a competitive advantage. In other words, are we loosening some of the requirements so we get more business here or what are we doing? Data protection should not be about getting a competitive advantage on our competitors or other countries overseas. It should be protecting our people. Also we are talking about equivalence but we have modified equivalence. I would like to know how we have diverged from either the United Kingdom or the European Union directly. Again, I can leave the point that the Constable of St. Saviour made. I was concerned again why there was the breakdown between ourselves and Guernsey over bringing in new legislation and why the joint Channel Islands Data Protection Commissioner has gone to Guernsey. Is that because we were failing here? I would like to know more information. I must say, too, that with any legislation like this, and we have got one coming up shortly to do with changing the law ... the correct title is draft Criminal Procedures (Jersey) Law. The devil is in the detail. These laws are quite complex and need a great deal of scrutiny. The Economic Affairs Scrutiny Panel said they had a briefing on it but did they call it in and examine it? As I say, the devil is in the detail and you have to go through this with the aid of experts. Finally, what I will say is it is all right us writing these laws. The usual thing is how they are implemented. They can be implemented openly, in other words they are ... it is funny, Britain has always had the attitude, and we followed ... it is still part of the E.U. although with Brexit the U.K. will be leaving. The U.K. has always implemented the law to the *n*th degree and yet we see in France or Germany or other countries, or Italy, they implement what they want. I am concerned to make sure that the people who are implementing this do it properly, neither too rigidly nor too loosely. As I say, the key to this legislation is how it is applied. We have to watch that and those who are still in this Assembly after the election I hope will monitor the progress of this law and amend it going forward if it is not doing its job.

#### **2.1.9 Deputy J.A. Hilton:**

I was wondering if the Chief Minister could possibly give Members a little bit more information on Article 11, the section to do with children and the age of consent? I would like to just understand a little bit better how we came to deciding that 13 would be the age of consent, please.

#### **The Greffier of the States (in the Chair):**

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

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

I will endeavour to answer Members' questions on the principles that are relevant to this law and I will hold over, as you rightly direct, the other questions, although it would not be right for us to go into personalities and have a discussion about why individuals have made decisions that they have. Deputy Doublet asked about breaking down the silos of using data protection. I have had it confirmed to me that all States departments, of course, currently comply with the existing law but what this law

does allow for is, in effect, a new information security governance board to be created. That is being created, and it will co-ordinate data protection matters across the States. There is a new States of Jersey data protection lead or official. The Deputy Chief of Police is chairing that board but there is a new data protection officer being appointed as well. What it does, I think, is get to the heart of the issue that the Deputy is referring to where departments have held information about individuals and have to go through a very convoluted agreement, providing they have the will, in order to share that information. It is no secret that we have a myriad of I.T. (information technology) holding a myriad of different information about those same individuals and this law will rightly expect us to do work to remove those silos. I think it is extremely helpful in that regard but at the same time having proper and appropriate controls in place. We did start this process working very closely with Guernsey but Members will be aware that Guernsey has a different law drafting and law officer arrangement. It was at that point where we had divergent arrangements that we saw divergence in the drafting of the law. I have got to say that we in Jersey continued to be keen to work together, even though we had different laws in place. Guernsey took the view, very clearly, that they felt that there were different laws in place and, therefore, we should diverge at this particular time. We will come on to that with the authority. I hope that no Member in this Assembly is suggesting that we should have subrogated ourselves to Guernsey and simply taken their law. That would not have been appropriate at all. We must take the best advice that we can and I congratulate officials for all the work that they have done in regard to this particular law. We believe it is the right law for Jersey and for our future. No doubt if Members were members of the States of Deliberation in Guernsey they would be hearing a similar pronouncement from their Home Affairs Minister over there. Time will tell. I will come back to this under the Authority Law because all is not lost, in my opinion, and I think within the course of probably the next 2 years you will see a convergence again of authorities, but we will come back to that. That work has already been started. The Connétable of St. John talked about the European gold standard. I am not sure whether he was referring to that as a positive or a negative standard. I think he might be a secret Brexiteer so he is probably thinking of it as a negative. The reality is that the European Union, and we see that even now with the discussions we are having, look at international standards and believe that they want to add to them, thereby creating a gold standard. I think it is a fair assessment in this particular regard. I would not agree with the approach they take in every standard that they create but I think it is fair to say in this particular regard that it is very likely that this will become the global standard and can be referred to as the gold standard. Other countries already recognise that the G.D.P.R. is such and will be seeking adequacy. We know that Canada will be; we know that New Zealand will be as well. I think that is very firmly the way that third countries will be approaching this matter, as we are, but we will, as I have said, be one of the very first.

[11:00]

He also asked about remedies for particular breaches and they are covered in Articles 67 and 68. Particularly I think he was concerned about where there was inadvertent breach and he will see that throughout this law there is a tiered approach when things have not gone as they should. I am not sure how to respond to Deputy Higgins. At one point I felt maybe I should just rip the law up and not bother because he was telling us about the fact - and he is right to point this out - that there are organisations out there seeking to break systems. It is inevitable from time to time that those systems will be broken and people around the globe are seeking to access our information, which is why again the cyber security strategy that Senator Ozouf brought forward for our Island is so incredibly important and it is why an updating of these laws is important to give further clarity about what is required. I think he was also referring to governments and I was at a presentation yesterday where one of the speakers suggested that there are some organisations - they were referring to governments - who you cannot fight again when it comes to cyber security and safety of data and that is governments, but the point was also made that some of those people are on our side as well. I think he was trying to allude to that with the relationship between the U.K. secret services and the American

Government, but perhaps I will leave that there. I think he recognises that this is a great improvement on the existing law. We have worked, as I said - and I am grateful to the Deputy of St. Mary for saying this - very, very closely with the Scrutiny Panel. Their suggestions have, I think, led to improvements in this law. He tried to suggest at some point that he did not think that data protection should be used for competitive advantage. I do not agree with him at all. Being at the forefront of new standards, having laws and certainty in place about equivalence and being able to market that, as I said earlier, around the globe, because other countries are now following on, can give first mover advantage and what can sometimes seem onerous to put the processes in place can give commercial advantage in due course, so I do not think we should be shy of suggesting that. I think he also asked about derogations. There are derogations that the G.D.P.R. allows for in the directives. There are derogations that we have moved across from the existing law, largely around trust, but there are also derogations for the size of fee, bearing in mind the size of our economy. I think they are appropriate as well and we will come on to those. There is also a differential between our law around complaints or challenges that might be made without an actual complainant and some countries will be allowing that. We currently do not in this law. I think Deputy Hilton asked about why we had chosen 13. The directive allows a choice of between 13 and 16 but, as I understand it and it has been relayed to me, all of the countries currently bringing forward their legislation - the U.K., the U.S. (United States), *et cetera* - have chosen 13 and, therefore, we have just mirrored their choice. I think it is appropriate. I do not think it should be any lower but there is a balance to be struck about that and I think most of us will recognise that the education around use of data, use of technology is increasing and improving and will be an ongoing piece of work but equally I think that that is an appropriate age to have chosen. It was Deputy Maçon who asked about the right to erasure or the right to be forgotten. It is important to remember that this is not an unlimited right and he will see in Article 32 the detail of that right and where that right is constrained and we will do that as we go through the Articles. I hope I have answered every question that Members might have and I maintain the principles and ask for the appel.

**The Greffier of the States (in the Chair):**

The appel has been called for. I ask Members to return to their seats. The vote is on the draft Data Protection (Jersey) Law principles and I ask the Greffier to open the voting.

<b>POUR: 38</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
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 J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				

Deputy M. Tadier (B)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
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 L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
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):**

Deputy of St. Mary, would your panel wish to call this in for scrutiny?

**The Deputy of St. Mary (Chairman, Environment, Housing and Infrastructure Scrutiny Panel):**

No, Sir.

**The Greffier of the States (in the Chair):**

In which case, Chief Minister, how do you wish to deal with the Articles?

**2.2 Senator I.J. Gorst:**

I am very grateful to Members for their overwhelming support for this important piece of legislation. I have no doubt we have already had questions about various Articles. I will take them in parts, if I may. I know that might lead to some frustration on behalf of Members but I will endeavour ...

**The Greffier of the States (in the Chair):**

I have asked if it has gone to Scrutiny, Senator. I have also talked and we have had the Scrutiny and the Chief Minister has been interrupted now dealing with the Articles. Can we go back to that point, Chief Minister?

**Senator I.J. Gorst:**

I will beg Members' indulgence if I may. If we take part 1, that includes Articles 1 to 5 and Schedule 1. Part 1 sets out key definitions. Where appropriate, definitions have remained unchanged from the Data Protection (Jersey) Law 2005. Some definitions, of course, have been amended to achieve closer adherence to G.D.P.R. and the Law Enforcement Directive, again required so that we can retain our adequacy decision. Schedule 1, which Article 4 introduces, modifies the application of the law where personal data is processed by a competent authority for law enforcement purposes. A list of competent authorities is included in that schedule. It, of course, includes the States of Jersey Police, Customs and Immigration, Law Officers' Department and others. I, therefore, propose part 1 with the inclusion of schedule 1.

**The Greffier of the States (in the Chair):**

Are Articles 1 to 5 and schedule 1 seconded? [**Seconded**] Does any Member wish to speak on those Articles? If not, those in favour of the Articles kindly show. Those against? The Articles are adopted.

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

Part 2 is Articles 6 to 13 and includes schedule 2. Part 2 sets out the fundamental duties of controllers and incorporates the G.D.P.R. 6 data protection principles. Article 9 gives effect to schedule 2. Schedule 2 establishes the condition for lawful processing of personal data. Article 11 sets out the requirements for establishing consent to processing and consent must be given positively, specifically and, as I have said, be easily withdrawable. I propose part 2 which includes schedule 2.

#### **The Greffier of the States (in the Chair)**

Are Articles 6 to 13 and Schedule 2 seconded? [**Seconded**] Does any Member wish to speak on those Articles? If not, those in favour of those Articles kindly show. Those against? Thank you.

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

I propose part 3, which is Articles 14 to 20. Part 3 sets out other duties of controllers. It requires controllers to implement proportionate, technical and organisational measures to ensure data is adequately protected. It also requires controllers to provide data protection by design and default. This means protecting the rights of data subjects at all stages of data processing. Articles 17 and 18 contain a requirement to consult the authority where proposed processing activities or legislation are high risk. Article 20 outlines the controller's obligations to notify the authority, and in serious cases the data subject, where there has been a breach of security regarding personal data. This assists the authority in performing its supervising functions and enables affected data subjects to take measures to mitigate any risk associated with the breach. These requirements, of course, flow from the G.D.P.R. and I think we will confirm are necessary but important improvements. Therefore, I propose part 3.

#### **The Greffier of the States (in the Chair):**

Are Articles 14 to 20 seconded? [**Seconded**] Does any Member wish to speak on those Articles?

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

One thing that is clear is that this part of the law is the real heart of the responsibilities of data controllers. I wonder if the Chief Minister would give the Assembly some information as to the assistance that companies are going to be given by the arrangements that I know are in place in order to meet these, what are very significant new arrangements in order to conduct their business. Does he feel that there has been a sufficient awareness of these Articles, because these are the very heart of the changing of the regulations in terms of putting the onus on data controllers? Is his judgment that our financial services industry - data industry, all those people dealing with data, which is probably every type of business, including the States of Jersey - is in a position to be able to meet the requirements that part 3 sets out, which I have no issue with, of course, because they have been well drafted and properly drafted?

#### **The Greffier of the States (in the Chair):**

Does any other Member wish to speak on Articles 14 to 20? Chief Minister, reply to that?

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

Senator Ozouf makes a very valid point. Of course it is as relevant for part 2 as for part 3 where there is the general duties and accountabilities and then the duties to comply with law and keep records in part 3. The Law Officers, the officials and the law draftsman took the view in the drafting that they wanted to bring together parts of the directive so it was clear to all controllers what their duties were,

which is why they are quite clearly listed out in part 2 and part 3 to give clarity to those who would be controllers. The Senator does, though, make a very good point and he will be perhaps aware of this. This is one of the laws where we were, in government, lobbied by industry bodies to speed up, to make sure we were prepared, to make sure we had given resource within government to bring forward the laws and he was instrumental in persuading the Council of Ministers that we had to set aside chunks of money in order to ensure that this work was undertaken and that equivalence was granted, but that was only the start of it.

[11:15]

We know that there are lots of private sector consultancy and advice firms across the Island, and across the globe for that matter, who are marketing support to ensure compliance with these new laws. Barely a day or a week goes by that I do not receive an email from one of these bodies inviting me to a G.D.P.R. compliance seminar. That is absolutely as it should be, but the authority itself will be issuing very detailed guidelines for corporates, for small businesses, for charities and for other organisations. I hope that organisations and those who come under the remit of the law will be ready when the time arrives and will receive, I know, appropriate support from the authority when they are ensuring compliance with the law. We have had one States Members' briefing. States Members will be required to comply with the law as being data controllers and there will be further detailed briefings to States Members in due course once these laws have been agreed, but I maintain Part 3, Articles 14 to 20.

**The Greffier of the States (in the Chair):**

Those in favour of Articles 14 to 20 kindly show. Those against? The Articles have been adopted.

**2.5 Senator I.J. Gorst:**

I now propose parts 4 and 5 together, which is Articles 21 to 26. Part 4 sets out the joint duties of controllers and processors and the individual duties of processors. It places a series of obligations on processors. This is a key difference from the 2005 law, which did not place obligations on processors. It also enables enforcement action to be taken where processors fail to meet data protection requirements. Part 5 concerns data protection officers. It requires controllers and processors to appoint a data protection officer. We discussed that earlier in answer to Deputy Doublet's question about what was happening in the States in certain limited circumstances. I propose parts 4 and 5, that is Articles 21 to 26.

**The Greffier of the States (in the Chair):**

Are Articles 21 to 26 seconded? [**Seconded**] Does any Member wish to speak on those Articles? Would Members in favour of Articles 21 to 26 kindly show? Those against? They are adopted.

**2.6 Senator I.J. Gorst:**

We come now to part 6. That is Articles 27 to 39. This part sets out the rights of data subjects, again in line with G.D.P.R. The draft law strengthens the rights of data subjects while balancing them with the need for businesses and organisations to be able to process data appropriately. Many of these rights are already provided for in the existing 2005 law and this draft law draws on these where possible to give continuity to data subjects and controllers and processors. This part gives citizens the right to access their data, be informed of how it is being used, have it rectified where it is inaccurate or incomplete and in certain circumstances, as we have already considered, it may be erased. It also enables citizens to have their data transmitted elsewhere. This is known as a portability right, which I think is extremely important for users of social media, as I understand it. Therefore, I propose part 6, Articles 27 to 39.

**The Greffier of the States (in the Chair):**

Are Articles 27 to 39 seconded? **[Seconded]** Does any Member wish to speak on those Articles? If not, those in favour of Articles 27 to 39 kindly show. Those against? The Articles are adopted.

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

Part 7, which is Articles 40 to 65. Part 7 creates exemptions from certain provisions of the law and, as we have already discussed, G.D.P.R. gives Jersey flexibility in this regard. Where possible we have replicated the existing exemptions in the current domestic legislation, for example in maintaining broadly the same approach to academic, journalistic, literary and artistic material, national security and the privileges of the States Assembly. Article 64 exempts processing related to law enforcement, legal proceedings, public record-keeping from any provision of the law providing one of the conditions set out in schedule 2 is met. I propose part 7.

#### **The Greffier of the States (in the Chair):**

Are Articles 40 to 65 seconded? **[Seconded]** Does any Member wish to speak on those Articles? If not, those in favour of Articles 40 to 65 kindly show. Those against? The Articles are adopted.

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

Parts 8 and 9, which is Articles 66 to 77 and includes Schedules 3 and 4. Part 8 concerns cross-border data transfers. The draft law puts in place equivalent restrictions to those in the E.U. with regard to the transfer of personal data to third countries outside the E.U. Exemptions are included in... safeguards are included in schedule 3 and 4. Part 9 gives data subjects, controllers and processors rights to bring complaints and seek judicial remedy. Article 70 enables a person with standing to make a complaint against an authority or data controller or processor. It also enables them to authorise a not-for-profit data protection organisation to represent them. I propose parts 8 and 9.

#### **The Greffier of the States (in the Chair):**

Are Articles 66 to 77 and schedules 3 and 4 seconded? **[Seconded]** Does any Member wish to speak on those Articles? If not, those Members in favour of Articles 66 to 77 and schedules 3 and 4 kindly show. Those against? The Articles are adopted.

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

Finally, I propose part 10, Articles 78 to 88. This part includes a number of regulation-making powers. These are necessary to ensure the law is future-proofed. It provides for the authority to approve codes of conduct to encourage or facilitate compliance with the new law. Article 84 enables regulations to provide for the Government to constitute an information board, again a question that was asked by Deputy Doublet. The board will oversee and govern the use of data across government. Article 86 introduces schedule 5, which contains various savings and transitional arrangements. Article 87 repeals the 2005 law and introduces schedule 6. I propose part 10, Articles 78 to 88.

#### **The Greffier of the States (in the Chair):**

Are Articles 78 to 88 and schedules 5 and 6 seconded? **[Seconded]** Does any Member wish to speak on those Articles? In which case, those in favour of those Articles kindly show. Those against? The Articles are adopted. How do you wish to deal with the matter in Third Reading, Chief Minister?

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

*En bloc*, Sir, if I may. I take this opportunity again to thank all of my staff and the staff of the Law Officers' Department for all of their incredibly hard work. I particularly want to mention again the Scrutiny Panel who have supported and worked constructively with officials. I thank Senator Ozouf who helped to start us on this course and I am also minded today that the seat to my left is vacant. That Senator should have been here today bringing this legislation to conclusion and I know he is disappointed not to do so. He is probably on ice as I speak or exercising but I certainly wish him a

very speedy recovery, as I know that all Members do [**Approbation**] and I thank him for all the work that he has done in bringing this forward today. This is a really important legislative change, which we should not be shy of saying puts us at the forefront of competition around the globe and once again will enhance our international reputation.

**The Greffier of the States (in the Chair):**

Is the Third Reading seconded? [**Seconded**]

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

I am grateful for the kind remarks of the Chief Minister. He is right to say ... and I would congratulate him. I hope this is not regarded as being sycophantic but the deftness of the Chief Minister being able to bring a law of this complexity and then being able to answer questions of the States I think shows that we have a Chief Minister who is able to handle a number of different briefs. This is complicated and when you come to the States you need to be able to answer questions. Some people may grimace but I think I pay tribute to the Chief Minister to be able to literally stand into the shoes of Senator Routier. This is not easy stuff. What the Chief Minister also said, and it is appropriate to say in the Third Reading, is the exciting opportunities that this law now passed, or after it has gone to the Privy Council, will provide. We speak a lot about Jersey being a mono industry, financial services dominating together with our vibrant local, domestic economy in all of its ways, but at the heart of it we are an export-driven data, effectively, intellectual property services centre. We call it the finance industry but increasingly it is diversifying. The opportunity of passing this law and the opportunity of going out in the world to promote it and promote the good regulation of it is that if the finance industry can be described as effectively providing services for a warehouse of financial assets, then the opportunity of this law and the accompanying revolution in data is that assets are now no longer just financial assets but they are data assets, assets, as Deputy Higgins has said, which are intellectual property assets. There is, if I may say, an enormous opportunity for Jersey in presenting and, if we take the standards that we have in regulation in financial activity, providing services to financial assets. They are easily transportable into the same area of data. If one understands the value of something like the FTSE100 or the Nasdaq is probably over half of it is data and intellectual property and that is encompassed in effectively holding an asset that is not a tangible financial asset but which is an intellectual property asset, at the heart of it the regulation of protecting those assets, which this law now revolutionises and modernises that, there are enormous opportunities for Jersey. When Islanders think about and when Members worry about the mono industry, which I do not accept the concept that we are a mono industry because the finance industry is a very diverse industry both in terms of product and geography, I think we that we should also now make a strident attempt to position Jersey as a data centre of excellence. That requires good promotion with Digital Jersey working hand in hand with Jersey Finance. Digital Jersey has not been mentioned in this debate at all yet and I would ask in his concluding remarks if the Chief Minister would agree that investment in Digital Jersey is absolutely vital in terms of seizing that opportunity. I was in the largest tech fair in the world just at the weekend - at my own expense, because I am interested in it - and I saw at first hand the scale of new technology and innovation that is available. I was speaking to Deputy Higgins, I think, and a couple of other Members about that. Whether it be a new product in disabled access, health, transportation or whatever, at the heart of it is data and it requires 3 things: (1) a good law; (2) a good promotion agency, Digital Jersey with the sufficient resources to go out and win and argue the case for those assets being test bedded or brought to Jersey or that data being held in Jersey; and (3) the importance of the role of the regulator. If we did not have the J.F.S.C. (Jersey Financial Services Commission) doing the job that they do with the right controls, with that measure, that right balance of toughness but also fairness and speed of delivery when decisions are made, we would not have the finance industry that we have today. Similarly, we must also recognise the importance, which we will again talk about in the next debate, of the role of the Information Commissioner who

will have a role as a result of this law. That tripartite of good law, good promotion and good and respected regulation is the key to driving new jobs and growth that we do not currently have. In Jersey, with this law now passed, together with Digital Jersey and building on the success of our finance industry, I think we can see a future whereby literally hundreds of jobs could be created in the future on the back of what I would describe as a data warehouse. In the Third Reading I think is an opportunity to say it, for the Chief Minister to give his commitment to the resources that Digital Jersey needs, to the resources that the data commissioner needs, because without them nothing can happen. There are some challenges ahead with the way that that is going to be funded because, of course, this law now replaces the old arrangement whereby their offices are going to be funded by effectively an annual subscription that we all pay as States Members. I would like, in his concluding comments, for the Chief Minister just to give an unequivocal almost boost of confidence to both the people working in Digital Jersey, promoting Jersey, alongside Jersey Finance, because it is very similar, but also to the office of the data protection commissioner.

[11:30]

Our regulators do difficult jobs but they are important and they deserve our thanks and respect and our good wishes in terms of having to translate this law, which we pass today, and then enforce it in a proportionate and proper way, as I know that the excellent staff that I have always dealt with there will do. Now with this massive law, with huge implications for every single business, they have got a big job ahead them and I take this opportunity of wishing them well but they need the resources to be able to do it in a very different way than the previous law that this law now replaces. I would ask the Chief Minister to comment and to give them the vote of confidence I think that they deserve.

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

Over the next 5 to 10 years we are going to see some dramatic changes in, I think, our economy, brought by artificial intelligence and the use of computers and the data mining and the data gathering and the analysis that will take place and that is going to have some major impacts on employment in Jersey. If you look at the finance industry at the present time, they are trying to simplify processes and they are replacing people with machines. This is going to accelerate and no one is sure how quickly some of these things are going to come in but we will see changes within 5 years, we already have driverless cars being experimented on in various cities in the United States. We have other technological advances that are coming in. Artificial intelligence is going to replace people in work. It is all about data and about setting up the systems and so on. It is something that we are going to be spending a lot of time dealing with because the industries we have at the moment, including finance, are going to change quite radically. I was scrolling through ... I have not had the opportunity to go through it in detail and this is why, in one sense, I am disappointed that it did not undergo a full scrutiny. I was looking at one section here, it is to do with health, education and social work, which I am particularly interested in because of the difficulties I have been having trying to get data from the Health and Social Services Department. I am going to examine this in a great deal of detail going forward because if it is restrictive - and I will certainly put any faults I find in this legislation to the Independent Care Inquiry who are coming back to see what progress we have made and if necessary I shall bring some amendments on it. But I welcome the law in general terms. We do need greater protection for our citizens and equally we do have to trade with Europe and it is important we have equivalence. But, as I say, the devil is in the detail and we may have to come back to this time and time again.

#### **The Greffier of the States (in the Chair):**

Does any other Member wish to speak on the Third Reading? If not, Chief Minister?

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

I do like it when Deputy Higgins parrots back what I have said across this Assembly previously about the changes in technology and how it is going to affect our entire Island. He knows that we did a strategic review into financial and business services about 4 years ago and we changed the way that worked. This ties in absolutely with what Senator Ozouf, and he was at the helm delivering these changes, where we were warned of jobs to be lost in certain sectors of the financial centre and the work that we had to do to create jobs in other sectors. There are over 3,000 jobs moved out of banking on our Island that those individuals are now being employed and those jobs have been recreated in other sectors of the financial and business services sector. He knows also that Jersey Finance and Digital Jersey are working together in a way that they never have before. Yes, it might have taken a little bit of time to bring those 2 bodies together but financial, business services, digital and technology, they are going to be interchangeable, as they really are now. Financial services firms rely on technology. Senator Ozouf and I have been out together to Canary Wharf, we have been to some of the big banking headquarters, we have seen floors of those tower blocks that people think is just people sat at desks adding things up, no, they are innovating with technology and they are rolling it out right across their network. We are continuing to persuade them to use Jersey in our microcosm to test their technology, and some are in quiet and small ways doing that. Senator Ozouf, as he told us, was out in America last week driving a driverless car. I am not sure he was driving it, he was just riding in it. I have been in a driverless car out in the U.A.E. (United Arab Emirates). We need to continue to encourage those operators to come to Jersey and use us as a test bed for their technology. Digital Jersey, that is part of their remit and if they are going to need more money in the future we will have to find more money to give to them. One of the pleasures that I have enjoyed over this last year is giving certificates to graduates who have been on coding courses at Digital Jersey, and your office, Sir, the Greffe, were involved in the latest cohort and they are going to be transforming how members of the public - I am not sure if I should be saying this in the public domain, you are raising your eyebrows - know what we have been up to in this place. They will be able to find out much easier than they can now about whether we have been sat in our seats, whether we have been here voting and what our voting record is. We should be encouraging that because we should want to stand at the next election and explain our voting record. So technology, artificial intelligence will continue to transform our lives. It is not something that we should be scared off, it is not something that we should be nervous about, it is something that we should embrace and this law will allow us again to be at the forefront of data and that transformation. I was reading only last night about houses being printed. Houses being printed and then being sold for about \$67,000. The world is transforming and changing in a way that many of us never thought possible but this gives us here opportunities to address some of the problems which have been difficult to address in the past. New methods of construction, which are cheap and which are easily deliverable, and technology is at their heart. So I am absolutely aligned this morning with Deputy Higgins. I would say: "Come and join us, stop criticising and let us welcome and work towards the future that we think can be positive for our community."

**Deputy M.R. Higgins:**

Could I just get some additional information, a clarification from the Chief Minister? One, I am not opposing it, I am well aware we have to have contingencies for it because it could be for the good but it could equally be bad. The point of clarification, though, is the first paper that the Chief Minister mentioned, the research that they had, not one of us have seen it because it was kept secret by the Chief Minister about the impact on banking and so on.

**The Greffier of the States (in the Chair):**

I think you are asking if it has been put into the public domain, so if the Chief Minister could clarify that?

**Senator I.J. Gorst:**

The Deputy knows that the Financial Framework Strategy was put into the public domain and it talked about those risks and it talked about the strategies that we were going to deliver to mitigate those risks. There is information which is market sensitive. He should know because he often stands up saying the end of the world is nigh, woe is me. All is lost. But we recognise the challenges, we are not complacent but we put in place the very best legislation and we work together, industry, government and regulator. We will come on hopefully in very short order to discuss the new regulatory law which will help us to deliver this transformation of our data protection legislation.

**The Greffier of the States (in the Chair):**

I think you have clarified the point.

**Deputy M. Tadier:**

Could I just get a further point of clarification? On the radio the other day the Chief Minister said that he would be making a statement about whether he is standing for election, is that the statement or is there a separate one?

**The Greffier of the States (in the Chair):**

No, no, it is not clarification of people’s radio interviews, Deputy, it is clarification from the speech. If we can move on to the vote?

**Senator I.J. Gorst:**

May I call for the appel?

**The Greffier of the States (in the Chair):**

The appel has been called for. I ask Members to return to their seats. The vote is on the Third Reading of the Draft Data Protection (Jersey) Law and I ask the Greffier to open the voting.

<b>POUR: 37</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
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 G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				

Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

### **3. Data Protection Authority (Jersey) Law 201- (P.117/2017)**

#### **The Bailiff:**

So we now move on to the Draft Data Protection Authority (Jersey) Law 201- and I ask the Greffier to read the citation.

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

A law to provide for a new statutory body to oversee the protection of personal data and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

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

I beg the indulgence of the Assembly again. This is a shorter law but it is necessarily important and therefore I must speak accordingly. We have just approved the draft Data Protection (Jersey) Law and I am very grateful to Members for their approval of that law which will increase Islanders' rights and protections over their personal data. This law, as I said during the in principle debate of the previous law is a companion piece of legislation. It establishes the new Data Protection Authority, replacing the Office of the Information Commissioner. It increases the obligations and powers of that authority reflecting the fact that we will regulate a new and extended Data Protection Law. Consequently it also facilitates the strengthening of the authority's governance and staffing. This expansion of obligations, powers and improved governance is appropriate both to enable the authority to be effective and to ensure equivalence with the G.D.P.R. and law enforcement directive. Turning firstly to obligations. The European Commission's data protection working party has stated that to achieve adequacy third countries must have an independent authority capable of monitoring, ensuring and enforcing compliance with data protection requirements. To deliver on these requirements national data protection authorities will need to adopt a more proactive approach to regulation. Accordingly, to ensure compliance with the European framework and maintain our status as a best practice jurisdiction our authority will need to play a more dynamic role. For example, the authority will need to ramp up its awareness raising activities. In this regard, plans are already afoot for the authority to provide tailored materials to local organisations, offer talks, host and support more data protection related events. It was an issue that Senator Ozouf raised and spoke about in the previous law. The draft law will therefore mark a shift for the authority from being a primary reactive regulator to one that proactively investigates and educates. The aim is to create an authority that protects individuals and helps businesses and other organisations meet their obligations. In doing so it will strengthen Jersey's reputation as having a well-regulated, business friendly, data protection regime. To make good on these increased obligations, the data protection working party has observed that consideration should be given to the staff and budget of the supervisory authority. The requirement

for greater independence, capability and proactivity means that our authority needs to change. This law will be the impetus for that change. It overhauls its governance, establishing the authority as a body corporate governed by a board. Under this law the Information Commissioner will become the chief executive officer. The board will sit above the chief executive officer providing governance, advice, setting strategy and policy and assuming ultimate responsibility for regulating compliance with the new data protection law. This structure effectively mirrors that of the J.F.S.C. and C.I.C.R.A. (Channel Islands Competition and Regulatory Authorities), such institutions' strengthening is reflective that data protection has become a board level issue, one critical to many businesses, public authorities and organisations, not only in Jersey but around the world. It is also representative of the fact that the authority will have new powers. I will turn to those in a moment. The formation of the board will provide an appropriate additional level of governance and vigilance over the use of such powers. The draft law will also signal the transformation of the authority's funding model. At present data controllers pay a fixed annual fee to the authority, regardless of the size and the risk of their processing activities. A new model for registration charges is currently being developed. Under the new model the fees that data controllers and processors pay will be linked to the risk and volume of their processing activities.

[11:45]

Not only is risk-based approach a requirement of G.D.P.R. it will be fairer than the one-size-fits-all system that currently exists. The new model will be proposed to the States in due course by regulations. States Members, of course, will then have a chance to scrutinise those proposals and approve accordingly or not. Over time the new model should enable the authority to become largely self-funded. Finally, commensurate with its increased function, this law will act as a catalyst for a significant upscaling of the authority. In light of the enhanced oversight responsibilities and governance arrangements the law also increases the powers of the authority. It enables the authority to monitor and investigate potential breaches of the Data Protection Law. Following investigation, if the authority determines that the Data Protection Law has been breached, it can impose sanctions or fines. Currently under the 2005 law the authority can impose a range of sanctions. These include issuing a warning to a controller ordering the blocking, erasure or destruction of data and imposing bans on the processing of data. The introduction of fines gives the authority another string to its bow in encouraging compliance. The maximum level of fines was determined following consultation with the local business community. They will proportionately disincentivise breaches of our Data Protection Law. We have also exempted public authorities from fines, given that they are taxpayer-funded and, as suggested by the Economic Affairs Scrutiny Panel, there is a lower fining level for not-for-profit organisations. Of course, there will be a route to an independent hearing over sanctions and fines. As with the 2005 Law data controllers and processors will be able to bring proceedings or an appeal against the authority to the Royal Court. Moreover not all infringements of the Data Protection Law will lead to these serious fines. Fines must be in each case effective, proportionate and dissuasive. There are a number of other sanctions where fines are not appropriate. But they are a demonstration of a key point that data protection is now a front of mind, strategically important matter not something that can be worried about later. The draft law, as I have said, therefore will be transformative to the authority, it expands its supervisory responsibility, enhances its powers, improves its governance and acts as a catalyst for a significant upscaling of staff and structure. There will be a transition period until the end of the current M.T.F.P. during which time the authority will roll out its new operating and fees model. The authority temporarily needs additional funding from government for implementation of the increased running costs. The annual cost of the current Office of the Information Commissioner will increase by an estimated £1.1 million to £1.65 million per annum. There will also be a need for an additional £350,000 to support one-off implementation work. These are maximum scenario estimates. Work is ongoing to deliver what is required in the most cost-effective manner. From 2020 the increased running costs will be offset from greater revenues

from business which should allow government funding to return close to current levels. This transitional funding proposal is similar to that used by the Financial Ombudsman. Having received start-up capital from government in 2014, today the Ombudsman meets its costs through annual levies and case fees. I have a part of this speech about Guernsey but we have already discussed that so I will not revisit it. So in conclusion, the Draft Data Protection Authority Law is crucial to ensure the effectiveness of the Data Protection (Jersey) Law, which we have just approved. This law lays the foundation for the establishment of a strong independent and proactive authority, one capable of educating Islanders on data protection issues, ensuring their rights are upheld and helping businesses to meet their responsibility. It gives the authority new powers commensurate with its increased obligations and it facilitates the reinforcement of the authority's capabilities, paving the way for the appointment of a board and front line staff and a funding model that will eventually enable it to stand largely on its own 2 feet. I recommend this law to Members.

**The Greffier of the States (in the Chair):**

I did say an answer to the Constable of St. Saviour, that point about the Information Commissioner, would be carried over into this debate, and although you did say - rightly I am sure - that personalities should not come into it, I wonder if there might be a little bit more to say in response to the Constable because I do not think you said anything.

**Senator I.J. Gorst:**

I am quite happy to do that now or to do it in my summing up. Other Members may have connected questions. It has not been forgotten.

**The Greffier of the States (in the Chair):**

As long as it is not forgotten. Are the principles seconded? [**Seconded**] Does any Member wish to speak on the principles?

**3.1.1 Deputy J.M. Maçon:**

Again, as with the previous one, I am very supportive. It is interesting, however, is it not, when we go into the community there is always the argument that goes out there: "Oh, why are the States bringing more red tape, more civil servants, *et cetera*" but, of course, in this situation it is in order to facilitate the needs of growing the business that the Island can attract. Sometimes in that debate that is what is forgotten when you are looking at overall headcount of the States or costs or expenditure, about the benefits of having these frameworks to the businesses and the future business of the Island. I just want to put that on record. Thank you.

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

In the Oxera reports on competition Professor Sir John Vickers said in his opening remarks that the States of Jersey had demonstrated the importance it places on markets by founding the J.C.R.A. (Jersey Competition and Regulatory Authority), the regulator, and he went on to stress the point that conducting regulatory policy is hard but the economic benefits of good regulation can be substantial and he expressed the hope that the review would be in that area helpful to be providing a more effective economy. Those same remarks can be made for the job of the data regulator. It is hard, it is difficult and it can be unpopular work, particularly with the individuals having to take on all our regulators, face difficult work. In a sense they are almost akin to the roles of a policeman in the sense that they are trying to enforce rules. It is absolutely vital that there is the appropriate governance structure in place and, again, it is not appropriate to mention personalities but to make the general point that it is ... and I am going to be hard on one of those regulators in another place, because it needs to be done properly. But credit where credit is due, in the last few years our data protection office has dealt with a number of very difficult cases; very sensitive, we are dealing with people's sensitive information and I think the interactions that I have had with that office and the post holders

have been nothing short of helpful, constructive, but mindful that they have an incredibly difficult job to do. I think this is a welcome reform of the arrangements. Previously our Data Commissioner had nowhere to go frankly, they had only ... where did they sit? The Data Protection Commissioner moved from Finance and Economics, then it moved to the Chief Minister's Department, then I think it moved temporarily to the then Home Affairs Department and then it moved back to the Chief Minister's Department and the post holder had nowhere really to go. This solved it. Regulators must be independent, they must be accountable. My amendment to the housing regulation means that there should be appropriate powers of direction in regulation that preserves the independence of the regulator but also sets out the Minister who is holding the democratic right to oversee appropriate powers to direct in certain circumstances. So I welcome this arrangement. When you look back and one thinks, it has almost been an impossible position for the post holder to have been ... that they did not have anywhere to go. I think that some of the critical remarks which have been attributed to all of our regulators, some of which are deserved and some of which are not deserved. In the case of this particular area, I would commend that individual and that individual's staff for a job well done in frankly a structure that was not, in hindsight, appropriate. This fixes it and I welcome it and I think that the formation of this body is going to be far, far better, massively improved better. The staff in the Data Protection Commission Office are going to have somewhere to go. They are going to have somewhere to talk with someone of eminence that will be the chair and the governance arrangements will work. There also will be, I hope, a supportive Chief Minister's Office that will be there providing the resources that are needed because without the resources they do not have the confidence to go and do the job that we expect them to do. So the Chief Minister said this is a changed world, I welcome it, but I also would ask him to confirm without reservation that the resources are going to be made available to the Data Protection Commission Officer. Perhaps the Minister for Treasury and Resources might give that undertaking, it is his job now and maybe he will say that he will not, in any way, slice, pare, reduce the resource that is required. Because not doing this is frankly not conducive to a jobs and growth strategy and sending out the message of that excellent form of regulation that we need, which we spoke about earlier. Perhaps the Minister for Treasury and Resources will give that assurance to the Assembly that he will not haircut, chop and he will meet the demands of this most important sector of the economy.

#### **The Greffier of the States (in the Chair):**

Does any other Member wish to speak on the principles? If not, Chief Minister?

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

I just want to thank Deputy Maçon for his supportive words. He is absolutely right, we get criticised for creating red tape and bureaucracy but one can absolutely guarantee that if something went wrong with any Islander's data they would want to know why there was not somebody on the case straight away finding out what the problem or fining, and what will now be possible for those who have breached that data. So he is right to say this is an absolutely necessary increase improvement and step change in the office of the Data Protection Commissioner. You directed me to say perhaps a little more about Guernsey and I want to start by reiterating the words of Senator Ozouf. The Jersey Data Protection Commissioner has served her Island incredibly well from the creation of the office with very little or no support structure, no real connection into government in order to provide funding or staffing or even down to office accommodation, it should not be that someone has to come in to my office to prove the case for the need of a new office accommodation. We thank her for that. The job of the Data Protection Commissioner, the job of overseeing complaints about freedom of information is extremely difficult and in the current structure extremely lonely. The job in Guernsey is different from the job here in Jersey. We have a Freedom of Information Law that that office has to support as well. They do not have that in Guernsey, so it is a different job. Not least of which now we are layering on 2 different data protection laws. Different in the way that they are drafted,

different in the way that the enforcement directive is included either in the primary legislation or coming behind in ordinance. So it is a different job. Not only that, that same individual has currently been covering both Islands, doing one job here and a different one in Guernsey. Guernsey took the view that they felt their new law was so different from ours that they wanted to separate out. We did not agree with that, we pushed them quite strongly to maintain the Channel Islands operation. They took their view that they did not want to do that at this point in time, they wanted to go their separate ways. They advertised for a new Data Protection Commissioner, the current holder of the pan Channel Islands post applied for that post and was appropriately appointed to it.

[12:00]

We now are in the process of recruiting a chairman for this new board and then we will, in very short order, recruit a new Commissioner. There is great staff here in the Jersey office already who can support this ongoing work and this implementation but there will need to be a recruitment to fill that post in due course once the new chairman is in place. Hopefully I have answered every question there and I will give way to the Connétable.

**The Connétable of St. Saviour:**

I just wanted to say thank you very much. I was not interested in personal things, I just wanted to know why both Islands were not singing from the same hymn sheet and you have explained it. Thank you very much.

**The Greffier of the States (in the Chair):**

If your speech is over, thank you very much.

**Senator I.J. Gorst:**

May I call for the appel?

**The Greffier of the States (in the Chair):**

The appel has been called for. I ask Members to return to their seats. The vote is on the principles of the Draft Data Protection Authority (Jersey) Law 201- and I ask the Greffier to open the voting.

<b>POUR: 29</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf		
Senator A.J.H. Maclean		
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. Ouen		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of Grouville		
Connétable of St. John		
Connétable of Trinity		
Deputy of Grouville		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy of St. John		
Deputy J.M. Maçon (S)		

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

**The Greffier of the States (in the Chair):**

I ask the Deputy of St. Mary if his panel would wish to call this piece of legislation in?

**The Deputy of St. Mary (Chairman, Environment, Housing and Infrastructure Scrutiny Panel):**

No, Sir.

**The Greffier of the States (in the Chair):**

In which case, Chief Minister, do you wish to propose the Articles?

**3.2 Senator I.J. Gorst:**

I do. Mindful that the only comments during the in principles were supportive, I will talk in a little detail about all of the Articles but I am going to endeavour to take them all together rather than separate them out, if the Assembly will permit me. So part 1, which is Articles 1 to 10, establishes the authority. It sets the authority up as a body corporate and provides for its constitution, it establishes a board comprising a chair and between 3 and 8 other voting members with the Information Commissioner as an *ex officio* non-voting member. As I said it provides also for the Commissioner to act as chief executive of the authority and sets out their duties. Part 3 and 4 outlines the functions of the authority. These are more comprehensive, as one would imagine, than those contained within the 2005 law. This reflects the extended Data Protection (Jersey) Law. This also provides for the authority to be independent. It is a requirement to achieve equivalence with G.D.P.R. and it represents regulatory best practice. Article 13 enables the authority to issue opinions and guidance and, as I have said, over the coming weeks and months we will be doing so. Part 3 deals with registrations and charges. It requires controllers and processors to register with the authority subject to any exemptions made by regulation, and it provides the controllers and processors pay registration fees if so provided for in regulations. Part 4, together with schedule 1, provides a range of investigatory and enforcement powers that can be exercised by the authority to secure compliance with draft Data Protection (Jersey) Law. Investigatory powers include the ability to issue information notices, conduct, or require data protection audits and, in certain circumstances, enter and search properties. Enforcement powers include the ability to issue a reprimand, warn of a likely breach, order the controller to take certain action or levy a fine. This area addresses the concerns that the Constable of St. John had in the previous law. This part also gives individuals the right to complain to the authority where a controller or processor has contravened the law. Parts 5 and 6. Part 5 sets out administration provisions. These are necessary to ensure the proper governance of the authority and are similar to those for other regulatory bodies in Jersey. Articles 43 and 44 require the authority to have audited annual accounts and prepare an annual report and for the Chief Minister to lay those before the Assembly. Article 47 and schedule 2 provide for transitional provisions. The purpose of this is to enable smooth transition from the 2005 law to this draft law. I propose, therefore, the Articles, together with schedules 2 and 3. Perhaps I should have said schedule 3 provides for

consequential amendments to the legislation. I propose therefore all of the Articles, together with schedule 2 and 3.

**The Greffier of the States (in the Chair):**

Are the Articles seconded? [**Seconded**] Does any Member wish to speak on the Articles? If not, those in favour of the Articles, please show? Those against? The Articles are adopted. Chief Minister, do you wish to take it in Third Reading?

**3.3 Senator I.J. Gorst:**

If I may, and I would simply like to reiterate my thanks to all of those involved in getting us to this point today. Of course, for me personally it is a disappointment that we are not still in alignment with Guernsey but, in hindsight, I think that on reading our law, law officers, law draftsmen, officials, the Data Protection Office have done an excellent job in getting this draft law into the place that it is and I am hopeful that it will speedily get Privy Council approval so that we can meet the timeline and have this transformational legislation on our statute book. So all of those, whether I have mentioned them by title or not, I am extremely grateful for all the hard work that they have put in in getting as to this point today. Thank you.

**The Greffier of the States (in the Chair):**

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

**3.3.1 Deputy S.M. Wickenden:**

Again, I just wanted to stand and thank the team, the digital team. You can count the members of this team on one hand, as long as you have a minimum of 5 digits on one hand. In this term they have delivered the digital policy framework, the cyber security strategy, the telecommunications strategy and now this Data Protection Law. It is an enormous amount of work, very dry work, it is very complicated work and I think they should be thanked and commended for the amazing work they have done in this area with such a small team. I hope they get more funding to be able to do more in the coming years. Again, they could not have done any of this work without Digital Jersey, under the leadership of Tony Moretta, he has done a great job with his team and he has helped them engage with industry to make sure that all industries in the Island are taken into consideration when we are passing these strategies and laws and I would like to thank them as well. Thank you.

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

The Chief Minister said he hoped the Privy Council would be able to consider this law in the earliest possible course. I wonder if he, having raised that, would confirm that he has established that this law, as is now normal in the practice that we have in getting our laws before the Privy Council ... that he has carried out both in this law and the previous one the necessary inquiries to ensure that there will be a speedy passage and that there will be no surprise in these laws. In other words, could he confirm to the Assembly that the appropriate consultation with the U.K. authorities has been made, which is, of course, designed to ensure that we are on equivalence and that there is nothing that is in our law that being part of the British family causes difficulties to the United Kingdom? Would he confirm when the Privy Council might be considering this because that is fundamental in terms of confidence and certainty in terms of all that we have been speaking about this morning?

**The Greffier of the States (in the Chair):**

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

**3.3.3 Senator I.J. Gorst:**

Thank you. I, of course, reiterate the comments made by Deputy Wickenden. This is not just an internal government piece of work but it is right across our community, not least of which with the

support of Digital Jersey. Senator Ozouf, earlier in this debate, said that if more money were needed would it be found? It has to be found. These are really important equivalence matters and we cannot show ourselves to be wanting in any regard with this matter. But in finding that money within government, the system, as I said, in due course, when ... **[Interruption]** **[Laughter]**

**The Greffier of the States (in the Chair):**

There is a metaphor there, Senator.

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

It appears the Senator might not be connected.

**Deputy M. Tadier:**

I think it is a critique of silo government.

**The Greffier of the States (in the Chair):**

I think the Senator knows the drill by now.

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

Sir, I might just say that was sound and vision, I am not sure if that is a surplus.

**The Greffier of the States (in the Chair):**

The fee is in the hands of the Bailiff, it is still set at £10. Thank you for your contribution, Senator. Now, Chief Minister, if you can continue.

**Senator I.J. Gorst:**

I am not sure which particular website it is that the Senator looks at but I do know that my young children have something called, I think it is “You Tube for Kids” and they speak to it and up pops a programme or the article that they want to look at. I am not sure if that is what is happening there. I was making an important point about resource. That in due course these will offset the initial cost to government but sometimes the money that government spends gives dividends to a strong community and is returned back into governmental coffers by other methods. This is one such piece of legislation that will deliver that. Officials have worked incredibly hard, as I have said, on these pieces of legislation. They took independent expert opinion on whether this law met and could be shown to deliver equivalence. They met with E.U. authorities to have that same reassurance. They have also pre-submitted it to the Ministry of Justice to get that same reassurance that it would make a speedy passage to Privy Council. Of course, one can never say but we are hopeful that it will meet Privy Council in February and will meet the timeline. Privately, one Member last night suggested that we were behind the curve in bringing forward this legislation and I reminded them that of all the E.U. member states that have to absolutely comply with the entire directive currently there are only 2 member states that have their legislation on the statute books, that is Germany and Austria. So when I say we are right at the forefront of showing equivalence, I am not exaggerating. On that trajectory we will be able to do so and we will rightly be able to take advantage of that on the global stage and in the global market place. May I call for the appel?

**The Greffier of the States (in the Chair):**

The appel has been called for. I ask Members to return to their seats. The vote is on the Third Reading of the Draft Data Protection Authority (Jersey) Law 201- and I ask the Greffier to open the voting.

<b>POUR: 34</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				

Senator I.J. Gorst				
Senator L.J. Farnham				
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 of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
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 S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

**The Greffier of the States (in the Chair):**

So we now come to the draft Criminal Procedures ...

**The Deputy of St. Peter:**

Sorry, Sir, I was just wondering as we are approaching the lunch and I do have a rather lengthy opening speech, and also the nature of the Criminal Procedures (Jersey) Law, I wonder if we could move to the next item and then return to Criminal Procedures Law once we have perhaps dealt with P.119 and P. 126, if Members agree?

**4. Draft Amendment (No. 34) of the Standing Orders of the States of Jersey (P.119/2017)**

**The Greffier of the States (in the Chair):**

Do Members agree with that suggestion? In which case we move on to the draft Amendment (No. 34) of the Standing Orders of the States of Jersey and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

The States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following Amendments to the Standing Orders of the States of Jersey.

#### **4.1 Connétable L. Norman of St. Clement (Chairman, Privileges and Procedures Committee):**

These simple amendments will implement a decision made by the States last year when it adopted a proposition of Deputy Labey that Ministers, subject to review by a Scrutiny Panel, should not be able to vote for the chair of that panel. This amendment to Standing Orders does that. We have gone a little bit further because Deputy Labey was silent on whether Ministers should be able to nominate chairmen of Scrutiny Panels. We felt if a Minister could not vote for the chairman they should not be able to nominate them either. So we have incorporated that in these amendments. It should be clear that relevant Ministers would not be prevented from taking part in the question period for candidates for chairmen of Scrutiny Panels. We also noticed while doing this work that the remits of some Scrutiny Panels were a little bit out of date so we have taken the opportunity of correcting that and bringing those up to date. I propose the amendments.

[12:15]

#### **The Greffier of the States (in the Chair):**

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

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

I am afraid to say that I do not think I voted for the original and I will not vote for this now. I think this sets a ... the Chief Minister has lodged a series of amendments, which obviously have yet to be considered by the Assembly, which would effectively give, if the States were to pass it, the ability to do Cabinet reshuffles, *et cetera*. It seems to me that this creates a precedent which I simply find completely unacceptable to my principles of ... I know this has been done in principle already, but I maintain the view that if we cannot trust an individual who has been holding elected office to have the appropriate fairness ... because Ministers who want to be a Minister face a Scrutiny Panel and they have to be co-operative and work together. I see no conflict whatsoever in disbarring that individual from voting in terms of that individual. I think this sets a dangerous precedent that what we are doing is effectively creating almost a *de facto* committee of the States which excludes some Members from one form of voting versus another. I know that is not going to be something that is likely to win majority favour but I think it is wrong in absolute principle. You are either a Member of this Assembly and vote on everything or you are not. This is the slippery slope that we are going to start putting complexity to and we are going to start being with the symbol of the appearance of effectively unequal membership of this Assembly. You are either a Member of this Assembly or not for the purposes of voting legislation, or holding Ministers to account, or electing individuals and it is an affront in my view to the concept of equality and fairness. I do not not trust any Member, whether it be a Member of Reform, whether or not it be somebody I argue with regularly on policy issues, I do not think ... I may disagree with them on their issues but I trust them to uphold their oath of office, which says that they will put the public in front of their own private interests. What this does is it says: "Well, some individuals cannot be trusted to vote for the person that is going to scrutinise them." I think that we deserve better standards and we are starting the slippery slope of effectively saying we do not trust people to do what is in the public interest and to do this very concept of putting the public interests first and our private interests second. I think it is wrong. I cannot remember how I voted, I must have said this thing if I was here in the last debate, I am sure I did and if I did not on reflection it is as bad today as it was then. It is separation, it is not compliant, I think, with the code that we have in every other thing and it is a slippery slope to segmentation and division. I absolutely oppose it.

##### **4.1.2 Deputy T.A. Vallois of St. John:**

Thank you, I will be brief. I voted against Deputy Labey's proposition on this. I do not agree with it. I have been a president of the Chairmen's Committee and think there are better and more

interesting changes that could be made to the role of Scrutiny. I do not agree with Senator Ozouf where he talks about the proposition of the Chief Minister because I do not think that affects this proposition. I am quite concerned with what the Chief Minister has proposed and not included the Scrutiny role within that consideration. But this particular case ... when I was chair of the Public Accounts Committee I remember going to a conference in the U.K. where we talked about how our processes worked. We were seen as a very good jurisdiction for the way that we carried out our role. It was shortly after that, I believe, that the House of Commons changed, or it was around that time the House of Commons changed their procedure in terms of allowing Ministers to vote for their chair of the Public Accounts Committee in Westminster. Because it was recognised that a P.A.C. (Public Accounts Committee) chair was non-partisan, their role was to hold officers to account, to be objective and evidence based. I really do believe that is the role of Scrutiny and that is why I could not support this last time. I believe the role of Scrutiny in the system that we have, the system that we have at present, is not one of adversary, it is one of trying to find the best solution and trying to work to a consensus. So people may not like that and there are parties that would prefer to maybe have an adversarial system but at the moment we have an Assembly that is made up of a majority of individual Members and on that basis I think it is absolutely imperative that we all hold each other to account, it does not matter what title we have and, yes, Ministers hold power but this role of this States Assembly gives them that ability and this is where the ultimate democracy lies and the ultimate power lies for this Assembly. So on that basis I cannot support what I believe was originally a well-intentioned motion but I think there is a better way to move Scrutiny forward which I will try to attempt with the Chief Minister's proposition.

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

It is not a question of whether we want an adversarial system or we aspire to some kind of consensus approach. The reality in this Chamber - and we only need to think back to yesterday's vote and look at how people vote in this Assembly - is that by and large even when there is consensus, and there was large consensus yesterday on the issue of single parents having their income reintroduced, even though the consensus was built, it was still only just won because the Council of Ministers decide to act as a party with a couple of exceptions on certain occasions from Ministers and Assistant Ministers. We saw that, yet again, repeated on the nationality debate where only a couple of Members broke ranks, but the official party line from the Council of Ministers is that we will not budge. We are the ones who are acting as a party. We should not make apologies for that because that is politics and I think Jersey needs to recognise the fact that we do have dialectical politics, we might say that we all want to achieve the same outcomes and that is not even necessarily true. Sometimes you want to achieve different outcomes. Even when we do have joint outcomes we have very different ways of achieving that and we have different starting points, different ideologies and different politics for which we should not apologise because that is the world that we inhabit and that is the vocation to which we have decided to join. That said, the reason I cannot necessarily support this today is because it is effectively window dressing. It is fine to make comparisons with the U.K. Parliament and the House of Commons, they obviously have their own system for appointing chairmen of the Select Committees, which is done on a kind of rota basis and it is proportional to the split of the votes within the Parliament. So at the moment, of course, the Conservatives will have a slight advantage on chairing. There is a tradition that P.A.C. goes to the opposition. The Deputy of St. John obviously knows all this and other Members may as well but it is not necessarily fair to compare a Parliament which is comprised of 650 M.P.s (Members of Parliament) from a variety of political parties to an Assembly of 49 where the Executive are not in the majority but in a very large minority, especially when they only need to convince a few extra supporters from the non-Executive branches to support them. That is the rub here, I think. I personally think that far from abolishing the Troy Rule, we need to strengthen the Troy Rule even further. I would go so far as to say we need to reduce the number of Ministers and Assistant Ministers. I would say to a third, not exceeding a third, of the

Assembly at any one point to strengthen the *de facto* Scrutiny role and the actual Scrutiny role, Members who are able to serve on those committees and by simply saying that one Minister cannot vote for a particular Scrutiny role while the other 20-odd Ministers can obviously decide who they think is best suited to give them soft scrutiny, is complete window dressing. We missed a complete trick here, we should have said no Minister and no Assistant Minister will take part in the election for Scrutiny chairman. They are the Executive, the rest of us are Scrutiny effectively. We are the pool from which Scrutiny can be drawn and therefore we are the ones who choose who is best placed to scrutinise the Ministers. That is the clear split that we should have between ministerial government. I am not one of those who looks back nostalgically and thinks that everything was better in the past. I am sure that there certainly a trade-off between the committee system and ministerial system. But if it is to work we cannot have all the so-called efficiencies of ministerial government. I say that slightly tongue in cheek because, of course, where are the efficiencies that we have seen in the expediency of decision making? They certainly have not manifested themselves in the likes of the hospital. Some changes coming through Social Security, whatever the department is, it is only really at the very end of this term that desperation kicks in with this Council of Ministers because they want to be seen to be doing something, whether it be in higher education, in other departments, whatever it might be. But if, in theory, there is to be efficiency in the ministerial system and, moreover, accountability and working together then even more important is that we have the democratic safeguards and the strengthening of the Scrutiny processes that go on. The way to do that is not by this piece of window dressing which purports to have some kind of separation between a Minister and who the other Ministers choose along with the rest of the Assembly, it is to do it properly and this proposition does not do that. I cannot be supporting it on that basis.

#### **4.1.4 Deputy A.D. Lewis:**

Just briefly. I am sure the chairman has a very good answer to this but P.A.C. is not mentioned in this at all. It is officers, as a member of that panel previously, we would interview. Of course the officers, and particularly the Treasurer and other officials, report to the Minister. I am just wondering what the chairman can offer in the way assurance that he does not feel that maybe that vote for P.A.C. should also be subject to similar kind of restrictions. I am with Senator Ozouf, though, with the oath of office that we take I would like to think that we can all make an informed decision in the best interests of the people that elected us to elect the best person for the job that has put themselves forward. I am not sure that this was entirely necessary. I cannot remember how I voted last time so I shall not quote it. In theory I can understand why it has come about but I am not so sure it is entirely necessary. My biggest bugbear about Scrutiny, having been on that side of the fence most of this term - I voted for it apparently, thank you, Senator - is I would like to see comparable resources in scrutiny that there are in the Executive. We are nowhere near that. Even if it was a tiny bit closer, there is so much more that the officers and those that serve in Scrutiny and P.A.C. can achieve. I know the Greffier has looked at it, and I know he has some thoughts and plans but we do not seem to have moved much further forward in this term at all with resourcing Scrutiny and the Public Accounts Committee. So I hope in the next Assembly more attention is given to that so we can give even better feedback to Ministers. They call us critical friends, that is fine, but we need to the resources to be that critical friend. I do not believe we have it at the moment and if we do we are perhaps not using it always as well as we could. So I would like the chairman to be pushing more resourcing for Members generally but particularly on the side of Scrutiny. I know that is a debate for another day but right now, from what I have heard today, I am struggling a little bit to support this in the way I did in the last debate. So I shall hear the chairman's summing up. But I would like him to answer what does he think about a P.A.C. chair being elected by Members that are directly affected by the reports and reviews that P.A.C. do, particularly the Minister for Treasury and Resources. Thank you.

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

If I had to assign a Shakespeare play to the title of this debate I think it would be *Much ado about nothing*. I sympathise with the P.P.C. (Privileges and Procedures Committee) in their view that it is not appropriate for a Minister who is being scrutinised by a particular Scrutiny Panel to propose the chairman of that panel. It seems to me to be extraordinary for a Minister to do that. Certainly I would never propose the chairman of the Corporate Services Scrutiny Panel.

[12:30]

But, on the other hand, I think the bad decision was made in trying to restrict the right of Members to vote in this Assembly, which is a different issue. I can see no reason at all why a Minister should not vote upon any proposition which comes before this Assembly, he is a Member of it.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak? In which case I call upon the Chairman of P.P.C. to reply.

**4.1.6 The Connétable of St. Clement:**

I will do my best. I said this was a noddy today, but I got that wrong. But it is interesting, we have debated all the items that have been raised this morning during this debate about the Troy Rule, about the number of Members, about the efficiency of government, the desperation of the Council of Ministers, the resources for Members, none of which are contained in this proposition. But nevertheless I can say to Deputy Lewis that P.P.C. are talking about resources for Members and we have started to do that really after the debate we had on Members' remuneration a few months ago and we are planning to hold some workshops in the next couple of months to start talking about how we can assist Members in those areas; and also the Deputy, yes, of course we did not include P.A.C. in this amendment to Standing Orders because the States did not ask us to. That is one reason but the other reason, of course, is P.A.C. deal with different matters, they deal in retrospect. They deal with administration and they deal with officers, not, as the Deputy well knows, as the previous chairman of P.A.C., so that would not have been appropriate. Personally, as a States Member, I agree totally with what Senator Ozouf had to say and I voted against Deputy Labey's proposition a few months ago. But I am speaking now as chairman of P.P.C. who was given a job to do, told to go away and come back with a change to Standing Orders that stops Ministers voting for their chairs of Scrutiny Panels and that is what I have done. The committee has respected the States decision, the decision has been made. I respect the democratic decision. Even though I voted against Deputy Labey's proposition, of course I respect the States decision and, as chairman of P.P.C., will support that States decision by voting for this proposition today. I maintain the proposition but just to be on the safe side I am going to ask for Articles 1 and 2 to be taken first because it would be silly to have the corrections to the remits if the Scrutiny Panels are defeated on this occasion. If I could ask for Articles 1 and 2 to be taken separately, Sir.

**The Greffier of the States (in the Chair):**

The appel has been called for.

**The Connétable of St. Clement:**

Has it? I did not call for it, Sir.

**The Greffier of the States (in the Chair):**

I thought you had called for it.

**The Connétable of St. Clement:**

No, I did not call for an appel, I asked for a vote separately on Articles 1 and 2. **[Laughter]**

**The Greffier of the States (in the Chair):**

The appel has now been called for. I ask Members to return to their seats and the vote is on Articles 1 and 2 of these changes to Standing Orders and I ask the Greffier to open the voting.

**Senator P.M. Bailhache:**

Sir, before the Assembly votes, can I just raise a point of order?

**The Greffier of the States (in the Chair):**

The Assembly is voting now, so, no, I am afraid. Too late, I am afraid, I think the vote is in progress.

<b>POUR: 22</b>	<b>CONTRE: 16</b>	<b>ABSTAIN: 0</b>
Senator A.J.H. Maclean	Senator P.F.C. Ozouf	
Connétable of St. Clement	Senator I.J. Gorst	
Connétable of St. Peter	Senator L.J. Farnham	
Connétable of St. Lawrence	Senator P.M. Bailhache	
Connétable of St. Ouen	Senator A.K.F. Green	
Connétable of St. Brelade	Connétable of St. Helier	
Connétable of St. Saviour	Connétable of St. Mary	
Connétable of Grouville	Connétable of St. Martin	
Connétable of St. John	Deputy J.A. Hilton (H)	
Connétable of Trinity	Deputy of Trinity	
Deputy G.P. Southern (H)	Deputy of St. John	
Deputy of Grouville	Deputy R.G. Bryans (H)	
Deputy K.C. Lewis (S)	Deputy R.J. Rondel (H)	
Deputy M. Tadier (B)	Deputy A.D. Lewis (H)	
Deputy M.R. Higgins (H)	Deputy M.J. Norton (B)	
Deputy J.M. Maçon (S)	Deputy G.J. Truscott (B)	
Deputy of St. Peter		
Deputy S.Y. Mézec (H)		
Deputy L.M.C. Doublet (S)		
Deputy S.M. Wickenden (H)		
Deputy T.A. McDonald (S)		
Deputy of St. Mary		

**The Greffier of the States (in the Chair):**

Senator, did you want to say anything in retrospect, what might have happened? Did you want to say anything at this point?

**Senator P.M. Bailhache:**

I was just curious, it seems to me that there is no good reason for any Member to vote against Article 1 of the proposed Standing Order, the interpretation of it and I wondered why that was linked with Article 2.

**The Greffier of the States (in the Chair):**

I think because it could be taken completely separately but I think the idea would be to take 1 and 2 and if that were defeated, which it was not, we would then take 1 and 3, which is a pragmatic way of dealing with that. But, as it is, 1 and 2 have been adopted. Constable, do you wish to propose 3 and 4?

**The Connétable of St. Clement:**

Yes, please, Sir.

**The Connétable of St. Lawrence:**

Excuse me, Sir, before we go on to that, may I just say that my vote did not register again today? I voted for the adoption. I know it has been carried but I would just like it to be noted it did not register.

**The Greffier of the States (in the Chair):**

Let me just check with the Greffier what the situation was.

**The Connétable of St. Lawrence:**

I am being asked how I know, it carried on flashing, Sir, even though I had cast my vote.

**The Greffier of the States (in the Chair):**

It is not down there. I think you have had this problem before, Constable, so ...

**The Connétable of St. Lawrence:**

Yesterday or the day before.

**The Greffier of the States (in the Chair):**

Yes, our system has it in for you. We will correct the records that your vote was counted. Are you calling for appel or ...

**The Connétable of St. Clement:**

Yes, I propose Articles 3 and 4, Sir.

**The Greffier of the States (in the Chair):**

Those in favour of Articles 3 and 4. The appel has been called for on Articles 3 and 4 of the Standing Order change. I ask Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 25</b>		<b>CONTRE: 13</b>		<b>ABSTAIN: 0</b>
Senator A.J.H. Maclean		Senator P.F.C. Ozouf		
Senator I.J. Gorst		Senator L.J. Farnham		
Senator S.C. Ferguson		Senator P.M. Bailhache		
Connétable of St. Clement		Senator A.K.F. Green		
Connétable of St. Peter		Connétable of St. Helier		
Connétable of St. Lawrence		Connétable of St. Martin		
Connétable of St. Mary		Connétable of St. Saviour		
Connétable of St. Ouen		Deputy of St. John		
Connétable of St. Brelade		Deputy of St. Peter		
Connétable of Grouville		Deputy R.J. Rondel (H)		
Connétable of St. John		Deputy A.D. Lewis (H)		
Connétable of Trinity		Deputy M.J. Norton (B)		
Deputy G.P. Southern (H)		Deputy G.J. Truscott (B)		
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.Y. Mézec (H)				
Deputy L.M.C. Doublet (S)				
Deputy S.M. Wickenden (H)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				

**5. Draft Employment of States of Jersey Employees (Amendment No. 9) (Jersey) Regulations 201- (P.126/2017) and Jersey Appointments Commission: appointment of Commissioners (P.127.2017) - reduction in lodging period**

**The Greffier of the States (in the Chair):**

Very well. Senator Green, if we move on to P.126 and P.127, both of these require use of the Standing Order 26(7) to reduce the lodgement period. I wonder if it sensible to take the reduction of the lodgement period together for the 2 propositions. Do you wish to propose that?

**5.1 Senator A.K.F. Green (Chairman, States Employment Board):**

Yes, I am in the hands of the Assembly as to whether we could reduce the lodging period. Would the world end if this had to wait until February? No, but would we be in a position to ensure better governance in terms of appointments and particularly for arms-length organisations earlier? Then the answer to that is yes and that is why we are keen to get on with it, Sir.

**The Greffier of the States (in the Chair):**

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

**5.1.1 Deputy G.P. Southern of St. Helier:**

Yes, and I am reluctant to do so but really we are getting to the point where we are hardly obeying Standing Orders at all. Minister after Minister brings propositions late. I want to suggest that what we should do is return to the previous rules, which were much shorter lodging periods. We introduced longer lodging periods and we seem to be unable to meet them. It seems to me a ridiculous way to behave, with Minister after Minister just exploiting this and saying: "Please, can we have this now?" Even as the Minister today says: "No, it is not urgent." If it is not urgent we should not be debating it, full stop.

**5.1.2 Deputy M. Tadier:**

I would like to echo that, Members will be aware that obviously this week I debated the amendment to the Constable's Law on nationality and, as such, I had to lodge, for it to make sense, a consequential amendment for Senators and Deputies. I could have asked for the lodging time to be reduced and I thought seriously about asking the P.P.C. chairman if we could have that debate first. I could have easily argued for it to be in the public interest because the issue of who can stand for election. I am not reopening the debate but just giving that by way of example; it is clearly in the public interest. But I chose not to do that because I think the rules about lodging periods, even though I was caught out, not in a negative way but I was caught out by the fact that P.P.C. had beaten me to something I wanted to do before the end of the term. I had to take that on the chin, if you like. I think it is only in exceptional circumstances and we need to show personal discipline about using these kind of reductions in lodging periods sparingly. If it becomes so commonplace and we cannot show that discipline, then we really do need to look at reviewing the procedures, either to shorten the lodging period, saying you can lodge whatever you want within a week and the Assembly decide on the basis of that whether they have had enough time to consider it and it may prejudice the debate in that regard or we go back to some form of tightening the rules and qualifying it because this public-interest test is never really debated. The presumption should always be on the person who is bringing it. Now we have had the Minister standing up and saying: "It is not really that urgent but it would be nice if we could get it in today for these particular reasons." I am sorry, that is not really good enough. I think in exceptional circumstances but not when it is coming every week and it is often coming from Ministers who do. I know they are very busy and the staff they have are very busy. They have the resources and we should expect better as an Assembly.

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

I am looking at the Standing Order and, frankly, the Deputy Chief Minister, in his capacity as Chairman of the States Employment Board, is required to put a 6-week lodging period for the proposition that is there. I think we just need to consider whether or not there is the ability; it does say in the public interest. The Deputy Chief Minister has said that we have 2 candidates. No doubt he has explained to us important appointments that need to be made. I think that is absolutely blindingly obvious. We are being asked to, effectively, apply the Standing Order, the public-interest test. Is it in the public interest that we get on, make these appointments, so that we can make appointments at a high level? I see the Constable of St. Saviour shaking her head. I am trying to work out what is not in the public interest of a proposition that is being properly carried out. There are strictures in relation to the way that the States Employment Board has to go through the modalities of appointing somebody. This is, effectively, if I may respectfully say, a check, almost a rubber stamp, providing everything has been in order. Is there anything in this proposition that does not look as though it is in order? Is it in the public interest to get on, appoint these people, so that the Appointments Commission, who are there to put the issue of the most important people to run our public sector in place? Is it in the public interest that we sort this out and make these appointments today, rather than just give a slap to the Deputy Chief Minister and have another regular beating of Ministers and those people who bring amendments? I have put forward an amendment today on something else, which I will get a good beating on next week, no doubt because I learnt only after the presentation of the housing issue. Is it in the public interest that we get on and debate this today? Clearly, it is. It is nearly lunchtime. Does anybody oppose it? I do not think so. The fact is it is a 6-weeks lodging period, which is the real problem that needs to be addressed. Appointments, 6 weeks when we are a ratifying authority; that is what we are doing. The work has been done, the jobs are there, the people are there; let us get on with them. I agree with the request from the Deputy Chief Minister. It would be unfair and unrealistic and much ado about nothing to say no, in my view.

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

I just cannot believe I just heard what came out of Senator Ozouf's mouth. I am sorry, I mean it is not about bashing up a Minister. We have rules in place for a purpose. This is part of the reason why the public get sick and tired of us and think we are stupid and useless because we cannot even abide by our own rules. What we should be doing in this Assembly is saying to the Minister, prove why it is in the public interest. The Appointments Commission, yes, it is an extremely important role but why does it have to be today and not 2nd February? When was the Minister made aware of this? When was the States Employment Board made aware of this? Why did it take so long for it to come to the States Assembly in the first place? Those questions have not been answered. Provide the information and the answers in order to test the public-interest test so that we can make that determination for ourselves. But do not just stand there and say: "It is just rubber-stamping, do not worry about it, we know what we are talking about." I think that is absolutely disgraceful. I am sorry but this is a regulation. This is about legislation, this is what we are here for. If the Minister does not like it, then maybe he should consider what he is doing.

#### **5.1.5 Deputy A.D. Lewis:**

Sorry to prolong this and I am not going to very much but this is just good management. We could have done this by now. I can hear what people are saying, yes, rules are rules but the world I come from sometimes rules are made to be broken as well. This is just good management, good management of time, good management of people. We have got people lined up to take on jobs; it looks like we are not being very efficient. On this occasion, I do not believe there is any necessity to delay this whatsoever. I think we should get on with it and we could have done this by now. We just debated this for the last 10 minutes; we could have done it. It is good efficient use of our time in this Parliament.

[12:45]

We have got a lot of work to do between now and April and this is not helping. The Bailiff alerted us to that yesterday. This is good time management and we should just get on and get on with these propositions and do it now.

**5.1.6 The Connétable of St. John:**

If anybody bothered to read the C. & A.G.'s (Comptroller and Auditor General's) report that came out earlier this year, she talked about evidence-based decision making. Give us the evidence, why is it lodged late? Why should we approve it? Let us make a decision on all the evidence before us.

**5.1.7 The Connétable of St. Clement:**

Just briefly, we are making heavy weather of rather a small item. I think those who said that we have rules and they should be applied and the Minister has said that it is not urgent, then perhaps we should listen to that. We do have the rules for a reason. But the States also agreed, now some years ago, that the system for making such appointments should change and the appointments should be made by the relevant Minister or department and notified to the States. The Privileges and Procedures Committee has now lodged an amendment to Standing Orders that would enable that to happen. It will be debated at the next sitting in a fortnight's time and if the States approve it, then propositions like this need not come to the States. But the reality is at the moment they do need to come to the States. If we cannot follow our own Standing Orders, when there is no pressing need not to, then it does not send out a very good message.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak? If not, Senator Green.

**5.1.8 Senator A.K.F. Green:**

I have heard all sorts of things, including we are breaking our own rules and Standing Orders but Standing Orders says if it is in the public interest. I say clearly, while it is not the end of the world, it is in the public interest that we have the right people in place as quickly as possible in order to ensure good governance in the appointment of all senior posts but particularly I am looking at the number of arm's-length organisation appointments we have to make in the near future. When these people are appointed they have to be trained. I did not lodge late, I lodged immediately the interviews took place and we knew who we were going to appoint. But I would like to get these people trained and working, so I can ensure, as the chair of S.E.B. (States Employment Board), along with my members of S.E.B., that we have the right people there with the right skills to ensure good governance in the appointment of senior staff, as I have said. I do not think I can say much more, other than confirm what the chairman of P.P.C. said, that very shortly this will be through Standing Orders, this will not come to the Assembly anyway. I just do not know why we just do not get on with it. We want to increase the number of commissioners by one and we want to name the 2 commissioners that have been selected. I cannot say any more, I think I have answered the questions. It is a very simple proposition. I am in the hands of the Members.

**The Greffier of the States (in the Chair):**

Those in favour of the proposition. The appel has been called for. I ask Members to return to their seats. The vote is on reducing the lodgement period for P.126 and P.127 and I ask the Greffier to open the voting.

<b>POUR: 20</b>		<b>CONTRE: 17</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf		Connétable of St. Helier		
Senator A.J.H. Maclean		Connétable of St. Clement		
Senator I.J. Gorst		Connétable of St. Lawrence		
Senator L.J. Farnham		Connétable of St. Saviour		

Senator P.M. Bailhache		Connétable of St. John		
Senator A.K.F. Green		Connétable of Trinity		
Connétable of St. Peter		Deputy G.P. Southern (H)		
Connétable of St. Mary		Deputy of Grouville		
Connétable of St. Ouen		Deputy K.C. Lewis (S)		
Connétable of St. Martin		Deputy M. Tadier (B)		
Connétable of Grouville		Deputy of St. John		
Deputy J.A. Hilton (H)		Deputy M.R. Higgins (H)		
Deputy of Trinity		Deputy J.M. Maçon (S)		
Deputy E.J. Noel (L)		Deputy S.Y. Mézec (H)		
Deputy of St. Peter		Deputy L.M.C. Doublet (S)		
Deputy R.J. Rondel (H)		Deputy T.A. McDonald (S)		
Deputy A.D. Lewis (H)		Deputy of St. Mary		
Deputy S.M. Wickenden (H)				
Deputy M.J. Norton (B)				
Deputy G.J. Truscott (B)				

**Deputy M. Tadier:**

Sir, may I ask to move Standing Order 85, which is the proposal to move to the next item?

**The Greffier of the States (in the Chair):**

No, because we are not on an item at the moment, nothing has been read. I was going to say that it is past 12.45 p.m. and the Assembly needs to decide whether to ...

**LUNCHEON ADJOURNMENT PROPOSED**

**The Greffier of the States (in the Chair):**

The adjournment has been proposed. In that case the Assembly will meet at 2.15 p.m. this afternoon. Deputy Tadier, do you have something to say about the adjournment?

**Deputy M. Tadier:**

I just want to say if it is so urgent that we debate this, should we not stay on over lunchtime?

**The Greffier of the States (in the Chair):**

I think the Assembly has decided to adjourn.

[12:50]

**LUNCHEON ADJOURNMENT**

[14:17]

**6. Draft Employment of States of Jersey Employees (Amendment No. 9) (Jersey) Regulations 201- (P.126/2017)**

**The Greffier of the States (in the Chair):**

The Assembly, before the break, agreed to reduce the lodgement period on P.126 and P.127, so I think we should proceed with those 2 propositions before returning to the Criminal Procedure Draft Law. The first one is P.126, Draft Employment of States of Jersey Employees (Amendment No. 9) (Jersey) Regulations and I ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Employment of States of Jersey Employees (Amendment No. 9) (Jersey) Regulations 201-. The States, in pursuance of Article 42 of the Employment of States of Jersey Employees (Jersey) Law 2005, have made the following Regulations.

**6.1 Senator A.K.F. Green (Chairman, States Employment Board):**

I will not keep Members very long, this is a very simple proposition. Currently we have 4 commissioners, we want to make it 5. There are no manpower cost implications. Obviously there would be an extra person available but that brings diversity, both to the choice of commissioners and availability because, as you know, it is a very part-time role. By having 5 just makes it more likely that we can get the number of commissioners we need every time we need to form a board. There will be more boards coming up, as I was trying to explain before lunch, now that the Commission is overseeing the appointments of board members in arm’s-length organisations, so 4 to 5, no extra cost.

**The Greffier of the States (in the Chair):**

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

**6.1.1 Deputy C.F. Labey of Grouville:**

I would just like to raise the issue and it is not necessarily specific to this proposition but obviously there are no cost implications with an additional commissioner here but is there a job of work being undertaken where we have all these commissions, where lay people do the work in a voluntary capacity? We have quangos like Andium, S.o.J.D.C. (States of Jersey Development Company), other organisations, where some board members are paid quite handsomely. I think there is an issue that needs looking at, just why some positions, voluntary positions, for the States are paid and others are not. Like I say, it is not specific to this proposition but I think there is a job of work to be done, to be looked at here.

**The Greffier of the States (in the Chair):**

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

**6.1.2 Senator A.K.F. Green:**

I think the Deputy of Grouville asked a very important question. It is something that I will take back for discussion. I am not quite sure if it falls within the remit of S.E.B. but I do think it is something that does need to be discussed, I say that I will do that. The proposition is very simple, 4 commissioners, now we want permission from the Assembly to make it 5 and I make the proposition.

**The Greffier of the States (in the Chair):**

Those Members in favour of the principles, kindly show. The appel has been called for. I ask Members to return to their seats. The vote is on the principles of the Draft Employment States of Jersey Employees (Amendment No. 9) (Jersey) Regulations and I ask the Greffier to open the voting.

<b>POUR: 30</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator A.K.F. Green				
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 Grouville				
Connétable of St. John				
Connétable of Trinity				

Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

**The Greffier of the States (in the Chair):**

A slightly unusual situation that virtually the whole Corporate Services Panel is absent, for one reason or another but the Constable of St. John, I think, are you still a member of the panel? Does anyone wish to claim to a member of the panel? I may check. I think in the circumstances it cannot be referred to the panel if no member of the panel is here to ...

**Deputy M.R. Higgins:**

Can we not suggest it anyway?

**The Greffier of the States (in the Chair):**

No, it has to be agreed by a panel member. I think we will deem that it is not to be called in for Scrutiny and we will move on to the Articles. Senator Green.

**Senator A.K.F. Green:**

It is very simple, as I said. Can I just propose the Articles *en bloc*, Sir?

**The Greffier of the States (in the Chair):**

Are the Articles seconded? [**Seconded**] Does any Member wish to speak on the Articles? Those in favour of the Articles, kindly show. Those against? The Articles are adopted. Third Reading, Senator. Does any Member wish to speak on Third Reading? Those Members in favour of Third Reading, kindly show. The appel has been called for. I ask Members to return to their seats. The vote is on a Third Reading of these Regulations and I ask the Greffier to open the voting.

<b>POUR: 30</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator A.K.F. Green				
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 Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				

## **7. Jersey Appointments Commission: appointment of commissioners (P.127/2017)**

### **The Greffier of the States (in the Chair):**

We now move on to Jersey Appointments Commission: appointment of commissioners 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 appoint Mrs. Jennifer Carnegie and Mr. Peter Charalambous as commissioners of Jersey Appointments Commission until 31st January 2022.

### **7.1 Senator A.K.F. Green (Chairman, States Employment Board):**

Yes, this does what it says on the tin but we have already had a vacancy for a commissioner and now the States - I am very grateful to them - has agreed to increase the number of commissioners and we have 2. The pen pictures of both candidates that have been selected are in the proposition. But Mrs. Carnegie has been with us before as a commissioner and carried out her role diligently and was an excellent commissioner but had to resign when her work took her out of the Island. I am delighted to say she is now back with us and applied when we advertised. Mr. Peter Charalambous is a new face on the block, considerable experience in the fields that we want and it is also nice to see somebody entirely new that is not on any other boards coming forward and offering his services. He was very impressive at interview. He has all the right skills and I hope that the Assembly will approve both of those appointments.

### **The Greffier of the States (in the Chair):**

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

## **8. Draft Criminal Procedure (Jersey) Law 201- (P.118/2017)**

### **The Greffier of the States (in the Chair):**

I now move back to the Draft Criminal Procedure (Jersey) Law 201- and I ask the Greffier to read the citation.

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

Draft Criminal Procedure (Jersey) Law 201-. A Law prescribing the procedure to be followed in, or in connection with, criminal proceedings; to provide for the quashing of acquittals by the Court of Appeal; to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003 in connection with evidence in criminal proceedings and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

### **8.1 The Deputy of St. Peter (The Minister for Home Affairs - rapporteur):**

I am very pleased to be able to bring the Criminal Procedure Law to the Assembly. It is a critical piece of legislation which is a culmination of years of work and has had considerable input from the Bailiff, the Magistrate, Viscount and others, including practising defence lawyers. It is a significant modernisation of our treatment of criminal cases. Once fully implemented, alongside other legislation covering bail, which we have already agreed to, sexual offences, mental health incapacity and self-determination, Jersey will be able to lay claim to being a world-leading criminal justice system. I am very grateful to the Education and Home Affairs Scrutiny Panel who have taken an active interest in this vital piece of legislation. I understand that the vice-chairman will call in the proposition after the principles are debated, in order to allow a sub-panel, which is chaired by Deputy Mézec, to complete its review into the law. This is a complex piece of legislation and that might make my speech today a little longer than is normal for a First Reading and I make no apology for that, given the significance of these changes to our criminal justice system. I will start with an overview of the draft law and then look at the rationale behind the legislation before addressing the principles in detail. Members will have received comments from the sub-panel and I highlight the points raised as I go through the principles. The general intention is to create a fairer, more effective and accessible justice system by replacing the existing 1864 Law in French with a single Criminal Procedure Law in English. It has been deliberately written in a way that makes it accessible to a lay person, which is essential, given the right of a citizen to represent themselves in the process. The draft law outlines its intentions clearly in a single statute stating that: “The overriding objective of the law is to ensure that cases in criminal procedures are dealt with justly.” The description of justice is the overriding objective; it is not simply decorative. It has a very real meaning in law and the courts will be required to apply that legislation in a way that gives effect to the intention. The overriding objectives of the draft law are to acquit the innocent and convict the guilty, to deal fairly with both the prosecution and defence and to respect the interests and rights of witnesses, victims and jurors. It also means running an efficient and effective criminal justice system, as efficiency and justice are intrinsically linked. The faster the journey of the victim through the system, the more likely they are to feel that justice has been served. The faster a defendant can be brought to trial with all of the necessary safeguards still in place, the better for them, whether guilty or innocent. The faster witnesses can be heard, the sooner they can move on with their lives. A criminal justice system can be just and fair because it is efficient and effective. There is no safeguard for victims, witnesses or defendants in court delays or cancelled hearings. Justice delayed is truly justice denied. The draft law makes the overriding objective of justice the responsibility of all participants in the process. It requires that the parties keep the courts fully informed about the progress of cases. Also, the court itself will be bound by the overriding objective in the exercise of its powers and the interpretation of legislation. The requirement for an effective and modern criminal justice system requires a degree

of case management, which is the exercise of managerial control over the progress of the case by the judge. The draft law will require that courts undertake active case management and that the parties assist them in that task by identifying key issues, the needs of witnesses and achieving certainty as to what must be done and by whom. It also means setting a timetable for the case and discouraging delay. A key element of this approach is to incorporate the use of technology into the criminal process where it is efficient and just to do so. The expectation is a rapid and effective communication between the prosecution and the defence and with the court throughout the case on subjects such as the likely plea of the defendant, what facts are in dispute and what material has been requested from each party and so on. The draft law will allow the Bailiff and Magistrate to issue directions about case management to both prosecution and defence, for instance, about whether a hearing will be public or private and when they will be held, on how issues in the case will be dealt with. In order to ensure that cases are completed in a reasonable time, rules are laid down about how long hearings can be adjourned for, giving consideration to whether a defendant has legal representation and whether or not they are held in custody. These periods range from 30 to 60 days but it must be recognised that this is an absolute maximum, rather than a target. These adjournment periods may be requested by either party or directed by the court and they are intended to allow further work to be done or material gathered where it could not be done before the trial commenced. The draft law describes the position of the Attorney General within the criminal justice system and restates the current position that the prosecution of criminal proceedings may be conducted by or on behalf of the Attorney General.

[14:30]

I must be absolutely clear here, that this does not affect the powers of a Centenier to charge, grant bail, conduct a Parish Hall Inquiry or present a defendant before the Magistrate's Court. As some Members will be aware, the Attorney General gave a presentation in respect of the draft law to both Centeniers and the Comité des Connétables and the feedback we have received is that they are satisfied with the protection the draft law provides with the role of the Honorary Police. As under the current system, the Attorney General will retain the capacity to directly initiate cases in the Royal Court where this is appropriate in all the circumstances of the case. I will speak further about the process for initiating proceedings in a few moments. The draft law also deals with the Magistrate and the operation of the Magistrate's Court. It does not change the maximum fine or sentence that the Magistrate can impose, which remain at £10,000 and 12 months' imprisonment, respectively. With all cases that might require more serious penalties being passed on to the Royal Court. This retains the existing structure of 3 criminal courts in Jersey; the Youth Court, the Magistrate's Court and the Royal Court. It allows the Magistrate to sit at any time or place, which provoked a comment in consultation referring to it as the Martini provision. This is in fact a restatement of an existing power of the Magistrate under the previously amended law of 1853, which established the court. It is worth outlining for Members that a defendant might proceed through the criminal justice system, so I can give some details now about how this will change under the draft law and what elements will remain the same. As now a person will appear in the Magistrate's Court if they are arrested for an offence within the scope of the Magistrate's sentencing powers or if they are summoned by the Attorney General, a prosecutor or a Centenier. If they fail to attend when instructed without good reason, they will have committed an additional offence with a maximum penalty of up to 12 months imprisonment or an unlimited fine and they will be arrested. A significant change in the process is the requirement that if a person is in custody and has not been granted bail, then they must appear in the Magistrate's Court within 48 hours of their arrest. This means that the Magistrate will be able to decide whether or not someone should be bailed in good time and avoids unnecessary confusion and uncertainty on the part of the defendant, as well as starting the prosecution process as quickly as possible. Members will recall that the related Bail Law, which we debated last year, makes detailed provision for the grant and conditions of bail. I will not repeat those here but Members will see that the 2 pieces of legislation are deeply interlinked. When a defendant first appears before the

Magistrate's Court they may enter a guilty plea or a not guilty plea or may choose to enter no plea at all. Guilty pleas will be withdrawn with the permission of the Magistrate at a later date, if required. If no plea is entered then the proceedings will continue as if the defendant had pleaded not guilty and they may enter a plea at a later stage in the process. As quickly as reasonably possible the defendant will then be tried on charges brought against them by the Attorney General. In a departure from the current process the draft law will provide the prosecution with a capacity to alter the charges which an individual faces once the trial has commenced. This means that if the facts revealed in the case indicate that the defendant may have committed a crime that is different from the one that they have been charged with, then the trial does not have to be abandoned. Any change in the offence being tried will allow the defendant to enter a new plea, if they wish. Where a defendant has pleaded guilty, they will be convicted of the offence in question. The Magistrate will hear representations from the prosecution and defence and decide whether or not the defendant should be sentenced in the Magistrate's Court or by the Royal Court. If a defendant pleads not guilty, the Magistrate must hear representations and decide whether or not the defendant should be tried in the Magistrate's Court or in the Royal Court, depending again on whether they are given all of the circumstances in context, the offence would be likely to require a sentence outside of the Magistrate's scope. This is a significant departure from the current situation in that it will remove the current arrangements for committal proceedings. This issue was highlighted by the Law Society, which called it a fundamental right in its response to the consultation and Members will have seen reference to it in the comments. Firstly, we must recognise that a full committal is not generally understood to be a fundamental right, whether in Jersey or elsewhere. Some pre-trial consideration of the case is essential but this is currently managed in almost all cases by what is known as a paper committal, which is an exchange of documents between the parties. Under the new system this will be dealt with by the defence case statement and related prosecution disclosure. What is now known as an old-style committal requires that all evidence that will be submitted by the prosecution be laid out in full and it has a significant effect on witnesses, as it requires them all to present themselves at this point, as well as giving evidence during the trial itself. Committals were introduced in 1864 at a time when cases were brought to the Magistrate's Court only by Centeniers, who were not legally qualified. The committal process was then intended to weed out any cases that had no merit before a full trial took place. In addition, committals were instituted at a time where there was no provision for bail and there was an incentive to test cases immediately to avoid the accused spending unnecessary time in prison and, remember, at the time that prison was, of course, Newgate Street. Now that the Attorney General is responsible for all prosecutions, there is no longer a concern that evidence will fail to be professionally assessed. Were any cases without merit to proceed to prosecution, the Magistrates and lawyers involved in the case are able to test the evidence appropriately and ask for the case to be dismissed or at least that bail be granted on the basis that the case was weak. The downside of retaining committals is their use in the present day to make the prosecution's task more challenging by increasing the burden on witnesses. The Attorney General now routinely uses his powers to initiate cases concerning sexual offences or violence directly to the Royal Court when an attempt is made to require an old-style committal in the Magistrate's Court, on the perfectly reasonable grounds that he will not allow a victim to be forced to undertake the trial process twice. If the case is tried in the Magistrate's Court and it becomes clear from facts emerging during the trial, that the particular characteristics of the offence make it so serious as to be outside of the Magistrate's sentencing powers after representations are heard, it can be directed to the Royal Court for sentencing. This ability for a case to be tried by the Magistrate but sentenced by the Royal Court has been identified in one consultation response as a potential erosion of the right to jury trial. In fact, this is going to be a rarely-used provision within the current body of law and under the new rules it will still be a very unusual outcome. There is a safeguard in that any party who is aggrieved by the outcome of the case in the Magistrate's Court, including passing the outcome to the Royal Court for sentencing, may apply to the Magistrate in writing within 8 days to ask the Royal Court to override the decision of the

Magistrate. This new provision for moving cases between courts is intended to ensure that they work in harmony by facilitating a smooth transition, for instance, to avoid disconnection and delay the Magistrate may set a date for a Royal Court trial to start and may pass connected offences or connected defendants to the Royal Court for trial, where it would be appropriate to avoid 2 separate proceedings. As now, a defendant will have the right of appeal in writing within 7 days to the Royal Court against a sentence of the Magistrate. Depending on the seriousness of the offence, the defendant may also find themselves in the Royal Court on indictment from the Attorney General. This may be because they have been sent to the Royal Court by the Magistrates because the Attorney General has started a prosecution directly in that court or because they are sentenced by the Royal Court, either having been found guilty or pleading guilty in the Magistrate's Court. The initial process is very similar to that in the Magistrate's Court in that a defendant may enter a plea of guilty or not guilty or may choose to enter no plea until later in the process and guilty pleas can be withdrawn with the permission of the court. Again, the draft law will provide the prosecution with the capacity to alter the charges which an individual faces, once the trial has commenced, to avoid the cost and distress of aborted trials and, again, any change in the offence being tried will allow the defendant to enter a fresh plea. As Members will have seen from the comments, one change under the draft law is that cases elevated to the Royal Court may be returned to the Magistrate's Court if the circumstances justify it. This is an administrative improvement that will allow cases to be better managed. At the current time cases that appear in the Royal Court cannot be returned to the Magistrate's, this means that if any part of the indictment is dropped the residual elements remain in the Royal Court. As an example, if an individual was charged with breaking and entering and also being drunk in charge of a bicycle, if the facts reveal that no breaking and entering took place, then the Royal Court would be forced to deal with a prosecution solely for being drunk in charge of a bicycle. The Royal Court is not suitable for that purpose, clearly, as it is too expensive, too busy and has no experience in dealing with that kind of relatively minor conviction. Also, in the case of the defendant, it would not deserve a conviction from the Royal Court on their record, as the assumption of people later viewing that criminal record will be that the case was dealt with in the Royal Court, so the bicycle crime must have warranted more than 12 months' imprisonment, as they must have had significant aggravating factors. Unlike the Magistrate's Court, the defendant in the Royal Court can face different modes of trial if they have committed an offence that is codified in law as a statutory offence when they will be tried by the inferior number of the Royal Court, which consists of a judge and 2 Jurats. If the offence comes from the body of customary law they can choose to be tried either by the inferior number or by judge and jury. The draft law also provides mixed indictments to be heard. This will occur when a person is charged with a customary offence, together with a statutory offence. It is not currently possible to try both offences at the same time, as the modes of trial are different. This can lead to injustice, as the difficulties of holding 2 near-identical trials mean that some offences can go untried. The draft law will allow the Royal Court to try both offences together. This correction will help to satisfy Jersey's international obligations in respect of the management of financial crime. Currently our courts cannot try both a customary offence of fraud and a statutory financial crime, such as money laundering, joining together. Fraud is the most serious of those offences so is usually charged, with the result that Jersey appears to prosecute very few statutory financial crimes. This has been noted by MONEYVAL, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. They represent the European Commission, as I am sure Members are aware. The change will make no real difference to our already satisfactory compliance regime, but it will make a further improvement to our reputation. If the defendant pleads guilty, they will be convicted of the offence and will then proceed to sentencing. Where they plead not guilty, they will proceed to trial as they do currently. If the Bailiff believes that the trial might be particularly complex, then the draft law allows for preparatory hearings to be held before trial starts to make sure that everything to do with the case is known to the court and to both parties before the trial commences. The defendant will experience some changes that apply to

both the Magistrate's Court and the Royal Court, especially in the process of disclosure. The point of disclosure is that neither side should hold back information that they have about the case even when that information may assist the other side. The principle is intended to avoid miscarriages of justice that could occur if, for instance, the prosecution had clear evidence that the defendant was innocent but that was never seen by the court. The Attorney General's guidelines currently require the prosecution to make appropriate disclosure, but there is no requirement in legislation for it to do so. There is an exemption to the requirement on the prosecution to disclose where the public interest is at stake, as identified in the panel's comments. Where disclosure might not be in the public interest, the prosecution may approach the court and reveal certain information that might, for instance, be required for ongoing investigations or form part of another prosecution. The court may then order the material to be disclosed or not. The disclosure of the defence case will be by means of a defence case statement. This was one of the matters raised in comments, which noted that the responses to the consultation had identified the requirement for that statement to be a breach of the right to silence. The defence case statement will outline the argument that the defence will put forward, including a list of the witnesses that they will call and any alibi that might be offered. This means that if a defendant knows of a fatal weakness in the prosecution's case that they wish to communicate to the court, then this is known at the start of the trial and not after costly and time-consuming court activity. Alternatively, a defendant may decide, looking at the available evidence, that a guilty plea is warranted. This would bring the trial to a swift and satisfactory conclusion and thus make resources available to progress other cases. However, this does not affect the right to silence. A defendant can still make no comment in interview and remain entirely silent during the process and the jury will not be permitted to hold this against them in any way. This is the fundamental right to silence. A change to this right was considered, which would, in effect, have meant that a jury could draw an adverse inference from the defendant's silence. That was done in the U.K.

[14:45]

After considerable thought, that was rejected and the right to silence remains the principle of Jersey law. The defence case statement is a critical part of the disclosure process and is mirrored by the requirement for the prosecution to reveal any information that it holds which might damage its own case or enhance the prosecution case. To an extent the 2 elements rely on each other as within an indication of what the defence will be the prosecution will not know what information is important to the defence and thus must be disclosed. For instance, if the defence hinges on a particular behaviour of the victim, then the medical history and the psychological profile of the victim will be important and any material that the prosecution hold in that respect will be disclosable to the defence. This may benefit the defence case. Without a defence case statement to alert the prosecution to the issue, such material would not be disclosed. The defendant may also experience a difference to the way in which they attend court and in the repercussions of not doing so. The law provides that with their consent a defendant can be treated as being present if they access the courtroom by 2-way television link. This is intended, where possible, to reduce the cost, complexity and distress in moving prisoners on remand from the prison to the court and back because they are technically being discharged from prison but at the same time they need to be kept fully secure at all times. There is an extremely complex process to go through to get them from prison to transport and transport to court and back again for what might be a very short hearing. A defendant will have a duty to attend trial and if they voluntarily choose not to do so, then provision is made for the trial to be conducted in their absence. This decision would not be taken lightly and the court will have to weigh a considerable number of factors before it can allow this to happen. It must balance any potential disadvantage to the defendant with the inconvenience and hardship caused to the victim and witnesses by delayed or abandoned trial and give careful thought to what it would mean if the defendant is found guilty but has, for instance, permanently left the Island. People also have every right to represent themselves in court, even in potentially complex and challenging criminal cases. There is

a duty on the judiciary and the Government to support them as much as possible when they choose to do this. The draft law gives some specific consideration to litigants in person; for instance, by allowing the court to waive the requirement of a defence case statement where a person is defending themselves. The most significant improvement for unrepresented people is that they will be able to look at one single law in English written as naturally as possible that underpins the court process. While defendants must be treated fairly, so must victims and witnesses, and there must be some protection against them being interrogated in court by a person who is accused of harming them or who may be intimidated by them. To that end, as noted in the comments, the draft law will require a defendant representing themselves in cases concerning violent or sexual crimes to make arrangements for a legal representative to cross-examine the victim and any witness under 18 or with cognitive impairment and if they do not do so the court will appoint someone for them. In all other ways, they will be able to represent themselves if they so choose. This is a very important provision for victim and witness protection. Visitors from other jurisdictions are often surprised to hear that a defendant accused of any offence, including rape or another sexual offence, can cross-examine a victim directly in court. Equally, a vulnerable witness to a distressing attack can be cross-examined by a person they have seen commit acts of extreme violence. Such situations have occurred. Recently, I was contacted by a man who had been abused as a child and was cross-examined by his abuser at trial for a prolonged period of time. Such things cannot be allowed to continue. Another core principle of the law concerns jury service. Serving on a jury is one of the duties of a citizen. It is a legal requirement and a necessity for the effective operation of a criminal justice system. Thus people are still required to serve on juries when called to do so and failing to present oneself for jury duty remains an offence. The draft law enables the process for selecting citizens for jury service to be set out in secondary legislation, which may enable some elements of that process to be modernised. An important change is that the age at which people cease to be eligible for jury service will rise from 65 to 72, which is in part recognition of the valuable resource the Island has and the wisdom and experience of its senior citizens. The minimum age for jury service has also been reduced from 25 to 18 and this reflects the modern principle of extending civic rights to citizens at the age of majority. The scope of automatic exemptions has been reduced. The current system exempts all civil servants, teachers, dentists and Jersey Railway employees among others. This, of course, rules out thousands of people, including approximately 400 legal professionals, most of whom have no involvement with criminal work. This limits the civic rights of an unnecessary number of people on the grounds of what they are. The new system is intended to exempt on the basis of what people do, so if a lawyer has no involvement with criminal justice for more than a year they are not considered to be conflicted and thus can serve. Police officers cannot remove themselves from the criminal justice system for obvious reasons and, therefore, remain exempt. The Viscount will still be able to exempt people from serving on juries if appropriate. This power has been used in the past to ensure that people in critical professions - surgeons, for instance - are not taken away from their jobs for a period of jury service. There will still be 12 jurors in a jury and the minimum needed to return a verdict will remain at 10. However, in a long trial where there is always the possibility of a number of jurors becoming ill or discovering a conflict mid-trial so that they are no longer able to remain, the requirement of 10 remains to continue the proceedings. To alleviate this, reserve jurors may be chosen where a trial is expected to last 5 days or longer. These reservists will be privy to the full jury experience and will be called upon to take over from any jurors who drop out. If not called upon, they will be dismissed before the jury retires to reach its verdict. As now, people will have the right to seek an exemption from jury service on their own behalf and the defence or prosecution can challenge a person's inclusion on a jury if they have good grounds to do so. There will be restrictions on 2 members of the same family sitting on a jury to avoid any suspicion of undue influence among the jurors. Jurors will be required to swear an oath or make a solemn affirmation prescribed by regulations. They will remain in the custody of the Viscount throughout the trial and will not be allowed to communicate with people outside of the trial process. One significant change in the draft law is that juries will

have the right to appoint their own chairperson. Currently, that appointment is made by the Bailiff, who may seek advice from other officers of the court in making his decision. While this is an expedient system and has worked satisfactorily since 1864, the underlying modern principle is that citizens are passing judgment on a fellow citizen and so outside of the necessary guidance from the court the power of self-determination should sit with those citizens to the greatest extent practically possible. A potentially serious problem with the current law is that there is no rule against jurors researching the case that they are sitting on. Rules around this are urgently required as juror research can be grounds for a mistrial and research can now be easily conducted by a juror online or at home or even sitting in the jury room with a mobile device. The effect of a mistrial is to cause unnecessary cost, delay and distress to the victim, witnesses and the defendant. The draft law, therefore, creates an offence of research by a juror and provides that the Bailiff may order the surrender of communication devices as required. If a juror fails to surrender any devices when the Bailiff has made an order to do so, they will be in contempt of court. The draft law provides for the first time for retrials in the event of a hung jury. Under the current law, if a panel of 12 jurors cannot reach a unanimous or a majority verdict with 10 in favour of conviction, then the defendant is acquitted. This is different to the position in many jurisdictions and is set out in the draft law where a majority of 10 jurors is required to reach a verdict of guilt or innocence. Where a majority cannot be reached, then the jury will be hung. In the event of a hung jury, the draft law will enable a retrial to take place at the discretion of the Attorney General. The draft law sets some rules around how witnesses are treated, in particular how they are considered to be competent to give evidence in court. The basic rule is that all witnesses, however young, are competent to be a witness unless they are found not to understand the questions put to them or to be unable to give answers which can be understood. The party calling the witness must satisfy the courts that they are competent. They must give evidence under oath if they are 14 or older. If they are younger but competent, then the court will still accept their evidence. It also makes some changes to the rules about compellability, which sets out who can be required to give evidence in a trial. As the sub-panel identifies, the draft law contains provisions to compel spouses and civil partners of defendants to give evidence in certain trials. The current law of 1908, *au Sujet des Témoins et Informateurs*, as amended, on the subject of witnesses and informants already contains provisions to compel spouses and civil partners to give evidence in respect of assaults or threats against their partner or any child and any sexual offences against a child. These rules exist for 2 reasons: firstly, they give witnesses some protection from retaliation in that they have no choice but to give evidence against their abusive partners and, secondly, in some cases the offence is so serious that the need to protect the public is paramount and all relevant evidence must be obtained. The changes in the new system will widen these grounds of exemption in 2 ways. It will protect families by expanding the coverage of offences against a partner or family members to include wider harassment, including illegal entry of their premises, kidnapping and threats by phone, post or email. It will also broaden the coverage of sexual offences against partners or family members to include gross indecency, indecent exposure and others. Separately, the draft law will also improve public protection by widening the scope of offences for which a partner can be compelled to give evidence generally to cover a number of serious offences if they are carried out against a child or a person with a cognitive impairment. The main objective here is to improve the criminal justice system's response to domestic violence. Witnesses will still be required to attend court by law and can be fined up to £10,000 if they fail to attend without good reason. If there is a reason to believe that they could provide material evidence but that they will fail to attend, they can be issued with a summons if it is in the interests of justice to do so. Failure to comply with that summons without good reason is a much more serious issue amounting to a contempt of court. The law introduces special measures for the protection of vulnerable witnesses, which again was mentioned in the sub-panel's comments. The courts can currently make special arrangements to allow vulnerable witnesses to give evidence in the least distressing way possible. However, in the absence of clear rules as to who is and who is not vulnerable, the police or other agencies can never say with certainty

to a witness that they will definitely receive particular support. This has a real impact on some witnesses, who might choose not to give evidence. To improve the situation, the draft law specifically defines a vulnerable witness and thus greatly increases certainty throughout the criminal justice process by allowing those witnesses to be told clearly that if they engage with the process they will be able to give evidence in court behind a screen or by video link, for instance. Lastly, in respect of juries, there is not at this time an offence of interfering with witnesses or members of a jury. The draft law includes rules protecting witnesses and jurors from outside influence and creates an offence of intimidation, which includes causing threatening physical or financial harm or harm to a person's property. The penalty is up to 10 years in prison and an unlimited fine. The draft law sets out some new rules about the treatment of costs. Broadly speaking, by increasing efficiency the draft law provides a platform for reduction in the cost of trials to all parties. It will also allow the courts to take a more nuanced decision around these costs that should be applied considering their conduct during the case and what contribution they have made to the overall length and cost of proceedings. This will allow the courts to ensure that there are some consequences if a case is needlessly prolonged by the actions of one party. I hope that this will affect the behaviour of parties and avoid the needless waste of scarce court time on hopeless or vexatious matters. There is also a provision to recover wasted costs from the defence or prosecution if it is found that some improper act has unnecessarily increased the cost of the case and even to allow costs to be recovered from third parties who are not directly involved in the case if they have caused expense to be incurred; for instance, by intimidating jurors or witnesses. The last significant change in the draft law itself is the establishment of a Criminal Procedure Rules Committee to make rules for the Magistrate's Court and the Royal Court. These rules will cover areas such as how proceedings will be conducted in court, the timing and service of orders, and so on. They will replace the rules of court which are currently made by the Superior Number of the Royal Court, which consists of the Bailiff and 5 Jurats. Such rules are a critical part of the management of criminal justice in most jurisdictions and they are similar in principle to the Royal Court rules which they will replace.

[15:00]

The intention is to keep them regularly updated to reflect changing circumstances and ensure that our system remains fully fit for purpose. To achieve this, they will be developed and amended as necessary by the committee, which will have a wider membership than the Superior Number and consist of representatives of the judiciary, the police, practising criminal lawyers to represent the defendants' interests, the Probation Service and a nominee of the Chief Minister. These rules will be supported by practice directions made by the judges of the relevant courts, which will be more concerned with the procedure that must be followed by the participants in criminal cases. Another point of principle that I must address in the provisions is the provision for a retrial where a defendant has previously been acquitted. It cannot be denied that this is a significant change to the old double jeopardy rule and, quite understandably, it features in the comments. In this area, the law follows best practice in the U.K. and other jurisdictions and is intended to allow the prosecution to revisit acquittals if it becomes apparent that a miscarriage of justice has occurred. This power comes with some very robust safeguards. It will only be available where the offence is of a very serious nature and the regulations will be brought to the Assembly, which will allow Members to approve the list of offences to which this rule will apply. In the U.K. only very serious offences allow the equivalent provision to be used. The decision to retry will always be in the hands of the Court of Appeal, not the prosecution. New evidence must have become available that was not raised at any point in the previous trial process and this must be compelling, meaning that it must be both reliable and highly suggestive of guilt. It must also be in the interests of justice to hold a retrial. The rule here is broadly the same as enforced in England and Wales, where it has been in place since 2005. The call for this provision emerged from the Macpherson report on the murder of Stephen Lawrence and the Auld report on criminal justice. The intended use of the power is primarily to deal with issues where new

technology has revealed evidence that has not previously been available. Historically, in jurisdictions where this provision exists, it has primarily been used to retry people acquitted for very serious offences such as rape and murder where new D.N.A. (deoxyribonucleic acid) evidence has emerged sometime after the original trial. Lastly, I must address 2 more points which fall outside of the law itself and into the Police Procedures and Criminal Evidence Law, which the draft law amends. Firstly, the comments identify that the law makes provision for the prosecution to introduce evidence of a defendant's previous criminal record to show a propensity to commit similar offences to the one charged. This is referred to as evidence of bad character. There are currently circumstances in which this is already admissible. Jersey has adopted the U.K.'s position on similar facts, which means that if a person commits a crime which is markedly similar to misdeeds in their past these earlier actions can be relevant. In addition, where a defendant seeks to claim that they are of good character, evidence about their character and past actions can be admitted in response. Under the new system, evidence of bad character will be admissible only at the discretion of the court and not all previous conduct will be shared. For instance, if a defendant was charged with indecent assault and had a history of indecent assaults and other offences such as drink driving, then the indecent assaults might well be seen as relevant but it is unlikely that the drink driving would be. The objective is to consider the tendency of the defendant to commit certain offences, not to list a full criminal history to sway the jury to convict. This will correct a current unfairness in Jersey law where the defendant's criminal history must remain secret in most cases but the defence can list any offences committed by prosecution witnesses to raise doubts about their character and likely truthfulness. It will also achieve more just outcomes. There are numerous examples where jurors who have acquitted a defendant are genuinely shocked to hear a long list of similar offences that the defendant has committed. This is a particular issue as it gives serial domestic abusers and professional criminals a fresh start with every offence. Secondly, the draft law will allow the admission of what is known as evidence of hearsay in some circumstances. There are certain difficulties in the use of hearsay evidence in Jersey, and other jurisdictions have adopted improvements. Hearsay evidence is evidence given by person A about something that person B is supposed to have said. It is currently not admissible except in very specific circumstances such as where the defendant has confessed to another person, and this creates special difficulties in prosecutions for domestic violence. Because domestic violence victims are often not willing to repeat in court what they may have told police officers, doctors or family earlier, out of court statements become significant pieces of evidence. The draft law will broaden the scope of admissible hearsay evidence in line with the current position in England and Wales and the goal of conducting evidence-based prosecutions. I thank Members for their patience and concentration today and I commend the principles to the Assembly. **[Approbation]**

**The Greffier of the States (in the Chair):**

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

**8.1.1 Deputy S.Y. Mézec of St. Helier:**

Thank you to the Minister, who I think gave a very comprehensive and clear explanation of a lot of the elements that will be changed if this law is adopted. Members should hopefully know by now that the Education and Home Affairs Scrutiny Panel has set up a sub-panel to look at this and it is our intention to call it in for scrutinising. I think it is fair to say that this is a very important piece of legislation, one that a lot of years of work has gone into, so I think it is right that we do look into it. I want to thank the Minister, the Attorney General and all of those who so far have engaged constructively with our sub-panel to give us briefings and information to help us decide how we are going to go about this. We have already had quite a few submissions sent to us by people who are at the forefront of our criminal justice system, who have raised some very important points with us that we are going to have to consider moving forward. We lodged comments to this proposition just to outline a few of the areas that it would be helpful for us to hear from Members simply what you think

about it. There will be further opportunities, if Members feel strongly about particular elements of this, to make submissions to the Scrutiny Panel, to get in touch with us and tell us more, but we thought at this stage, having the debate on the principles, it would be helpful for our benefit to hear if there are any issues arising from this that Members might want to bring up at this point so we can discuss them further. It is obviously important that the law that underpins how our court system works is fit for purpose, which takes into account various advances that there have been in the 150-odd years it has been since the original law was in place. It is right that every now and then we look at the principles that underpin what is allowed to happen in the court system to work out if they are in the best interests of justice. That is not necessarily always going to be clear cut. There are cases which come forward that are incredibly complicated. There are cases which are very difficult. There are things which are difficult to get right in particular instances or in the nature of our justice system compared to what the justice system in a bigger country is like, where they have options at their disposal that we do not necessarily have. I wanted to just draw attention to a few things that are set to change here, not to speak either for or against those changes but merely to get Members thinking and hopefully inspire some Members to come forward just to make some points on here. There are changes that are being proposed which I think will be fairly non-controversial but also some things which might require a bit more thinking about; is that the right way we want to go about things? One area that I think may well end up being complicated or something that some people may feel uncomfortable about is the area where we are talking about allowing evidence to be used in trials that refers to previous convictions. This is something that they do have in the English criminal law system. It is something that I believe was introduced in 2003, so there may well be case law we can look at to see how it has worked up there. But I think there may well be an issue that Members might like to think about here. Is it always going to be the case that evidence of previous convictions is relevant to proving that on that particular occasion an offence was committed? You can argue that C.C.T.V. (closed-circuit television) footage is pretty concrete evidence sometimes if it clearly shows one individual doing a particular act, but if they have a criminal conviction from, say, 10 years ago of them doing something exactly the same, is that evidence that they have done it this time? Or it is not actual evidence, it is evidence related to their character, which some may argue opens you up to having a jury make a decision based on prejudice rather than concrete facts and evidence before them. That is not to say it is the wrong thing to do. There may well be instances where that is an acceptable thing to do, but it is, I would say, morally complicated. We might just want to discuss that, whether that is going to be helpful or if we would prefer things to remain as they currently are. There is the abolition of committal proceedings in the Magistrate's Court. Again, you may argue that that can help facilitate things quicker and make it easier, but then there are those that would argue - and we have seen submissions that have said - the right to a hearing straight away in the Magistrate's Court is a fundamental right that has existed up until now. There may be reasons not to change there. There are provisions in this related to compelling spouses and civil partners of defendants to give evidence in certain trials. That is obviously an area that we have to be very careful in, especially when it is on things like domestic abuse and cases like that where defendants and witnesses are often in a very difficult situation and may be compelled to give evidence against somebody when they do not really want to. But then, on the other hand, that can be helpful to them where if they do not have the ability to say: "Oh, I was volunteering to do that." That can put them in an easier position in some instances. I am just looking at what other aspects we have looked at here. Changes to jury selection, allowing lawyers, police officers and civil servants to serve on juries. I think that is something that the Minister mentioned in her opening remarks. That makes sense. There is also a particular clause in this law which talks about having reserve jurors. I think that we might need to think a little bit about that in terms of the practicalities of how that can work, to make sure that those who end up being reserve jurors make the most out of it, and bear in mind that there may not necessarily be many trials where that is likely to be necessary and is that the best use of those people's time. There are other bullet points that I raise in the comments and I hope Members have read them, but I just wanted to make

that statement, that we will be looking at this law. Any contributions that Members have got to make either now or later by making submissions to us will be helpful in us looking at it to make sure that we get the best outcome at the end of this.

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

I welcome the introduction of this law. It is about time we got into the 21st century, because anyone who has looked at the previous law and a number of the other laws that are written in French - and once they have been translated and we find how defective they are or how wide open they are - would welcome a piece of statutory legislation that makes things clearer. I definitely like the idea of the law being in plain English, as far as possible it can be. One area that does concern me, and it concerns me because of developments elsewhere, is regarding litigants in person. In the Island it is very difficult for people to afford lawyers. Quite simply, the rates are so high, very few people can afford them, especially if a trial is going to be for any length of time. I know that there are provisions within the law to do with litigants in person, but other changes that have taken place recently are making it more difficult for litigants in person. The courts, for example, have restricted the provision of tapes and transcripts to trials. At one time you could go and get them; at the present time you cannot necessarily get them. I think this whole area needs to be looked at. I also just wanted to say that I have also put my name forward to the chairman of the sub-panel, because I would very much like to get involved in the scrutiny of this piece of legislation, so as I say, a step forward, but because a lot of the provisions there are new or considerable changes from what the practice has been in the past, it does need to be scrutinised in detail.

[15:15]

### **8.1.3 The Connétable of St. John:**

Again, I would like to congratulate the Minister on bringing this forward. It is a substantial piece of work, but there are a few areas that do raise a concern with me. The first is the provision to compel spouses and civil partners. I do not know about civil partners, but certainly in the case of spouses, when I took my marriage vow - which was in a public forum, as marriages are - I promised to honour. I do not see how I can honour my wife if I were to give evidence against her in court. That would be a clear breach of my oath, as I understand it, so I would certainly want that to be examined further. There is also provision allowing the prosecution to withhold evidential material. If a jury is to make a decision, it has to be on all evidence and the withholding of any evidence by either side I think is incorrect. I know in the cases of terrorism, *et cetera*, there are circumstances in which this may be desirable, but I fear that representation would be needed to be made to court rather than having it in the legislation. Those are my initial observations, but I look forward to Scrutiny doing their work and coming back with greater detail.

### **8.1.4 Connétable M.J. Paddock of St. Ouen:**

I just want to make a brief point in response to a comment by Deputy Higgins, who remarked that some defendants were not able to afford legal fees and thus represented themselves. It is the case that legal aid is available for defendants charged with serious criminal offences and no charge would be made to those who have limited means. It is fair to say that if defendants have substantial means, they would still be expected to pay something towards their legal representation, but in Jersey we have an excellent legal aid system which is available and nothing in this law would change that, as far as I can see.

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

We have an excellent legal aid system, which is obviously under review, because so many people have told us in the past that the system does not work for them, so maybe it is really good and excellent, but it can be made even better. That is the message we should take away today. There are

a few areas which I think have been touched on already. There are some alarm bells which should go off, rightly, and it does not mean that the suggestions coming forward from the Minister are right or wrong, but they do need to be looked at and I am glad that Scrutiny will be pulling these in for further consideration. One of the areas, and it goes back to the fundamental, which is a truism and hopefully not a cliché, but that is that one is innocent until proven guilty, which is difficult sometimes, because obviously people also say there is no smoke without fire; that is another cliché that we hear. It is very topical, because there is a wider debate going on not just in Jersey, but around the British Isles and elsewhere, about the right to privacy until a case has been proven, because of course the damage that goes with that can be almost as bad, if you like, as if you were to be found guilty anyway, so one appreciates that these are finely-balanced points. My concern initially was that anybody should have the right to defend themselves in court, irrespective of what they are being charged with. Of course the Minister, understandably and for the right reasons, is trying to balance that with the very stressful process of somebody who has, for example, been an abuse victim, whether they be a young person or an older person, not wanting to have to relive that alleged abused from the alleged perpetrator. That is problematic and it is flagged-up in the report, because there are human rights points that are touched on there. I simply wanted to put that on record, that it is an issue. It is important and I hope the Minister will touch on this when she sums up, but if we are saying in certain circumstances it is inappropriate, understandably, for the person who is alleging abuse to be cross-examined by the alleged abuser, then in that case it is imperative that that person has legal representation which is paid for by the States and which is adequate. There is a potential consequence whereby ... and it is not simply related to abuse. One finds it strange coming in this context, where we all have to be very careful, even though we have freedom of speech, in how we interact with each other. We cannot allege any allegation of false motives or any allegations of untruth in this part of the building, but if you go to the other one, it is not uncommon to hear people alleging that people are lying and saying: "This did not happen. You are lying because you have got another motive", *et cetera*. It could be potentially worse to be cross-examined by a very good professional defence lawyer, who does it for a job, and so I would like to know if there are already provisions - and I suspect there may be - in law and in the practices of the court so that an abuse victim cannot be savaged by a defence lawyer. It seems strange to saying: "Look, let us not let them be savaged and have to relive their hell from their abuser" if they are going to be savaged by a very erudite lawyer doing exactly the same thing. Perhaps you can give me some comfort on that. I think it is a dangerous road when we start saying that somebody's criminal history can be given to the jury, because of course there is that argument that you become predisposed and prejudiced against the defendant, irrespective of whether that has any relevance. It may well be that somebody has stolen things in the past. It does not mean that they have stolen things on this occasion and the facts need to be proven. It might be that a better solution is to say that once you have been convicted a second or third time that of course it is an aggravating factor and that is a matter for the judge and the jurors to decide on a proportionate penalty which takes into account the fact that you have been penalised in the past, rather than necessarily telling the jury, which makes them more likely to come to the conclusion that the person is guilty before they have necessarily heard all of the facts. Compelling spouses to testify against their spouses, I think the first question we need to ask is why was it put in the law in the first place? It is an uncomfortable question to have to ask, because of course we should all take the stance that we should not show nepotism, so irrespective of whether it is your son, your daughter or a family member, if they have committed a crime, especially if it is a serious crime, you should not let that blood bond get in the way, because that is a form of corruption. If we have learnt anything from the Care Inquiry, it is that you do not cover up because somebody is your friend, your colleague or you are part of the same club, because that is corruption. That is what some people have been calling "the Jersey way", which of course is not exclusive to Jersey and it is tantamount to perverting the course of justice. On that side, you can fully understand why the Minister is bringing this forward, but again it goes back to the question of why was this provision put in law in the first place? If, in

passing this provision, we find that spouses are turning up in court and perjuring themselves more often, but without that necessarily being proven, so people come to court and because they have to testify against their spouses, they may not testify truthfully. Unless that can be proven, that could be worse than if they did not testify in the first place. For example, it would not be the Constable of St. John. I joke to myself that he really likes his food and he would not want to come home one day if he was married to somebody who had been a mass murderer and then find that he has got something dodgy in his food, but that is obviously hypothetical and I probably did not need to say that, but we are getting ...

**The Greffier of the States (in the Chair):**

Can we move on, Deputy?

**Deputy M. Tadier:**

... into fantasy land. What I am saying is that if somebody is not inclined to testify against their spouse and they have to, then the quality of that evidence could be questionable anyway, so what are the perverse consequences of that? He remains nonetheless a very fit man. He must do a lot of exercise. The integrity of the jury is something which I think is key and it is partly tangential to what we are talking about here, but I question whether or not one should automatically have to serve on a jury and also how the jury service is selected. I have knocked on doors trying to register people to vote and they say: "I do not want to be registered, because that would mean that I would have to be compelled to serve on a jury." Should it be linked to that? If you do not want to serve on a jury, should you be compelled, because if you are the type of person who does not want to serve on a jury, does that affect your ability to come to a reasonable decision on a jury? Just as an aside, I think it is something that perhaps could be looked into by the Scrutiny Panel, but also by the Greffier. If we are talking about the integrity of a jury, which is part of what we are discussing here, it is completely unacceptable that the jury share the same entrance as States Members. I have been in this building where jurors are coming up the stairs just after let us say the first roll call, while prayers are going on, and States Members are still milling around. It seems strange that they cannot have a discrete separate entrance which is secure. I feel very uncomfortable being around jurors and they should be put in that position. That is just a comment which I hope can be taken on board. We are introducing this law in English rather than French, and even though I am a Francophile and I will fight for the right for French to be used in this Assembly, I think it is important that we do have laws which are written in English, so the majority can understand them. I would ask if it is going to be the continuing practice that the opening proceedings in court carry on in French, it would seem logical to change English, being that is the working language of Jersey. I would also question if prayers are going to be said in court, first of all, should that be done in English rather than French and should prayers be used at all in the court system, given the fact that we should have an impartial system which does not presume or favour any one denominational religion over the other? It seems to me that we should be moving to a secular system, certainly as far as the courts are concerned, and even this Assembly. We should also be looking - and this is something for the panel to consider in the interactions with these different regulations - at how technology can be used. We have been talking earlier today about the modern world, that we do live in a modern world where data protection is increasingly necessary and that we should be much more accountable for our decisions, yet it seems that the courts remain quite closed, even though they are public institutions where people can attend. Is there a good reason why obviously when proceedings are not overly-sensitive that they should not be televised, that they should not be streamed in the same way that the States Assembly is? Is there a reason that there is not a transcript that is recorded of proceedings in courts, be it in the Magistrates' Courts or in the Royal Court, so that litigants can refer back to what was said verbatim rather than having to apply to listen to tapes and then to ask for transcripts to be made available? It seems to me that the courts should be held up to the same standard as this institution, notwithstanding the fact that I have said

before certain things need to remain confidential for sensitivity reasons. The reason I raise it is that I am not the only Member in this Assembly who has been approached by people who do allege misgivings during court proceedings. They say: "This witness, this lawyer has lied and I cannot prove it because I cannot get hold of what they said. I am sure I heard them say this" and nobody has got the recollection. If it is there in front of you in black and white or as a video clip which you can view, it is completely indisputable and it does not give rise to those kind of allegations. In the long term it probably saves a lot of time and money. Those are my initial thoughts and I look forward to looking at the outcome from the panel's review.

#### **8.1.6 Deputy K.C. Lewis:**

Several years ago now, I had just arrived home to find a letter from the Viscount's Department stating that I was required to attend Royal Court for jury service. I rang the Viscount's Department and said: "I am a sitting States Member" and they said: "Sorry, States Members are not exempt" but the jury service I was required to attend clashed with several States sittings.

[15:30]

I pointed out in a letter that I am obliged by oath to attend the States sitting whenever required to do so. The Viscount very kindly exempted me from the duty. Several years ago now, the role of Constable was changed to remove the policing element from the Constable, the theory being that one should not have a hand in possibly drafting, amending and voting through a law and maybe later on prosecuting under that same law. That element was removed even though they are obviously head of the Parish and that seems to have worked quite well. But is there not a case to be had for we, as States Members today, voting through this law and maybe in the very near future being called upon to attend a Royal Court or any of the Magistrates' Courts and implementing those same laws by way of voting innocent or guilty? Is there not a case to be had to add States Members under part 9 to the list of exempt persons while they are in office? It may be something that Scrutiny may wish to look at.

#### **8.1.7 Mr. R.J. MacRae, H.M. Attorney General:**

Plainly this law has been welcomed by many Members and I do not propose to add to what has been said. I would like, if I may, just to contribute some thoughts in relation to some of the remarks that have been made by certain Members in relation to the draft law in order to assist them. Questions have been asked about the competence and compellability of spouses to give evidence. The current position is that a spouse is always competent to give evidence against his or her spouse, but not compellable, save in limited circumstances. It is right to say that during the last 2 years there was discussion as to whether or not spouses should be compellable in all circumstances to give evidence against their spouses, like other relations, or whether or not they should be protected from ever giving evidence against their spouse. But the current law strikes a balance, or attempts to, in the public interest in requiring spouses to be prepared to give evidence and be compellable to do so in certain circumstances, particularly involving violence in the home or sexual and other offences against a child of the family. What the draft law attempts to do in schedule 1 is to list the offences where a spouse or civil partner could be compelled to give evidence against another and we can see that at page 115, if anyone has the law in front of them, the offences in respect of which a spouse or civil partner is compellable to give evidence. It extends to any offence against a child under the age of 18 and particular offences listed at sub-paragraph 7 of the schedule, which you can see are a variety of offences of violence, where either the spouse is a victim or a witness or a child under 18 is a victim or a witness. But obviously the Scrutiny Panel would look carefully at those offences. The Constable of St. Ouen asked a question about disclosure of prosecution material and expressed some concerns in relation to that. I would like to say that what Article 83 does is to simply codify the current position, which is that in every criminal trial the prosecution is obliged to disclose prior to the trial

any material which may undermine the prosecution or advance the defence case. In relation to any material that may be relevant that the prosecution does not want to disclose on public interest grounds, for example, material that might identify a police investigative technique, the prosecution needs to approach the judge for an order exempting them from making disclosure. But I can assure the Constable, through you, Sir, that the position is that the prosecution does in every case disclose material which will undermine it or advance the defendant well before trial. Deputy Tadier raised some concerns in relation to vulnerable witnesses giving evidence and defendants who wished to cross-examine them either individually or through an advocate. Can I firstly reassure him that the days of advocates tearing apart victims in court are well and truly gone? I say that in respect of vulnerable witnesses, because firstly the judges do and have been trained to intervene in such circumstances. Only last year my department organised training for all Jersey advocates who cross-examine in such cases and we have all been taught to cross-examine vulnerable witnesses in a way which is very different from what we might have done 20 or 30 years ago. In relation to the need to ensure that unrepresented defendants who choose not to have a lawyer do not treat their victims harshly, we have introduced provisions at Articles 105 to 106 to ensure that defendants are prevented from cross-examining victims in certain cases, as set out in those Articles. But the point that Deputy Tadier quite rightly makes is that what about the costs to a defendant in those circumstances who simply cannot afford representation? Under Article 106, he will be invited to instruct a lawyer in circumstances where there are vulnerable witnesses to be cross-examined and if he declines to do so, then the court must appoint an advocate chosen by the court to cross-examine the witness in the interests of the defendant. That will be at no cost to the defendant, as he is an advocate who is not responsible to the defendant, he is simply appointed to assist him and ensure that the evidence is tested, but at no cost to the defendant himself. I should add that in relation to the most vulnerable witnesses, the court now appoints intermediaries, experts designed to assist them in giving evidence, to ensure that they are treated properly and also to understand the questions that are asked of them. Those are the points that I wished to make to assist.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak on the principles? In which case I call on the Minister.

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

Thank you very much to those Members who have spoken today, and particularly thanks to the Attorney General, who has been very helpful in covering some detailed points there, so I shall not reiterate those. However, I think today's brief debate has highlighted some key areas of interest for the Scrutiny sub-panel and I very much look forward to seeing their findings and discussing further with them their views on this very important subject, because we have today an opportunity to approve the principles of a law that will bring the criminal justice system in Jersey forward by 150 years. It is an opportunity to let our courts consider the rights and needs of vulnerable people who may be caught up in the criminal justice system, to increase the efficiency of the courts and access to justice and to make the outcome of trials fairer and more just. In the opening speech, I spoke briefly about the experience of a victim who approached me late last year after the public consultation on the draft law. I would just like to say a few words about his experience to help Members understand the significance of this legislation. The current law allows a defendant on trial for any offence, including violent or sexual offences, to cross-examine a victim, as we have discussed today. The man who approached me had been a young boy when he was sexually assaulted. He faced his abuser in court at a trial last year and saw him convicted and sentenced to 5½ years in prison. He said that the trial was like being abused all over again, only with a room full of people watching. Apart from the abuse itself, he said it was the worst thing that had happened to him. The draft law would stop such things happening again. More than that, it would also provide much wider support and protection for victims and witnesses throughout the system. We can see from the work of the

Independent Jersey Care Inquiry that it has historically been difficult for young or vulnerable victims to have their voices heard. I believe that the draft law, together with the Bail Law, which the Assembly has already considered, and the Sexual Offences Law, which will soon be lodged, we will be able to offer the certainty and protection necessary for people to approach the criminal justice system with trust and confidence. This draft law shows that the tide is turning. The significance of an abuse survivor willing to help and offer support to the States of Jersey, after years of allegations of a cover-up, is a significant step and should not be underestimated. We have a duty to demonstrate that we are here for all victims of abuse and will help them. By approving this law today, it shows that we are willing to do just that. I know that we are just at the principles stage, but I would like to say some brief thanks, firstly to the officers who have worked on this law. I would also like to thank the contributors to our public consultation and particularly the Law Society of Jersey. In addition to assistance in developing the legislation, the society have made a comprehensive analysis of the draft law, which has been of considerable value. I would also like to thank the sub-panel for taking the time to undertake a review of the draft law, as I think it is essential for Members to get a balanced view of the effects of the changes that are being made to the criminal justice system. They all have legal minds and I look forward to seeing their thoughts and detailed points. I appeal to Members to approve this draft law. I call for the appel.

**The Greffier of the States (in the Chair):**

Thank you. The appel has been called for. I ask Members to return to their seats. The vote is on the principles of the Draft Criminal Procedure (Jersey) Law 201- and I ask the Greffier to open the voting.

<b>POUR: 34</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
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		
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 Grouville		
Connétable of St. John		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
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 R.G. Bryans (H)		
Deputy of St. Peter		
Deputy S.Y. Mézec (H)		
Deputy of St. Ouen		
Deputy L.M.C. Doublet (S)		

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):**

That brings us on to the arrangement of public business for the next sitting.

**Deputy J.M. Maçon:**

Do I not get a referral to Scrutiny?

**The Greffier of the States (in the Chair):**

Very good point, Deputy Maçon. We have talked so much about it, I thought it had already happened. Deputy, would your panel like to call this in for Scrutiny?

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

Yes, and I am sure the States would like to know when we want it to come back, which we would like to have it on 20th March.

**The Greffier of the States (in the Chair):**

That is 4 sittings' time. Excellent, thank you very much. Back to where we were.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**9. The Connétable of St. Clement (Chairman, Privileges and Procedures Committee):**

Future business. Looking at the Supplementary Order Paper, clearly we have heard that the proposition we have just debated, the Second Reading will take place on 20th March. On 6th March, as per the Consolidated Order Paper, but plus the Short-Term Incapacity Allowance proposition in the name of Deputy Southern and the Draft Postal Services (Transfer) (Jersey) Regulations, projet 8/2018, lodged this week. On 20th February, there will be in addition the Lifeboat Petition proposition in the name of Senator Ferguson; and in a fortnight's time, so on 30th January, it is as per the Order Paper, plus an amendment to the Deputy of Grouville's proposition, projet 88, which is also in the name of the Deputy of Grouville, and Senator Ozouf's amendment to projet 120, Social Housing in Jersey: introduction of a regulatory framework. 30th January has the potential for a 3-day sitting, so I think Members should be prepared for that. I make the proposition.

**The Greffier of the States (in the Chair):**

The proposition has been made. Senator Ozouf.

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

Members will know that I have put an amendment after receiving a very comprehensive briefing from the Minister for Housing yesterday. I am not going incur the wrath of the States now, but obviously my amendment, because of the timing of it - depending on when it is taken - may or may not fall short by one or 2 days of lodging. You know the circumstances in which I did it and I thank the Greffe, as usual, for turning it around quickly, but maybe it is an issue which perhaps the panel that would be needing to be asked for Scrutiny ... I am not sure how it works. It is not an automatic calling, but it would be subject to the States calling it in, because it is not something that would have that call-in right, just as the previous proposition has done.

[15:45]

I can ask now or leave it over, but I suspect I am going to get a beating either way, but it is designed to be a helpful amendment, which came out of the briefing that was only held yesterday.

**The Greffier of the States (in the Chair):**

The amendment was only lodged today. I think it would be sensible to leave it until next time, when Members have had the chance to look at it and reflect on it. Any other points?

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

The observation is that there will not be an automatic call-in of this, but the panel I understand might have indicated that they wish to scrutinise it, but that will be subject to a vote, is that right?

**The Greffier of the States (in the Chair):**

No, it is a straightforward proposition. I do not know what the panel want to do. No doubt we will all find out in due course. There is not an automatic call-in. I cannot predict what will happen at the next sitting. We will find out in due course and Members can take a view on your amendment next time around, when they have had a chance to read it and reflect on it. But you have put the matter out there, everyone is fully aware of it now.

**9.2 Deputy M. Tadier:**

I wanted to ask the Chief Minister about P.108, the Care Inquiry report implementation and recommendations. Does he have a date fixed for that in committee debate? He will have also received a note from me saying that I have been contacted by a friend of the care leavers, suggesting that we might wish to invite the Committee of Inquiry members over to talk to the progress that is being made, and whether he can give that consideration as well, either to tie-in with this or at some subsequent date.

**9.2.1 Senator I.J. Gorst:**

As you know, I had my light on to just to remind Members of what I said right at the start of this sitting, that I will be asking for an in committee debate at the end of the next States sitting. That may or may not be helpful to Senator Ozouf's timing, but I do intend, having consulted again with the Scrutiny Panel, to have the in committee debate at that point. I have not really considered the Deputy's suggestion, but I will consider it.

**Deputy M. Tadier:**

I appreciate that last part, but would it be possible to fix a start time and end time for that debate so that interested parties can come to it? It may well be that if we even fixed it as the Wednesday, for example, and that it would be a tidy solution to Senator Ozouf's particular issue. But it would be helpful if we knew that that Wednesday or Thursday we could come into this Assembly specifically to debate those recommendations.

**Senator I.J. Gorst:**

Of course I am in the hands of the Assembly. I cannot say whether it will take a full day. It may indeed do. The chairman of the P.P.C. will have a better understanding of how long he thinks the sitting is going to be. He thought it was going to be 3 days. We have got the equal marriage legislation. It might take some time to get through that and those amendments under the piece of legislation, so I will be led by the chairman. If the chairman thinks that taking the in committee debate on Wednesday is an appropriate course of action, then of course I am happy to abide by his view in that regard.

**9.3 Deputy G.P. Southern:**

Can I take the opportunity also to question of the Chief Minister when we might see a response on the Living Wage proposition that I have got down for debate on 21st February? I have asked him in the past to give plenty of time so that we can have proper, full consideration about the Living Wage. He failed to meet any sort of deadline last time. I moved it a month later. I do feel it is important that we get some response from the Chief Minister on this particular issue in plenty of time to have that debate with full understanding among Members about what is involved.

**The Greffier of the States (in the Chair):**

Chief Minister, do you wish to reply?

**9.3.1 Senator I.J. Gorst:**

I am quite happy to make another speech. The officials in my department are of course undertaking some of the work, as I have informed the Assembly previously they were. I do not have a timescale in front of me now. I know that they are having to reach out to organisations that the States contracts with and find the implications of the implementation of this proposal, but it is not straightforward, it is time-consuming, but I shall endeavour to give an indication at the next States sitting of what the likely timescale is of that.

**The Greffier of the States (in the Chair):**

If there are no other contributions, may I ask the Constable of St. Clement to respond, if he wishes to, or maintain the proposition?

**9.4 The Connétable of St. Clement:**

The proposition itself is maintained. Really what the question was was the order of business. It does seem to me, off the top of my head, that there will be considerable interest in the in committee debate on the Care Inquiry implementation and recommendations and therefore it would be convenient to the public to know when it was going to be held. Therefore I think the suggestion that it be held as the first item of business on the Wednesday, subject to the completion of any business which is outstanding from the Tuesday, would be a sensible one, that the public would know when it is going to take place. As to the length of that debate, if I remember rightly, Standing Orders state that the Presiding Officer decides on the length of the debate, so it would be sensible, I think, for whoever is going to be presiding on that day to discuss that issue with the Chief Minister in advance so again that we, and the public, can be given some indication. Because of the nature of the debate and the importance of the debate and the public interest in the debate, I think we should have it as the first item on the Wednesday, subject to completing anything which may have been left over from the Tuesday. If Members are content with that, I would propose that.

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

Can I make a counter-suggestion, Sir?

**The Greffier of the States (in the Chair):**

Yes.

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

The fact is it does not seem to me that we would dispatch both the issue of P.88 and P.91 on Tuesday afternoon and that that is inevitably going to be, so would the Constable consider maybe a slightly revised amendment, that notwithstanding the non-completion of those 2 debates, we would return to those debates after the conclusion of the in committee debate, rather than just ... because otherwise we will not.

**The Greffier of the States (in the Chair):**

I do not think that is what the Constable suggested. I think he suggested that there would be some business on Tuesday, presumably P.88, and once that was concluded - and perhaps other smaller items that could be got in - then on Wednesday morning at the start or very close to the start, the in committee debate would begin. I do not think there was a suggestion that there would be an attempt to try to get through the Marriage Law on the Tuesday afternoon. In principle, we will be able to confirm ...

**The Connétable of St. Clement:**

I wish we could do that on the Tuesday afternoon, but clearly we are not. We need to be sensible and pragmatic and see where we are at 4.00 p.m., 5.00 p.m. on the Tuesday and make a decision then. As you quite rightly say, we can do some of the more minor items, which, with respect, might take only a short time. But I think what we need to do is to agree the principle first thing on Wednesday or very close to first thing on Wednesday and start the in committee debate on the Care Inquiry recommendations.

**The Greffier of the States (in the Chair):**

Is the Constable's proposition adopted? I sense ...

**Deputy M. Tadier:**

Just to save problems at a later date, are we then suggesting that P.91 would not be commenced until after the Wednesday? Because I can see P.91 being very protracted. As long as we were not starting that on the Tuesday ... and if that is not the case, it may be even more sensible to move the inquiry debate to the Tuesday afternoon so we have got the whole of the afternoon to deal with that. But if we are not taking P.91 until after, then that would probably work.

**Senator L.J. Farnham:**

I just wanted to draw Members' attention to the fact that the outcome of P.91 has quite a significant impact on potential visitor economy. There are people wishing to plan marriages and maybe take advantage of this and I just want to draw that to Members' attention. We need to get on with it.

**The Greffier of the States (in the Chair):**

My understanding of where we have got to is on the Tuesday after questions and so on P.88 will be taken in the afternoon. We do not know how long that will go on for. Other propositions that we think might be able to be finished on the Tuesday, or perhaps may take half an hour or so on the Wednesday if there is an overlap, will then be taken. Once they are dealt with on Wednesday morning, there will be the in committee debate. I think there is further discussion about the duration of that, but let us say a day. Thursday kick-off with the marriage law, which obviously the principles have been adopted, so we are into the Articles, so that is not the full debate on the full thing, and anything else that needs to be mopped up at the end. It becomes a bit hard to predict, but that is my understanding of where we have got to. People look happy, so I am going to leave it at that and assume that that has been adopted. The Assembly will stand adjourned until 30th January at 9.30 a.m.

**ADJOURNMENT**

[15:55]