

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 15th SEPTEMBER 2021

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[9:32]

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

**The Bailiff:**

We now continue with the debate on P.72 and does any Member wish to speak? I beg your pardon, Deputy Martin, you indicated that you wanted to say something at the beginning of the Assembly.

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

I was not sure, I think I may have misled Deputy Ward yesterday in questions without notice when we were talking about raising the contributions of long-term care. Then I got a question on social security. I may have inadvertently said long-term care was only on higher earners. That was for parental benefits it was put on higher earners and we raised the ceiling to £250,000. I just wanted to clarify if there was any confusion. I did not mean to mislead, I was thinking on my feet or on my sitting part.

**PUBLIC BUSINESS - resumption**

**1. Vote of Censure: Council of Ministers (P.72/2021) - resumption**

**The Bailiff:**

Thank you. We now resume the debate on P.72. Indicating in the chat a desire to speak is the Connétable of St. Martin.

**1.1 Connétable K. Shenton-Stone of St. Martin:**

I will be voting for this vote of censure against the Government. Yes, we are all in a pandemic but that is no excuse. We cannot use the pandemic to excuse all our behaviours and we cannot use the pandemic for not carrying through. Yesterday, the Minister for Home Affairs said that we, in the Assembly, are all perceived to be in the Government. In actual fact the Council of Ministers is the Government and the rest of us are in Scrutiny, whose duty is to be a critical friend and hold the Government to account. This is what we are doing. If by chance some of the electorate believe that we have all been censured, so be it. I have no problem in admitting that, yes, the Government could do better on so many fronts. They could listen more and be more inclusive. If, as the Minister says, we are all Members of the Government then could I please have a pass for Broad Street? Could those of us not in the Council of Ministers have a pass instead of being left in reception while meetings start. The Minister mentioned 100 reports have been written. That is impressive. In Scrutiny we have the most amazing Scrutiny and research and project officers who write excellent and incisive reports. I asked a couple of people yesterday whether they would be voting for this. They said no because it was brought by Reform, a party. The trouble is we now have a growing number of parties so if a proposition is brought by Reform, Alliance or Progress does that mean that I, as an independent, cannot vote as it is being brought by a party? That is a nonsense. This censure is deserved by the Government and if I am deemed to be part of that by virtue of being in the Assembly, so be it. We should never be complacent. The Government can do better. We can all do better and we can all take time to reflect, and we can all do better whether there is a pandemic on or not.

**1.1.1 Deputy R. Labey of St. Helier:**

I apologise I am not with you in person today. It was my intention to be but I have a developed a cough overnight and it would be unwise to come in under those circumstances, I am sure you will agree. I think it was in May or June of this year that I found myself at the Radisson Hotel for what I thought was a lunch with the Chairman of Andium Homes, Richard McCarthy, but when I turned up there were over 20 people waiting there, sitting round a large table. It was a meeting of the board of directors, plus the board of management, and there was one empty chair there for me and everyone was sitting eagerly awaiting my presentation. I just thought, well, let us start at the beginning, a good

place to start, and I said who I was and that I was very new to being a Minister and relatively new to being a politician and that I had been elected in 2014, and spent the first 18 months of my life as a politician in a bitter and bloody battle with Andium Homes. It broke the ice. Some Members who were there at the time will remember that series of debates on saving a piece of protected open green space on Green Street in the La Collette low rise development. It was a debate I won, with support from my colleagues. That was a cause for great celebration and time went on and the Government did nothing to enact it. By the way, I keep thinking about the Deputy of St. Martin when I bring this story up again because he always looks at me across the Chamber with spaniel eyes, and I do not want to ... I have to say I do not hold the Deputy of St. Martin to blame, and he was the only Minister who had the decency and courtesy to call me up when this became apparent and apologised. But effectively that was a conscious act of the Government to do nothing to enact a decision of the Assembly; an emphatic decision, hard won decision of the Assembly and it got a lot of publicity. I thought that was disgraceful at the time, and I still do, and damaging to the Assembly. What we have in front of us today is something entirely different. The Government are late on delivery of one part of a 3-part proposition for which apologies and some explanations have been made. There is no intention not to fulfil the decision of the Assembly. It is just because of a set of circumstances and planning a lot, there is a delay. With respect to the previous speaker and to Senator Mézec himself, who has the moral high ground here, and I apologise unreservedly, no ifs, no buts. But I do not think this merits a vote of censure. I think it is a completely different scenario to the one I explained just now. As to my involvement with the South Hill development, I remember opening the pages of the *J.E.P. (Jersey Evening Post)* to see the development and immediately writing to my officers and said in an email: "Can this be the last time that the Minister for Housing and Communities learns about a housing development from a government agency from the pages of the *J.E.P.*?"

[9:45]

It is an example, I think, it crystallises a sort of problem that I have identified with the office of Minister for Housing. By the way, this is absolutely no criticism of any individual, certainly not any of the previous Ministers for Housing for whom I have renewed admiration given that I now realise the difficulty of the job that they had to do in their time. I can remember a prevailing attitude in the 2014-2018 term that was just after the 2013 creation of Andium Homes who out they went from the government offices, off to their own. Effectively the whole department became arm's length and Andium Homes, and it seems to me that a void was created there. As I say, a sort of prevailing attitude of do we need a Minister for Housing and what do they do now? This has been worrying me since I took over in February and I want to make it my goal and aim, and I am doing so now, to redefine and re-emphasise the role of the Minister for Housing because for Jersey the Minister for Housing is absolutely crucially and vitally important. I am helped in this by my predecessor's policy development board and the recommendation, for starters, to create a housing strategy and regeneration function team, looking at what is coming down the pipeline and making sure that pipeline stretches further into the future. Making sure we are managing demand to the best of our ability and providing supply. They will be doing other work also. Fortunately, it was the Group Director of Strategy and Innovation, the brilliant Mr. Skelton, who said: "Why do we not do an interim appointment for the team leader so we can get this up and running as soon as possible?" and that has happened. I jumped on the idea. We have appointed the team leader, Deborah Reeve, who I am excited for the Assembly to meet, and I will arrange that. Could not be more perfect fit for that role, coming as she does from the Isle of Man and having run Housing there. So, a similar situation. That is up and running. I think that is going to help us. Either by regulation or by introducing a new custom or tradition everything that Andium, States of Jersey Development Company, now the Ports of Jersey if they are going into accommodation and housing development, they need to bring that to the housing strategy and regeneration group and myself, and Deborah Reeve, at conception, from the very beginning, and I think that is going to help. So, we are all on the same page. The relationship between S.o.J.D.C. (States of Jersey Development Company) and Government is not through the

Minister for Housing. It seems to have developed through of course the Treasury shareholder representation, Deputy Ash, but also I think their main point of contact is the Regeneration Steering Group, which, if you remember, no longer, when I took office, contained a seat for the Minister for Housing. I stopped that and I am on it. But it is desperately important that we need to strengthen these relationships and the role of the Minister for Housing at the very beginning. I am interested to see the work that the Scrutiny Panel, I answer to - Constable Jackson's Scrutiny Panel - by doing a very timely piece of work on affordability and it is interesting to read some of the representations that they have received already from industry. One of them was the top bullet list to help solve the housing crisis was to reconstitute the old housing forum, which I think last sat in 1989, bringing all industry and government and the main players in housing together to share and talk and share experiences. That we are doing too. Its first meeting will be held on 29th September this year. We have had a fantastic reaction from all those we have invited. I think that is a really important thing. Of course to strengthen the whole political leadership of housing, and that also will be done with ... we have already started with the political oversight group. So those are good building blocks. It is difficult, we all know we have a huge problem, multifaceted, complex problem of immense proportions as regards housing on our Island. I remember finding it very difficult in the first few ministerial meetings, I was being pressed by officers from the list they had drawn up to choose the priorities to work on for the rest of my term. I kept evading the answer and I think they must have thought: "Oh, we got a right one here. We are never going to get a decision out of him." Eventually, I think it was meeting 3 or 4, I said: "Listen, I want to do them all. I cannot pick and choose." So they said: "Right, okay, we will schedule it, we will try and get them all scheduled, at least started if we can." So you have your programme. We have the *Creating Better Homes: An Action Plan* sorted. But in this job, as I suppose any ministerial job, there are events; events that happen and can mean a reprioritisation. For instance, the latest housing price index that came out middle of August and delayed any holiday that I was intending to take, because it struck me that that should ring massive alarm bells. There has been since 2017 a spike ...

**The Bailiff:**

Deputy, I am sorry to interrupt but could you assist me with how this is directly relevant to the motion of censure?

**Deputy R. Labey:**

I want to explain that from the Housing point of view we are immensely busy. We are working methodically through a huge workload. We are not in panic mode. We are stretched but we are coping and we are bringing in new ideas. This is a huge body of work. I know nobody has underestimated it and it has got this difficult, and the only silver cloud is now there is, I think, widespread recognition in Government that housing is a top priority. We are working our socks off. I am sorry that this happened. I do believe the Constable of St. Martin should be careful. If you want to give the Government a kicking that is fine, and I did it plenty of times myself in the past. But there is collateral damage. There is a drop in morale over the last few days in Broad Street among officers who will take this to heart, and who feel that they have let their Ministers down because this has happened. My officers from day one have supported me, carried me and are working 100 per cent, care deeply and they have not in any shape or form let me down, and I am sure other Ministers feel 100 per cent the same. That is all I have to say.

**The Bailiff:**

Thank you very much indeed. Does any other Member wish to speak on the proposition? Does any other Member wish to speak on the proposition?

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

Sir, I have put something in chat, I hope it is there.

**The Bailiff:**

No, I am afraid I cannot see anything in chat.

**Deputy M.R. Higgins:**

I may be on the wrong ...

**The Bailiff:**

You say good morning all, then nothing after that on my chat.

**Deputy M.R. Higgins:**

Sorry, Sir, I put to speak, please.

**The Bailiff:**

It has just appeared now. Yes, Deputy Higgins.

**1.1.2 Deputy M.R. Higgins:**

Can I just say at the start, this is not a prepared speech but a number of observations? As Members know, I do not mince words. Like many Members, I get extremely frustrated with the Council of Ministers, not just this Council of Ministers but all previous Council of Ministers that I have experienced in the 13 years I have been in the States, with regard to promises made, undertakings given and dates given for action. This is not new and points to a systemic failing in the way that States operates as a whole. It is my belief that this is a matter for Privileges and Procedures Committee to address with the Council of Ministers, rather than a vote of censure, although it does highlight the issue. I also believe that those who bring forward such propositions and who are likely to support it should look at their own actions while in Government or a Scrutiny chairman. I hate hypocrisy and the old adage that people who live in glasshouses should not throw stones is applicable here. I can criticise, for example, the former Minister for Home Affairs and her Assistant Minister for not doing anything about the allegations of corruption in the Planning Department, even when they were shown proof of perjury, perversion of the course of justice and misconduct in public office, which ultimately led to the Norfolk police investigation which has been undertaken over the last 3 years; that was no thanks to their inaction. I can criticise the former Minister for Children for not answering emails from members of the public who were crying out for help, who then approached me for assistance or my own Scrutiny chairman for failing to address the “Jersey Way” and kicking the can down the road. I am also concerned that this is pure electioneering almost 10 months before the election and is likely to become the norm going forward. I also lament the politicisation of Scrutiny. I passionately believe in Scrutiny but I believe it is being used as political opposition and has been for almost 3 years in some cases. I am particularly critical of the Scrutiny Liaison Committee, whose job it was to co-ordinate the activities of the various Scrutiny Panels but is now being used to bring propositions in its own right and the president or chairman of the committee ...

**The Bailiff:**

Deputy, I understand the occasional value in making the rhetorical point that other people are not immune from criticism but I think to go through an entire list of things that you do not like within the Assembly in order to criticise the censure is taking that rhetorical device too far and it does not appear to me to be directly relevant to the proposition. I would be grateful if you could bring it back to topic.

**Deputy M.R. Higgins:**

Sir, you will be delighted to know I have got to my very last sentence where it says in conclusion I ask the Members to reject this proposition and ask P.P.C. (Privileges and Procedures Committee) to

deal with this matter as a matter of urgency and for the Council of Ministers to address the housing issue, which is, in my view, a crime.

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

I wonder if I could just perhaps correct the record to start with. I think I was marked as out of the Island on States business.

#### **The Bailiff:**

You were.

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

Only I was in a prior meeting which overran with a visitor to the Island, so if that could be corrected. I also will inform the Assembly that I must leave later this morning for a funeral. Can I say, and I am pleased to follow the last speaker, because this parliamentary term has been in existence now for well over 3 years? In fact I think we can already see - not the mover of the proposition, it would be unfair to lay this at his door - but I think we can already see Members of the Assembly gearing up for June next year. It is never a pleasant time of any parliamentary term when we are gearing up for an election in that way. The last speaker's rhetorical device of each one of us putting their hand up and admitting that we have not done enough either individually or as an Assembly or as a Government to deal with what some have referred to as the housing crisis. I know others have demurred from that term but for my part it is time that we refer to it as a housing crisis and that we come together as an Assembly - and I know that the new Minister for Housing and Communities is seeking to do that with the plan that he has recently published - and discuss the policies and the legislative changes and the action that needs to be taken to deal with that crisis. I think that the mover of this proposition is shaking his head but I think he does believe there is a housing crisis. He is saying he does. He, like me, has been in the Government for a number of years.

[10:00]

If there is a housing crisis let us argue on the issues that need to be addressed and the actions that need to be taken to deal with that housing crisis. He and I will not agree on all of the action but let us argue about the actions because that, taking action, is what will lead us towards helping to resolve that crisis. For my part there is very little that should be off the table in dealing with this crisis. We should not underestimate how impossible it feels to young people and to young families that they can never, ever see a way on to the housing ladder in the Island in which they were born, in the Island in which they now call home, in the Island in which they would like to see a future and they feel part of the community but they have no hope of that future and they are, therefore, questioning their role in its future. I say we can blame each other and I put my hands up, having been in this Assembly for a long time. We have not done enough, we have not done enough soon enough. Other Ministers have outlined what has been undertaken, what has been done, what is being done. There can be no doubt that this particular item that the Assembly voted for and the timescale in which it asked for it to be done has not been done. There is no getting away from that. I, for my part in Government, apologise for that. The question for the Assembly today is, is that sufficient to support a vote of censure in the way that the mover of the proposition has outlined? For some they might feel that, well, they have come to the end of their tether and any motion is as good as another, as some other speaker said, to kick the Government into action. I believe that the Government is already being kicked into action and it does not meet the threshold to vote for a vote of censure. Rather we should come together in these last few months, take the action that can be taken, reach agreement where it can be reached, and start to give hope back to our community. I ask that Members do not support this vote of censure, accept that the Government admits it has not met the timeline but come together and commit to take the action which is required.

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

Just for the record, I have an underlying health condition; that is why I am not in. I was not going to speak on this but I think it is important, and I have a great deal of sympathy with Senator Mézec for bringing this. It has happened before in the past in the previous Assembly where the will and the decision of the Assembly is, for whatever reason, really not taking traction, one could argue being ignored and just left to drift. Quite frankly, that is not acceptable. I join the Constable of St. John, who has only been in, it seems, a few months now but he has realised that the system is not really quite what it should be. I am amazed that there is not a simple mechanism in place and, just to correct that, there was, when I was Assistant Minister at Social Security, a system in place where we had one of the officers, they would listen in to the debate, they would pick up the points, then we would note them and then they would be acted upon going forward, so that we would miss nothing and would respond with courtesy. I think here is the crux and one of the issues, a courtesy to keep Members informed of what is happening and what is being worked upon. The only thing that has been missing in this process is a courtesy be shown to a Member and, yes, as a Backbencher it is, and I am sure some would agree that for Reform members to get propositions through, to show that Member and that individual a courtesy to say exactly where things are with regard to action. I am pleased to hear that P.P.C. are looking at introducing some kind of mechanism. All we require as Backbenchers and, as you say, it is hard enough to get stuff going forward but just that courtesy, that professional and that assurance that something is being done. I will not be voting with the Senator on this but I think the Government should take it as a warning, a shot across the bow that standards have got to improve. I think that is the important message that should go out this morning that really deal with the will of the Assembly and respect it and treat it with the reverence that it deserves.

#### **1.1.5 Deputy K.F. Morel of St. Lawrence:**

The issue here is not just the issue before us in terms of, as the Connétable of St. John said yesterday, the very narrow focus of this proposition. The issue is, as Deputy Truscott has just laid out, the problem of Government and, to be honest, not just this Government but previous Governments too, ignoring the will of the Assembly, whether on purpose or by accident because there just was too much work to do. Either way I think many of us in this room today agree that Government often ignores the will of the Assembly and that is not, in my view, a place that we should ever allow the Government to be. I strongly feel that the Assembly is the supreme law-making body of this Island. It is not just the law-making body, it is the body overseen with good conduct of the Government of this Island. But, as was argued earlier by the proposer and by others, we find the Assembly too often toothless in its ability to reprimand any Government that is not delivering as the Assembly has asked it to do so. Because, as much as anything, we are caught between 2 things, a vote of confidence, in which case the Government is removed and a new Government is put in, and people have heard me back in November saying how it was not the right time; it is a nuclear option, gets too much at times. In that case it is because of the impending Brexit transition and the pandemic. It was not a good time to throw Jersey's Government into confusion, regardless of your thoughts on the Government itself of the day. Or you have a vote of censure which people say is toothless because it does not do anything, it is a metaphorical slap across the wrist. We have aspects, such as the C. and A.G. (Comptroller and Auditor General). The C. and A.G. can make recommendations but they can be ignored by Government because the C. and A.G. has no power to enforce recommendations or to reprimand the Government. We have Scrutiny, Scrutiny provides reports. One previous speaker talked about the politicisation of Scrutiny. The trouble is anyone who disagrees with the Scrutiny report, whether it is in praise of or criticising the Government, is going to say that Scrutiny is politicised because they just have not followed the road that that particular Deputy or Senator wishes them to have followed. Scrutiny itself can bring no other motion than a vote of censure or a vote of confidence. To my knowledge, I do not think a vote of confidence has ever succeeded because it is a nuclear option and votes of censure, I genuinely do not know. I cannot recall one myself succeeding but there are Members of the Assembly who have been here a lot longer than I have. But regardless of the narrowness of this particular proposition, Government does need to know that the Assembly

has some teeth; that the Assembly is supreme on this Island and the Government answers to the Assembly. We are moving to an election where we know there will be more parties. Some of those parties have the explicit aim of wanting to get a clear majority, 25 seats in this Assembly, a clear majority. If that is so, no vote of censure will ever be won, no vote of confidence will ever be won. The Assembly will be rendered toothless. As we look forward to that potential future, I sit here today thinking, okay, maybe this is not the perfect scenario for the vote of censure, maybe the Government has learnt. But when I spoke in November on the vote of confidence I said words very similar to Senator Gorst's, which were the Government must listen, the Government must change its tune and must act and step up to answer the Assembly. It did not do so because if it had we would not be in this situation today. We heard Deputy Pamplin talking about elements of his proposition which led to the S.T.A.C. (Scientific and Technical Advisory Cell) minutes being released but other elements of his proposition which were not adhered to. There are examples of Deputies and Senators and Constables around this room where their propositions have not been adhered to. I just do not think it can go on. I feel that the Assembly needs to step up, needs to show that it is not just a body which accepts anything time and time again. What does a vote of censure do? It just formally tells the Government you were not good enough in this area. I am going to do a speech after this in my own proposition, which again I believe will be highlighting how the Assembly is rendered toothless. I cannot accept that anymore. I am a proud defender of this Assembly. I am a States Member first, every other position I hold comes second to that role. As a States Member, I do not want to see this Assembly being undermined time and time again, whether it is intentional or unintentional. The undermining of this Assembly should not happen and must not happen. While reluctant, I am likely to support this proposition because I think that the Government needs to see that the Assembly can act and do something.

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

In these sort of debates you think: has enough been said? But I cannot let that last speech go. I absolutely agree, after being here nearly 22 years this Assembly is the decision-maker. This Government does not and never has and never will hold this Assembly in contempt. I have never met a Chief Minister who tries to embody everything. If there is an amendment, if there is a recommendation we speak around the Council of Ministers and the Senator across the room can look at me in the eye as if I am not telling the truth. I am. We try to accommodate everything. This is to do with timelines. We had over 3,000 cases of corona. The Chief Minister had to go on holiday the day the censure vote was lodged, after much needed 70 hours or 80 hours a week they have been doing. I and Social Security were in those sort of hours in the first 3 months, not so much, but the Chief Minister, everything that comes across his and his officers' desk is debated. I was going to speak and I recorded Channel last night when I saw Senator Mézec on Channel television. He basically said this Council did not like the Assembly's decision and they will be dragged kicking and screaming to do it; that is absolute rubbish, absolute rubbish. I know you have made some rulings, Sir, on what is pertinent to a vote of censure and it is not a slap on the wrist; that is why it is defended very, very strongly in this Assembly. Last night I was absolutely ashamed that we stood and left in the middle of a vote of censure because to me it is a vote of confidence. If you really think that we should have done that, we did, we are where we are, totally wrong.

[10:15]

There is no such a thing as a slap on the wrist. We try and try again to make sure the Assembly is listened to, what can we accommodate and we do it in the timeline? Things have got in our way. I have heard from the proposer yesterday ... I know you have made rulings, Sir, when he proposed it he said this Government has not introduced F.O.I. (Freedom of Information), which was 3 Governments ago, on to arm's length bodies. But the vote of censure is a narrow part (b) of 165, a very narrow, narrow part. We do agree what this Government cannot do - I think if you were listening to the Minister for Housing and Communities - is cannot do anything that will make this housing

situation worse. We have to check, we are still checking. We do not disagree with the Assembly. I have heard somebody is going to vote for this because they have not got a pass to Broad Street. That is not a reason to have a vote of censure. **[Interruption]** If I misheard ...

**The Bailiff:**

Let us not have an exchange across the body of the ...

**Deputy J.A. Martin:**

Sorry, Sir.

**The Bailiff:**

Everything through the Chair.

**Deputy J.A. Martin:**

If I misheard ... but what I am saying, I am trying to get across that the vote of censure - and I am very grateful to Deputy Higgins, who has been in this Assembly nearly as long as me - is not just a slap across the wrist. Even in the proposition the Senator acknowledges that it is the Council of Ministers that the Assembly will be censuring and half of us would not have anything to do with writing this report. But we do sit around the Council and we do try and make sure that everything is on time. Things have got beyond us but then again sometimes when I see propositions lodged by Backbenchers and they give us 4 weeks, they think everything else has got to go away. It cannot happen like that. We are where we are. To me, if you really believe that this Council sits there and says, how can we get away with not implementing what this Assembly has asked us to do? Vote for the vote of censure but there is nothing, we do not work like that, we want to respect. Absolutely this place is sovereign. I have been a Backbencher a lot longer than I have been a Minister. I am telling all the newbies in here, after 2022 when you step up there is no buck-stopping. It comes to you, my officers do not tell me what to do. They say: "Minister, what do you want to do?" You are there making absolutely massive decisions and on housing it is one of the most important decisions. This report had to be right, it has to take things into consideration and if it was slightly late - and it was - it was never, never this intention to be dragged kicking and screaming to implement the Assembly's wishes. Vote of no censure, do not vote for it. It is far, far too much for a narrow thing that we have not done. Look at the wording, vote and stick to the vote of censure. If you want to vote and think we hold this Assembly in contempt but if you do not believe we hold this Assembly in contempt, do not vote for it.

**1.1.7 Senator T.A. Vallois:**

I am just going to speak briefly and it is following Deputy Martin's speech just now. What concerns me, and maybe this is a way to provide that critical friend piece of advice, when we are talking about timelines and deadlines, I am talking about capacity and ability to deliver on States Assembly decisions. I think one of the issues we have here is that sometimes there are tactics that are played in order to get a proposition over the line or to not get a proposition over the line or to just please in the best way possible. Because the principle of what is being agreed is correct but the capacity to deliver via an individual department in particular is not realistic. It is not realistic. You then lead to an inability to deliver on what that States Assembly have agreed and I have read the report to the proposition, as Deputy Martin referred to, and it was the Council of Ministers that put the deadline in themselves. I think there has to be a good long hard look in the mirror in terms of reflection about how organised and how realistic the Council of Ministers are about their priorities but also the ability to deliver on those priorities. I hear what the Minister for Housing and Communities was saying, it is an extremely difficult role with limited power at all in terms of ability under that. He has to rely very much on other Ministers, without that role of collective responsibility or having a party system and a discipline that comes with that, if it was a party system that was in place under the Council of Ministers. It does concern me and it rings true to me what Deputy Morel was referring to. I do feel

concerned that when I hear the same excuses or the same attempt to make an argument that we will do better, I am not hearing what the solution is here. That is why, from listening to the speeches that have been made so far, that piece of advice, that discussion around being realistic with deadlines and enabling and understanding about the commitments that are being made and the pressure that the public sector are under to deliver is extremely important in the debates we have, so that we can manage expectations and ensure that there is action taken at the end of a debate and a discussion around policies that are extremely important, not just to us but to the Island as a whole.

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

I had to speak when I heard Deputy Martin's speech. First of all, I was not going to speak initially because I thought the Constable of St. Martin summed it up quite well. The way I understood it is when she was referring to not having a pass to Broad Street, I think that was in reference to Deputy Guida's speech yesterday when he said: "The public does not see any difference between Government and the Assembly." I thought, what on earth has that got to do with this debate? Because he is trying to say that, look, guys, we are all in this together and as far as the public are concerned we are all the ones that make decisions, so let us not be fighting among each other and let us just get on with it. But of course that is not the reality, there are Backbenchers in this Assembly, there are scrutineers and there is Government and there is a form of collective responsibility within Government, and that is why this censure is being brought in Government. Because Government has failed to do something that this Assembly has asked them to do. It is not about not doing something that Senator Mézec wants, it is about something that this Assembly has clearly asked for the Council of Ministers to do. Senator Mézec, and I think none of us entered this debate lightly, and he did not bring this proposition lightly, he recognises in his proposition, in the report, that he gave the Council of Ministers several chances to come back. There was an original deadline in April that they failed to meet. There was another deadline later on, which they failed to meet and now we find ourselves in September and this has dragged on. It is around the critical issue of housing, which I think we all recognise deep down there is a housing crisis in Jersey, and even though I do not think the proposition was successful, I am sure I have heard the Chief Minister after that point acknowledge publicly that there is a housing crisis. This is fundamentally about how we hold any Government to account and how any Assembly holds any Government to account when they do not deliver on the promises that they have made. Of course there were several opportunities for the Government to come back and say: "Senator Mézec, Assembly, we are working on this but we cannot deliver this in the timeframe that you wish for, so, therefore, please give us a bit more time but we are all working towards the same goal." That did not happen. Deputy Martin tries to overplay what a censure is. Yes, a censure is serious, it is an expression of disapproval from the Assembly towards a Member or, in this case, the Council of Ministers. It is absolutely appropriate that when the Assembly's wishes have repeatedly been ignored and they have not delivered in a way which we, and indeed the public would expect, that they should be censured. You can compare it to a caution, if you like. You go to a Parish Hall Inquiry, you jump a red light or whatever it is and there is no point in saying: "I did not intend to jump the red light, I was driving carefully and the red light just changed as I was going through it." You accept that you have not complied with the regulations or your duty and the Centenier says to you: "Will you accept a caution?" If you are sensible and you are humble you say: "Yes, I did make a mistake and I accept that caution." Because there are other options available. Senator Mézec could have brought a vote of no confidence had he wanted to and he could have raised this in other ways and he did not do that. I think a censure is exactly what it says on the tin, it is about setting a line in the sand about what we expect of our Government, that there is clear demarcation. Not all of us do or want to sit around the big table in Broad Street but when we want to get things done for our parishioners, for our ... more generally, we expect them to be delivered in a timely way by the civil servants and the Ministers in that Broad Street building, wherever they might be. We want that to work efficiently. This is not about personalities or about parties or anything like that. This is about any Government delivering properly and effectively and when they do not do that there should be

consequences, and that is the point. In our own personal lives and in our professional lives there are consequences if you do not meet deadlines, if you do not deliver on your promises and sometimes they can be soft consequences, sometimes they can be more severe. In parliamentary terms, for parliamentarians there are political consequences and this is one of the consequences which is entirely proportionate and appropriate when Governments fail to deliver. I do not think we should be taken in by saying it has been a difficult period and we have tried to do what we can and this is too severe. It is a consequence of a failure to deliver. The Council of Ministers, I think, should have the humility to accept that for what it is, accept the censure and move on.

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

I believe every single Member of this Assembly takes their responsibility as a States Member first and foremost and above every other position with which they are appointed to by the Assembly. I think that is absolutely right and it certainly represents itself in the Council of Ministers and meetings. When I work with my colleagues, even my Assistant Ministers, and I was prompted to follow the speech of Deputy Morel because he knows the way we work consensually in our department. There is a very strong will to deliver for the Assembly. We are appointed by the Assembly and we report, ultimately, to the Assembly. I have never witnessed anything other than a strong will by the Council of Ministers to deliver. It is fair to say we do not always deliver. Sometimes we do drop the ball, sometimes we cannot meet the guarantees, but I do not think there has been any time in the last 18 months, never been a time throughout the pandemic when we could give an absolute guarantee, although as Council of Ministers and departments, we have tried. I am not trying to make an excuse for this because in circumstances and instances like this we have to do better. As Deputy Truscott said, this is a shot across the bow and we can feel that. A vote of censure for a Government is not a simple slap on the wrist, it is a bit more than that. But I just wanted to try and reassure Members, certainly from all the experience I have had working with Ministers, there has never been any attempt not to deliver for the Assembly.

[10:30]

It is not ever done purposefully. Of course, we all engage in political debate, we do not always agree. We have good debates, we have good debates around the Council of Ministers' table. Senator Mézec knows that, he was there with us, he participated in some of those very good debates. The Senator himself, his position on housing is very, very well-known, he passionately champions the cause but so does the new Minister for Housing and Communities and so does the Council of Ministers. We all want to deliver, we will move heaven and earth, all of us, if we could to make sure we find a solution for what I believe is the biggest single problem this Island is facing moving ahead, and that is the challenges around housing. If we have let the Assembly down, and I am sure I would like to apologise sincerely, and I know other Ministers do not like to let the Assembly down. But what I will say is rather than look to seek retribution through votes of censure, we can learn from these experiences. Like I said, there certainly was no intention or no intent to delay this. What I will say in these times, these very challenging times that we have had with the pandemic, with Brexit and the unique very challenging political problems that we face, is that in my 20 years as a States Member without exception we, as an Assembly, as a Government, are always stronger, we are always more productive and we are certainly more effective when we work together. Let us work together to achieve the results that we need to get over this problem.

#### **The Bailiff:**

Thank you, Senator. Does any other Member wish to speak on the proposition? If no other Member wishes to speak, then I close the debate, other than to invite the Chief Minister to respond, as he is entitled to do.

#### **1.1.10 Senator J.A.N. Fondré:**

Let us be really, really clear, we apologise and we have apologised for the failure to meet the date and we have obviously listened to the comments from Members during this debate, which overall in fact has been a fairly good-natured debate. I would just make one clarification, and I know Deputy Martin gets very passionate in her speeches, she spoke very warm words but I just want to make one clarification that, in my opinion, a vote of censure is very different to a vote of no confidence. It is very, very important obviously but it is of a different level of magnitude. There are practical reasons why part (b) was delayed. I do not need to go into those, I do not think, at this stage. It is not a matter we have taken lightly and indeed this is not about something that is not going to happen. It is about something that has been delayed and it is going to happen this month. I would like to address a couple of comments from Members, the Deputy of St. Mary and also, for want of a better expression, put them together. Deputy Tadier, just to really emphasise the point, we did report on 7th June in R.100 and we did signal the delay. As I understand it, Members were also given a high-level briefing on 19th May. Deputy Tadier has suggested we did not come back to the Assembly, we should have done; we should have given Members warning. If Members look at R.100 it does lay out the point that P.165 was meant to have been reported by 30th April. It lays out the various steps that have taken place. It does reference the briefing that took place on the 19th. But it also clarifies and I think it puts into juxtaposition the reason I believe that April was selected was because the application was due to be made in May 2021. What the document says is: "S.o.J.D.C. are planning a final public consultation on their development plans in mid-July 2021 and the application being targeted to be submitted by the end of September 2021." I would update that, we are now expecting it to be October: "While the issuance of guidance has been delayed due to the change in timescales above [there we are, I have been very clear] the Council of Ministers remains committed to the publication of the guidance in the form of a report to the States Assembly in advance of S.o.J.D.C.'s submission of the application." That is where we presently still are. That may not be enough for Members, let us be clear. Let us also look at the positives, if Members like, for moving forward. I am very grateful, and I think it is indicative of a different style of approach because it is trying to do a long-term solution to the issue, rather than short-term ones. That is to the chair of P.P.C., who has confirmed that there is work taking place to produce a decision tracker for States decisions. I think, as we have said, this has been going on a long time; that does not make it right. I will make some comments about the Connétable of St. John but I agree with him. I can go back. Deputy Russell Labey, I think, brought a decision to this Assembly which the Assembly backed, which was about not building on, I cannot remember if it was green space or important open space in St. Helier; a very clear decision of the Assembly back in 2015. Oddly enough, that decision was completely ignored. It was not a case it was delayed, it never happened. In fact it went completely against the decision of the Assembly. There have been other measures that we know that we are still sometimes trying to address. What we have going forward, and we started this quite some time ago, we have, firstly, created a tracker for both Scrutiny and P.A.C. (Public Accounts Committee) recommendations and that is now what is evolving into tracking States decisions. In 2019 a tracker system was developed to enable reporting of the P.A.C., on actions taken in respect of reports and recommendations by both the P.A.C. and the C. and A.G. Obviously officials have worked to review, bring all the recommendations in, categorise them and then put some controls in place to validate some of the recommendations to ensure action is being delivered in the way they should be. That tracker has recently been updated to make it easier to monitor, et cetera. Scrutiny recommendations have now been added to that tracker system and they can be monitored in the same way. Now where we are, as the chair of P.P.C. has said, we are now in the position where States Assembly decisions can be put in play to ensure that where the Assembly approves an action for a Minister or for C.O.M. (Council of Ministers) or for S.E.B. (States Employment Board) to take place, then that will then be monitored. The initial decisions of 2021 will be added to the new system by the end of October and then all decisions moving forward. Then the intention is there will be a progress report that comes to C.O.M. initially on a monthly basis, then going to quarterly, to get that process embedded. Just to be clear, I am informed - I think this will be at an officer level - that has been reported to the P.A.C.

in the past. That we did intend to do this process for all States Assembly decisions once we had embedded P.A.C. and C. and A.G. recommendations sufficiently. This is not something we have just pulled out of the rabbit hole in the last month because of the vote of censure. I will be very frank, I share the Connétable of St. John's views, he said he would have expected something to have long been in place, and I think that is the point. I was quite surprised when I came in that there was not a system. That illustrates the changes in culture, silo mentality, defects in systems or, sorry, lack of systems that we have been tackling. Like many things that one might expect, it was not there. There are no systems in place for a whole range of areas. For example, the report on consultants that gets produced at the moment is a manual process that takes something like 300 hours for an officer to go through and produce that 10, 15-page report. That is the poor state of the systems we have. We do not have the data or system in place that one might expect in the 21st century, and that is why we have put a lot of investment into these type of areas. If Members recall, we did a warts-and-all presentation, I think, back in 2019. I will call him out because I am still absolutely staggered and highly flattered almost, I think it was Deputy Higgins stood up at the back of that presentation at the end of it and said that was the best presentation he had ever attended because, essentially, it was warts and all. It told Members what it was like. That is what we have been doing to try and get things into a better place but it does take time and, boy, has the pandemic sucked resource out of addressing that? As you have said, we absolutely acknowledge we are not in the right place, that is up to Members, but I hope it is also acknowledged that progress has been made. This saga, as I said, has gone on too long and I am going to refer to Deputy Labey, I think that was back in 2015, but there are things that are being put in place to address these issues and, ultimately, to ensure that decisions of this Assembly are tracked, monitored and, most importantly, are actioned. A vote of censure is an important matter. We have apologised for the delay in implementing part (b). But, as I have said, in censuring the entire Council of Ministers, the proposition, not the speech of Senator Mézec but the proposition, and what this Assembly is being asked to vote on is also censuring us for the things that we have done, in particular part (a), which for me is tied into an election commitment I made at the time. That is a matter for this Assembly. I make the point again, we are still in a pandemic and we are still donating many resources into protecting this Island and Islanders. In our view, it is not a proportionate response, given the circumstances. However, we have obviously taken Members' comments on board but I do ask Members not to vote for this proposition.

#### **1.1.11 Senator S.Y. Mézec:**

I thank Members who have taken part in this debate and there has been a substantial proportion of the debate taken up by talking about the issue of housing and Members reiterating how important that is. I guess that is a good thing because I think Members should get used to talking about housing issues in this Assembly because they are not going away any time soon and other issues to do with housing will consistently be brought back to this Assembly. However, this debate was the wrong time for it. Those parts of those contributions were irrelevant because this itself is not a debate about housing, it is a debate on the Council of Ministers' failure to implement a very clear States decision and that could have been in relation to any other decision that has not been implemented. We could equally have a debate on that, it is not a debate about housing. If I were a Minister I too would probably have wanted to have used this debate to talk about housing because it is a great distraction from the clear facts about what the proposition is really about. Let us reiterate those facts and make them crystal clear. On 10th February this Assembly adopted a proposition requesting the Council of Ministers to do something and the Council of Ministers did not do it; that is the simple clear fact for which there is no getting around. The Government can come forward with reasons for why it did not do what the Assembly told it to do, and many of those reasons we may consider to be justifiable. We may think that there is some logic behind that and we may want to give them some leeway on it. But the next fact is that the Government did not adequately explain itself or allow it to be held to account on its failure to do what the Assembly had very, very clearly told it to do. When it missed the deadline that the Assembly had given it, it did not proactively explain why it had missed that deadline until I

pushed for it. They then gave another deadline and when they missed that deadline they did not account for it in this Assembly. When I pushed for them to explain I was ignored, and this goes to a point that the Constable of St. John made in his speech yesterday where he specifically asked me if in my summing up I would explain what I did to speak to the Government to try and follow this up. I did what I could and I was ignored. What more can you do when you try to do the right thing? You have had a victory fair and square and a victory we can all share in because it was a good proposition that was adopted, and when you see it falling apart because it is not being implemented and you try to do the right thing and say: "Come on, what is going on, can we talk about this?" You are ignored, what else do you have left at your disposal there? The answer to that is a vote of censure; that is a way that this Assembly can formally say to whoever that censure is aimed at, we admonish you for this particular reason and we want that on record. Contrary to what Deputy Martin said, it is not a vote of no confidence. She was simply constitutionally wrong when she said that.

[10:45]

I said in my opening speech I did not want to make this a vote of confidence issue because it clearly does not meet that threshold and it would cause more disruption than is worth it when, hopefully, a censure motion would get things back on track. To be honest, in a way they kind of already have helped get it back on track because where the Government failed to do what the Assembly told it to do and then failed to account for why it had not done what the Assembly had told it to do, when I put this vote of censure on the record, when I lodged it, 2 things happened after that. The first of those is that P.69, the proposition in relation to South Hill, which was similar to the waterfront proposition in which to set a deadline, that was met. They did meet that deadline and the Minister for Treasury and Resources extolls that in her speech, saying that the Government did show a commitment to respecting the sovereignty of the Assembly because it delivered on P.69. This vote of censure was on the record at that point, so I wonder if that had anything to do with making them a little bit more enthusiastic about respecting the States decision on that occasion, just in case a second vote of censure had been on the way. Several Ministers, Senator Gorst and Senator Farnham, were both very clear in their apologies in their speeches and the Chief Minister, of course, gave his own version of an apology in his speech but I make the point again that that was not proactive. That has come about because this vote of censure was put on the table and it was published in their comments last thing on Friday, just a few days before this debate took place, when if it had come in May with some sort of presentation to the Assembly in the form of a statement from the Minister or something like that to say: "Look, we underestimated this job and the States Assembly has inadvertently tied our hands behind our back and made it impractical for us to do what the Assembly wants us to do, here is what we suggest instead", then this issue would never have got this far. The Government needs to learn that lesson. It is not right for the Assembly to make a very, very clear decision for the Government to not abide by that decision and not proactively approach the Assembly to account for that. The only reason there has been some form of accounting for that is because I have pestered them and when my pestering was not working because they were ignoring me, I then have to go ahead with this vote of censure, which I said it in my opening speech, was not how I want to be spending my time and not how any of us wanted to be spending our time. The one comment that I do want to address that came from the Minister for Treasury and Resources in her speech, and I went to listen back to it last night to make sure that I got the wording absolutely right because I was staggered when she said this, when she was referring to me she said: "The Senator, I am afraid, greatly underestimates the complexity of issuing guidance on what is ultimately a £1.3 billion development." No, I did not pick the end of April deadline; that was not my idea. In fact if Members want to check the original proposition I did not set any deadline whatsoever. The end of April deadline came about because of a really good and constructive discussion that I had with the Minister for Treasury and Resources and her team where we met to discuss it and I said: "I am prepared to compromise on some of what I am asking for if you can propose good alternatives." That is exactly what they did, to their credit. It was a really good discussion and we came up with a form of words, the Minister lodged her amendment

and I supported it without any caveats and I helped them put some of the wording together for it. But the deadline for the end of April was not my insertion, it was theirs. They were the ones who put that deadline there. If that deadline greatly underestimated the complexity of the issue, it is not fair to put that on me because I did not come with it, it was the Government that came up with it and they should show their respect to the Assembly by saying: "We are sorry we put something unrealistic before you" and had they done that we would not have ended up in this situation. I do really think that this is a very clear-cut matter. The facts are as I have said they are and there has not been a credible argument against those facts and there cannot be because they are simply facts. We told the Government to do something, they did not do it and they did not then allow themselves to be held to account for it. That has been recognised by some Members in their contributions in this debate and that there were some contributions I was particularly pleased for. Deputy Morel's was obviously one of those. The Deputy of St. Mary yesterday spoke well as well and of course the Constable of St. Martin today, I completely agree with what she says today. But there were 2 that I found very frustrating though because they spoke to say they had a lot of sympathy with what I was proposing and they, I think, accepted the underlining facts and the principles here but indicated that they may be voting against this vote of censure. I want to try to win them over at this last moment. I am talking about the Constable of St. John and Deputy Truscott. Again, I listened back to the Constable of St. John's speech yesterday to make sure I got the wording right for what he said. He said: "I hope they do not take a vote against this as an opportunity to ride roughshod over the Assembly." I have to tell him that that is exactly what is going to happen if he and the majority of Members do vote against this. Because when it comes to the voting record there is pour and there is contre. All of the nuance you use to arrive at your particular position does not show up on that record. If you say you are sympathetic to what the proposition stands for but you are going to vote against it, on the record you are in the same place as those who are not sympathetic to the proposition. You come up on the voting record exactly the same as those people and that can be used to say that the Assembly did not agree with the principles underpinning this proposition and that is what the Assembly will be marking. Deputy Truscott, I believe I heard him say that he was inclined to vote against this but that he hoped that the contributions in the debate should be seen as a warning to the Government. I ask a warning of what? A warning that you cannot do what the Assembly tells you to and the Assembly will do nothing about it; I mean some warning. The least the Assembly can do is support a motion of censure against them, which has no direct consequences. It is not taking anyone out of office. It is not demanding a particular course of action. It is merely saying that we are officially unhappy with what you have done and with that information we will be expecting you to do better. Of course if there were multiple votes of censure that would have a cumulative effect and eventually you get to the position of a vote of no confidence. But that is why it exists. It exists to be a stop before then to give the Government an opportunity to learn its lessons and to improve its conduct so we do not end up here in the future. So it is great to hear the apologies at this stage but they came in a set of comments that missed their own deadline, that were presented as late as they possibly could have been, when a better opportunity would have been early on in this to just hold your hands up, own up and say: "We messed this up a little bit. We set a deadline that turned out not to be right and we have not maintained decent communications on this." Since housing is such an important issue and since so many Members want to make that point and I welcome that, then to expect the Government to do better on its implementation of good housing policies in the future ... this was a good proposition, ultimately. It was one that all Members of this Assembly bar one supported so presumably one that we all buy into, then we can expect the Government to treat it seriously and can expect it to abide by its word and implement it fairly. If problems arise, since we are all - bar one Member who did not vote for it - on one side here, then we can be reasonable about it. If the Government wants to come forward and very clearly say: "This wording, it turned out, did not work so well so here is an alternative. Can we all get behind that please? What do you think?" rather than in a footnote somewhere in some written question or something that was only published because they were compelled to by the rules of this Assembly when I made them do so, then that would have shown a better approach. In closing,

I just want to ask Members that question: are States decisions optional? Because if they are optional, then this body is not really doing its job effectively and it is our job to hold the Government to account and to make sure that they uphold the commitments that we extract from them as the sovereign decision-making body of the Island. If we do not want to take minor opportunities, which is what a vote of censure ultimately is because nobody loses out on anything at the end of it, then we are sending a message ultimately that the Government can just get on and do what it wants and does not have to treat those decisions with respect. That is what this proposition is ultimately about. It is about respect and doing things properly irrespective of what the subject matter ultimately is. I ask Members to vote in support of this motion of censure to say to the Government, as the sovereign decision-making body of the Island, when we make decisions we expect them to be upheld. Where they cannot be upheld for legitimate reasons, you must come back to us and account for yourselves and we will approach that in a reasonable way if you approach it in a reasonable way as well. Since that is reasonable, why is this proposition not reasonable? I ask Members to vote in support of this motion of censure so we can get on with more important things and I call for the appel please.

**The Bailiff:**

The appel is called for and I ask the Greffier to open the voting. The vote is on P.72. Senator Pallett, would you like to indicate your vote orally because you cannot vote on the screen, I do not think, because your seat is different? You can vote on the screen? Sorry, Senator Pallett. I am entirely mistaken. You are perfectly capable of voting on the screen in the normal way and I apologise.

**Senator S.W. Pallett:**

Yes, I should have just explained, I am struggling with the fans. I have an eye problem so that is why.

**The Bailiff:**

No, that is absolutely fine. I fully understand why you have moved and that is perfectly acceptable.

**Senator S.W. Pallett:**

Thank you.

**The Bailiff:**

However, Connétable of St. Clement, you do not have the luxury of voting over the screen so you will need to indicate your vote at this point.

**Senator L.J. Farnham:**

Sir, I am getting some technical troubles on my screen so I wonder if I may just lodge my vote.

**Deputy R.J. Ward of St. Helier:**

Sir, I think I have had a bit of a technical hitch but I think I have voted online pour.

**Senator L.J. Farnham:**

My issue appears to have resolved itself, Sir.

**The Bailiff:**

Thank you. All right, well, so far, we have recorded 40 votes so it is likely that the voting system is working. I note 2 votes in the chat on the assumption that those who were voting in the chat have not been able to record their votes. Very well. Has anyone else come into the Assembly without a machine to vote on?

**Senator L.J. Farnham:**

Sir, I just wanted to make sure my vote was recorded as contre because it was not clear on the screen. Thank you.

**The Bailiff:**

Well, we will have to wait and see because we obviously cannot vote twice but we note that you are intending to vote contre. If Members have had the opportunity to vote, I ask the Greffier to close the voting. The proposition has been defeated.

<b>POUR: 21</b>	<b>CONTRE: 26</b>	<b>ABSTAIN: 0</b>
Senator T.A. Vallois	Senator I.J. Gorst	
Senator K.L. Moore	Senator L.J. Farnham	
Senator S.W. Pallett	Senator J.A.N. Le Fondré	
Senator S.Y. Mézec	Connétable of St. Helier	
Connétable of St. Saviour	Connétable of St. Lawrence	
Connétable of Grouville	Connétable of St. Brelade	
Connétable of St. Martin	Connétable of Trinity	
Connétable of St. John	Connétable of St. Peter	
Deputy G.P. Southern (H)	Connétable of St. Mary	
Deputy M. Tadier (B)	Connétable of St. Ouen	
Deputy of St. Martin	Connétable of St. Clement	
Deputy L.M.C. Doublet (S)	Deputy J.A. Martin (H)	
Deputy of St. Mary	Deputy of Grouville	
Deputy K.F. Morel (L)	Deputy K.C. Lewis (S)	
Deputy of St. John	Deputy M.R. Higgins (H)	
Deputy M.R. Le Hegarat (H)	Deputy J.M. Maçon (S)	
Deputy S.M. Ahier (H)	Deputy S.J. Pinel (C)	
Deputy R.J. Ward (H)	Deputy of St. Ouen	
Deputy C.S. Alves (H)	Deputy R. Labey (H)	
Deputy K.G. Pamplin (S)	Deputy S.M. Wickenden (H)	
Deputy I. Gardiner (H)	Deputy G.J. Truscott (B)	
	Deputy J.H. Young (B)	
	Deputy L.B.E. Ash (C)	
	Deputy G.C.U. Guida (L)	
	Deputy of St. Peter	
	Deputy of Trinity	

[11:00]

**2. Draft Civil Aviation (Amendment) (Jersey) Law (P.64/202-)**

**The Bailiff:**

The next item of Public Business is the Draft Civil Aviation (Amendment) (Jersey) Law, P.64, lodged by the Minister for External Relations and Financial Services. The main respondent of this debate will be the chair of the Economic and International Affairs Scrutiny Panel, the Deputy of St. Mary, and I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Civil Aviation (Amendment) (Jersey) Law 202-. A law to amend the Civil Aviation (Jersey) Law 2008 and the Air Navigation (Jersey) Law 2014 and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

**2.1 Connétable R.A. Buchanan of St. Ouen (Assistant Minister for External Relations and Financial Services - rapporteur):**

Sir, the Minister has delegated this to me and, unfortunately, he is not in the Assembly anymore.

**The Bailiff:**

Very well. The Assistant Minister, yes.

**The Connétable of St. Ouen:**

I am also having a few sound problems because when I switch my P.C. (personal computer) on, it echoes, so I will try and use the microphone. This draft amendment law would, if passed by the Assembly, amend the ...

**The Bailiff:**

You cannot use the microphone, Connétable, on the computer. You need to use the microphone that is lit up but you need to angle it closer to your mouth so that it is clear.

**The Connétable of St. Ouen:**

Thank you, Sir, yes. I will, for the benefit of Members, start again just in case they have not been able to hear me and I apologise. This draft amendment law would, if passed by the Assembly, amend the Civil Aviation (Jersey) Law 2008 to introduce regulation-making powers to provide for the implementation of the new air accident and investigation legislation. The investigation of air accidents and incidents is currently provided for through the Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000. This legislation needs to be updated to reflect developments in international standards in this area as set out in the Convention on Civil Aviation Chicago. I should clarify that the draft amendment does not, of itself, bring the Civil Aviation (Jersey) Law into line with the standards set out in annex 13 of the Chicago Convention but instead introduces regulation-making power that will enable regulations to be made by the Assembly to this effect. Rather than updating the 2000 law by order and in council, I intend to bring forward draft regulations under the 2008 law to implement annex 13 of the Chicago Convention, which relates to the investigation of air accidents and incidents. These regulations would replace the 2000 order and so this draft amendment law, which also provides for that order, would cease to have effect. The amendment law and draft regulations therefore will be brought into force simultaneously by Ministerial Order. The draft amendment law would also amend existing regulation-making powers contained in the law so it is possible for the Assembly to introduce regulations implementing international agreements, instruments or obligations relating to civil aviation. The existing powers provide only for the Assembly to implement such regulations, instruments or obligations by making regulations to amend the law. These new and extended regulation-making powers will allow the Island to keep pace more quickly and easily with changes to international standards in civil aviation. For the avoidance of doubt, the above refers both to the new regulation-making powers introduced by Article 19A and the expansion of existing regulation-making powers in Article 21. In addition, the draft amendment law makes 2 changes to the Air Navigation (Jersey) Law 2014. It clarifies the wording used in the provision prohibiting aircrew from being drunk or under the influence of drugs. It also defines the term “psychoactive substances” using the same definition as that which is used by the International Civil Aviation Authority. I therefore commend this legislation to the Assembly and open the debate.

**The Bailiff:**

So are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? If no Member wishes to speak on the principles, then I ask the Greffier to put a voting link into the chat and the debate is closed. The link is now in the chat. I ask the Greffier to open the voting. I ask Members to vote in the normal way. Connétable of St. Clement, how do you vote?

**Connétable M. Troy of St. Clement:**

Pour.

**The Bailiff:**

I ask the Greffier to close the voting.

**Senator L.J. Farnham:**

Sir, can I record my vote as pour as well because the link does not appear to appear?

**The Bailiff:**

Yes, very well.

**Connétable J. Le Bailly of St. Mary:**

Sir, I am having problems getting in on the link or on the chat. Could I have my vote recorded as pour please?

**The Bailiff:**

Yes, indeed, Connétable. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				

Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Does the Economic and International Affairs Scrutiny Panel wish to scrutinise the matter?

**Deputy D. Johnson of St. Mary (Chair, Economic and International Affairs Scrutiny Panel):**

No, thank you, Sir. We did seek clarification on a number of points previously. We have been given that clarification so, no, we do not.

**The Bailiff:**

Thank you very much. How do you wish to propose the Articles in Second Reading then?

**2.2 The Connétable of St. Ouen:**

*En bloc* please, Sir.

**The Bailiff:**

Are they seconded *en bloc*? **[Seconded]** Does any Member wish to speak on the Articles in Second Reading? If no Member wishes to speak on the Articles in Second Reading, then I close the debate and ask the Greffier to place a voting link into the chat. The link is there. I ask the Greffier to open the voting and Members to cast their votes in the normal way on the assumption that some Members will have the same difficulty. Connétable, pour?

**The Connétable of St. Clement:**

Can I record mine as pour please, Sir?

**The Bailiff:**

Yes, indeed. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The Articles have been adopted in Second Reading.

<b>POUR: 44</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham		Senator S.C Ferguson		
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				

Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

How do you wish to deal with the matter in Third Reading?

**2.3 The Connétable of St. Ouen:**

Yes, I would like to propose it in Third Reading please, but before I do, I would just like to thank Members for their support today and also thank the Scrutiny Panel for their engagement and support which has been very useful as always.

**The Bailiff:**

Thank you very much, Connétable.

**Deputy M.R. Higgins:**

Sir, before we go to the vote, can I ask if we can know who the contre vote came from please?

**The Greffier of the States:**

The contre vote was in the chat. It was from Senator Ferguson.

**Deputy M.R. Higgins:**

Thank you.

**The Bailiff:**

Is the law seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? If no Member wishes to speak in Third Reading, then I close the debate and ask the Greffier to post a link into the chat in the normal way. I ask the Greffier to open the voting and Members to cast their votes. Pour, Connétable of St. Clement? Are you able to vote in the link?

**The Connétable of St. Clement:**

Thank you, Sir, but it has worked this time.

**The Bailiff:**

If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The law has been adopted in Third Reading.

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Mary				

Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

### **3. Chief Executive Officer - recruitment process (P.73/2021)**

#### **The Bailiff:**

The next item is Chief Executive Officer - Recruitment Process, P.73, brought by Deputy Morel. The main respondent for this debate is the chair of the States Employment Board, the Chief Minister, in effect, and I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of the opinion to request the States Employment Board to halt the recruitment process for a new chief executive officer (C.E.O.) and instead to extend the current interim C.E.O.'s contract until a date after the elections in June 2022 pending the completion and publication of a review into the appointment process for the former C.E.O. as

recommended by the Comptroller and Auditor General and requested by the Public Accounts Committee.

**Deputy K.F. Morel:**

Do you mind if I stand to make the speech?

**The Bailiff:**

No, provided you can be heard. If you prefer to stand, that is within your ...

**3.1 Deputy K.F. Morel:**

Thank you. We shall find out. Well, I will start by saying I appreciate that this proposition has caused a great deal of consternation in some areas and I apologise for that and I will start therefore by saying to people the reasons that I have brought this proposition. So it is quite simple and perhaps too simple. I sometimes think my reasoning can be too simple. I, over the past 3½ years in this Assembly, have seen the public service and have seen instability. We have seen reported poor culture in terms of leadership. I believe we have seen cronyism. We have seen a diminishment of the status of this Assembly and we have seen a lack of understanding of Jersey.

[11:15]

That, in my view, sums up the situation up until the appointment of the interim C.E.O. Following that appointment, those conditions that I have just mentioned were replaced by stability, a respectful culture and understanding of the role and status of the Assembly and very, very importantly, an appreciation of Jersey's unique culture. When I looked at that truly quite magnificent change, the main difference was the appointment of the interim C.E.O., and he is to be congratulated for that. So, in my mind, I was looking at a vastly improved situation within the public service, and I was grateful for that. I could not help but think, come June/July time: "Hold on, this gentleman has had a 4 or 5-month long job interview and he is proving to be extremely good." I knew, because S.E.B. had told us that they were undertaking a new recruitment process, that there was a recruitment process going on but of course versus a 5-month long job interview, that recruitment process would involve, at best and at most, a 5-hour job interview to be undertaken via Zoom or some other technological means. So it seemed to me, given that the civil service was that and it is this now and is in a much, much better place, why gamble with Jersey's future because there is no doubt, when you appoint somebody new, you could be going to better places but, as we have seen in the past, you could also be going to places which are not as good? In the last decade or so, we have seen 3 compromise agreements and so, in my mind and in those of many people in this Island - States Members, civil servants and Islanders - it seems to me that the best way forward was to stick with the interim C.E.O. because, and solely because, he appears to be doing such a good job. Why gamble when we are winning? We may win more with the new person but we may lose. I know that many States Members shared my concern that S.E.B. had pressed ahead so quickly with the appointment process particularly as it was doing so without having implemented the sixth recommendation, particularly, of the C. and A.G.'s report entitled "States Employment Board Follow-up - Employment of the Former Chief Executive." That sixth recommendation asked S.E.B. to undertake the proposed review of the original appointment process for the former C.E.O. as soon as practicable and implement the findings from that review in the recruitment and appointment process for the new permanent chief executive. The C. and A.G.'s report also said that S.E.B. had resolved in its meeting of 24th November that and I quote: "It is resolved to request one member of the S.E.B. and its independent H.R. (Human Resources) adviser to undertake a review of those aspects. However, that review has not been commenced and there is no reference to it in subsequent minutes of the S.E.B. The S.E.B. has now commenced the recruitment process for a new permanent chief executive. If any lessons are to be learned from the previous appointment process, it is important for the review planned by S.E.B. to take place as a matter of urgency." Of course, we know today that the recruitment process has all

but been completed and this review has still not taken place. The Corporate Services Scrutiny Panel's People and Culture review raises several issues, some of which should have been resolved before the recruitment process took place. These include identification of a conflict of interest concerning the Chief Minister in his roles as line manager for the chief executive and chair of the States Employment Board. The reports asks for an independent review of the conflict of these roles. The report also identifies shortcomings in the job description for the new chief executive. It goes without saying that these shortcomings should have been resolved before moving to offer the role and agree a contract. The report also highlights the fact that, within a few months of taking office, the new C.E.O. will be serving a new Government and quite possibly a new Chief Minister with different aims and objectives to the existing Government. The former C.E.O.'s own performance appraisal placed a focus on the importance of the relationship between the Chief Minister and the C.E.O. Common sense, in my view, dictates that given the success of the current interim C.E.O., S.E.B. should have waited until after the election in 2022 before commencing their search for a new permanent C.E.O. These reports show us that against a background of compromise agreements, civil service instability and a poor employment culture, S.E.B. has chosen not to learn the lessons of the past and has instead pressed on with its recruitment process regardless. It is in the face of these facts that I drafted my proposition, a proposition that, to my mind, amounted to good common sense and doing the right thing for Jersey. As I said, why gamble with the Island's future when we have reached a stable place? Now it is important to understand that, at the time of lodging, I did not know the identity of the preferred candidate as permanent C.E.O. and I made no effort to find it out because this proposition has nothing to do with that person. To be honest, when I wrote this proposition, that person could have been anybody. The leading concept in this proposition, as I have said and I will repeat throughout this speech, is why gamble? As I have said, when we gamble, we can win more and maybe this new C.E.O. will be even better but the flip side of any gamble is that you can lose it all, and that is a potential loss for the Island and not for any one of us in here or any group of us in here. If there is a loss, it is the Island that will feel it and this is what my proposition seeks to avoid. My view has always been that, given the excellent performance of the current interim C.E.O., we should ask him to stay on until at least after the election so we can provide stability during the instability caused by the installation of a new Government. These are unstable times and an election, while an exciting time, is an unstable time and after the election, as this Assembly changes and new people come in, we will then vote and install a Government that will be different. It is impossible to say how. It could be vastly different. It may be marginally different but it will be different and that is a period of instability. I believe the C.E.O. situation should have been a point of stability over that period of necessary instability. I think what may have been found interesting by Members of the Assembly and, if not by them, then surely by Islanders is that, at the time of lodging, I believe there was overwhelming support for this proposition. Indeed, I am unsure that, were it not for one particular piece of information, this proposition would likely succeed today. With that I now pause to ask the Solicitor General a question. Would he advise the Assembly as to what he believes to be the legal ramifications and situation created by this proposition were it to succeed? With that I will ask the Solicitor General for his advice.

**The Bailiff:**

Are you able to advise the Assembly, Mr. Solicitor?

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

Yes, of course. The recruitment of a new chief executive officer is governed by Article 26AA of the Employment of States of Jersey Employees (Jersey) Law 2005. That provision prescribes in law the process which must be followed - and I stress, must be followed - when recruiting someone to the post of C.E.O. It is couched in mandatory language. It requires the States Employment Board to request the Jersey Appointments Commission to nominate a commissioner or commissioners for the purpose of the recruitment exercise. Those people have a number of statutory obligations they must

fulfil. First, they must decide which candidates for recruitment shall be interviewed - and “shall” means the same as “must” - not maybe but must/shall be interviewed, which candidates following interview have met the required standard for recruitment - not “may have met” but “have met” - and then this, which is perhaps most significant of all, which candidate is to be offered the post. Not which candidate ought to be offered or which candidate ought to be recommended to someone else for appointment to the post but which candidate is to be offered the post. So the language is clear, the legal statutory obligation and power to effectively select the next chief executive officer sits with the commissioners appointed under Article 26AA. One other thing it says is that the successful candidate is appointed on merit. That is the process prescribed by law, a law which the Assembly enacted, I think, in 2017. Tellingly, the law creates no power of veto over the commissioners’ appointment decision for anyone. It creates no power for anyone to review the appointment decision of the commission nor does it create any legal requirement on the commissioners to consult anyone. That is not to say in an appropriate situation it would not be appropriate for there to be consultation, simply that there is no legal requirement on the selection panel to do so. Once a successful candidate has been offered the post of C.E.O. by the commissioners, then Article 26AA is silent about what happens next. But what, I ask myself, must happen next if the legal selection procedure under 26AA is not to be frustrated or rendered nugatory without effect? What must follow, it seems to me, is this: the new C.E.O. must take up his or her post. Yes, a contract of employment will have to be signed first but that is a necessary step in giving effect to the selection decision made according to law under 26AA. The C.E.O. must take up post, otherwise the S.E.B. could simply ignore the selection made according to law and render 26AA without any effect whatsoever. This proposition, I am bound to say, and it is the opinion of the law officers, if adopted, and if acted upon by the States Employment Board, would entail them calling an abrupt halt to a lawful and legally-binding selection process prescribed by law. I think it would be fair to say, if colourfully, it would involve driving a coach and horses through the law. What might the legal consequences of S.E.B. doing that on the back of this proposition be? Well, in my view, the least speculative option would be a challenge by way of judicial review in the Royal Court. That challenge would not be without its difficulties. It might be argued, for example, on behalf of S.E.B., they would be the ones being reviewed, that this was a private law matter and not susceptible to judicial review at all. On the other hand, it might be said by any challenger, which could be the successful candidate but it could also be the Jersey Appointments Commission who would have *locus* to bring a review, they might say: “Well, no, this is a public law matter, the S.E.B. is a public body, the office of C.E.O. is a public office with substantial effects on the public generally” as I think Deputy Morel has just really explained. Perhaps significantly, the appointment process is prescribed by statute and it might be said those are all the hallmarks of a public law decision which you can judicially review. If it were reviewed, and reviewed successfully, that would entail the Royal Court concluding that the States Employment Board had acted unlawfully or unreasonably or with procedural irregularity. If that were the case, what order might the Royal Court make? The most obvious would be a mandatory order. The Royal Court would order the S.E.B. to get on and sign an employment contract with the successful candidate which of course would be precisely the opposite effect to what this proposition, if adopted, would call upon S.E.B. to do. Other options: suing for damages on the applicant’s part or for discrimination are, in my view at this stage, altogether more remote and uncertain but erring on the side of caution, one would not rule them out at least as a possibility in these circumstances. But my professional concern as a lawyer, I think in the first instance, would be the possibility of a challenge by way of judicial review.

[11:30]

There is, I think, a distinction to be drawn between, on the one hand, a political debate about the timing of the selection process, which is what I take this proposition to invite, and, on the other hand, the effect in law of Article 26AA. Because in my view no amount of political debate about timing and whether there should have been consultation or whether things recommended by various people

should have been put in place beforehand, no amount of debate on those topics can now change or alter the legal nature of what has happened. Because, as a matter of law, a successful candidate has been selected according to law and this debate, it seems to me, cannot change that. Now whether there is political merit or not in the points that Deputy Morel makes, it is not for me to comment upon. What I can comment on as a lawyer is that whether or not there should have been consultation; whether or not various recommendations should or should not have been put into effect first are not things which can alter the legality of the selection that has been made. Nor are they things which, in my view, if there were to be a challenge in court, would be likely, I think, to persuade a court that S.E.B. had acted lawfully in pulling the plug on the process on the back of this proposition. I think a court would still come to the view that S.E.B. doing that was unlawful in all the circumstances. So I think there is a stark divide, if I may say so, between a consideration of political matters and the state of the law and the legal state of the decision that has been made. Public authorities here and elsewhere can and do from time to time act unlawfully. That is an occupational hazard of public decision-making but such unlawful acts usually occur in good faith and through simple error of judgment or a misapplication of legal principle. Occasions where a public body knowingly and quite wilfully decides to act unlawfully, as would, in my view, be the case here, ought to be vanishingly rare indeed, to the point of never happening. To act in such a way would, it seems to me, give rise to some genuine concern about the governance and the rule of law. I think I will betray nothing of a confidential nature if I say no law officer could ever advise anyone to disobey the law. If elected legislators do not care for a law, the remedy lies with them. They are able to repeal that law, they are able to amend that law, and they are able to pursue political avenues to express their displeasure at what may have happened. But what they ought not to do, in my view, is request someone else not to obey that law. So that is my advice and I hope it is to some extent helpful.

**The Bailiff:**

Deputy Pamplin has asked for a point of clarification. I think it might be useful to hear from the Solicitor General with the totality of his advice before you continue with your speech, Deputy Morel. So, purely related to what the Solicitor General has said, Deputy Pamplin.

**Deputy K.G. Pamplin of St. Saviour:**

There was a lot the Solicitor General said that was really helpful but in the earlier part of his speech the Solicitor General made reference to the commissioners seeking advice or opinion. Could he just clarify what he meant by that because I missed part of it and it did not sound right to me. I hope that makes sense.

**The Solicitor General:**

I am not sure I did say that. If I did, I did not mean to. The 26AA I think is what I may have been referring to and that simply provides the legal process which the commissioners must go through to select a person who is to be the next chief executive officer. The law does not make any provision for them having to seek legal advice, the law does not make any provision for them having to consult any third party. The point I was making was the fact that the law does not require them to consult, there is no legal obligation to consult, does not mean there might not be a pragmatic good reason to consult in any given case. It simply means that there is no legal duty on them to consult. I hope that clarifies it.

**The Bailiff:**

The Connétable of St. John, you have a point of clarification for the Solicitor General?

**Connétable A. Jehan of St. John:**

Can the Solicitor General confirm if the law states when the process starts following the position becoming vacant or is that a decision purely for the States Employment Board?

**The Solicitor General:**

The law does not provide any timeframe by which the process must be begun. It is a matter, it seems to me, for the States Employment Board.

**The Bailiff:**

Deputy Young, do you have a point of clarification for the Solicitor General?

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

The end conclusion of the Solicitor General's advice raised major issues for me. He pointed out the conflict between the legal position and this proposition which would mean that if we were to vote for it then, normally, that situation would be one of error, good faith and judgment. But what he said, I think, was that if we were to go ahead and vote this proposition, willingly and knowingly and act against the law, what that raises for me in my mind is, if people were to do that, what are the potential consequences of that? I know in the U.K. local authorities, if elected members were to do such things, there are serious consequences of that. So could he elaborate what that would effectively do? I think that is a really critical point. If Members go ahead and willingly and knowingly make a decision to vote for this proposition and disobey the law, I would like to know what he considers the consequences of that potentially could be.

**The Bailiff:**

Could I ask if I am clarifying your question correctly in this way, Deputy Young? Are you asking the Solicitor General what the consequences would be for the Assembly if they voted for it or what the consequences would be for the States Employment Board if they acceded to the request of the Assembly as a result of that positive vote? Which was your question?

**Deputy J.H. Young:**

Both of those things. I do not think Members would willingly want to get in the position where we deliberately disregard legal advice and I need to know the consequences.

**The Bailiff:**

Very well, that is as far as I think we can go in a point of clarification. Can you assist with that, Mr. Solicitor?

**The Solicitor General:**

I do not think there would be any legal consequences for the Assembly voting for this proposition. The legal consequences would be for the States Employment Board if they were to accede to it. The most likely one would be, in my view, a challenge by way of judicial review.

**The Bailiff:**

Deputy Gardiner, do you have a point of clarification for the Solicitor General?

**Deputy I. Gardiner of St. Helier:**

There are recruitment processes that would not end with appointment for various reasons. As this proposition stands now, we are not opening the other recruitment process or will appoint somebody else, it is basically asking to stop the recruitment process. Is it a legal obligation from the point of the commissioner to finalise and appoint a person or is it their power to halt without signing the contract?

**The Solicitor General:**

That is a good question. I think that the States Employment Board would have, in an appropriate case, a discretion. But it would have to be their discretion and it would have to be their independently-exercised discretion not to sign a contract of employment following a successful 26AA selection

procedure. But in very limited circumstances, for example, where it transpired subsequently that the successful applicant had lied in the course of the application or had withheld material information which would entitle the S.E.B. and, indeed the Appointments Commission, to say that that vitiated the 26AA procedure but it would be in those extremely limited circumstances. The anticipation must be where a 26AA selection has been made that the process by means of an employment contract will be completed within a reasonable time. That must be the expectation if the law is not simply to be, as I say, rendered nugatory. It seems to me tolerably clear that this proposition is suggesting a great deal more than just delaying for a short period. It has the hallmarks, as it were, of negating the selection process by kicking it into the long grass for many, many, many months indeed in such a way that it would be quite clear, to me at least, that proceeding in that way would be unlawful. I do not know if that helps clarify but that is my response.

**The Bailiff:**

Deputy Ward, do you have a question?

**Deputy R.J. Ward:**

I think part of what I was going to ask has just been answered. But I suppose to understand, this is a process of recruitment, does the law define the end point of that process? So is it the signing of the contract itself, could it be determined as a verbal contract as being offered? Could it be that public knowledge in some way defines that there has been an end process there? Is that within the process itself? I think it is just an understanding of if there was a delay to the process which has ended, what is the end point of that process? Does that question make sense? I completely understand if it does not?

**The Solicitor General:**

No, it does make sense. The answer is, I think I explained earlier, that 26AA is silent as to what happens after the successful candidate has been offered the post. It seems to me that if 26AA is to be of effect, the post must be taken up within a reasonable time. It must not be denied to the successful candidate for arbitrary reasons, one of which would be any of the reasons, I am bound to say, in my opinion, that appear in this proposition because they are political reasons, and 26AA is about the independent selection of the next chief executive officer. One would therefore expect the C.E.O. would take up post within a reasonable time. A condition precedent to that might well be the signing of a written contract. In most instances, and I have not been privy to the process, one would expect a very senior appointment of this sort, where the job is offered, to be expressed to be subject to contract. That may well be what happened here but of course a contract can arise orally. It would be unlikely if such were the case here, I know not, but, yes, a contract could arise orally. But the point at which the deal is done, so to speak, is the point at which contractual relationships arise but you cannot divorce the contractual relationship from the 26AA process. Either 26AA means what it says or it does not and if it means what it says, it has to be followed. The candidate who is offered the post pursuant to that process has to take up the post. If for any, as I say, arbitrary or inappropriate reason that is frustrated, that would involve the S.E.B. in unlawfulness.

**Deputy R.J. Ward:**

Thank you for that, it really helps. The offer, the point of offer is something that could be wrangled - that is the wrong word - about later if that offer was being seen to be withdrawn. So that is a verbal offer ... I think it is that finality point of where the offer is made that I am trying to understand.

**The Solicitor General:**

The finality point would not be the offer, at least in terms of the candidate, because the candidate could say: "Well, thank you very much, I have changed my mind, I do not want the job after all." But where the offer is made and the candidate wishes to accept it, then the legal process, it seems to me, is binding and that candidate must take up post.

**The Bailiff:**

You have a further question, Connétable of St. John?

**The Connétable of St. John:**

Can the Solicitor General confirm whether or not a signed heads of terms would be contractually binding?

**The Solicitor General:**

I do not know immediately the answer to that. The way I think these things happen is that the job offer is made, usually it is expressed to be subject to a written contract. There are then heads of terms which set out the ambit of the contractual arrangements which are agreed and then there is the contract of employment which follows upon those agreed heads of terms which gives legal effect to and creates a binding agreement between employer and employee. That is how I think it happens here.

**The Bailiff:**

Very well, do you wish to continue with your speech, Deputy Morel?

**Deputy K.F. Morel:**

Can I ask a further question of the Solicitor General?

**The Bailiff:**

Yes, please do.

[11:45]

**Deputy K.F. Morel:**

I apologise to the Solicitor General for putting him on the spot like this; really, they are just clarifications. First of all was, which body owns the recruitment process? In my understanding from what you have said, S.E.B. starts the recruitment process by asking the Appointments Commission to undertake it but then the ownership of that process, the sole ownership of that process, is with the Appointments Commission. Am I correct in that?

**The Solicitor General:**

Yes, I think that is correct, subject to the one caveat I made, which is that where subsequently something emerges that is really to the successful candidate's detriment, then S.E.B., in my view, would have a discretion to say: "Well, we are going to call time on this application." But the Deputy is quite right, the S.E.B. begin the process by requesting the commission to appoint a recruitment panel. It is then for the recruitment panel entirely to own the selection process. It then goes back to S.E.B. for the agreeing of the minute details of the employment contract.

**Deputy K.F. Morel:**

One last question which is, should my proposition succeed today, Solicitor General, are you able to give us a sense of how you feel you would advise S.E.B. in light of that?

**The Solicitor General:**

I can only repeat what I have said already, I do not think it will surprise anyone if I say a law officer of the Crown could not advise someone to act unlawfully.

**Deputy K.F. Morel:**

With that, if you do not mind, I will resume my speech. I would like to thank the Solicitor General for his help. While utterly deferring to the Solicitor General and his legal knowledge, personally I do not agree with all of that advice in my reading of the law but that is irrelevant. I know that the

Solicitor General's words will cause the clear majority of States Members to cool their support for this proposition for he is saying, or what I believe he is saying, is that my proposition is asking for S.E.B. to undertake something that is illegal. However, while I may disagree, I do not see in the relevant law any suggestion that the Assembly cannot halt the recruitment process which, in my mind, is something that is not politicisation. It is pragmatic; it is pragmatic realism, in fact, but the Solicitor General's advice suggests otherwise and I know the majority of States Members will listen to it. This advice also raises, however, a much more significant issue, one that was pertinent to Senator Mézec's proposition of censure, and that issue is the primacy of this Assembly. We have a situation in which the S.E.B. cannot only ignore the Comptroller and Auditor General's recommendations but is also exempt from acting according to the will of this Assembly. This concerns me deeply and explains in large part the reason I voted for Senator Mézec's proposition, in fact, almost wholly; it is the sense of the powerlessness of this Assembly in an increasing number of areas. If, for no other reason, I believe this proposition has done everyone a favour in highlighting that. I agree that recruitment processes should be fair and free from political influence in the selection of a candidate but that does not mean the sovereign political body that is this Assembly should be rendered impotent in terms of choosing whether or not to start or stop a process of recruitment in any area of the civil service but most particularly in terms of the chief executive officer. Perhaps if I believe that S.E.B. and the Appointments Commission had overseen fair and transparent recruitment processes during the time I have been in this Assembly, then maybe I would be grudgingly willing to accept the primacy of S.E.B. in this matter. But, in my eyes, I have seen cronyism, the cronyism that I referred to at the beginning of this speech, as proof that the processes currently being used and overseen by the Appointments Commission are clearly insufficient. On top of this, we have all seen and all heard of the constant choosing of U.K. candidates over Jersey candidates resulting in a situation whereby among the entire senior leadership of the civil service - and I am referring there to director generals and above - there is, to my knowledge, not a single person born in Jersey serving in one of those positions. The consequence of this is that the culture of the Government's administration is divorced from the culture of this Island. I also have evidence-based reasons to believe that the interview process used in the C.E.O. recruitment had flaws. I will not go into those here for it will be unfair and unwise. However, this evidence raises serious concerns in my mind about the conduct of the Appointments Commission. I believe it is important that this Assembly stops ignoring the deficiencies exhibited by the bodies of the S.E.B. and the J.A.C. (Jersey Appointments Commission) in terms of recruitment processes but those issues, as much as I and others in this Assembly want them, and want to get to the bottom of them, they are not the reason I brought this proposition. As I said previously, the reason I brought this proposition was to continue the stability and improve culture that this interim C.E.O. has brought to the public service. But it is clear that between the advice of the Solicitor General, the P.R. (Public Relations) campaign that was undertaken by the Government in the last few days, that I and, by extension, this Assembly have been put into a no-win situation with regard to my proposition. If in the extremely unlikely event that this proposition were to succeed, then either the States Employment Board will pause the recruitment process and extend the current C.E.O.'s contract as the proposition requires, but by doing so it would put the interim C.E.O. into the position of working with a Chief Minister who does not believe he should have the role. I do not mean that in terms of ability, I just mean in terms of the processes that have been undertaken and believe that we need to move on to the new C.E.O. That is something which is not good for Jersey and could lead to unintended disfunction within the civil service thereby creating the possibility that the next 9 months of recovery from COVID could become wasted. Alternatively, the S.E.B. could ignore the will of the Assembly and continue with the appointment process, and is likely to be advised to do that, in which case, despite succeeding, this proposition will still have lost. Some might say: "Well, if S.E.B. ignores the will of the Assembly then a vote of confidence should be brought against it." Now, some may believe S.E.B. may well be worthy of a vote of confidence but I have to say that when torn between the Assembly and acting illegally, S.E.B. will be in an impossible position and so such an action in this very limited place would certainly not be

appropriate. Sometimes you have to know when the cause is lost and in the case of this proposition that, I believe, is firmly the case, not just in terms of the number of votes, which I believe following the advice of the Solicitor General would be impossible to achieve, but also in terms of the consequences of those votes, particularly if this proposition were to succeed. In this situation I have to ask myself: what is the right thing to do for Jersey? Sadly, and with great regret, given the analysis above that I have laid out, to continue with this proposition would certainly be going against what is best for Jersey and indeed could harm the Island, harm this Government, harm this Assembly and harm S.E.B. Do I think S.E.B. has acted entirely in the interests of the Island by continuing with this process, by starting the process so soon? No, I do not. By starting the process in advance of undertaking the C. and A.G.'s recommendations, certainly not. I also have to have regard to the 2 individuals now involved in the role of C.E.O. I have to be aware that the ensuing debate could cause them harm and, knowing that my cause is lost, whichever way the result goes, I cannot in all good faith subject those 2 individuals to the chance that their reputations are harmed in any way. I know that many States Members have deep concerns about the States Employment Board, the Jersey Appointments Commission and the recruitment process, not just for the C.E.O. but across the organisation. With that in mind, I have asked the Chief Minister as chair of S.E.B. to agree to hold a questions session with all States Members, that is, a questions session between S.E.B. and States Members, in which we can ask S.E.B. about any relevant subjects. I think this is a vital way to begin to hold S.E.B. to account. In addition, I will request the C. and A.G. to review the recruitment process of the new C.E.O. as it is being undertaken this year. Whether she chooses to do that or not is entirely in her gift. From there, we States Members will be able to bring the much-needed reforms to S.E.B., which in many Members and Islanders' eyes is not a body that is succeeding. We must also look at the Appointments Commission. In my view, it has overseen the cronyism of the last few years, something which it is expressly meant to prevent. In my eyes, it is failing. It brings me no satisfaction to withdraw my proposition but for the good of the Island, I must do so. I apologise to those Members who have prepared for this debate but I hope they understand. I also apologise to those Islanders who see the problems with S.E.B. and J.A.C. and who hoped that this proposition would help deal with those. To those Islanders, I say this: this proposition was not designed to deal with those failings. It was always and solely about avoiding an unnecessary gamble. Other future propositions will have to be used for reform of S.E.B. and reform of the J.A.C. I would like to finish by saying that we must welcome the new C.E.O. and help her lead the civil service with the humility and skill that this Island expects. I would also like to recognise the excellent work of the interim C.E.O. He has shown us all how the civil service can be led, he has set an example and a benchmark which must be followed. **[Approval]** He has gone about this work with a true understanding of what it is to be a servant of the Government, the Assembly and this wonderful Island. I ask the Chief Minister to continue working with him productively and to do everything to ensure that there is no instability in the handover to the new C.E.O. and a new Government next year. I hope my thoughts on this complex situation have been understood by the Assembly and Islanders. I am sorry to have to do this but I must withdraw my proposition.

**The Bailiff:**

Very well, Deputy, thank you very much. You are entitled to withdraw unilaterally your proposition and it is accordingly withdrawn.

**Senator J.A.N. Le Fondré:**

Sir, may I say a couple of words?

**The Bailiff:**

I am afraid not, there is no *locus* for doing so, Chief Minister.

**Deputy J.A. Martin:**

I did ask for a point of clarification.

**The Bailiff:**

I am afraid, if the debate had been taking place and would have continued you would have had a point of clarification.

**Deputy J.A. Martin:**

Well, the Deputy made some very disparaging, I think, even really terrible remarks about the S.E.B. acting illegally or cronyism.

**The Bailiff:**

No, I am sorry, there is no *locus*. The Deputy has made a speech which was not, to my mind, contravening Standing Orders and he has, as he is entitled to under Standing Orders, withdrawn the proposition. A Member can withdraw the proposition any time prior to the opening of the debate and that only takes place after it has been seconded, so that is the position, I am afraid. A point of order, Deputy Young?

**Deputy J.H. Young:**

Yes, I understand your ruling on this but obviously we have gone through a period where the Solicitor General was asked to advise on quite a lot of very substantial points promoting comments from Members. I really do wonder whether there should be some way in which Members can express their views on this, not on the proposition, but where this leaves us, frankly, in a mess procedurally on it.

**The Bailiff:**

There is, of course, always a mechanism of seeking an in-committee debate on any particular subject. But the business of the Assembly, as it is presently constituted, as it is presently dealing with matters, is to resolve propositions and this is a proposition which has now been withdrawn. I see no difficulty if you wish, or any other Member wishes, to bring a proposition for an in-committee debate on general matters relating to the functioning of S.E.B., then there is no reason why it should not do so but I do not think the context in these circumstances ... there cannot simply be an open forum for Members to stand up and express their points of view. A point of order, Deputy Tadier?

**Deputy M. Tadier:**

I think it is a point of order, or maybe procedural, but could you confirm that if the Chief Minister wishes to respond in some way he has the avenue of lodging a statement to the Assembly which can then be questioned if he feels the need to respond?

**The Bailiff:**

That is procedurally correct. Provided the notice provisions are complied with, then the Chief Minister can make a statement in his capacity as chair of the S.E.B. and he can be questioned by Members for a 15-minute period on it.

**4. States Meetings: Move to a 3-week cycle (P.74/2021)**

**The Bailiff:**

The next item is States Meetings: Move to 3-week cycle, P.74, it is a re-issue, lodged by the Privileges and Procedures Committee, and I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to refer to their Act of 25th September 2020, which authorised the trial of a 3-weekly sitting cycle of the States during 2021, and to agree that meetings of the Assembly should in future follow a 3-weekly cycle, with meetings in 2022 to be held in accordance with the schedule of dates contained in appendix A of this proposition.

[12:00]

#### **4.1 Deputy C.S. Alves of St. Helier (Chair, Privileges and Procedures Committee):**

This proposition proposes that meetings of the Assembly should in the future follow a 3-week cycle. Members will recall that in 2020 the Assembly agreed to enter into a trial period for a 3-weekly sitting cycle for States proceedings. Part (b) of that proposition requested P.P.C. to bring forward for debate any proposals to permanently alter the frequency of future States meetings, having monitored the impact of the trial. The committee had previously agreed to undertake a consultation exercise at the 6-month stage in order to ensure a sufficient period of time had passed for Members to take an informed view on the new model and in order to gather measurable data. Members will see that they have recently received an email this morning. I apologise for the delay in that but the paper has been circulated to States Members and sets out the data that we gathered, which includes a range of statistics over the years from 2015 to 2021. Our consultation involved writing to the Council of Ministers, Scrutiny Liaison Committee, Comité des Connétables, and the interim chief executive for their views. We also sent out a survey to Members asking a simple yes or no question of whether the 3-week cycle should become a permanent fixture for the States meetings. The survey also provided the option for Members to add any comments they wished to make. In terms of the survey results, 25 Members responded in total: 14 in favour of the 3-week cycle and 11 were against. In addition, the committee received a range of views both for and against the 3-week cycle. On behalf of P.P.C. I would like to thank all of those who responded to the consultation and for taking the time to provide comments. Unfortunately, the main outcome was that it did not result in a clear direction from Members as to whether to continue with the 3-week cycle or revert back to the 2-week cycle. The feedback we received was that some Members believed the 3-week cycle enables more time to prepare for sittings and for Scrutiny and constituency work in the weeks between sittings. On the other hand, some Members believe that the 3-week cycle has reduced the accountability of Government to both the Assembly and the public. In terms of Scrutiny, one panel fed back to us that the 2-week cycle offered more opportunity to correlate propositions at a faster rate than the 3 week-cycle. Given the almost 50/50 split in views, we decided to lodge this proposition so that Members can debate the matter and reach a conclusion as to the preferred way forward. Members will have seen that the proposition includes a schedule of meetings for 2022 for both a 2-week cycle and a 3-week cycle and we hope that this will assist Members during the debate. If the Assembly votes to reject the proposition, we will remain on the 3-week cycle for the rest of the year, as has been agreed, and revert back to a 2-week cycle next year. In terms of the Standing Order amendments that were made to the systems of both oral and written questions, P.P.C. will revisit these should Members reject this proposition. We will consider whether or not they should remain in place or whether they should revert back to how they were before the 3-week trial was implemented. Following the debate today and its outcome, P.P.C. will present a confirmed schedule of meetings for 2022 before the end of this month. I make the proposition.

#### **The Bailiff:**

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

#### **4.1.1 Deputy R.J. Ward:**

I just wanted to say a few things; I was hoping other Members would say a few things on their opinion on the 3-week cycle. First of all, I think there is an irony of the consultation on whether it worked, getting so little response, because people are probably so busy and not sure as to what they judge it on in such a short time, so I think that is a really difficult one. That is not to blame anybody for that, it is just the reality of what has happened. I did not vote for the 3-week cycle before and I think the reasons why I did not have not changed that much. One is that there does certainly seem to be a loss of accountability for Government. We have a short time for questions, we have questions without notice, of course, and we question the Chief Minister for 15 minutes once every ... well it says a 3-

week cycle but sometimes those gaps in between can be much longer than 3 weeks. With half terms and Easter breaks and so on, it can be 4 or 5 weeks. One of the issues we have on this Island is not engaging people in the processes of this Assembly. I do not think we are going to improve that by having less engagement in the processes of this Assembly publicly. Scrutiny, of course we want more time for Scrutiny, and I would praise Scrutiny Panels and certainly praise those who take the extra work of chairing a panel because it is an enormous amount of extra work. Yes, we certainly need more time to do that. But what I am fearful of in supporting this is that we will feel that we have addressed the issue of how to improve the amount of time we have to serve constituents, undertake Scrutiny, scrutinise the Government and question Government, simply by giving more time in between sittings when - I suppose the phrase is - the elephant in the room that we have never addressed is the massive inequity in resourcing between those that are provided for our Government and Ministers and that itself may not be adequate. I would suggest if you want a Ministerial Government to do a good job, it has got to be given the resources to do that; I have no problem with that. That makes it more accountable and then people can make judgments as to whether they want that Government or another one. But as a non-Executive Member, a Backbencher away from Scrutiny - and I will come on to Scrutiny in a moment - there are zero resources for us to undertake. I think the only way in which you are going to improve that is to have proper constituency resources for Members who are elected so that your constituents know where you are and can get help. Those should be staffed constituency offices so that every member of your constituency knows where you are and can go and ask for that help. I think that unless we address that issue, the issue of just giving simply more time between sittings could be seen as a solution to a problem that is not being solved. Therefore, we should not conflate these 2, i.e., this is why supporting this does not solve the issue that I believe it is intended to solve. That is why I make that point. I have an issue with the written questions as well which seem to have, to a large extent, disappeared into the ether. I had a conversation with a Member of the Assembly today who I have put a question into who said to me: "We are getting your answer to you. I am not sure when they are due" and I said: "I am not sure when they are due either, it would just be nice to have an answer. Thank you very much." It was a very polite conversation but I think the process of written questions and when they are coming back to us and, most importantly, publicly, has not been addressed. Indeed, if you go on to the States Members' website and look at the questions that are asked, only the first 20 questions that you have asked as written questions are there. So, that issue has not been addressed either. A 3-week cycle may be a great idea if, in the background, we had a much more open accessibility and engagement from the public so that every piece of work that we do in this Assembly can be seen, can be examined, can be scrutinised by the public to see whether we are doing the work that people think we should be doing. I, for one, if I am honest, get fed up with some comments, which are made just jokingly, I am sure: "Oh, what is it that you do?" Because I think myself and other Members are extremely busy and work extremely hard in the role that we have trying to do the very best that we can. So in terms of a 3-week cycle I am not so sure whether the trial has shown any improvement to what we are doing. I am not sure whether the trial has shown an increase in accountability in any way and whether it has gone the other way and decreased accountability of the Government publicly. I know it is a complete pain for Ministers to get questions. I know some of us ask many more questions in this Assembly than others but that is part of our democracy so that we are publicly holding to account the decision-making process into the future. We need to do that, if anything, more frequently rather than less frequently. If we were to move to a 3-week cycle for business in terms of propositions, then I can say fine, if that were accompanied by perhaps a bi-weekly or a weekly short session of questioning, for example, because then that public questioning of Ministers in this Assembly would be there. But we do not, we put the 2 together and so we have lessened the ability to ask those public questions. Sometimes I think it is a shame we cannot speak twice in one of these debates because there are things that I know will come up from debate. No one else wanted to speak, so I went first and I am sure something else will come up. But I hope that we consider really carefully as to whether we want to continue with this experiment, what the positive outcomes have been, which I really

cannot see, or whether we go back, as we come up to the election, where that scrutiny within this Assembly is so vital so that people can see what we do, how we do it and hold people to account. So at this moment I again will not vote for the 3-week cycle but there is part of me that could be convinced. It is only a small part though.

#### **4.1.2 Deputy K.G. Pamplin:**

I also did not vote for this trial last time. I was not convinced that the impact will be universally beneficial to all parts of this Assembly, so I was a little disappointed that part of the proposition did not come with a full analysis of the impacts of this 3-week trial. I can interject some from my experience of Scrutiny. We have quarterly hearings with the Minister for Social Security and the Minister for Health and Social Services on the panel I sit on and it is fair to say the Scrutiny work with the Minister for Health and Social Services has been essential with the ongoing pandemic and other big programmes in play. We had a quarterly hearing in May, we had a quarterly hearing only recently, and there was a long time between that, obviously with the 3-week cycle and, as Deputy Ward mentioned, half term, Easter and then the summer recess, whereas we usually get through our Scrutiny process. It is becoming aware that we run out of time with the amount of questions that we just do not have the time to fulfil in that Scrutiny hearing. So our increase of writing letters as a part of the Scrutiny process to the Minister to answer the questions we have, because we have another 3-weeks for the States sitting or when they have the next quarterly hearing, has increased. I know we have, as part of our process with both the Ministers we scrutinise, increased those questionings through letters. Of course, that does build more work for us and obviously the Ministers who have been under great pressures with their workloads who then have to respond to our questions. So I am seeing that is not a benefit of this 3-week cycle because if we had one extra week to bring those questions, we would be able to continue that and I think that would take the burden down. Secondly, it is the public test which I know sometimes we make decisions here which have not been popular. They sometimes have to be necessary and sometimes the nuances of the work of the Assembly are difficult to get across. But I have not met one member of the public who has come up to me and said: "Oh, that is really great, this process of not meeting every 3 weeks." I think a lot of people just have always felt uneasy with their Parliament not meeting more frequently to hold the Government and all of us to account. So that is an ongoing process for the public. Equally, the other thing, looking to the future, and it does not really matter if we do the 2 weeks or 3 weeks, we have a huge amount of policy propositions, we understand, coming our way. Today we have not really done much policy debating, it has all been in-house: motion of censure, the C.E.O. proposition that we did not debate and now we are debating another procedural matter.

[12:15]

The Island wants to see this Assembly debating propositions and policy that affects day-to-day lives, to improve their lives and we are not doing that today so far. I know the irony of me talking in that debate could be thrown at me. But equally there is a lot of big policy, we understand: there is the hospital budgeting debate, there is going to be the Government Plan, we know there is a population migration policy coming. Then, as we look to the looming deadline of 2 weeks of the Island Plan in March, there is a lot of work coming to this Assembly. Does this really help that process? I am not convinced. Equally, if you look at the schedule, this sitting Assembly's last date in this Parliament doing this process finishes on 29th April, then that is it. The new States Assembly convenes on 5th July, then there are the processes of election, the Chief Minister, Ministers, Scrutiny chairs, Scrutiny Panels, committee members and then it is the summer. There will not be another sitting in this Assembly to question and to bring forward debate until 13th September. So a period of question time will be on 27th April, the next one will not be until 14th September, as the consequences of the election being held in June, then coming into summer. Those sort of things do not sit right with me, and I do not think that would sit right with many of us. The public wants to see, as soon as an election happens, the elected representatives of this Island, getting to work, being held to account and bringing

the situations. It is an unfortunate way how this has played out but I feel very uneasy. I just have echoes, even though I was not a States Member of the time, of the last date of this previous Assembly and the previous Chair, President of the Assembly, just admonishing how much was being rushed through. I just think it will look like lessons have not been learned. So for all those reasons, retrospectively I think, not enough evidence has been shown that it has improved the whole workings of this Assembly not to meet every 2 weeks and to meet as often as we can to hold this Assembly to account. Again, I still cannot vote for the trial and that is why I will not be voting that way.

#### **4.1.3 The Connétable of St. Ouen:**

I have listened with interest to the 2 previous speakers and have, as a new Member, observed the 2 types of Assembly in action, and I think there are some points that can be made. I think in terms of propositions, whereas with the 2-week cycle we probably spent one or 2 days here, it is undoubtedly true that with a 3-week cycle we tend to spend at least 3 days working our way through public business. So I think in terms of time spent on public business, probably about the same if you add up the hours that are spent on it. I think where things have not worked properly, and it is not often I agree with Deputy Ward - if we can smile at that comment - the written questions seem, to my mind, have almost fallen apart. I have no idea what the cycle is, when a question is going to be answered and when to put one in. Whereas with the previous process, your written questions, originally when I first arrived in the Assembly, were went through in detail by the Chair and we knew where they were, we knew when the answers had to be in. Now I am never quite sure whether we are dealing with the questions that were asked the previous week of the current Assembly or one that was 2 weeks ago. I just get confused where we are with that. I think also Deputy Ward makes a good point in terms of oral questions. As a Member of the Government we are held to account by oral questions and there is no doubt with the 3-week cycle there is less opportunity for Members to put questions to us and I am not sure that is necessarily a good thing. I am sure my colleagues will be cursing me for saying so because there is an inordinate amount of work involved in answering an oral question but nevertheless I think Members should have the opportunity to hold us to account through the oral question process. So on balance I am inclined to support going back to a 2-week cycle. Yes, it is good in some respects as a Member of the Government because you have an extra week to deal with some of the other government work that you have to do and there is no doubt that preparing for an Assembly involves a fair amount of work as a Member. If you reduce the period by a week then you are increasing your workload but nevertheless I think the benefits of a 2-week Assembly outweigh the disadvantages. So I would be inclined to support going back to it.

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

I will be exceptionally brief because I do not believe in repeating what others have said. I happen to agree with all the speakers who believe we should go back to the 2-week cycle. I think it has been a retrograde step, I hope the Assembly will support going back to it, and look forward to getting back to business as normal.

#### **4.1.5 Senator J.A.N. Le Fondré:**

Yes, I will give a slightly contrary view to the people who have just spoken. What I wanted to do was remind Members it is sometimes the experience we have had, I suppose, looking back as well; in my case I think it is coming up to about 16 years. It is difficult in this particular Assembly because obviously we have had the disruptions of COVID which has not given us a clear view as to what, if you like, a normal cycle is and to an extent we are still experiencing that. What I thought was helpful, I was reminded of a memorandum that was produced by the then Greffier of the States, it was back more than 10 years ago. I am presuming it was to the chairman and members of the States Business Organisation Sub-group. I do not know if it is appropriate to name the predecessor but hopefully for longer-serving Members they will know exactly who I am referring to. What he said is: "I would offer the view that what everyone is seeking is a way to improve the efficiency of what might be

described as the overall ‘government machine’ in Jersey. I would include in that definition the meetings of the States Assembly itself, the meetings and operation of the Council of Ministers, work undertaken by Ministers, the work of Scrutiny Panels and the Public Accounts Committee and, just as importantly, the work that individual Members do in their own right. This could include their constituency work, general research and other matters such as lodging propositions for debate. I believe it is therefore important that any proposals to ‘increase efficiency’ of the Assembly are designed so that they lead to improvement in the performance of the whole operation of the government machine in Jersey.” Then he goes on to cover various other areas: “The matter I wish to raise with you concerns the scheduling of States meetings during the year. As you know, the States currently meet on what is generally a fortnightly cycle throughout certain periods of the year, working around school holidays and other matters such as bank holidays which sometimes means there is a longer or shorter gap between meetings than the standard 2-week cycle. The perception I have had during the last few months is that Members and officers have found themselves in what could be described as a treadmill during each parliamentary session. By coincidence I began preparing this submission during a period of what was part of a 3-week gap and I found that the last 2 weeks have had a very different feel to them when compared to a normal gap between States sittings, and Members and officers have also commented on this to me too. Members are normally on a constant 2-week cycle of one week spent in the States for a 2 or 3-day meeting, and the next week catching up with Scrutiny meetings, Council of Ministers’ meetings, constituency matters, et cetera. As officers here in the States Greffe, we find the week between States meetings taking up and finalising the minutes in Hansard from the previous week, while spending Monday dealing with written questions and firstly with oral questions and the Order Paper the following week, not to mention the ongoing work of dealing with propositions, reports, et cetera. I am constantly hearing from many Members that they are so busy that they feel they are neglecting some aspects of their duties. This has led me to consider whether a different cycle of States meetings would be of benefit to all.” He then starts talking through time periods and then says: “I therefore considered whether a 3-week cycle of meetings would be a possibility.” He talks about the benefits of concentrating sittings in one week and making that the focus of the week. He then talks about longer gaps they have in sittings anyway when Government is not held into account, for example in the summer recess. The point was, I make that as somebody who was a long observer of the activities of the States. In fact in that position I would suspect would also have been an experienced hand of someone who had seen the committee system as well. Those were his observations. That, after my experience both on the Council of Ministers side and on the Scrutiny side, it was about what I call the hamster wheel. Essentially, we were getting into this position of having a week potentially controversial in the States, you then were literally, depending where you were and depending how long that system had been, you came out of the States as a Backbencher, or even as an Assistant Minister, you were getting your written questions in place for the Monday. You were then trying to work out and getting your oral questions in place for the Thursday. Then you were back in the States the following week. It may well have changed, but certainly from my experience within all that lot, you were trying to work around getting good preparation for Scrutiny hearings and holding Ministers to account. On the other side, I was acutely aware of the work and issues of trying to deal with (a) government business in terms of either trying to respond, bearing in mind the debates we have had earlier today, to Assembly business, but also the issues of trying to do government business as well. That couples with both side, particularly as the work of the Assembly and the Government has changed significantly even in my time, we have a lot more engagement off-Island. Also the ability, which has always been there, which I highly commend, for panels themselves to go off-Island if they want to and do visits to sites and things like that. Or to learn from other jurisdictions in whatever aspect they are looking at. The point we are being is that having in general a 2-week gap between those 2 sittings to me gave a much more considered period. I obviously caveat this, it does not necessarily feel like that at the moment, because essentially COVID has landed and, as I said in the past, sucked out a lot of time and resource when we have been focusing so much on that on both sides of the Assembly. Obviously then we

have not necessarily got into that pattern, that rhythm. I have some sympathy for what Deputy Ward has said in terms of written questions, in terms of how they are publicised and all that type of stuff. That frankly is a matter for P.P.C. and the Assembly. That can very easily be addressed. I absolutely also agree, and I think there are measures in place, that the public still do not understand what Assembly Members do, what Ministers do, what Scrutiny does, what the Council of Ministers does. Again, I understand that P.P.C. have been putting measures in place coming down that line to try to address that. I know in Government we are also trying to do the same. That is around communications. That whole critical area, which we will not go into, but people have many, many views on. The principles though of the 3-week cycle for me has been and should be that it gives us the ability, if applied properly, to get off that hamster wheel and focus on doing our job for ultimately the public. On that basis, I do appreciate the work from P.P.C. in bringing this. Obviously they did ask Members, and I believe the majority of Members who responded are in favour of retaining the 3-week cycle. Of course there will be Members who say: "Our job is in the Assembly, we have to hold people to account, and I want to be seen to be holding people to account." Sometimes, in there, there is a little bit of self-generating publicity as well, I would possibly suggest. But equally we all have our responsibilities in the Assembly, we have other responsibilities, which are to do with our responsibilities to the Island as a whole and we do need to recognise that as we perform our duties, whichever role we hold, ultimately for the good of the Island. The 3-week cycle needs longer to run, to be honest, to bed down. There are always improvements in that. But for me I would heartily commend retaining the 3-week cycle, certainly up to the elections, and then essentially have a good assessment. Because hopefully by then we will also be back to what I would call normality and hopefully not having to deal with further issues that come out of the pandemic, which do have an impact on the resources we can apply and the time we spend addressing issues to do with the Assembly and our normal business. On that basis, I personally will be voting for the proposition and I hope Members will take those comments on board.

**Connétable J.E. Le Maistre of Grouville:**

A point of clarification?

**The Bailiff:**

That should normally come in through the machine if we are going to raise any points of clarification. But, as you have let us know, Connétable, a point of clarification?

**The Connétable of Grouville:**

Thank you, sorry about that, I am not used to it yet. The Chief Minister seemed to imply that people ask questions for self-application. Does he include himself when he was a Backbencher when he asked questions in that comment?

**Senator J.A.N. Le Fondré:**

Absolutely.

[12:30]

**4.1.6 Deputy S.G. Luce of St. Martin:**

In my first term in office as a States Member, I chaired a Scrutiny Panel and vice-chaired another. My second term I was a Minister in Government. I absolutely recognise, when the Chief Minister talks about the continuous nature, the treadmill nature of on-off 2-week cycles, spending a week in the States Assembly and the following week catching up with all your Ministerial or Scrutiny duties. Then before you know it finding yourself back in the States Assembly again. I do recognise the need to be in the Assembly but there is no doubt in my mind that, with the exception of written questions, which I accept have not gone well, we do spend proportionately more time in the Assembly on oral questions and proportionately it is the same, if you like. There is no doubt in my mind, after having

spent some time on the 3-week cycle, I wonder how I, and I know I do not work as hard as some others, but I wonder how I would fit everything back into a fortnightly cycle, especially with the work of the Planning Committee taking complete full days out of your diary. It would be quite challenging to go back and certainly would mean I would have to compromise either some of my planning work or one of the 2 Scrutiny Panels that I sit on. From that point of view, I say to Members I have found the 3-week cycle far more efficient, a far better use of my time, and a far better way to get through more work. I would urge them to support this proposition.

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

I too will be brief on this particular topic. I absolutely abhor the 3-week cycle. It is correct to say that detailed questions have disappeared from being logged properly and analysed properly, so that people who are most important in the system, the voters out there, do not know what we are doing. I see no advantage in the 3-week cycle over the 2-week cycle. It establishes a regular rhythm, which is far easier to get on to. I want urgently to return to the 2-week system where we can get rhythm going that is effective and efficient in the best possible sense. So I will be voting straightforwardly to return to the 2-week cycle. The only thing that is made easier by a 3-week rather than a 2-week cycle is the planning of holidays. That is the only advantage I can see in it.

#### **4.1.8 Deputy I. Gardiner:**

I will breathe before I start to speak. We have all been elected to represent our constituents and we do have 3 main duties, which I personally try to balance. One of them is to help our constituents really to find solutions to a wide range of issues, from road safety to social security benefits, bus routes, and various things. Second, it is being part of the decision-making process and to be in the States Assembly and examine what Government is doing. The third one is scrutiny. Some Members work a bit harder than others in Scrutiny and maybe if all Backbenchers will join Scrutiny there will be less burden on others, so I would invite other Members to join Scrutiny as well. Going back to the 3-week cycle, as I mentioned, we have 3 parts, and we have a 3-week cycle, and we have to balance between all 3 of them. As the Deputy of St. Martin mentioned, if I am going back to 2 weeks I have no idea how I will continue to have the same amount of the public hearings, which from my perspective this is also holding Government to account and asking valid questions and to receive answers. I would like to just share with Members that tomorrow, when I look into tomorrow, we will have a States sitting. We did not have any other choice to have a public hearing start at 5.30 p.m. and to finish at 7.00 p.m. to be able to produce our report on time. I just received last night an email from my constituency asking to join at 7.30 p.m. to very urgent matters that I have to address. I cannot say no. Do not forget, we also owe people and we need to balance and basically on that day need to say apologies to my constituents that I will probably not be able to reply to all emails that I receive. I agree that the written questions need to be sorted out. I agree with Deputy Ward, we have constituency support, and maybe the next Assembly would have a constituency support and it would be somebody who would be able to make a quick answer, to have a quick conversation with me, and to support, to answer to all constituency requests. We might be able to go to 2-week sittings. But currently, to put constituency support in place or to put the written questions in place, to put the logistics of the written questions is much easier. We have lots of disagreement with the Chief Minister, as everybody knows, but at this particular point it is a way to improve our efficiency. We have to be efficient, we have to dedicate time to our Scrutiny work, to our constituency work, and to our States work. So I will be personally supporting this proposition.

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

I will also be brief. More frequent meetings would be more beneficial for the Assembly. Today, the Chief Minister mentioned the impact of COVID. It was probably even more important than ever that this Assembly should have met more frequently rather than less. We also heard yesterday about the desire for more collaboration and, in my opinion, this again would be helped by more-frequent

meetings. If I can, I would like to quote from the Harvard Business Review: “A daily meeting is different from a weekly meeting and a weekly meeting from a monthly one. Irregular, ad hoc, quarterly, and annual meetings are different again. On the whole, the frequency of meetings defines or perhaps even determines the degree of unity of the group.” Perhaps we should be debating shorter lunch breaks and earlier start times if people are concerned about the time they spend in this Assembly. I will be voting for a return to the 2 weeks.

#### **4.1.10 Connétable P.B. Le Sueur of Trinity:**

I will equally be brief but unfortunately I cannot agree with the comments of the previous speaker. I have a bit of a reputation as being someone who is resistant to change and I was reminded this morning, thinking about a cartoon that appeared in the local *Daily Mirror*, reminding me that sometimes change can be a good thing. The change to the 3-week cycle has been a good thing. Speaking personally, it has enabled me to manage my time more effectively and I believe become a more effective Constable and politician here in the Assembly. So I will be voting to maintain and stay with the 3-week cycle.

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

I will be very brief. I have struggled with which way to go on this all along. I have never been comfortable at the start with the move to 3 weeks because I absolutely agree with the points that Deputy Ward and others have made about the importance of questioning. I do think the written question rule has completely failed. I do not know whether it is too complicated. I learned today about that we had some very kind figures circulated around from the Greffe and they talk about they have identified that Article 12 gives some kind of procedure in writing where, if a written question does not meet the answer, provide the answer properly, you have certain responsibilities to deal with that. I had no idea we had such processes and frankly I agree with the Constable of St. Ouen. I have no idea about where this timetable is. So, whatever happens, I would ask P.P.C., if we stick with the 3 weeks, to revisit these written replies, because it is not good. But, having said all that, I absolutely believe that the 3-week cycle has the benefit of allowing us to do the work responsibilities we have. Listening to Deputy Gardiner, absolutely, a very, very busy Member, chairman of the P.A.C. and so on, it really is extraordinarily important to be able to spread the time between those various roles. For me, as a Minister, I almost take it for granted that the 3-week cycle during the last year has freed up time to do all the policy work that I have had to do and others with the officers on the Island Plan. I know Deputy Guida is working on the carbon neutral policy. We have a mountain of work to do. Going back to the 2-week, on balance, would be a retrograde thing. It becomes just like a treadmill, one week Council of Ministers, one week States, and trying to cram things in the gaps in between. So I prefer that we stick with the 3 weeks. But I do think the points Members have made about this written question issue, maybe some of it is because these answers do not get published and nobody knows when they are going to be published. There needs to be some clearer procedure on that. But on balance the 3 weeks, thank you.

#### **4.1.12 Deputy R. Labey:**

Just picking up on that last point first, I think P.P.C. are getting the message about the written question issue. There is no reason why we cannot return. We divorced written questions from the Assembly sittings. There is no reason why we cannot return them, to couple them back up again. I am pretty sure that the rest of P.P.C. will be happy to look at that. Just a quick thing on the election timetable for Deputy Pamplin, whether we are in a 2-week or 3-week cycle, the election timetable is dictated by other things and either 2 or 3 weeks does not affect it. We are into a rather more extraordinary situation once every 4 years with that. Other factors come into play about when the Assembly sittings are. I am so pleased that some Members who were sceptical when I proposed this have said to me in the last few months that they would not want to go back and they have now accepted that it is giving them more time to do their work. I am still convinced that this is much more productive. The sittings

spaced out as they have been, our States sittings have improved. I was convinced that this would be more family-friendly and it has been. We have practically eradicated those dreadful 5.30 p.m. discussions about whether to go on or whether to finish. The longer week of sittings has given us a more relaxed attitude in that respect. We more often than not know that we will be sitting the following day, so to have a 5.30 p.m. discussion about whether to go to 6.30 p.m. or 7.30 p.m. is futile. I hope other Members recognise that too. Those are always painful and do not show us in a good light. As I say, we have practically eradicated those. P.P.C. will be open to trying anything and it is down to people's own personal beliefs and it is interesting to hear both Deputy Gardiner and the Deputy of St. Martin saying: "How now are we going to fit into one week what we do in 2?" Having sat on the Planning Committee, I take his point absolutely too, it was awful. We had a States sitting and then the Planning Committee week and then another States sitting after it, it was full on. There is always some sort of inference occasionally with this debate that the proposers of it want more time off. Members know my work ethic. I took on 2 chairmanships at the beginning of this term and I have taken on a Ministry now. I am not complaining and I like to be busy and I like to work. When I take on a job I do it with enthusiasm and energy and that is how I roll.

[12:45]

So I know how hard other Members have worked and I have always stressed that publicly when I was P.P.C. chair and acting as the union rep really for States Members to the public. But this has improved the working life of States Member immeasurably. To Deputy Ward, I thought his speech was incredibly measured and very sensible and very interesting. I know he has been banging on about constituency officers for a long time. I would just say that I think the last time we had him into P.P.C., the feeling was the outlay and expense in real estate terms and in personnel terms to set up constituency offices, let us say the 9 constituency offices with the new 9 districts that we have now passed, I am not sure that would get through the Assembly, I would say to Deputy Ward. But I do take his point and, as P.P.C. chair, it was something that worried me greatly. The security of Members meeting constituents alone in rooms in the dungeons of the States Assembly building, with no reception, I have always been worried about that. I have floated it publicly, I have talked about it on P.P.C., I would like to see Piquet House brought into the family of the parliamentary group of buildings and be a resource for members of the public to meet their constituents and for Members of the States to have somewhere that has windows, that has a reception, that has meeting rooms, both one-on-one meetings rooms and upstairs with a disabled lift, meeting rooms fully kitted out for Scrutiny hearings or the Planning Committee, et cetera. I believe now it is not going to be used for courts, it is not going to be used for something else, and I have asked P.P.C. to put in a strong bid with Property Holdings so that we can use Piquet House as a resource, and it is ideally placed. So I just float that idea with Deputy Ward and wonder how he feels about that. That is all I have to say. I do hope that we can continue with the 3-week cycle until the end of this term. There is not much difference, given the Island Plan debate and the election, there is not a great deal of difference between a 2 and 3-week cycle for the rest of this term. The new Assembly can make a decision early on in that if they want to revert back in 2023. But I would urge Members, let us keep this going until the end of this term.

**The Bailiff:**

Yes, thank you very much indeed. Is the adjournment proposed?

**LUNCHEON ADJOURNMENT PROPOSED**

**The Bailiff:**

The Assembly stands adjourned until 2.15 p.m.

[12:48]

**LUNCHEON ADJOURNMENT**

[14:18]

**The Bailiff:**

We continue with the debate on P.75.

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

I just wanted to thank P.P.C. for consulting the Comité about this. It came as no surprise to any members of the Comité that there was no consensus about it. Of course that is in accord with the views that we have heard expressed here today from my colleagues. My personal preference is for the 3-week cycle as it allows us to plan our work more efficiently and also permits us to agree to such ad hoc meetings as the Carbon Neutral Steering Group, which has been referenced earlier in this debate. I was pleased to hear Deputy Gardiner explain how well she thinks the 3-week cycle works for Scrutiny. I wanted to just make reference to comments that Deputy Pamplin made regarding the length of time next year that there will be between the election and the return to States sittings after the summer recess. He was rightly concerned that the public could think that potentially Members were not working or doing nothing during that time. Obviously, we all know that is not the case and I just wanted to remind Members that of course it is particularly so for the Constables who, whether it is an election year or not, always have their Parish to run during both summer and of course the winter recess. Just to remind Members that I will be supporting the 3-week cycle.

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

I just wanted to make a couple of brief points. Initially, I was quite torn when we first started discussing this. I was against the changes and I felt that they were less family friendly and one of the reasons for thinking that was that it would be more difficult to arrange childcare on a 3-weekly cycle rather than a 2-weekly cycle. But, having done some investigations, I find that is not in fact the case and there are many nurseries that will be flexible in that regard. So I was left to try to decide on balance whether I thought this was the right thing in terms of encouraging diversity in the Assembly and from a family-friendly perspective. Not just for my own circumstances of course, but for a wide range of circumstances that we might find among the general population and, hopefully, any potential States Members. Because of course we want our States Assembly to reflect the diversity of our population. On balance, the 3-week cycle is better. The reason why I think that is, when we are in the States Chamber there are Standing Orders, there are fixed timings and ways of doing things - quite rightly so - that we all must stick to, to come together to perform the functions of our Parliament. But the weeks in between, those are the weeks where States Members can discharge their functions of their other responsibilities. We are much more able to be flexible with those other responsibilities. That is one of the real pros in terms of family-friendly working of this role that it is quite easy to balance with a family because we are essentially our own bosses. We can decide whether we want to do emails at night time if we want to, in the evenings, or we can do them very early in the morning or we can stick to traditional working hours if we want to. We can balance, to some extent, our responsibilities as States Members with caring responsibilities. So I definitely think that the 3-week cycle would be of benefit, with some caveats, because I note that just this last sitting that we have just had that fell outside of term time, which is not ideal because traditionally we have always had our sittings just in term time. Having spoken to the chair of P.P.C., she said in the future the aim would be for that not to be the case. So, with some flexibility, we should move to a 3-week cycle. We should be able to put in extra sittings if we need to or shorten to 2 weeks perhaps at the end of a term, to make things work for us. Also, Deputy Russell Labey mentioned about the 5.30 p.m. debates that we have sometimes about staying late. It is about culture change and we have been sliding a little bit into being perhaps a bit less efficient with our time. I have noticed this over the last couple of years and perhaps not being able to finish promptly at 5.30 p.m. because we have not used our time effectively. So I would just take this opportunity to raise that with Members again and hope that we can all work together to make efficient use of our time. Hopefully within the 3-week cycle,

because I will be supporting that, and I hope Members will support that and that we can make it work for people with all different types of responsibilities and show the public at the next elections that we are a family-friendly working environment and that we welcome people to stand for election who have caring responsibilities and that they can join us and take an active part in the democracy. The 3-week cycle is a positive thing that will help towards that. There is something that Deputy Gardiner said as well about Scrutiny. She was telling me about how she is having more-frequent public hearings. Our working practices will evolve. I do feel sometimes that I would like more frequent opportunities to question Ministers, but of course we do have those opportunities with Scrutiny. Perhaps we could be more flexible with the way our Scrutiny Panels operate and allow non-Executive Members on an ad hoc basis to join in public hearings with other panels if they have particular areas of interest. That is something I recently was co-opted on to the Health panel for their maternity services review. I like to be flexible with my working practices so that I can add value across the board, the things that I am interested in and passionate about. So, on balance, I would like to move to this 3-week cycle and I would really like P.P.C. and the Greffe to help us pick up on some of the points that have been raised about making better use of our time and better use of our skills as States Members and to be more effective and work as a better, more effective Parliament together.

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

It is said that the 2 things in life that are certain are death and taxes. If you ask people in general if they would like to pay less tax they would say: "Yes please." If you ask people generally if they would like to live a bit longer or as long as possible, they would probably say: "Yes please." Similarly, if you ask States Members: "Would you rather meet every 3 weeks rather than every 2 weeks?" they would say: "Yes please because that is much better for us. It is much better for us to manage our time. It is much more family friendly and we can get more work done." I am not sure how that is true or how, for hundreds of years, even under the committee system where Members were perhaps sitting on multiple committees, they still managed to meet every 2 weeks and come in and do their work and balance their constituency or even Parish responsibilities with that of the Assembly. My concern here is that we are looking at it through the wrong end of the telescope. We are looking at it about what is best for us, what is most convenient for us, rather than recognising that the Assembly is the interface between elected representatives and the public. This is where it happens, if you like. This is where we can be scrutinised. It is not simply about holding Ministers to account or Ministers being able to stand up and say what their current policies are and give answers to topical and perhaps urgent questions. It is about that responsibility and about the public display of politics and being transparent and open. Quite frankly, it is not an arduous task to meet every 2 weeks. This talk of a treadmill, this is just a fabrication, it is not a treadmill at all. This has been going on for hundreds of years. It is a well-established principle that you meet every 2 weeks. You do not meet on the Monday incidentally; the Monday is the day for preparation. But I have always held my constituency surgeries at Monday lunchtime because I know that I can dedicate that day of the week to my St. Brelade constituents where they can come and see me and talk to me and I know that on the Tuesday I will be in the States Assembly. Not every week, but every 2 weeks. Let us look at that. What about if the proposition was to say let us meet every week, like a lot of Parliaments around the world do. They manage to meet every week. How on earth do they do that? They are probably much busier than some of us are. They have many pressing issues to deal with. So there is a strong argument to say that we should be meeting every week, not going to every 3 weeks. To the people who say we can get so much more done in 3 weeks. Imagine what you could get done in 4 weeks if we went to a 4-week cycle. Is that the next step? We say 3 weeks is working really good, but imagine with 4 weeks, you can do one week in the States, you can spend one week on your constituency work, you can do one week on Scrutiny, and you can do one week on your Planning Committee. That is nice, is it not, 4 weeks. But the reality is it does not work like that. We all have to juggle States responsibilities.

[14:30]

After we have finished what can seem like a long day in the States, but in reality it is a lot less than what normal people in the real world do, people who do not start at 9.30 a.m. and who do not finish at 5.30 p.m., who may have to get in earlier and not have the 1½ hour lunch that we have, and then finish at 5.30 p.m. Of course we know that we may have to field calls at night and often the evenings are the best time to get back to other people who work because they cannot contact us in the daytime. So let us be frank about this, I know there is this myth that we like to create that States Members are always super busy and we would never dare tell anyone that we were not always busy. But we can keep the Monday generally free for constituency work, for personal matters, and the Friday traditionally, even under the 2-week cycle, we know that we are not sitting in here really for more than 2 days. Let us be honest about it, the record will show 2, 2½-day cycles. Even with a few meaty debates this week we are probably going to be out of here sometime tomorrow. So the Mondays kept free, the Fridays kept free. Now we are telling people we want to go to a 3-week cycle because it is better for democracy. No, it is better for some people in this Assembly. The bottom line is it does mean that Ministers, and any of us could be Ministers in the future of course, we could have a different complexion of Government, so it is not about this current Government. There will be fewer opportunities to question Ministers and for Ministers to convey their policy topical and urgent issues if we move to a 3-week cycle. Now, we are not the U.K., but if you look at the U.K. there is a practice of Question Time being every week on a Wednesday and everyone knows exactly that every week, whoever the Prime Minister is, whoever the leader of the Opposition is, they will be holding each other to account. But the Government in particular will be held to account every week. But work still goes on because, whether it comes to Scrutiny or whether it comes to Government work or committee work, of course Members put a lot of time and effort in, but it is really the civil service, it is really the Greffes who do the majority of the work, who write the reports, and it is for Ministers then and us to either present those policies, to present the legislation and the regulations, the budgets, the business plans, in the Assembly. It is a completely retrograde step at a time when we should be trying to encourage more people to engage in democracy when we are having our first proper democracy week to say: "Let us move away from a 2-week cycle, let us move to a 3-week cycle, because we think it works better for us and we can get more done." Complete nonsense. You are not pulling the wool over my eyes and you are not going to pull the wool over the eyes of the public who are watching us very closely, even if they cannot be watching us direct as many of them will be working, but they will pick up on this issue and they will say: "So States Members who have it pretty cushy already are giving themselves an extra week." Of course they will say: "All right, I saw so-and-so at the airport again" or: "So-and-so does not even live in Jersey and that is going to be really convenient for him to be able to go away and spend more time in his second home." That is completely unfair of course because we can all work from wherever. But the perception is important but the reality and the practice is also important. This distracts from our core function, the oath that we take, the only obligation we have is to attend the States Assembly and its meetings when we are called upon to do so. It is quite convenient for some if they say: "We are going to reduce the amount of States meetings that we need to go to, the number of weeks that we are going to attend." I do not buy into that thank you very much.

#### **4.1.16 Deputy L.B.E. Ash of St. Clement:**

It is unusual for me to just sit here and say that I agree with Deputy Tadier. He makes many good points. Perception is vitally important. The public already perceive we perhaps do not do anything like we do. We perform a much larger function than they feel that we do. I can understand that, if you are a Government Minister, I know my own Minister works incredibly long hours, and finds it difficult at times to prepare for States sittings because they are so time-consuming. However, we have had debates this morning where people have come on, they have said: "We are ignored, the Assembly is ignored. We are not listened to. Why are we not listened to?" Yet we are now voting to make it an extra week when they are not listened to really. We will make it 3 weeks so you will not be listened to for an extra week. When we were on 2 weeks, there were several things that

happened: (1) the questions were much more topical obviously because if you are asking a question with a week or so to go you are going to get a much more topical answer; (2) people were more interested and things did not drag on quite as long as they have done. We have ended up with far more 4 or 5-day sittings because of this. I also think there is something that many people may have missed. That is that the press very largely in Jersey, because other than the Bulls and the Reds, there is not an awful lot for the local press to concentrate on. Thank goodness we do not have too many murders and of that ilk. So politics tends to consume a lot of the press's time. When we have a 2-week sitting they have a lot of questions, a lot of topical answers, and a lot of things they can work with. It has most certainly been a massive feature since we have gone to, I was going to say the 3-day week but that would rather date me going back to the 1970s, since we have gone to the 3-week sitting that the press have had to rely on a few ramblings from one or 2 malcontents within the Chamber rather than official answers and the proper business of the Chamber. That has been a disappointing result of switching to this 3-week sitting. I shall leave it there.

#### **4.1.17 Deputy K.F. Morel:**

I guess in a sense I am breaking Standing Orders because really I want to agree fully with the previous speaker. Deputy Ash has got it right. What he has very ably elucidated is that it is what we all know in communications, when there is a vacuum it gets filled by others. Certainly that is one of the consequences of this 3-week cycle is that there is a wider period with very little political activity from the external perspective, from an Islander perspective, and so that gets filled by people who, in Deputy Ash's terms, were malcontents. I do not know if that is an appropriate way of describing people who may not be happy, but I guess it is, it says so in the word. But I come back to, and I have not really changed my position since I spoke on this in 2020, I am deeply worried, and I said it earlier, I will fight to protect this Assembly. The move many years ago, 16 years ago, to Ministerial Government is no doubt, and there are pros and cons to everything, but one of the cons was it stripped the Assembly of its role as Government. Because we have to remember before that the Assembly was the Government. So now it is not. It is a selected part of the Assembly that becomes the Government. But, in order for that system to work appropriately, the Executive, as they are known, needs to be held to account. In my mind, there is no doubt that has been happening less as a result of the 3-weekly cycle. Again Deputy Ash said it very well with regard to questions and topicality, things like this. I do appreciate that from a Government perspective they are less caught up in this kind of routine of States Assembly, do some government work, States Assembly, do some government work, I understand that. I get that. Their analysis is probably correct. But they are doing that work for this Assembly. If this Assembly is less able to see the work they are doing, less able to question the work that the Government is doing, then what you are doing is again weakening the Assembly. I have a serious issue as a democratic, not in an American party sense, but in the sense that I believe in democracy, that this Assembly needs to be meeting regularly in order to hold that Government to account. But it also holds another really important role, and the lunch I have just had was a brilliant example of it. Because we are in the Assembly today, I bumped into one of the Connétables and he said: "Do you fancy going for lunch?" so we went to lunch. In the café we went to, or the restaurant we went to, we bumped into another Connétable and another Member of the States who is in the Executive, completely unexpected. We sat down at the table, we were invited first to sit at their table, and we had a discussion. In that discussion it was quite clear that the other member of the Executive learned a great deal about an area that he is currently working on from 2 members of Scrutiny. Without that, he would never have learned this information, which should be quite helpful to one of the projects he is working on. The problem is, because we have divided the Assembly into Scrutiny and Executive, that information is not passing around within the normal course of business. That sort of information only passes around when you happen to meet in the Assembly or in lunchtimes, et cetera. By moving to a 3-week routine, we have limited the opportunities for that to happen. I know very well that the 4 of us would not have got together for lunch by invitation, we were not going to phone each other up and say: "Let us have lunch together

today”, had it been a normal week of working outside the Assembly. So I know it is informal, but it is a really vital role that this Assembly plays. It puts us in touch with each other. Somebody has already said it, by meeting each other regularly, it also takes the sting out of a lot of what can become politically nasty. Because we know each other, we see each other, we just are better acquainted with each other. That does mean that some of the nastiness disappears. Whereas what is building up now is you have a gap of 2 weeks before you meet in the third week and in that time people have become very frustrated. There is a particular issue, it builds and builds and builds, and so then it spills over into the floor of the Assembly and debates as a result can be nastier. So I really hope, I often feel this way because I am still of the opinion that the original proposition in 2020 was brought, and I know they denied it, but I believe that was brought by P.P.C. at the request of the Council of Ministers or some Members of the Council of Ministers because they felt it suited them. We are not here to suit ourselves. We are here to suit the Island of Jersey and to do the best for the Island of Jersey. In my opinion, that involves sitting here every 2 weeks, not every 3 weeks. We should forget about our own individual situation in this. If I was being selfish and just wanted to make sure that my work as Assistant Minister was allowed to continue unfettered, and without any reproach or any criticism, then I would not want the Assembly to be occurring very often at all. But I do not believe that. I believe I should be held to account. I made quite a tough speech earlier, I voted in a way that a lot of people would have preferred me not to have voted earlier. But I do that because I believe that I need to be held to account. If I am ever a Minister in the Council of Ministers, I believe I should be able to stand up from time to time and face censure in all its forms when I have not performed and delivered. That is what the Assembly is here for and it enables us to do these things. So I ask Members please do vote down this proposition. Let us go back to the 2-weekly cycle. This is what Islanders need and this is what Islanders deserve. I believe it is what this Assembly needs and what this Assembly deserves.

#### **4.1.18 Deputy M.R. Le Hegarat of St. Helier:**

I will be short because I pretty much agree with what the previous speaker said. However, I would just like to make a point that I am part of P.P.C. and I am not in favour of the move to a 3-week cycle because I feel that we do lose something quite vital by not seeing each other on a 2-weekly cycle. I agree that this means you do not speak, you do not negotiate and I think it does mean that we drift and are sometimes becoming dysfunctional. From my perspective I think the 2-week cycle works far, far better.

#### **The Bailiff:**

Does any other Member wish to speak on the proposition? If no other Member wishes to speak then I close the debate and call upon Deputy Alves to respond.

[14:45]

#### **4.1.19 Deputy C.S. Alves:**

I have brought this proposition obviously in my capacity as P.P.C. chair so I feel that I need to maintain neutral, especially as we on P.P.C. did not reach a consensus between us, as I am sure some Members have heard throughout this debate. However, I would like to make Members aware of how I personally feel outside of my role as P.P.C. chair. Members will know that when this was proposed last year I was not P.P.C. chair, although I was on the P.P.C., and I spoke in favour of the 3-weekly sitting. I feel that this trial has not necessarily been representative, it was not carried out during normal times so in hindsight maybe we should have delayed this trial to when things were back to normal, but none of us could have guessed that COVID would go on for as long as it has. I have personally struggled with how I feel about this and have listened to everybody’s comments today. On the one hand it has made managing my workload a lot easier. I have been able to be better prepared for sittings, I have been able to deal with constituency issues a lot more efficiently. I have not had to ask constituents to wait a week or more before I could schedule things in between Scrutiny

Panel meetings, reviews and other committee meetings. Members are obviously aware that I have probably spread myself quite thinly. During Freshers' Week I signed up for a lot of things as a new Member. It has personally helped me to manage that workload and means that I have been a lot more efficient as well. On the other hand, I do also see Members' points in relation to the frequency of sittings and the opportunities to debate and question Government on topical areas. Especially with it being an election year next year, I think that probably having more opportunities to sit would be favourable. I think it is important to mention that regardless of which way the vote goes today, there is nothing to stop the next P.P.C. from looking at this again, from bringing it back to the Assembly with the new cohort in the next term. Now, speaking as P.P.C. chair, I would like to thank all Members for their contributions. I would especially like to thank Deputy Labey, who addressed a lot of the things that have been put up during this debate. He is correct. P.P.C. are prepared and happy to revisit and look all the things that have been mentioned during this debate and look at changing them to suit Members and with the ultimate outcome of increasing productivity. Just to specifically address some of the comments from Members about the written questions system. This is something we can look at and act upon any changes or improvements that the committee would like to make once we have heard and taken on board all the comments that have been made in this debate. If anybody has any other further comments afterwards then please do get in contact with the committee. There was a requirement with the adoption of the previous proposition that Members could ask the same number of written questions as under the 2-weekly cycle, that is why this system was chosen to do that. An alternative that we did consider at the time was increasing the number of written questions a Member could ask for each States meeting. At the time the desire was just to leave it as it was so as not to leave it so long between being able to submit questions, that is why we went to that weekly routine. We could easily revert to a system of attaching the written questions to meetings again, up to the number of questions a Member may ask. It used to be 5 questions and Deputy Ward highlighted that there has been an issue with the publication of the questions. The written questions are published on the website. He is right, there is a bit of an issue when they are attached to individual Member's pages but the question pages does list them all. As always, I am in the hands of the Assembly and I would ... sorry, there is also the issue about sitting during term time. When we looked at scheduling the 3-weekly sittings at the time, to get them in we did end up going into, I think, it was the first week of the summer holidays this time around. Obviously, in order to be family friendly, this is something I would like to avoid if this is adopt. It may be in order to do this there would be times where there would not be a 3-week gap. Members would be made aware of this in advance and this would be something that would have to be agreed with the whole of the P.P.C. I have tried to address as much as I can in this summing up. If there are any sort of queries after the vote, whichever way it may go, I would urge Members to get in contact with myself or anybody on the committee. I maintain the proposition.

**The Bailiff:**

Thank you very much. Very well, I would ask the Greffier to put a voting link into the chat. A vote pour maintains the 3-week cycle, a vote of contre moves back to the previous cycle. I open the voting and ask Members to vote.

**Deputy G.P. Southern:**

Could you repeat that instruction about the voting? A vote pour is for which system?

**The Bailiff:**

A vote pour maintains the 3-weekly cycle, a vote of contre changes the 3-weekly cycle back to a 2-weekly cycle. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. We do not appear to have recorded a vote. Bear with us a moment. Apparently the text is not coming through in a readable font so it will take a moment until that is corrected and the numbers, as if by magic, will appear. Very well, the proposition has been adopted: 22 votes pour, 18

votes contre, no abstentions within the link, a further 2 votes contre and one abstention in the Chamber, and a further 2 votes pour in the chat. Could you read the names out, please, Greffier?

<b>POUR: 24</b>	<b>CONTRE: 20</b>	<b>ABSTAIN: 1</b>
Senator L.J. Farnham	Senator I.J. Gorst	Connétable of St. Clement
Senator J.A.N. Le Fondré	Senator T.A. Vallois	
Connétable of St. Helier	Senator K.L. Moore	
Connétable of St. Lawrence	Senator S.W. Pallett	
Connétable of Trinity	Senator S.Y. Mézec	
Connétable of St. Peter	Connétable of St. Brelade	
Connétable of St. Mary	Connétable of Grouville	
Deputy J.A. Martin (H)	Connétable of St. Martin	
Deputy of Grouville	Connétable of St. John	
Deputy K.C. Lewis (S)	Deputy G.P. Southern (H)	
Deputy J.M. Maçon (S)	Deputy M. Tadier (B)	
Deputy of St. Martin	Deputy M.R. Higgins (H)	
Deputy of St. Ouen	Deputy S.J. Pinel (C)	
Deputy L.M.C. Doublet (S)	Deputy L.B.E. Ash (C)	
Deputy R. Labey (H)	Deputy K.F. Morel (L)	
Deputy S.M. Wickenden (H)	Deputy M.R. Le Hegarat (H)	
Deputy of St. Mary	Deputy S.M. Ahier (H)	
Deputy G.J. Truscott (B)	Deputy R.J. Ward (H)	
Deputy J.H. Young (B)	Deputy C.S. Alves (H)	
Deputy G.C.U. Guida (L)	Deputy K.G. Pamplin (S)	
Deputy of St. Peter		
Deputy of Trinity		
Deputy of St. John		
Deputy I. Gardiner (H)		

**The Bailiff:**

The States remains at a 3-week cycle.

**5. Draft Finance (2020 Budget) (Jersey) Law 2020 (Appointed Day) Act 202- (P.75/2021)**

**The Bailiff:**

The next item is the Draft Finance (2020 Budget) (Jersey) Law (Appointed Day) Act, P.75, lodged by the Chief Minister. The main respondent for the debate is the chair of the Corporate Services Scrutiny Panel, Senator Moore, and I ask the Greffier to read the citation.

**The Assistant Greffier of the States:**

The Draft Finance (2020 Budget) (Jersey) Law 2020 (Appointed Day) Act 202-. The States make this Act under Article 36(3) of the Finance (2020 Budget) (Jersey) Law 2020.

**Senator J.A. Le Fondré (The Chief Minister):**

The Deputy of St. Peter is acting as rapporteur.

**5.1 Deputy R.E. Huelin of St. Peter (Assistant Chief Minister - rapporteur):**

Currently employers submit their tax, social security and manpower information on different returns and to different timescales. As part of the Minister for Treasury and Resources plans for rationalising these return it is intended that from January 2022 employers will submit a combined employer report every month, which will include tax, social security contributions and manpower all on the same return. For many employers the new return will eliminate significant duplication of information requests across the currently separate returns, bringing opportunities to cut down on administration. As Assistant Chief Minister, I have responsibility on behalf of the Chief Minister for the Control of Housing and Work (Jersey) Law 2012. In order to allow manpower returns to be included upon the monthly combined employer return the Control of Housing and Work (Jersey) Law 2012 requires a minor amendment. The Assembly previously adopted the Finance (2020 Budget) (Jersey) Law P.109/2019 on 2nd December 2019, which introduced the combined employer return. This Appointed Day Act triggered the required changes within the Finance (Jersey) Law 2020, which in turn makes required parallel amendments to Article 32 of the Control of Housing and Work (Jersey) Law 2012 regarding monthly manpower returns. You will recall that while accepting P.137 Migration Control Policy, the importance of gathering accurate and timely data. The move to monthly manpower reporting as part of the combined employer return will enhance the speed of accuracy of that data, allowing more informed decisions on migration and population issues. I commend this proposition to the Assembly.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the Act? If no Member wishes to speak on the Act then I close the debate and ask the Greffier to place a link into the chat.

[15:00]

The link is there, I ask the Greffier to open the voting and Members to vote. If Members have had the opportunity of casting their votes, I ask the Greffier to cost the voting. The Act has been adopted.

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				

Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

## **6. Draft States of Jersey (Amendment No. 10) Law 202- (P.77/2021)**

### **The Bailiff:**

The next item is the Draft States of Jersey (Amendment No. 10) Law, P.77, lodged by the Chief Minister. The main respondent for the debate will be the chair of the Corporate Services Scrutiny Panel, and I ask the Greffier to read the citation.

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

Draft States of Jersey (Amendment No. 10) Law 202-. A law to amend further the States of Jersey Law 2005. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

### **Senator J.A. Le Fondré (The Chief Minister):**

The Deputy of St. Peter is also acting as rapporteur on this.

### **6.1 The Deputy of St. Peter (Assistant Chief Minister - rapporteur):**

Members will be aware that I sat as a member of the Migration Policy Development Board and that this board felt that the interplay between population policy and all areas of ministerial responsibility is so wide that it should be specifically referred to in the responsibilities of the Council of Ministers. I am pleased that the Assembly was of the same opinion of this importance and giving their approval to the same, P.137 Migration Control Policy on 3rd March 2021. This amendment is the enactment of that approval. The population policy will need to be a living, moving document with a flexibility

to react to the future changes, challenges and opportunities that present themselves to the Island over time. This amendment will place a formal requirement upon the Council of Ministers to consider the population impacts of government policies and require the Council of Ministers to discuss and agree a population policy on at least an annual basis. The report that accompanies this amendment acknowledges the importance of the data that Deputy Perchard highlighted within her proposition P.120. I can give an assurance that the information and level of detail that Deputy Perchard has required within her proposition will be included within each annual population policy. This change will apply the day after the registration of the amendment. I would be happy to answer any questions Members may have and I propose the principles.

**The Bailiff:**

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

**6.1.1 Deputy R.J. Ward:**

There are a number of questions that I would like to ask. Very frequently, and I understand the amendment that came forward from Deputy Perchard, but there is a line here that says to be discussed frequently or discussed on a regularly basis, I think it is. I have lost my wording because my computer just moved. Whenever that discussion is mentioned I get concerned because I think: “Okay, we can discuss anything, it does not mean any action is going to be taken.” In fact, in this sitting and previously we have discussed a lot of actions that have not been taken and what happens as a consequence of those? It is clear that there are no real consequences for things not happening. I am not suggesting it is, but I would like to say that I hope that this is not a token gesture towards something that was adopted to this Assembly. That is my concern. We talk a lot about data. I would like to know more about the nature of this data. Updated infrastructural data. Is that to do with the number of homes that are available, how many roads there are, the number of parking spaces, the number places to lock up your bicycle, the cubic area of swimming pools available, the leisure facilities. Sometimes going to those ludicrous examples gives an example of why we have to be precise in what we are talking about, because we could be saying one of the pieces of data is going to be how much space is an area to walk your dog. We may have to limit the population of dogs if there is not space to walk them. Yes, it is ludicrous but what are we talking about? Before we pass pieces of legislation like this that to some extent pat ourselves on the back to say we have done something, I very strongly believe we need to know what it is that we are doing. It says here: “Educational, health-related, environmental and social requires of any projected population growth.” The educational requirements that I may put for a population may be very different from the educational requirements of somebody who has a very different political perspective from me. We need to be defining what it is that we are talking about and the data that we are collecting, otherwise this does become tokenism. I am sure that the intention behind this initial amendment to P.137 was to have precise data on particular areas but I would just like some understanding from the proposer as to how that is viewed both by the proposer and by Government. In terms of environmental requirements, I would like to have seen here something about the environmental impact, the environmental challenge, the environmental cost, because there is not anything there on that, of population. You can have a population that is large with low environmental impact if you get it right. You can have a small population with a massive environmental impact if you get it wrong. These, again, are the parameters within which we have to be clear as to what we are talking about. I think I have undertaken a bit of an exercise in pedantry here but it is important that we know what we are talking about when we come to this sort of generic proposal. That is one of the first things I would like to ask in the set of questions. I think the principles is the right time to do that. Also the frequency of the discussion. A yearly population policy, will that be on 1st January? We know the Assembly works ... this is a very important point. We know the way the Assembly works, the Government Plan is rushed in at the end of each year. Well, not rushed in but we have a debate ... I see the Chief Minister raising his eyebrows at me; I am used to that to some extent. What I meant there was it is a

rushed process in terms of there is an absolute deadline that we have to reach in order to implement it for the next year. I get that, I understand that, we all understand that. If we are going to have a population policy each year that is going to be another demand at a set time and that could influence ... if we are going to have changes to the way we have migrant workers every 9 months, for example, it could have to fit in with that or it could be completely out of kilter as to when another population policy will come into play halfway through one section of 9-month contracts. It has to be thought through really carefully as to how this is going to work with the mechanisms of this Assembly, the mechanisms of government. Are we going to get to the stage where we say: "Actually, this year we are not going to have that population policy because the policy officers were too busy and the policy pipeline was blocked" because something else happened that was urgent as well? If we are going to make promises in this Assembly today about what we are going to do, the mechanism for this needs to come back to us. The more I am talking, the more I am talking myself into thinking: "I wonder if this is in the right state to come to the Assembly without this detail." Perhaps, again, I am just in a pedant mode, which I do apologise for. I hope I have made it clear and to the proposer I just would like to see some of that detail before we go any further with this and before ... it seems to be an obvious vote because we voted for this before, but it would be nice to know what the actual detail of the mechanism of this is.

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

I think my point is rather more straightforward than the previous speaker's. Bearing in mind the debate that we had earlier on P.72, I would like the rapporteur to clarify for the Assembly what is meant by: "The Chief Minister is committed to lodging a common population policy for debate by the end of December 2021." Does that mean that a proposition will be lodged by the end of December 2021 or does it mean that it will be lodged and a debate will be able to take place before the end of December 2021?

### **6.1.3 Senator S.W. Pallett:**

I want to comment with regards to the Corporate Services Panel. I chair the Migration Policy Review Panel so I thought it was important that I do say a few words. I am not going to say a great deal but that I do say a few words. First of all, I want to thank colleagues as well for the work they have been doing, that is Deputy Truscott of St. Brelade and Deputy Ahier of St. Helier. We have been keeping a close eye on the work that the Assistant Chief Minister is doing in regards to the population policy and have met him regularly - actually met him during the summer - in regards to the progress he is making on the population policy. I want to start by saying this proposition ... I do not want to speak on behalf of the Assistant Chief Minister, but this proposition is merely amending the States of Jersey Law to ensure that our population policy is discussed and agreed on a regular basis. It is just putting it in the law. The Constable of St. Lawrence has just mentioned around whether population policy will be lodged by the end of the year. Again, I do not want to speak on behalf of the Assistant Chief Minister but that is the intention of P.137, was to ensure that a population policy is prepared, and I know the Assistant Chief Minister is doing it at the right time, he is still out to consultation on the population policy but the intention is to draft a population policy that will be lodged in time to be debated before the end of the year. That is something that we have regularly been told by the Assistant Chief Minister and his policy officers. In terms of the actual proposition, I think we support it as a panel. It is bringing into effect P.137. But what we do need to recognise is that the population policy is not going to be a one document solution but rather something that would need to have flexibility to evolve around the Island's social and economic needs. Deputy Ward has mentioned data and I am going to come on to that in a minute. It will need to evolve and we will need to understand how the Island's social and economic needs are changed because clearly we are seeing changes in the economy, we are seeing needs within various sectors of the economy and the population policy and migration policy are going to have to adapt and flexible in regards to the needs of our local economy. What does need to be really clear is that there is an obligation from the

Government to provide a robust framework for any future policymakers, one which addresses challenges that we are experiencing now and gives the guidance to find the balance that we need to strike. By that I mean, again, ensuring that we understand the needs of the economy, we are collecting data on a day-by-day, week-by-week, month-by-month basis, to allow us to fully explore how that population policy may change. Rather than me mentioning it later on, I will mention it now, around data, it is clear that there are I.T. (information technology) systems that are going to need to be put in place to capture that data, that we understand we will be ready for in January 2022.

[15:15]

That is something we pressure the Assistant Chief Minister on a regular basis and it is something he might want to update Members on when he sums up. It is important that those systems are in place, because once our new population policy is in place ... and what we are going to have to remember, is the population policy that is lodged this year will not have the benefit of any new data. The Assistant Chief Minister and his team will have to put that together with the data that they have. It probably will not include any of the data from the re-census. That will mean, and I hope I am not speaking out of turn, that the population policy that is drafted for this year probably will not be as detailed as one may be in the future. I will let the Assistant Chief Minister comment on that when he sums up. We do have to acknowledge that whichever way we look at it, and I am not making excuses for the time this has taken, because I have been trying to push the Assistant Chief Minister to do the work as quickly as possible, but it has been a difficult 18 months. The time has now come to ensure that Government is focused on delivering a population policy that not only the public in general can understand but those within business can work with. That is going to be a real challenge. Not only have we had the pandemic to deal with, we also have Brexit that we are still having to deal with on a day-to-day basis and will carry on having an effect on the economy as we are seeing at present with both hospitality, retail and other sectors struggling to find staff. For some it will seem to have been a very slow process. It is a very complex area. I do not think any Member would try to kid themselves that it is not. It is one that has stumped previous Governments in terms of trying to find a robust population policy that people are comfortable with. The Government has felt it necessary to go back out for consultation, which from a personal point of view I am not sure that was necessary. The Assistant Chief Minister may feel differently, but I am not sure there is not too much we do not know about how the population feels about levels of population and some of the issues that revolve around that. If it is going to provide a more robust population policy when it is finally drafted and put before the Assembly later this year then maybe that is a piece of work that needed to be done, but I am yet to fully understand what they are trying to achieve with it, as are the panel. We look forward to seeing the results of that consultation when it is complete. What I will say is what the panel has done - I hope the Assistant Chief Minister will agree - is to try and work as constructively as possible with the Assistant Chief Minister and his team, because we do want to see something that is beneficial to the Island and that people can get behind and can work with. We carry on working closely with the Assistant Chief Minister and we will carry on scrutinising and ensuring that the States Assembly get the information they need to judge the population policy when it is finally lodged. I will come back to data again, because I cannot stress enough how important it is that Government and industry itself will need to understand where we are on a day-to-day basis, in terms of resource needs and labour needs in the Island. We are not going to know that unless we have information on who is leaving, who is coming and going, where people are employed. Some of that at the moment is sketchy. It is not as detailed as it needs to be. Again, I cannot stress enough how important it is going to be to our I.T. systems in place by the end of the year. Again, we are being ensured that that will be in place by 1st January 2022. That is really all I wanted to add. In terms of this particular proposition, it is just getting those words in the law to say a common policy on population needs to be discussed on an annual basis. So if it is passed today it will now be in the States of Jersey law. We have had the debate around migration controls. The panel has provided a report to the Assembly, which set out some of the details within the migration controls. That is

something else the Assistant Chief Minister will have to look at, because we are already getting rumblings from sectors of the economy around whether the controls that have been suggested within the Migration Control Policy are too strict. What we do need to have is a population policy that is going to be flexible and, again, is going to clearly meet the needs of a changing economy. Let us make no bones about it, our economy is going to change as we move forward, for all sorts of reasons, and that includes the finance industry. We are supportive of this particular amendment. We will carry on doing a close piece of scrutiny work on the Population Policy as it develops.

**Deputy K.F. Morel:**

If you do not mind, could I start speaking by asking a question of the Solicitor General again, Sir?

**The Bailiff:**

Yes. It depends on what the question is, I am sure.

**6.1.4 Deputy K.F. Morel:**

Absolutely. It is pertinent to this debate. In the proposed amendment, it says that the appropriate paragraph will sit in Article 18 of the States Jersey Law 2005 after subparagraph (e), there is inserted and then obviously the paragraph. Subparagraph (e) in 18(2) talks about the Common Strategic Policy. It says that agreeing and lodging for referral to one or more Scrutiny Panels established on the Standing Orders as statement of the Common Strategic Policy and it goes on to (f). Once this paragraph is inserted, Solicitor, I was wondering, will the elements agreeing and lodging for referral to one or more Scrutiny Panels still pertain to this new paragraph?

**The Solicitor General:**

I am going to have a look, I am afraid. I was not expecting a question on this.

**Deputy K.F. Morel:**

I do apologise.

**The Bailiff:**

No, not at all. In which case, you will come back to us on that?

**The Solicitor General:**

Yes. Could I just ask the Deputy to clarify the question, because I was not sure, without the law in front of me, what precisely he was asking?

**Deputy K.F. Morel:**

Okay. In Article 18(2) subparagraph (e), it says: "Agreeing and lodging for referral to one or more Scrutiny Panels ... a statement of their own Common Strategic Policy and ...". This paragraph is to be inserted after that "and". I am trying to understand whether this paragraph will be subject to the agreeing and lodging for referral to one or more Scrutiny Panels.

**The Bailiff:**

Is that sufficiently clear, Solicitor?

**The Solicitor General:**

Yes, Sir. I will have look.

**Deputy K.F. Morel:**

I do apologise. If I had realised I was going to ask the Solicitor General this question I would have let him know in advance. I do apologise for that.

**The Bailiff:**

No, not at all. Would you like to continue, Deputy?

**Deputy K.F. Morel:**

Thank you. To enlighten the Assembly, the proposition itself is fine. I will be voting for it. There is no question. I just understand that the population policy is of enormous importance to many Islanders and while this would be discussed and agreed within the Council of Ministers, my concern is that it then has a public viewing of some sort. Obviously the Common Strategic Policy by law has to go to Scrutiny, so in my view it would be beneficial if this element of this population policy would have to by law go to Scrutiny, not just at the will of the Ministers. That is really where I am coming from. I am just hoping that the population policy is not something that future Council of Ministers could agree among themselves and keep to themselves, per se. The reason I say this, and it is not a dig at the ex-Minister for External Relations, who is not here, is because the External Relations Policy, which is dealt with in subparagraph (c) is not subject to those clauses about scrutiny and did require a little bit of digging to get hold of. I am not saying it was being held back, it was not, it was just that it was not automatically published and provided. I am hoping this would not be the case with this proposition. If it is, it would be worthy of future amendment. If this new subparagraph is not subject to the Scrutiny Panel element then I think it would be worthy of future amendment to bring it into line and make sure it is by law having to be referred to Scrutiny. That is really it. I will be supporting it. There is no question. I just want to make sure it gets a public airing too.

**The Bailiff:**

Thank you very much. Solicitor General, are you ready to advise the Assembly?

**The Solicitor General:**

Yes, Sir. Looking at Article 18, I read 18(2)(e) to be a freestanding thing. It follows that paragraph (2)(ea) would not fall within those things to be referred to Scrutiny under (2)(e). It would simple be a separate function of the Council of Ministers to discuss and agree on a regular basis at least annually their common policy on population.

**Deputy K.F. Morel:**

Thank you, Sir.

**6.1.5 Deputy J.H. Young:**

I would like to follow the theme and broaden out what Deputy Morel has said. Looking at this amendment it does, as the Solicitor General has said, create what is a standalone task for the Council of Ministers by a minority, 7 is the minimum number, to discuss and update and form a population policy. Then, obviously, the question in my mind is: then what happens to it? It is updated annually. Certainly I believe what the Island wants is a population policy which is long term. Annual adjustments are needed, absolutely right, but it does need to have something which is sustainable. I do wonder why, when I look back, the origin of this law change was discussed, as the report tells us, on 3rd March 2021 and it asks us to do what this amendment does, but it adds on some words. It says that the policy on population would be reviewed and updated annually based on the prior years' population growth and that includes annually updated infrastructural, educational, health related [and this is the key thing] environmental and social requirements of any projected population growth." What that says to me is that when we agreed that what we were seeking was a policy of having sustainable growth. The reality is our population has grown unsustainably. It is not just a question of enabling our economy. That is what has got us into this situation. Members should reflect on joining up the links between economic growth, population growth, housing demands, health costs, education costs, infrastructure needs right across the whole piece. We all know they go together. What we have here is a standalone provision in the law, which sounds fine, but it does not include any elements of that part of the proposition which I read there about sustainability, particularly the environmental requirements. That is rather inconsistent with other laws. When we altered the Public

Finances Law we included a requirement for well-being. Well-being is very much about environmental and social implications. We are asked to agree and I have no means to doubt it. The report, as it goes on, says that the Chief Minister gives assurances that this will be done. We have the assurance there, but it is not practice, it says, to include the level of detail within the primary legislation. Well, my point would be: we did it within the Public Finances Law on well-being. I hope that future consideration will be given to this, because we need the States to decide a legal requirement for the Council of Ministers to drive this.

[15:30]

It certainly should be subject to scrutiny because it is a matter of public property. It is public property; it is not in my view an exclusive thing for the Council of Ministers, but they are responsible for producing it. Everything Deputy Morel said is right. The assurances that we have, I am hoping that there will be consideration to how that can be backed up with some amendment and strengthen in the States of Jersey Law, so that the requirements of what was, I believe, required for a sustainable Migration and Population Policy is what that is intended to do and not merely an economic device. I am not making light of this that there are no issues there, there are. Nonetheless, sustainability means finding where that balance is, which we have lacked for decades and got us in the situation, in ways, that we are in.

**The Bailiff:**

Thank you very much, Deputy. Does any other Member wish to speak on the principles? No other Member wishes to speak on the principles. Then I close the debate and call upon the Deputy of St. Peter to respond.

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

We have drifted into a population policy debate, which is great because it is good initial feedback as to the feelings of the Assembly. When I started on this it was quite clear that I was not going to bring a population policy that would be debated, approved or not approved and then just left to gather dust. I was very keen, within the population policy to include some hooks and triggers that meant it had to be reviewed on a regular basis. This was not the one I had in my mind, because I do not think legally very well, but this is very much something that when given to me, I was totally in support of. It commits the Council of Ministers to regularly review the population policy. If we have learned anything over the last 18 to 20 months, we have learned the pace of change. Some of the historians here will question whether there has been an Assembly that has had to adapt to 2 major external influences as much as we have done over the term of this particular Assembly. Therefore, even a year could possibly be too long to respond to the needs of the population of this Island. I am moving into a population policy now. That is what it is: a determination that it will be revisited and also revisited by the Council of Ministers. Without having every single Minister in full support of playing his or her role within the population policy it will flounder. All the cogs on the wheel must work in sync perfectly. Can I thank Senator Pallett for his support? It has been a very, very constructive and positive engagement. I thank him for saying that. The data is the big issue. While the system we plan to have in place is, I believe, on track. It will not be 1st January, but it will certainly be early in the new year. Let us accept that it will take many cycles in order to have valid data that can be analysed. It will only be a subset of what is needed. We do not need to share my views on the I.T. systems that we have within this particular Government. However, I am confident that with a new I.T.S. (integrated technology solution) project, et cetera, that that is being addressed. We will not have the census data. That is not to be published until March anyway. It is fair to say we will use whatever data we have, whatever data we can extract, from whatever compatible systems are out there. It is going to be a long-term project until we can have what the normal commercial world has in today's systems: push a button, get a report and make a decision. That has to be the goal and the objective. Senator Pallett says another thing: there is not much we do not know and the Island at

large are quite clear on their feelings. The challenge is not knowing more, it is knowing how to fix it. That is what the population policy will be about. I thank Senator Pallet again. Deputy Ward, some of that has been covered. It is about the frequency. It is about ensuring that we have nailed down the frequency of the reviews, as it were, and when they are. That is noted. What I wrote down here is: it is one step at a time. A lot of people have been coming to me saying: “I do not envy you the task. It is the poisoned chalice. Why has it been ignored for so long?” Well, because it is in the hard box. What I am working on is it is one stage at a time. If we get it right first time, the job will not be done well enough because it will be treated too simply. The Constable of St. Lawrence, she is so analytical. The P.120 stated that we should lodge and debate by the end of 2022. I have spent my whole summer doing this. I went public and said I will speak to absolutely anybody in the Island who wishes to give me their views. That has occupied a lot of time. It has been a fascinating experience. We are still doing workshops with Jersey Business. We still have some other plans to engage particularly with the youth of the Island, both on-Island and off-Island. We need to understand why people have left the Island and not returned or why they have not returned. Technically, yes, we should. Also, the comments from Scrutiny, from Deputy Morel, i.e. we want to ensure that Senator Pallett and his Scrutiny Panel have a full term to review that. I may come back and ask the leave of the Assembly to debate it on 18th January 2022. It will certainly be delivered this side of New Year. We are working towards not doing that, but I do not want to compromise what is potentially hopefully going to be a very good piece of work for the sake of 2 or 3 weeks. We will advise and seek your approval, in what professional capacity, I do not know. Deputy Young asked what happens to it afterwards. It is a living, moving document. He also discussed sustainability. Deputy Morel. I cannot commit to it, but I will ensure that it is looked at and if it is viable, no reason why it will not be, that this is put into law to go to Scrutiny. If I have missed anybody, I apologise. I could never write at school and I cannot read my writing to today. With that, I move the proposition.

**The Bailiff:**

Are the principles seconded? [**Seconded**] Very well, then I ask the Greffier to place a link into the chat for voting. I open the voting and ask Members to vote in the normal way. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				

Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Presumably the Corporate Services Scrutiny Panel does not wish to scrutinise the matter. How do wish to deal with the matter in Second Reading, Deputy of St. Peter? There are simply 2 Articles. You can propose them *en bloc*.

## 6.2 The Deputy of St. Peter:

Could I propose them *en bloc*?

### The Bailiff:

Yes. Are they seconded? **[Seconded]** Does any Member wish to speak on the Articles in Second Reading? No Member wishes to speak on the Articles in Second Reading. I close the debate. Given the last vote, unless someone indicates a vote *contre* within the chat or otherwise then I will take it as a standing vote. We will not physically have to stand, but could anyone now, if they wish to be other than a standing vote, could they please now indicate in the chat? Very well, the Articles are adopted on a standing vote. Do you move them in Third Reading, Deputy?

## 6.3 The Deputy of St. Peter:

I would like to thank the Assembly for their support.

**The Bailiff:**

Is the law seconded for the Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? No Member wishes to speak in Third Reading. I close the debate. We will again deal with this on a standing vote. If anyone wishes a recorded vote to be taken, please indicate in the chat. Senator Pallet has sought a recorded vote. I therefore ask the Greffier to place a link in the chat. The link is there. I open the voting and ask Members to vote. If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The law has been adopted in Third Reading.

<b>POUR: 44</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator S.C Ferguson				
Senator J.A.N. Le Fondré				
Senator K.L. Moore				
Senator S.W. Pallett				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				

Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

**7. Draft Income Tax (Amendment - Stage 1 of Independent Taxation) (Jersey) Law 202-(P.78/2021)**

**The Bailiff:**

We now come to the Draft Income Tax (Amendment - Stage 1 of Independent Taxation) (Jersey) Law P.78 lodged by the Minister for Treasury and Resources. The main respondent will be the chair of the Corporate Services Scrutiny Panel, Senator Moore. I ask the Greffier to read the citation.

**The Assistant Greffier of the States:**

The Draft Income Tax (Amendment - Stage 1 of Independent Taxation) (Jersey) Law 202-. A law to amend the Income Tax (Jersey) Law 1961 to provide for first stage of independent taxation for people who are married or in a civil partnership. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

**7.1 Deputy S.J. Pinel of St. Clement (The Minister for Treasury and Resources)**

I am here today with mixed feelings as I present the draft law that would begin the phased introduction of independent taxation into Jersey. On the one hand, I am disappointed that we are holding this debate in 2021. It simply should not have taken us so long to reach this point. Jersey is lagging behind the rest of the developed world. I am disappointed that parts of our income tax system are so archaic that unpicking it to create something more suited to the 21st century has been cited previously as one reason for delay, rather than a call to action.

[15:45]

I am disappointed for the wives, married same sex couples, and civil partners of Jersey who have not been treated equally or fairly and who, on occasion, have been shocked, dismayed and embarrassed that they needed their husband's or partner's permission to speak to Revenue Jersey about their own tax affairs. On the other hand, I am proud to be presenting this draft law to the Assembly for our consideration today and proud to be part of this Assembly as we begin to make these significant changes to our personal tax system. These changes, taken together with our decision last year to abolish the prior year basis of paying taxes, are undoubtedly the biggest changes to our personal income tax system since 1928, when income tax was introduced. Since I became Minister for Treasury and Resources, I have fought hard for a fairer personal tax system. With this draft law I believe the vision is now clearly in view. I am proud that Jersey's tax system, if Members agree with me today, will be in a better place when compared to the system I inherited in 2018. I am delighted that with my Assistant Ministers and Treasury officials I have found a way to bring forward this draft law in a way that protects the financial position of Islanders who might otherwise lose out from the transition. I am sure Members will recall the debate on personal tax reforms held in 2020, during which I spoke about some of the most outdated parts of the current law, including the provisions that hold a wife's income is deemed to be her husband's income and how from that one outdated provision

arises so many of the problems in our tax system. It is precisely that deeply engrained tangle of which our predecessors were wary. They were right to be wary. I cannot understate the real difficulties posed by a move to independent taxation when the starting point is a system in which wives and partners are all but invisible. Following that debate in February 2020, the Assembly agreed to take some transitional steps on the journey towards independent taxation. Much has happened since that debate, to put it mildly. The extent that some of those transitional steps were no longer required, such as the introduction of so-called joint and several liability for couples in legal relationships. Those steps are no longer required because I am asking the Assembly to take a more profound leap. A leap to a system that provides those fundamental rights for everyone, while at the same time protecting those on lower incomes, who might otherwise have been financially affected by the move. In the last few years, I have been asked many times why we cannot move straight to independent taxation: "Surely it cannot be that hard." However, if States Member recall, if we had moved overnight in a so-called "big bang" approach, we estimated that at that time over 8,000 couples, mostly lower income families, would have financially lost out. In developing a solution to that problem, we have identified the need for a compensatory allowance, which would be highly responsive to the individual circumstances of those existing married people. The allowance needs to be programmed into Revenue Jersey's system and we are forecasting that Revenue Jersey should be able to activate it as early as 2024. I am consequently proposing a phased approach to transition to the new system. Phase one will commence in 2022, phase 2, in 2023 and phase 3 possibly as early as 2024. Phase 3, which is the provisional starting point for mandatory moves for existing married people and civil partners to independent taxation, depends on our readiness to provide the compensatory allowance. The compensatory allowance would be available to anyone who needs it, who is already married for a transitional period of 10 years, to ensure they do not pay more tax as a result of these proposals. That compensatory allowance would be set out in the next phase of draft legislation in 2022. The legislation will provide for review of the ongoing need for the allowance after the initial 10-year period. Today, I am asking the Assembly to focus on the first 2 phases of the implementation of independent taxation. The draft law before us today will achieve 2 main goals. Firstly, it will mean that couples who marry after 31st December 2021 or move to Jersey after that date will be treated independently for income tax purposes. That means that while we make this transition over the coming years no more people will be treated using the existing outdated rules. Additionally, from 2022 onwards, the draft law also offers independent taxation to the 600 or so couples who have previously elected to be assessed separately in the old system. Those couples, who are most likely to be ideologically aligned with independent taxation if they choose to adopt independent taxation in 2022, would act as a pilot group to help Revenue Jersey test and further develop the detailed processes and procedures needed to manage the next 2 phases of transition. Secondly, the draft law also creates phase 2 of the transition, which will allow all couples to opt into the system of independent taxation from 2023. This could see up to 14,500 couples move to independent taxation in 2023, because they would either be financially better off or at least no worse off. The third and final phase of transition would see the mandatory move for everyone else into independent taxation, but with those financial protections I have already mentioned. We currently estimate that about 7,100 couples fall into this third phase. As I have said, the draft legislation for that phase will be presented to the Assembly during 2022. I would like to emphasise the considerable amount of consultation the Treasury officials have undertaken to reach this point. A full public consultation was held in early 2019. The results of that consultation directed us down the path of independent taxation. We followed that up with focus group sessions, which enabled more in-depth discussions with some of the trickier questions. During this process, I have also engaged at length with the Corporate Services Scrutiny Panel. I am pleased that the panel supports this legislation in principle. I thank the panel for their very comprehensive and detailed comments presented to the States on 9th September 2021. Despite the complex nature of the subject, the draft law I present today is relatively simple: couples who are not yet married will continue to be treated as if they were single, even if they do marry. Married couples and civil partners who arrive in Jersey from January

2022 onwards will be independently taxed. In most cases that will mean that they will continue to be independently taxed. Independently taxed couples will receive individually the same personal exemptions and allowances as unmarried couples. For the time being, and until the later stages of legislation are brought forward, all other spouses and civil partners will continue to be treated as a couple under the existing rules. The draft law does not make any changes to the tax allowances available in respect of children. Independently taxed couples will decide between themselves how they would like to split the allowances. This approach is consistent with the approach currently taken for unmarried couples in Jersey. A small change is made to the Childcare Relief Article to ensure that individuals are not able to benefit from more relief than the amount they paid in childcare costs. This is a momentous day for Jersey and an important step in delivering greater equality between the sexes. It removes age discrimination from our provisions of same sex marriages and for civil partnerships. I am very grateful for the support and encouragement we have received from all quarters of this Assembly to enable us to get to this point. I commend this draft law to the Assembly.

### **The Bailiff:**

Thank you very much, Minister. Are the principles seconded? [**Seconded**] I open the debate.

### **7.1.1 Senator K.L. Moore:**

The Minister is quite right, the move to independent taxation is long-awaited and could bring an essential change to an outdated and discriminatory system of taxation. However, the proposals before us should sit within the 4 watch words that guide Jersey taxation Bills. They should be low, broad, simple and fair. This proposal does not quite fit that bill. Firstly, before the Assembly today, to enable the move to independent taxation, the Assembly has, of course, agreed in principle to the wider move, but has not agreed to the 3-phased approach that is before us and causes the issue that prevents this proposal from being fair. The panel notes that the phased approach appears to conflict with statement provided in the Government Plan, where independent taxation was defined as being introduced for the year of assessment 2022. The panel is concerned that the use of a phased approach to independent taxation could result in 2 identical families paying different levels of tax depending on which phase of the move to independent taxation is adopted by that taxpayer. The panel would also like to highlight the following areas to inform this debate in the Assembly. Firstly, disparities due to income, the panel adviser's report, which I hope Members have had an opportunity to read, provides several calculated scenarios to demonstrate how the phased move to independent taxation is outlined in the draft law and from evidence gathered by the panel will affect those on various incomes and in variable scenarios, for example, the number of children and the different levels of contribution to the overall household income. The scenarios demonstrate disparities between the amount of tax paid by couples on different incomes and identifies that lower income couples could see a significant increase in taxation, while those on significantly higher incomes will see benefits. The panel adviser has calculated that single income couples without any additional allowances, other than the basic married man's allowance will be almost always worse off under the proposals due to the shift in allowances. The Minister has indicated in the report to accompany this proposition and in its public hearing that additional legislative changes will be implemented at a later date to allow for a new compensatory allowance to mitigate any potential financial impact to those taxpayers who would be worse off. The panel received submissions from Islanders who expressed serious concerns and worry about the impact that the compensatory allowance will have when it is removed after that period of 10 years. The panel is concerned that the framework for the compensatory allowance has not been covered in the draft law, as it is a fundamental component for the introduction of independent taxation to prevent significant financial inequalities. It is action within the draft law that sets a dangerous precedent. The panel adviser has also identified that wealthier taxpayers will enjoy benefits under the proposed tax change. The Minister highlights in the report to accompany the proposition that this would yield a potential cost of around £4 million to the Exchequer. This is in addition to the increased administrative cost of between £1.25 million and £1.5 million. The report

to the proposition indicates that the Minister is currently considering options to offset the costs to the Exchequer, but there is no detail provided to the Assembly and it is not able to determine the effect for the other allowances. The default position for child allowances according to the proposition report is that couples will equally share this allowance. The panel notes concerns expressed by its adviser that some couples may see an increased tax bill if one partner does not have sufficient income to shelter their tax allowance, and the panel concludes that clear advice to its use must be made available to taxpayers. The panel adviser has also highlighted that to reduce administrative costs and to simplify the tax system the child allowance should be removed from the tax system and operate an alternative such as the adoption of a child benefit system, as found in the U.K. where a tax-free benefit payment is provided to the person to whom the child or children reside with. The panel concludes that the Minister should provide for clarity to the States Assembly and the public regarding the future of child tax allowances in Jersey and how it will adapt under independent taxation.

[16:00]

The panel also wishes to note concerns about the application of mortgage interest tax relief and other allowances, and would strongly urge the Minister to provide clear and easily accessible information to alleviate the concerns of Islanders. Now we move on to communication and the consultation period. The panel received 71 submissions for this review, which identifies the level of interest among the public. From those submissions provided from members of the public the panel is of the conclusion that not enough information has been provided to Islanders about the planned move to independent taxation and how it will affect taxpayers. The panel is particularly concerned that many Islanders who are pensioners on lower incomes and those with care responsibilities have expressed worry to the panel that they will be negatively impacted through those changes. Indeed our adviser used the word “lamentable”; it is a lamentable situation that we are in. The panel agrees with its adviser’s report that insufficient information has been made available between the lodging of the proposition and the planned debate and that the Minister has not sought to publicise the details sufficiently or adequately behind how independent taxation and the compensatory allowance will work, and work to ensure that Islanders will not be financially worse off because of independent taxation. The panel received a demo version of the online calculator in September and is concerned regarding the accessibility of the calculator, with particular concern given to those with colour blindness or difficulties in distinguishing colour, and that the calculator lacks some of the necessary details the taxpayers will need to receive to understand their financial situation. In conclusion, the panel would like to express its disappointment in the lack of communication provided by the Minister to Islanders on how independent taxation will affect them, and the failure to adequately ease the concerns of Islanders, particularly those on lower incomes. This is the second summer during which the Minister has conducted inadequate consultation over a compressed time period. Last summer we warned the Minister and her team that this was unacceptable and we find it very disappointing that they should follow a similar route this summer. The panel would strongly urge the Minister to immediately begin work on publicly addressing the concerns outlined in the panel’s comments paper, and ensure that no Islander is left to worry about their financial future from a tax payment perspective. The panel notes that independent taxation will inevitably result in an increase in the administrative costs to be incurred by Revenue Jersey and would recommend that the Minister regularly reviews the department’s resource to ensure that it is able to sustain the additional work that will be required. The panel would further recommend that the Minister provides a clear understanding to the Assembly of the planned future of the child tax allowance following the introduction of independent taxation. Finally, the panel is concerned regarding the benefits that wealthier taxpayers are likely to enjoy under the regime proposed by the draft law and would strongly urge the Minister to undertake work to ensure that Islanders on lower incomes do not subsidise those on significantly higher incomes, while providing further clarity on how she will mitigate any tax benefits obtained from those higher incomes during phase 2 of the draft law against those not in the scheme but on identical incomes. Therefore, our advice to the Minister is to take back this law, to listen to our advice and conduct the

necessary work. These are historic changes, yes, but they should also be understood and workable. After all, as I said in the opening words, the watch words of Jersey tax are low, broad, simple and fair. Sadly this phase does not meet those maxims and particularly does not meet the fairness.

**The Bailiff:**

Thank you very much Senator. Does any other Member wish to speak on the principles? If no other Member wishes to speak on the principles I close the debate and call upon the Minister to respond.

**7.1.2 Deputy S.J. Pinel:**

I must emphasise that there has been a huge amount of consultation on this with more than approximately 5,000 responses to consultations, to focus groups over the period of time. The Scrutiny chair referred to consultation this summer; a lodging period is not a consultation, we have established all the consultation beforehand and we have acted on everything that came out of those focus groups, which is why it has taken so long to present this draft law. Senator Moore also mentioned the concern over the removal of the allowance after 10 years. The removal is not confirmed, it is an initial stage and it is bespoke to each taxpayer to make sure that nobody - absolutely nobody - suffers as a result of this move to independent taxation in a financial sense. There will be continuing reviews but a full review in about 5 or 6 years as to whether we continue it after 10 years to make sure that nobody disbenefits from this. Disparity of the tax, as mentioned by Senator Moore, is again compensated by the compensatory allowance, which I talked about in my opening remarks, which will be provided for 10 years if required and extended after that, as I have just said. The communications; we have already expressed to the Scrutiny Panel that they will be quite considerable. There is going to be a leaflet drop to all households explaining how to do this, there of course will be a website, there will be constant briefings to the public and also briefings at Parish Halls during the rest of September and October. The Citizen's Advice Bureau of course are helping with all that as well, so there is plenty of accessible information. The child allowances will not be affected at this stage at all and also the tax threshold in this Island is much higher than anywhere else and so if it means that for instance a couple's joint income is £70,000, so one earner on £60,000, another one on £10,000 - I am just picking up an example - then under independent taxation the earner on £60,000 will be paying a percentage of tax, the earner on £10,000 will be paying nothing because the threshold is £16,000. So it does eventually evaluate itself. I am not quite sure what else ... it does not meet the fairness question, which is what the Scrutiny chair alluded to. I do not think in the scheme of things we could have been more fair with making sure that nobody suffers from the move to this. It is a complicated move; there is no doubt about it. We all understand that which is why it has not been attempted before. But it is time to move from a 1928 law, as I keep saying, and the archaic attitude that women are chattels of their husband has always been difficult to accept. So we have to move forward on this and I just hope the Assembly will support this complicated but achievable move, and restate the amount of work that has gone into this to get it this far. Thank you, and I ask for the principles to be voted upon with the appel please.

**The Bailiff:**

The appel is called for, therefore, I ask the Greffier to put a voting link ... a point of clarification, Senator Moore, is it a point of clarification of your speech or of the Minister's?

**Senator K.L. Moore:**

Of the Minister's.

**The Bailiff:**

Yes, please.

**Senator K.L. Moore:**

I just thought it would help the Minister if the Minister could elaborate on the fairness point, particularly with regard to those on higher incomes.

**The Bailiff:**

Do you wish to speak further on this, Minister?

**Deputy S.J. Pinel:**

Well I thought I had alluded to that. The whole phrasing of this, which again the Scrutiny chair alluded to, has been done to ensure that there is fairness across the board. It will take time to adjust. It is not going to be fairness immediately, which is why the compensatory allowance is being brought in, in 2024.

**The Bailiff:**

Thank you very much, Minister. I ask the Greffier to place a voting link into the chat. I ask the Greffier to open the voting and Members to vote. If Members have had the opportunity of casting their votes then I ask the Greffier to close the voting. The principles have been adopted.

<b>POUR: 39</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 1</b>
Senator I.J. Gorst		Senator K.L. Moore		Connétable of St. Lawrence
Senator L.J. Farnham		Senator S.W. Pallett		
Senator S.C Ferguson		Connétable of Grouville		
Senator J.A.N. Le Fondré		Deputy of St. John		
Senator T.A. Vallois				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Saviour				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				

Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				
Deputy of Trinity				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Very well, presumably, Senator, your scrutiny panel does not wish to scrutinise the matter? You have already done it, in effect.

**Senator K.L. Moore (Chair, Corporate Services Scrutiny Panel):**

Well we have to an extent, yes.

**The Bailiff:**

So you do not wish to call it in?

**Senator K.L. Moore:**

Tempting as it is, because we would like to see the points that we have raised addressed, but sadly it is not the will of the Assembly so I shall not.

**The Bailiff:**

How do you wish to deal with the matter in Second Reading, Minister?

**7.2 Deputy S.J. Pinel:**

I would like to propose the Articles *en bloc* please, if that is acceptable to the Assembly.

**The Bailiff:**

Do you wish to talk to them at this stage or do you wish to answer questions?

**Deputy S.J. Pinel:**

I can, if the Assembly wishes, go through each Article but there are 15 and several of them overlap each other so I think probably best to accept questions after.

**The Bailiff:**

Very well. Are the Articles *en bloc* seconded for Second Reading? **[Seconded]** Does any Member wish to speak in Second Reading?

**7.2.1 The Connétable of St. Lawrence:**

My question to the Minister is with reference to Articles 10, 11, 14 and 15, and those Articles refer to the opportunity for election by spouses and civil partners to opt for independent taxation. Articles 10 and 14 refer to those options for the year of taxation from 2022. If the spouse or civil partner wishes to opt for independent taxation from 2022 then they must apply no later than 29th October 2021, however, should they choose to opt for independent taxation from 2023, Articles 11 and 15, then they must apply no later than 29th July 2022. I am wondering why they have a shorter time period to elect to opt for independent taxation from 2023. I think it is about 3 months less to opt for that independent taxation. While I am speaking I would just like to take the opportunity to

thank Scrutiny for their report, which I found very interesting, and I think it was summarised succinctly by the chairman when she spoke earlier.

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

Just picking up on Article 11 and 121D(3): “An election cannot be revoked.” I find that a bit permanent and I wonder whether the Minister would answer why it is termed in such a way.

[16:15]

### **7.2.3 The Connétable of St. Martin:**

I am worried about the same because it seems to me that both parties have to sign to elect this option so one could argue that one partner could still control the other. Also with what the Constable of St. Brelade said, if one partner put pressure on the other one to agree and then they disagreed it says an election cannot be revoked. That really worries me.

### **7.2.4 Deputy L.M.C. Doublet:**

My question is around the futureproofing for when the committed move to opposite sex civil partnerships is seen through; a commitment from the previous Minister for Home Affairs. Is this legislation futureproof to allow for that? But I also share those concerns raised by the previous 2 speakers. Notwithstanding that, I did want to thank the Minister as well because she has given additional briefings to myself and Deputy Perchard and other interested Members. I really do applaud her for her commitment to this because I think it has been a complex, huge piece of work which others I think have perhaps considered and deemed too difficult to address but she is seeing it through and I have great respect to her for that. I know that particularly the married women of Jersey are very grateful to her as well.

### **7.2.5 Senator K.L. Moore:**

I would be grateful if the Minister could express how she proposes to meet the fairness test when some couples may choose to elect to move to independent taxation in a year that is earlier than another. As I pointed out in my earlier speech, some couples will benefit from doing that and, therefore, that does not meet the fairness test and it is not clear in the Articles how it will be met.

### **The Bailiff:**

Does any other Member wish to speak in Second Reading? If no other Member wishes to speak in second reading then I close the debate and call upon the Minister to respond.

### **7.2.6 Deputy S.J. Pinel:**

First to the differences in timing, as pointed out by the Connétable of St. Lawrence, which is Articles 10, 11, 14; one was 29th July and one was 29th October. It is the difference between civil partners as opposed to spouses electing for independent taxation. I think the same question was from the Connétable of St. Brelade, and the Connétable of St. Martin also remarked on that. The “cannot be revoked” it does sound strong language, I understand that, but because by 2023 it will be mandatory for everybody to be on independent taxation that is why it was put quite strongly. So you have until the end of 2022 to elect to be independently taxed but it will be mandatory in 2021, so there is discussion time between partners to come to that agreement. I thank Deputy Doublet for her kind remarks, and she and Deputy Perchard and the Connétable of St. Martin were very interested and had several briefings with us and lots of questions on this, and I thank them for their interest and support. Senator Moore again says it is unfair. The move to independent taxation in 2022 is, as I said I think in my opening remarks, for those 600 couples who have already elected for separate taxation as opposed to the term “independent taxation”. Revenue Jersey could not simply deal with 20,000 couples moving in one year. It is not possible. The 600 couples are already being separately taxed so it will be easy for them to provide information back - Senator Moore pointed out lots of

questions from Scrutiny which will be addressed in this pilot year - that is why we are attempting to achieve this with couples who are already being taxed separately. So it made sense to have a pilot scheme to see what Revenue Jersey has to tackle essentially and where we can improve, as Senator Moore said, any smaller parts of legislation so we can come back with that after the pilot.

**The Bailiff:**

I ask the Greffier to place a voting link into the chat. The vote is on the Articles in Second Reading. The link is there and I ask the Greffier to open the voting. If Members have had the opportunity of casting their votes then I ask the Greffier to close the voting. The Articles have been adopted in Second Reading.

<b>POUR: 41</b>		<b>CONTRE: 3</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Senator K.L. Moore		
Senator L.J. Farnham		Senator S.W. Pallett		
Senator J.A.N. Le Fondré		Connétable of St. John		
Senator T.A. Vallois				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy G.C.U. Guida (L)				
Deputy of St. Peter				

Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

How do you wish to deal with the matter in Third Reading, Minister?

**7.3 Deputy S.J. Pinel:**

Yes, I would like to propose this in the Third Reading but may I also just take this opportunity to thank States Members for their contributions today and also the officers of Revenue Jersey for the enormous amount of work involved in this transformation of such an archaic tax law. I propose the Third Reading please and call for the appel.

**The Bailiff:**

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

**7.3.1 Deputy R.J. Ward:**

This is a difficult one because it is a little bit jam tomorrow because it is the detail that comes through the next tranches that are so important. I would say now that we will certainly be keeping our eye on those, because when we talk about fairness and we talk about people not being affected negatively that is a very generic term. It is a difficult situation because we do need to move forward to independent taxation; this should have happened many years before I was in this Assembly, and we all know that, but we have got to get this right because it is irreversible and to some extent quite rightly. A part of me wants to ask the question - and I hope my wife is not listening - I do have a plan to be a kept man and whether I can pass on my tax allowance, but perhaps that is not appropriate for today. But I think the detail and what can happen with tax allowances is very important, particularly on middle and low incomes because those subtle differences and those losses to income make massive impacts on people's lives. One of the biggest problems with the tax system at the moment is the random changes that tend to happen to people's tax, particularly around October time when people suddenly have their tax allowances changed and they have not been able to plan for them. That is okay if you have got excess income but many, many of us have not got that and you have to look at where it is coming from. I just say that as a warning in the Third Reading of this, that supporting this today does not mean that we will not be absolutely detailed perhaps in chasing that that is what happens into the future, because there is still the risk of this not working if we do not get it right. What concerned me a little was that the size of the job in hand cannot be used as an excuse for not getting it right. That is exactly what I need to say. We have got to get this right, it has got to be useable, and I think the fact that it is irreversible is exactly the reason why we have to do that. It is just those comments in Third Reading and to look to the future.

**7.3.2 Senator K.L. Moore:**

Deputy Ward is absolutely right; there is a lot more work to do. Of course there will be 2 more tranches, as we have heard. I would like to just point out at this moment that it is a shame that the Minister did not take the advice and reconsider returning to the Assembly with a better package that has clarity and fairness in it also at this stage. There is little point in conducting extensive scrutiny and indeed investing in the time of an adviser as well as the time of the panel to consider these items

if the Assembly is not going to listen. I absolutely take responsibility for perhaps not working the room and warning Members of the messages that we had within our extensive comments paper today, and so that I have learned and I shall not make the same mistake again. But it is the people who have expressed their severe concerns about the impact this may have on the amount of money that they will have to pay the Treasury at the end of the year or not. Simply whether or not they actually have to pay that is not the case; it is the level of concern that has been expressed to us, the level of concern that has unnecessarily been provoked by Revenue Jersey and its consultation period that is lamentable and unfortunate. As I said, lessons learned today, but I do urge the Assembly and Members to listen carefully to Scrutiny. Some may say that we are behaving in a political fashion but this has been an objective process; we have conducted this with the help and assistance of an excellent adviser and everybody will have seen that in the level of detail in the comments paper. So, yes, this may be a historic move and of course it is something that we all wish to say, but our job here in the Assembly is to ensure that it is done well and sadly that has not been done to the best of our abilities today and I regret that.

### **7.3.3 Senator S.Y. Mézec:**

As it is Third Reading I will keep this brief and relevant. I listened very carefully to what Senator Moore has contributed in this debate and I think she has made a series of extremely valid and important points that cannot go unnoticed. But I just wanted to clarify at this point that in this journey towards independent taxation the Minister has had my support and the support of Reform Jersey at this point but she must know that that support will disappear instantly if at the next stage of this process we do not get the safeguards that we require in terms of ensuring that those on low and middle incomes are not unfairly penalised by this; that the allowances are put in place in such a way to secure that for those people. The word “mitigate” has been used and I would prefer the word “eliminate” when it comes to those potential downfalls there may well be, and I would absolutely oppose any sort of change that led to a situation where this change ended up providing tax breaks to the super wealthy in Jersey because they have too many breaks as it currently is. So I use this opportunity in Third Reading to make that point to the Minister, that she has our support on this step of the journey because the journey is the right one, but she should be prepared for a significant fight if at the next point of this the detail is not forthcoming in the way that it needs to be done. I would suggest taking heed of the points that Senator Moore made because they were extremely valid on that, so I will support it in Third Reading and eagerly await the next part of this journey.

### **7.3.4 The Connétable of Trinity:**

I would just like to mention to the Minister, obviously I will be supporting this again but I do have a concern, which is expressed to me by my parishioners on a regular basis, that Revenue Jersey, have they got adequate resources to deliver upon this? Because the comment that I often get, and I apologise if it is not parliamentary, is this not easier to get an audience with the Pope than Revenue Jersey? I will leave it there.

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

I am pleased to follow the Constable of Trinity. He always manages to raise a smile, does he not? I have been in this Assembly long enough to hear the platitudes of former Ministers for Treasury and Resources when they have told us that they could not deliver this.

[16:30]

This Minister has, as Senator Mézec just said, begun the journey to the independent taxation that the public and Members of this Assembly and previous Assemblies have been asking for for many, many years. I thank her for that and I applaud her for that. It has not been an easy journey by any means but she has got on with it and she has not given us the excuses that former Ministers have rolled out over the years. That said, I do have some reservations, I have supported this this afternoon. I am

grateful, as I said earlier, to Scrutiny for their comments on this. I can assure the chairman that I did read the comments. I do have some concerns about this. The details on the compensatory allowance, although that is part of the journey, they will be crucial and I look forward to seeing those. It is clear from the Scrutiny report that the public and certainly older members of the public do have concerns about how this will impact upon them. We have heard that they feel that they have not been consulted, notwithstanding that we have heard today that there will be a leaflet drop to households and of course the Constables were aware that the Parish Halls have been requested for public meetings later this year. I am also concerned about the administrative costs of, I think, £1.25 million to £1.5 million to manage this, which are additional to the lost revenue, potentially, of £4 million. From what I can understand, the Minister has yet to explain how those administrative costs will be met. As we have just heard from Senator Mézec, talking about the journey and I think the Minister alluded to that, I am grateful that we have started this after many years of being assured that we would reach it eventually. It is the first step towards the independent taxation that this Minister and other Ministers have been asked for by different Members over many successive years. Notwithstanding the fact that the chairman of the Scrutiny Panel feels that perhaps in this instance or in this case her report and her panel's report may not have been perhaps scrutinised as closely by Members as it should have been and deserved to have been, I will be supporting this. But I hope the Minister takes on board my personal worries about the lack of some detail. I am looking forward to seeing that in the next tranches.

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

It is an observation really and I think it is strange when we say that the overall broad principle of our income tax system should be that it is broad, simple and low. Of course we know that, increasingly, it is not low for the majority because there are lots of add-ons, if you like, long-term care, et cetera. It is only really low for the super wealthy and for corporations where it is either zero or next to zero or basically negotiate with the taxman. But for the rest of us it is not low and it does not look like it will be ever in the future. It is certainly not simple is the point because if it were simple then these changes would be straightforward. It seems to me that the reason that the complexities arise in the first place is because of the allowances. While one might be tempted to say: "Well then get rid of the allowances and then we do not have a problem", of course in doing so that would make the system more regressive. But I think we do need to look at the nature of the allowances and of course what you could say is that because income support is based on households rather than individuals, how does it make sense to move to an individual taxation system if you have got a contrary system in your benefits where you look at people's family circumstances? I have said this often before, even somebody who has not got a job and does not have their own income stream and this is and can be seen as a feminist issue, if we have any feminists in the Assembly, I am not sure, they really should be picking up now. Because it is likely to be women more than men who are affected by not having their own income but, nonetheless, having an economic necessity within any relationship or family setting because they are very productive but they do not necessarily earn a salary. When they might fall on hard times, as a family collective, they cannot claim their own benefit if their partner is earning sufficient money, so that can keep people in oppressive and abusive relationships. Of course it can be applied to any gender and they do not have the right to claim their own independent benefit. One question I would ask is: what is the point of independent taxation if you do not have an independently assessed and access to the benefit system? That is one question I would like the Minister to consider, if not answer at this point. But also to emphasise the fact that the allowances which cause this whole issue can be themselves very unfair because they give a block amount to an individual or to a family unit but it does not take into account the fact that those personal circumstances may be vastly different. An individual who currently benefits from £16,000 a year allowance at the moment, whether they are single or in a non-married relationship, that £16,000 is applied to you irrespective of what your financial set up is. You could have inherited a house, which had been in the family for generations and you do not have any outgoings, apart from perhaps maintenance, rates, et cetera,

whereas somebody in a similar financial situation in terms of their income could be renting a property and using all of that £16,000 allowance to pay their rent for a property that is not theirs and will never be theirs, and the rest of their living allowances they have to pay out of their own salary with no tax relief on that, which the non-disposable income is, nonetheless, being taxed at 26 per cent. It is a very difficult area in which to talk about one thing to be fair because all circumstances are different. The notion of being able to pass on your tax allowance to your partner or why not even your children because if you have children living at home for income support their income can and will be taken into account if they are part of the same household? Why would it not be taken into account for taxation purposes and why would you not be able to pass your tax allowances on to any member of your household? I think probably the only way to get round this, but I think it would make it probably even more complicated, would be to submit your living expenses as an individual as a business would do. If you earn whatever amount a year you are only taxed on your disposable income and you are taxed at whatever rate is agreed, whether it is the 20 per cent, 26 per cent. There are a list of things that you can claim as legitimate expenses, as any business would be, and those legitimate expenses would probably be utility bills and they would probably be rental, if you are in a rental property. Of course there is a conversation to be had around whether mortgages should be included in that as well, given that, ultimately, you are buying an asset. I put that into the pot, even if the Minister cannot necessarily respond to all of those points, it might provide some food for thought for the bods who are working in the background and who have put a lot of thought into this from the Tax Office or Revenue Jersey, as we call it now.

**The Bailiff:**

Thank you very much, Deputy. Can I remind Members Standing Order 75(3) on the Third Reading of the Draft Law Regulations provide the debate should be confined to the content of the draft, as adopted in Second Reading? The debates up to now or the contributions up to now have certainly dealt with those things but also have gone rather more broadly into taxation in general and that is not in accordance with the principles for a Third Reading.

**7.3.7 Senator T.A. Vallois:**

I will keep my comments brief. I want to join others in congratulating and thanking the Minister and the department for what is a mammoth task and it is not to be underestimated. But what I would like to ask the Minister is to explain, with the work that is going to be carried out regarding the pilot group that is mentioned in the report for this first phase, how will the dissemination and accumulation of such data and information be shared with other States Members to inform the debate for phase 2 for us to understand the complexities? I would ask that with regards to the communication and the leaflet drop as to whether there may be circumstances that are not identified within that pilot group, that it may cause particular issues, especially for mixed family groups who have separated over the years and have a very complex situation in terms of their tax structure and their family structure. Again, I just want to reiterate my thanks and congratulations to the Minister and the department but, like we say, this is a mammoth task and this is the first phase. I want some assurance from the Minister about how that work is going to be carried out for the next phase and whether there will be any consideration at the Council of Ministers for the Law Commission report on redress when we refer to areas, such as appealing for tax and understanding a much simpler system that was recommended back in 2017.

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

I do not think I am straying too much from the draft in requesting the Minister before bringing the next tranche to the Assembly to give answers to the some 8 recommendations as put forward in the Scrutiny report.

**The Bailiff:**

Thank you. Does any other Member wish to speak in Third Reading? If no other Member wishes to speak in Third Reading, I close the debate and call upon the Minister to respond.

### **7.3.9 Deputy S.J. Pinel:**

I shall be as brief as I can in responding to questions asked in Third Reading. Deputy Ward and Senator Moore referred to the detail, and several others have as well in the Scrutiny report, which, as I said in my opening remarks, was extremely comprehensive but was only presented last Thursday, 9th September. I think probably some Members have not had the time to go through it all because it is a very comprehensive report and I can assure Members that all attention to the details in that report will be addressed. As Members hopefully will know, I do not give up easily and I do my homework and I can assure everybody, including Senator Mézec who had concerns about that as well, that I will follow it up for as long as I am permitted to in this position. The Connétable of Trinity said can Revenue Jersey cope? That is an often-asked question. Because of the prior basis to current year basis change that this Assembly agreed and with this coming up we have increased the resources for Revenue Jersey in the form of staff and, yes, they had a difficult time over the change of the antiquated computer system, 35 year-old computer system, which they had to change and the move from Cyril Le Marquand House to Social Security premises; that took quite a lot of change and resource. But we have made sure that they have enough resources now to cope with these. But that is another reason for a phased approach, is so that there is time to adjust to what people come back with with the pilot group and with what people say, and taking note of the Scrutiny report as well, which, as I say, is quite new to all of us. We will certainly keep a firm hand on the detail of it all.

[16:45]

The Connétable of St. Lawrence questioning the £4 million and the £1.25 million; the first phase of this can be accommodated in the resources that we have got already, so that is for the second and third phase, the £1.25 million to £1.5 million and it is a forecast; it may not come to that but it had to be pointed out as a point of detail. The £4 million, again, is a question, it is the cost to revenue and it relates to the taxes claimed from couples currently taxed at the standard rate. Only 10 per cent of the population pay 20 per cent tax at the moment but, in the move to independent taxation, would pay less tax, as the lower earner would now be eligible to the single person's threshold. For some it works extremely well, others there will be a penalty, which is why we are introducing the compensatory allowance but we will certainly be monitoring the detail. Deputy Tadier, again, mentions it being unfair on lower earners but, as I did say, that there is a £16,000 threshold here, so if one partner were to lose their job they would not be paying tax at all. I think it is a very generous threshold. Senator Vallois, thank you for your thanks and phase 2 is included in this legislation that, hopefully, we are just about to pass. It will be the constant monitoring of this, as I promised we will do, over the next year or so before we bring forward any propositions for debate on phase 3, which will then be the mandatory move to independent taxation. The Connétable of St. Brelade, I think I have already answered inasmuch as we will absolutely follow and monitor all the details that have been expressed. Thank you very much, Sir. May I move in the Third Reading, please, and ask for the appel?

### **The Bailiff:**

Indeed, the appel is called for. I ask the Greffier to put a voting link into the chat.

### **The Connétable of Trinity:**

Excuse me, Sir, my device has expired on me, could I record my vote as pour?

### **The Bailiff:**

You can when I have opened the voting, of course you can, yes. I ask the Greffier to open the voting and Members to vote. The Connétable of Trinity, you wish to vote a pour vote.

**The Connétable of Trinity:**

Yes, please, Sir.

**The Bailiff:**

The Connétable of St. Clement?

**The Connétable of St. Clement:**

Pour.

**The Bailiff:**

If Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. The law has been adopted in Third Reading.

<b>POUR: 41</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator I.J. Gorst		Senator K.L. Moore		
Senator L.J. Farnham		Senator S.W. Pallett		
Senator S.C Ferguson				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator S.Y. Mézec				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Clement				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy G.C.U. Guida (L)				

Deputy of St. Peter				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

#### **7.4 Draft Income Tax (Amendment - Stage 1 of Independent Taxation) (Jersey) Law 202- (P.78/2021) - Acte Opératoire**

**The Bailiff:**

Very well. There is an Acte Opératoire, a legislative Act which brings this into immediate effect, to be dealt with next and I ask the Greffier to read the citation.

**The Assistant Greffier of the States:**

Draft Act Declaring that the Income Tax (Amendment - Stage 1 of Independent Taxation) (Jersey) Law 202- has immediate effect. The States make this Act under Article 12 of the Public Finances (Jersey) Law 2019.

**7.4.1 Deputy S.J. Pinel:**

Yes, I would ask for the Assembly to respond to the Acte Opératoire and agree to it, please.

**The Bailiff:**

Is the proposal seconded? **[Seconded]** Does any Member wish to speak on the legislative Act? If no Member wishes to speak, then I close the debate and would any Member indicate whether they wish a recorded vote to be taken or whether this may be done on a standing vote, figuratively speaking? There is no indication to the contrary, accordingly I will record that as a unanimous vote pour on a standing vote and that, therefore, is adopted.

#### **8. Social Security (Amendment of Law - Minimum Earnings Threshold) (Jersey) Regulations 202- (P.79/2021)**

**The Bailiff:**

The next item of business before the Assembly is the Draft Social Security (Amendment of Law - Minimum Earnings Threshold) (Jersey) Regulations P.79, lodged by the Minister for Social Security and I ask the Greffier to read the citation.

**The Assistant Greffier of the States:**

Draft Social Security (Amendment of Law - Minimum Earnings Threshold) (Jersey) Regulations 202-. The States make these regulations under Article 50 of the Social Security (Jersey) Law 1974.

**8.1 Deputy J.A. Martin (The Minister for Social Security):**

These regulations amend the Social Security Law to help support Revenue Jersey to modernise and improve the revenue collection process for employers. At present the Social Security Law requires employers to collect and pay social security contributions for employees once they work 8 hours a week or more. These regulations will mean that employers will collect and pay social security contributions for employees that earn at or above the new earnings threshold instead. These

minimum earning thresholds will be set at the equivalent of 8 hours a week at the minimum wage. This will be £66 per week or £289 per month, based on the minimum wage today or £73 per week or £320 per month, based on the minimum wage proposed in P.85. However, I will set the rate in an order following that debate in line with what the minimum wage is set and what the minimum wage would be in 2022. This change will apply from 1st January 2022, at the same time the new compliant employer return is introduced. The Health and Social Security Panel has presented a comment in my proposition and I am very grateful for this. I would like to reassure Members that this change will not have a significant impact on employees with low wages. My proposed change is as close as possible to being a straight swap for the current rule which applies to employers and employees that work less than 8 hours a week. The estimated numbers of employees that Scrutiny quote includes anyone that works less than 8 hours a week but most of these will not be affected by my proposals because they can earn less than the new threshold. A much smaller number will overlap and start to pay contributions. This will mainly be people who work 6 or 7 hours a week above the minimum wage. However, many of these people will benefit from their contributions, along with their employers' contribution, which will go towards their record for benefit and old-age pension purposes. There will be a very, very small number of people whose contributions do not improve their record because they already have a main job, which gives them their full record. It is a very, very simple thing I am asking today and it does help the Revenue Jersey and the employer to do one return. That is really all I have to say. I recommend the principles and I would be glad to answer any questions that Members have, if I can.

**The Bailiff:**

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

**8.1.1 Senator S.Y. Mézec:**

I think that there are some questions that we need answering on this to understand the exact impact of who will be affected and how they will be affected. I listened to what the Minister just said and noted a couple of words that were used when outlining what impact it would have. I recall she said: "Would not have a significant impact" and that is, of course, different to there will be no impact. I think we need to know what that impact will be. It may not be significant in the grand scheme of things but is it significant to those who are affected by it? What sort of numbers are we looking at in terms of those numbers of people and what are we looking at in terms of the financial impacts to the department and to those employers and employees as well? What sort of types of people will be impacted by this and how does this affect, potentially, young people who are just doing a few hours as a weekend job or people who have a second employment contract with a different employer just to do a few extra hours to top up as well? Can the Minister attempt to give some clarity on that? I really am asking for some specifics here in terms of the numbers of people to be affected, given that she said there would not be a significant impact, as opposed to there being no impact at all.

**8.1.2 Deputy M.R. Le Hegarat:**

Yes, the panel received a briefing in relation to this and basically I am just going to reiterate what our conclusion says in that. Although it says the draft regulations as a small change would have a significant impact on certain employees and individuals working at the lower end, as the previous speaker managed to say, we also queried whether there will be other consequences for employers and the Social Security Fund. The panel believe that, if adopted, the regulations will result in more people being captured by the class 1 contributions, which will impact both employers and employees. The panel understands that the information about the changes proposed by the draft regulations have been communicated directly to employers and the public, both by email and on the gov.je web page. Much of the information available online is directed towards employers and the panel is concerned whether there has been sufficient or not information in relation to individuals who may be affected by the changes to their contributions. The panel has not lodged an amendment to the draft regulations but

wishes to highlight its concerns to Members in the hope that the Minister for Social Security will address those issues in this debate.

### **8.1.3 Deputy K.G. Pamplin:**

As vice-chair, I just wanted to echo the words of our chair on the comments that we have provided to Members, which I have equally shared in the chat channel for Members to just review to see where we are coming from with our concerns. We did request some data on how many people may be affected in the department, as we have mentioned in the comments paper, that is estimated, that there are about 600 people whose main job is less than 8 hours per week, and that is where our concern started to grow. Was it a definitive list? As our chair has mentioned, there were other concerns that we had and I think Senator Mézec was also alluding to, that this will be a significant change to certain members of our society, while not in great numbers but will have a change. We understand from the very thorough and very upfront briefing, as we always have with the Minister and her department, but it just did leave us with some concerns and questions. Just to reiterate the points, the communication, which is something I am always massive about, as the chair mentioned and I just want to echo, that we do not know if that consultation with individuals is as affected and how do we monitor that if employees are going to take full responsibility to explaining or will that be something the Government will do? It just raises more questions for us. Again, we just want to hear that but we do have concerns and I know there are others. I just wanted to raise that and hope Members have had a chance to read our paper.

### **8.1.4 Deputy I. Gardiner:**

I will be very quick. Listening to previous speakers the questions that are coming to my mind why minimum wage and not living wage. We try to attract people to work in hospitality where we are missing, and hospitality are now happy to offer £11, £12 an hour, and we probably have people who are happy to work 6 to 8 hours to support the hospitality and now they are thinking - it feels there are more questions at the same time - what is the maximum. So if somebody is having £50 an hour maybe it has ... I did not prepare this speech because it came to mind. What I am trying to say, if this step will not limit options for people who are looking for a part-time job or to work less than 8 hours to opt out and not to go, and it will not leave small businesses who would have support during the Saturdays or maybe Mondays or maybe a couple of times a week, after whatever people are doing, to not go to work and we will get less people who would like to be employed and will have less wages offered. Because as an employee you will not pay a contribution if you are paying minimum wage, but if you are paying £11, £12 an hour you need to pay a contribution which will increase your outgoing for 6.5 per cent.

[17:00]

So all these question are in my mind and I would ask the Minister if she can address my concerns.

### **8.1.5 Deputy R.J. Ward:**

I am very pleased to follow the previous speaker because it added something to my list, because I had written the question down: "Is the effect of this change regressive?" What I think was just articulated is the fact ... that is absolutely a point, and I have got a number of points that I will raise. I was very concerned about this - it looks like a small change - and the actual effects it may have long term. I just go back to that point, and I think as we try and push for a living wage - and we have issues with hospitality, we have issues after Brexit, we have issues after COVID with the workforce - anything that may impact on getting people to work a small number of hours but to fill in spaces and have that flexibility has to be looked at extremely carefully before we move forward. My children would have had part-time jobs when they were young and when they first get that bit of money for themselves. One of the questions I have, which has not been answered, is how it would impact on young people who may work 8 hours now on a Saturday or Sunday and not pay social

security. But if their employer pays them well they will very quickly go over the threshold, and seeing as employers are paying £10 an hour for people as they go through ... I know one or 2 coffee shops who definitely pay above that and they attract young people and they keep them regularly and they train them. It is that, that we keep talking about on this Island; to train and keep staff longer term, even if it is part-time, and then they go away to university and come back and work regularly. I cannot help thinking that this is regressive but we just simply do not know because there is no information. We do not know how many people are affected, we do not know the financial impact directly on people that are affected, we do not know the impact on the labour market, we do not know the impact on low paid workers, and this will affect low paid workers disproportionately or those who have taken a second job to top up the high rents that are paid or just that little bit extra for the family and are paying full social security contributions. To a young person of 16, 17, 18-plus going on to the labour market the notion of a state pension is many, many, many years off for them, so I think that is a really important point to be made, and that small amount of social security that they and the employer may be asked to pay can be significant. I wonder whether the effect may well be ... I cannot believe I have read this correctly but it could mean that what would happen is that you would get people working for longer hours for less so that they do not come into the social security contributions. That could be absolutely retrospective in what we are trying to do in terms of the wage that somebody earns. So I have got to the point with this piece that I feel I would like to ask for a reference back. I do not think this is a complete piece of work. I do not think we know the impact, I do not think we know the long-term impact on particular sectors of our labour market, I do not think we have taken anticipation of the effect of Brexit and COVID on the hospitality industry and other industries that might need this flexible workforce, and I do not think this should have been brought to the Assembly in a state that we do not know what is going on. Particularly the comments from the Scrutiny Panel, who have been very neutral in their comments because they have got nothing to work on. Scrutiny on something that is to the working is very difficult to do. So if I was to ask for a reference back it would be to ask for how many people ...

**The Bailiff:**

Well I think, Deputy, you have to nail your colours to the mast. Are you going to ask for a reference back?

**Deputy R.J. Ward:**

Yes, I am, sir.

**The Bailiff:**

If you are then what is it precisely you wish to have clarified or further information provided so that Members can know whether or not they support a reference back on that basis?

**8.2 Social Security (Amendment of Law - Minimum Earnings Threshold) (Jersey) Regulations 202- (P.79/2021) - reference back**

**8.2.1 Deputy R.J. Ward:**

I wonder if I can give you the list in that you may assist in making it more coherent, so to speak. Basically it is how many are directly affected by this, which age demographics are affected most, the effect on the labour market in terms of the problems we face post-COVID and post-Brexit in particular, the effects in particular on the hospitality industry - and I am including cafés and restaurants in that but it should probably also include retail - and the possible implication of how many would be brought into the social security system who were not already there of a younger age. I think those questions are not answered and they need to be for us to make a coherent decision. It will be up to the Assembly to decide as to whether those are pertinent questions or not but I personally at this moment cannot vote for this because there is no information there for me to vote on. I would

be opposing something that with the right information I may not oppose because it may put people in a better position, as is suggested. Further ...

**The Bailiff:**

Just to be clear, how many are affected by this, what are the demographics as to age, what is the effect on - did I read this right - the labour market?

**Deputy R.J. Ward:**

Yes, sir.

**The Bailiff:**

What is the effect on the hospitality industry, including retail; and then I missed, I am afraid, the last clause or 2 because I was concentrating on Standing Orders.

**Deputy R.J. Ward:**

I have sort of forgotten my own last point. It is in my notes.

**The Bailiff:**

The implication was the first word I jotted down.

**Deputy R.J. Ward:**

It was the implications of how many people would be drawn into paying social security that were not before. These are the questions that I do not think have been answered or addressed here and so I would ask the Assembly for a reference back until they are answered so we may be able to make a more informed decision. This may be a great idea; it may make things easier for employers. I question whether it does make things easier for employers simply because they have to record their workers' hours anyway. How on earth are you going to work out their pay unless you work out their hours? So it seems to me that we are adding a layer of administration when we are intending not to, but that is a separate issue, that might be something that is covered at a later date if the reference back is successful.

**The Bailiff:**

So you propose a reference back, is a proposition for a reference back seconded? **[Seconded]** There is no discretion afforded to the Chair, it is entirely open to the Deputy, as he has done, to seek a reference back. It has been duly seconded so a debate now follows on whether or not there should be a reference back. It is restricted purely as to whether or not there should be a reference back and to no other subject and, therefore, I open the debate on whether or not the Assembly wishes to have this referred back.

**8.2.2 Deputy J.A. Martin:**

These questions arose in Scrutiny and in the comments that we provided. I will try and go through the list the Deputy wants on the reference back. It is estimated there are about 600 people, that is 1 per cent of the total employed, that their main job is less than 8 hours a week. If somebody works a Saturday job at 8 hours a week they are already in the system, it makes no change at all. It is under 8 hours, so 7 hours. Labour market; the labour market is ... I cannot answer that one, if people want to send it back to see what effect it would have on the labour market the Deputy made it very clear that he wants to know hospitality. There are many, many workers doing the few hours a week in the cleaning industry, and some gardening and other industries. So those 600 out of 55,000 workers will be spread across many more industries than hospitality. How many will it draw into social security? Well you do not draw into social security, you pay into social security. I know the Deputy said when you are 15, 16 - well, 16 nowadays, it is very hard with Employment Law to get a job under that - it may seem a long way off before you get a pension but you may be entitled to other benefits, sick

benefits. Some people do not only work their Saturday job, they work in the week when they can in the holidays to supplement their student loan or to help them. They will pay social security, it goes towards their contributions in later life, it goes to if they have sick money. This is a very, very simple change. I will stick to the reference back. If we get back to the main debate I can make the order at the living wage, I was going to discuss that with Scrutiny. The order will have to be laid and if people did not like and they do not believe I can do that - I can do that - because I could not see where the amendment would come from except it would be a different rate. I have already said in my opening speech that I would not lay an order until we have decided what the living wage is going forward and will come in before 1st January next year. So if this referenced back, if I can find out what effect ... the only thing that is not answered there is what effect it would have on the labour market, I think would be very, very hard to do. I will say, if it is referenced back, and it is not ready by January it may make it very hard to employ people. I will leave it there. I really, really think that it should not be referenced back. The numbers are there. All the numbers were in the Scrutiny report supplied my officers and I wish the Deputy had read them.

**Deputy I. Gardiner:**

A point of clarification?

**The Bailiff:**

Yes, very well, if the Minister is prepared to give way for a point of clarification.

**Deputy I. Gardiner:**

Would the Minister please expand why if an order will not be made before January it will be very difficult to employ under 8 hours from January?

**Deputy J.A. Martin:**

I said I would make an order after we have decided what the minimum wage rate would be. There is a new employer return as of 1st January, it gives them one return, social security tax, et cetera, and employers may choose if they have to then divide it and say: "Well this person is by hours and this person is by money." I just make that example. But I will make the order before because an order is just laid. I do not know what the order will be yet. I can change that.

**8.2.3 Deputy G.P. Southern:**

There are some fundamental questions that need answering which have not been answered by the Minister in her presentation, and a fundamental question that needs to be asked is: does this produce more revenue for the taxman and the social security man? If so, how much? Because it is one thing to say this is a minor change and will have very little impact on these people who work low hours, often at low wages. So that needs answering. It is also directed, it seems to me, at the convenience of the taxman and the employer, but not at the convenience, if you like, or without consultation with the low paid worker. Has there been any consultation with low paid workers or their representatives? Has anybody talked to Unite about what this impact might be? So I think those questions need answering in support of the reference back we ought to give the Minister time to find out some of these things and certainly to consult with Unite or other representatives of low paid workers. That is something that needs doing before we start on this.

**8.2.4 Senator S.Y. Mézec:**

I completely agree with what Deputy Southern said just now. I think that to understand the impact that this would have on real people's lives, we need to have some numbers in front of us to understand that. What I am not prepared to do is to vote for something that I think is going to make some people who already have a difficult time in life worse off. My basic principle is that I do not vote for anything that is regressive and at this point it is not clear whether that impact will be regressive or not.

[17:15]

If the Minister can come back with some figures identifying what that impact is then we can be more comfortable about supporting something like this. But I would urge Members to consider that the decisions we make in this Chamber have a real impact on real people in their lives and we should not be prepared to nod things through without an accurate understanding of the impact it will have on them. The reference back provides a perfect opportunity to get that clarity so I would urge Members to support this.

#### **8.2.5 Deputy K.G. Pamplin:**

I just thought I had better speak on behalf of the panel. I hope our fellow Members do not mind but I just refer to our comments paper where the panel acknowledged the simplifying of requirements as outlined in the proposition. However, one of our queries was that there would also be a number of employees, particularly in certain industries that typically employ some staff for a small number of hours, for example teaching, tutoring, who would be affected by the change as they will now have to pay towards the class 1 contributions of some staff. However, we did not receive the information to show all types of businesses or industries that the draft regulations could affect in this way. We were keen to ensure that suitable consideration was given to this during this debate, which is why we left it to the will of the Assembly and to hear from the Minister today. I just want to draw that point, because I know our comments have been talked about a lot. As the Minister rightly said, the information was provided to us about numbers but, again, I draw to the point that it was estimated. We did not see a concrete spreadsheet with definitive numbers, which is where our concerns were. I just wanted to bring that clarity on where our comments papers have been talked about. I hope that has helped Members.

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

I was just looking again at the panel's comments and have noticed that they said they had not lodged an amendment to the draft regulations but they wished to highlight their concerns to Members. It appeared to me that it would be useful - and the vice-chairman has just spoken so maybe the chairman could address this now- if the chairman or another panel member could tell Members what they were considering to lodge potentially as an amendment. They make it quite clear the panel has not lodged an amendment. I read into that that potentially they were considering lodging an amendment, I may be wrong. We can be told about that but it seems to me that if they were considering lodging an amendment it would be helpful to us to know what that amendment would be, I think maybe for Deputy Ward as well, the proposer of the request to have this referred back. It would certainly help me in my decision as to how I vote on the proposal to refer back. I think the comments themselves were pretty open-ended. They did not really support, I think, what the Minister was trying to achieve today. They did not clearly support that. I have seen more supportive comments from the Scrutiny Panel and in fact probably the Minister herself has written more supportive ... or as chairman of panels in the past has submitted more supportive comments. I would be interested to hear from members of the panel if not the chairman.

#### **8.2.7 Deputy G.C. Guida of St. Lawrence:**

I am going to add something that will have an influence on whether Members want to reference back or not. We have had similar problems in France and, frankly, the way this was addressed is that the problem really was fairness. So if I understand well the way the system works now, you start counting by hours. So somebody who works at a minimum wage for 8 hours, goes into the social security system, must pay 12.5 per cent to their employer, over £64 a week. Somebody who makes £50 an hour because they teach something, they are a student teaching guitar in their off hours, would earn for 7 hours £350 but not have to contribute to social security. Is it fair that something that it is not quantified at all allows some to make quite a good living out of something and not pay social security and others to get the absolute minimum wage and minimum work and have to contribute?

So I think the first thing is fairness. The second thing, and that is what happened in France, was basically safety, because it is also quite possible to negotiate with your employer to say: "Instead of giving me 10 hours, just give me 7 and say that you are paying me more. I will still work the 10, because you need the 10, but we will just return a note there." Of course that has quite an influence on work accidents and other circumstances where that person is still working but not supposed to be there. We have talked about the unseen problems of changing this to value but we have not talked about the benefits of changing it to value, the fact that it is fairer and much safer.

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

I do not disagree that there is merit in considering this change in due course but my concern is that there are still several unknowns and we do not know how it is going to affect different industries. I do not know what level of consultation has been done in reality. On the one hand, of course, I am thinking of hospitality and I am thinking that only this week we have heard again how there are real issues that are facing that industry, but I am also thinking about, for example ... and I do not think I need to declare an interest in it because I do not do that much of this work but I have got friends who are quite close to, let us call it an industry but I think it is much more informal than that, the music industry. I think conversations need to be had about how that is going to affect them, because what happens is that a lot of the hourly rate that is charged, for example, for musicians or for even people who provide services that are ancillary to that, the hourly rate may seem like quite a lot but once you take into account the fact that, first of all, a lot of them will not be registered as businesses and so will not be claiming expenses and will not be deducting that from their hourly rate, there are real costs that are nonetheless associated with it. There may be public liability insurance. There is the cost of buying and servicing the instruments or the amplification equipment. When you take that into account, while a lot of them do and are happy to put that down on their tax receipts, they are not necessarily making profit always. What I know from the music industry, again if we can call it that, is it is often informal musicians who are playing a little bit at the weekends and the occasional wedding, the occasional pub gig now that they are allowed again. They are using that often to supplement other work that they are doing, but often they are doing a lot of voluntary work on the side, which again I am saying cross-subsidises. If they were to be charged contributions on this ... and maybe the Minister will say that it does not really apply to these people, not the self-employed, but I am not clear about that. So I would like to have more information about how it is going to affect different industries in particular, not only in the one I have just mentioned but more generally. I do not feel that the right level of consultation has been done and I do not see why it needs to be brought in now. If it is a good idea it will probably remain on the table but I think, as Senator Ferguson often says, we need to know about the unintended consequences of anything that we are putting forward and here it seems that there may well be some. So a reference back I think is entirely sensible.

### **The Bailiff:**

Does any other Member wish to speak on the merits of a reference back? If no other Member wishes to speak, I close the debate and call upon Deputy Ward to respond.

### **8.2.9 Deputy R.J. Ward:**

Thank you to those who spoke, particularly those who focused on the reference back itself. I think there was a broad discussion, to be quite frank. I will start with Deputy Guida, he raises some points. I think the important thing is, yes, you are absolutely right, we do not know. We really do not have the data on that, we do not have the information on the effect of that in Jersey. This is exactly why the reference back occurs to me. Can I make a few points? I do realise it is close to 5.30 p.m. and I apologise for that, but it does not mean we just leave it and let things go through that are not detailed enough and have enough information for us to make an intelligent decision because of, as I think Deputy Tadier mentioned, as Senator Ferguson often says, the unintended consequences. There were some really important points made about the demographic: which demographic is this affecting most?

It is disproportionately younger people on this Island and we do not know and this is a regressive step back for us in employment law and encouraging young people into the workforce and so, therefore, it needs to be looked at and we need more information and detail on that. I hope people will understand this; this is not me sat here just trying to wreck something. I want to be able to vote appropriately and I do not believe that the comments - and I have read the comments, I will have you know - cover this in enough detail, and I was looking for the detail. As the debate has gone on, more and more people raised the issue and more and more questions arose in my head. I re-read the comments paper from the Scrutiny Panel and the Constable of St. Lawrence made a very good point about it not being the most supportive paper I have ever read and I totally agree. It is in those spaces that I believe that sometimes we make bad legislation. We are not saying throw this in the bin now, but what I am trying to say is we need a reference back to look at the things I have mentioned, the demographics, the industries, I have written here, but I have talked about particular sectors of our economy. To be quite frank, I think if we do have the reference back on that any sensible department would look at that and think: "Okay, yes, there was a good point in the debate about musicians, there was a good point about cleaners and so on. We will include that." We do not want to come back again and have another reference back when someone says: "We did not include these things." I certainly would be covering those things as well and that makes good law. The actual number of those that we are certain it will affect, it seems to me as a real guesstimate that we have of 600 but we do not know how much it will affect. What we could be creating here is an economy of: "I will say we pay you this but we will have this thing under the table because you will not have to pay social security." Is that really what we want to do to our young people: "This is your introduction into the workforce. You can fiddle your way out of paying tax"? That is not what we want to do and if that is an unintended consequence of this then we are passing the wrong laws. I would urge the Assembly let us vote for a reference back, let us come back to this when we have a lot more detail, let us have the debate in a much more informed way. The Scrutiny Panel might want to look at it again and make some more comments, I do not know. I do not want to lump work on to them. But this at the moment, I cannot vote for it. It might be the wrong decision from what I have got. I think there are other people in this Assembly who are so unsure as to what to do with this. So let us pause, let us go back to it. Dare I say, the benefit of 3-week sitting, we have got a bit of time, a bit of irony for me there. But I believe that this is the right thing to do and I urge Members, please, to vote for the reference back and let us look at this in more detail later on.

**The Bailiff:**

I ask the Greffier to put a vote into the link. The vote is on a reference back to secure the information originally set out by Deputy Ward but it seems to me that there are additional items of information that other Members have sought as well. It is a reference back. I ask the Greffier to open the voting and Members to vote.

[17:30]

If Members have had the opportunity of casting their votes then I ask the Greffier to close the voting: 20 votes pour, 18 votes contre and one abstention in the link. A further one vote pour in the chat, making it 21, and 3 votes contre in the chat and in the Assembly, making it 21, and I am afraid that means that the proposition is lost.

<b>POUR: 21</b>		<b>CONTRE: 21</b>		<b>ABSTAIN: 0</b>
Senator S.C Ferguson		Senator J.A.N. Le Fondré		Connétable of Trinity
Senator T.A. Vallois		Senator S.W. Pallett		
Senator K.L. Moore		Connétable of St. Helier		
Senator S.Y. Mézec		Connétable of St. Lawrence		
Connétable of St. Saviour		Connétable of Grouville		

Connétable of St. Mary		Connétable of St. Peter		
Connétable of St. Ouen		Connétable of St. Martin		
Connétable of St. John		Deputy J.A. Martin (H)		
Connétable of St. Clement		Deputy of Grouville		
Deputy G.P. Southern (H)		Deputy J.M. Maçon (S)		
Deputy M. Tadier (B)		Deputy S.J. Pinel (C)		
Deputy M.R. Higgins (H)		Deputy of St. Martin		
Deputy of St. Mary		Deputy of St. Ouen		
Deputy J.H. Young (B)		Deputy L.M.C. Doublet (S)		
Deputy of St. John		Deputy R. Labey (H)		
Deputy M.R. Le Hegarat (H)		Deputy S.M. Wickenden (H)		
Deputy S.M. Ahier (H)		Deputy G.J. Truscott (B)		
Deputy R.J. Ward (H)		Deputy L.B.E. Ash (C)		
Deputy C.S. Alves (H)		Deputy G.C.U. Guida (L)		
Deputy K.G. Pamplin (S)		Deputy of St. Peter		
Deputy I. Gardiner (H)		Deputy of Trinity		

Deputy Ward, had you finished your speech?

**Deputy R.J. Ward:**

Is this on the main proposition? No, Sir, I had not.

**The Bailiff:**

We have reached the time that Standing Orders require that I invite the Assembly either to adjourn until tomorrow morning or to continue.

**Deputy R.J. Ward:**

I am happy to accept the adjournment mid-speech, Sir.

**The Bailiff:**

Is the adjournment proposed? Is it seconded? **[Seconded]** Does anyone wish to speak on the matter of an adjournment? No, everyone seems to be moving for the adjournment. The Assembly stands adjourned until 9.30 a.m. tomorrow morning.

**ADJOURNMENT**

[17:32]