

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 3rd NOVEMBER 2021

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[9:30]

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

COMMUNICATIONS BY THE PRESIDING OFFICER

The Deputy Bailiff:

1.1 Written answers to questions

I first want to say something about written answers to questions. Standing Orders provide for a written reply to questions. Members asking a question, usually of a Minister, must comply with a deadline to submit those questions, and Standing Order 12 provides that respondents are asked to provide their replies by noon usually on a Monday. In practice, this deadline may be extended to 5.00 p.m. by the Greffier, and the Greffier will distribute electronically and in paper form a reply to questions to be tabled at a meeting of the Assembly. Failure to respond in good time to questions that are properly asked puts the questioner, usually a Back-Bencher, at a disadvantage. Members will prepare for a meeting of the Assembly - sometimes for debates, sometimes for oral questions without notice - by reference to the answers that they have received to written questions. It is important that Ministers comply with these deadlines and even more important, now the Assembly is meeting on a 3-week cycle. It is inexcusable that at least 3 Members - Deputy Ward, Senator Mézec and Deputy Gardiner - did not receive replies to questions by 5.00 p.m. on the day before the sitting of the Assembly. Indeed, in respect of 2 of Deputy Ward's questions there had still been no reply by the time the Assembly met yesterday morning. Furthermore, there was no explanation or reason given at the time when the deadline passed in any of the cases as to why the relevant Minister had failed to meet that deadline. Such a failure is discourteous to the Members who ask questions and to the Assembly. Ministers must ensure that they and their senior staff give sufficient priority to these questions so that they are responded to within the deadline. It is not in the interests of good government or proper scrutiny of the Executive, for the Executive to fail to respond to deadlines that they have agreed to pursuant to Standing Orders.

1.2 Resignation of the Greffier of the States

The second announcement I have to make is that the Bailiff has today received a letter from the Greffier of the States indicating his intention to resign from his post. The Bailiff has agreed that the Greffier can stay in post until next summer to assist with transition. Arrangements to recruit a new Greffier will be announced in due course. There will be another time when we can properly reflect upon and mark the Greffier's contribution to the life of this Assembly.

Senator L.J. Farnham:

On the subject of questions, I just wanted to ask for your ruling on something in oral questions yesterday. Senator Moore asked a supplementary question which alleged that members of the hospital project team were overheard in conversation and quoted what was allegedly said. I understand that might be in breach of Standing Orders and I refer to Standing Order 10(7). I wonder if you might rule on that. Thank you.

The Deputy Bailiff:

I think from my recollection, Senator Moore, you were asking the Minister about the accuracy of a conversation overheard between 2 unnamed officers; I think that is right. Is that correct? I think that technically that is a breach of Standing Order 10(7), which says: "A question shall not ask whether a statement in the media or made by any individual who is not a Member of the States is accurate." I do not propose to suggest that the record be amended as no persons were identified in the question that you asked.

Senator K.L. Moore:

The purpose of reiterating that conversation was not a question of the accuracy of said conversation but to portray to States Members the attitude that we are dealing with, particularly in relation to the attitude to Scrutiny.

Deputy R.J. Ward of St. Helier:

Can I just point out, the written answer to question 428, I wonder whether that should be in the public domain in terms of the response to that, the fact that the answer was inadequate and needs to be redrafted. It is just because ...in terms of the public domain of the outcome of these decisions. It is the email that we received today.

The Deputy Bailiff:

Yes, I am just going to see if I have 428 in front of me. I did print it out last night.

Deputy R.J. Ward:

I have the text of the email if that helps.

The Deputy Bailiff:

No, I have it here. Yes, as it is in the public domain I was asked to rule overnight on whether certain answers given by Ministers were compliant with Standing Orders in terms of being a relevant response to the question posed. I ruled in relation to the answer to written question 428 that it did not comply with Standing Orders as set out in a communication to Members. It was merely an extract from some conditions of carriage and did not appear to be directed to the question at all. I directed the Minister to provide a proper reply by 9.30 am tomorrow. Deputy Lewis.

Deputy K.C. Lewis of St. Saviour:

Thank you. It is a referenced written question. Two questions did go missing, for which I apologise to the Deputy and to the Assembly. We received the first question but not the second and third. I was as surprised as the Assembly when it was discovered. I have no knowledge whatsoever of the 2 questions, but measures have been put in place to see that it does not happen again. As I say, I apologise to the Assembly and the questions have now been answered.

[9:45]

The Deputy Bailiff:

Well, one of them was answered in terms which requires the answer to be reconsidered.

Deputy K.C. Lewis:

I beg your pardon, Sir, was that the numbers and ages question?

The Deputy Bailiff:

No, it is 428. I am not going to read out the question but it is the answer to written question 428, which you need to address again within the deadline permitted by Standing Orders. Deputy Tadier, a point of order.

Deputy M. Tadier of St. Brelade:

It follows on from the rulings on written questions. When I submitted my question about social security contributions it was to ask for figures about the financial impact that changes would have. They were not supplied and I would like to know your ruling because even though in broad terms the answer did address the question, it did not provide me with the information I was seeking. I do not know how I would have phrased the question any differently to try and solicit the information. Based on what you said earlier, that effectively puts me at a disadvantage in the sense I do not have the figures that I wanted to have a look at and analyse to decide whether or not to take a further step. I am effectively delayed in any potential action that I want to take on that.

The Deputy Bailiff:

Which answers were these because I have already ruled that in relation to 2 answers that concerned you? They were tabled last Monday so the time for querying those has elapsed. Are there other ...

Deputy M. Tadier:

I did not know whether the time had elapsed.

The Deputy Bailiff:

Yes, it is in my email to all Members, including you. I sent it this morning, you may not have seen it yet.

Deputy M. Tadier:

Thank you, I will follow that up offline then in that case.

PUBLIC BUSINESS - resumption

2. Competent Authorities Ministers: Release of Minutes of Meetings to Scrutiny (P.86/2021) – Amendment (P.86/2021 Amd.) - resumption

The Deputy Bailiff:

We return to the debate on the amendment to the proposition. The next Member I have down to speak was the Deputy of St. Martin.

2.1 Deputy S.G. Luce of St. Martin:

As the cliché goes, I had not intended to speak in this debate because I did not think there was anything particularly contentious here. I was going to support the proposition. I did not think the amendment did much to help but I can see the importance of getting information and thought it was all fairly straightforward. Then the issue of legal advice came up, the importance of any party taking legal advice in confidence. As I listened to that I found myself asking the question: “How would I feel?” Previously I have been in a position where I have needed legal advice and taken it. I had always worked on the basis, as the Attorney General says, that you take it, you do not disclose you had and you certainly do not disclose the advice you have had. I felt that was really important because people across this Assembly, wherever they sit, are entitled to legal advice and I think that is the premise that we all work under. I found myself sort of starting to sway towards not only the amendment but going even further than that. Then I sat down and looked at it and listened to Senator Vallois late yesterday afternoon who made absolute complete sense on 2 counts. The first one, of course, I had not appreciated is that Scrutiny panels and P.A.C. (Public Accounts Committee), for example, receive all the minutes **[Interruption]** ...

The Deputy Bailiff:

Sorry, is that someone who ought to mute themselves that has joined us remotely?

The Deputy of St. Martin:

Unless I have become a ventriloquist very quickly. I have almost lost my train of thought. Senator Vallois made 2 points. The first one is that Scrutiny does not want to be confrontational, Scrutiny wants to be a critical friend, Scrutiny wants to help make things better. Certainly that is the way I have always worked in Scrutiny, get together with the Minister and see whether you cannot make the Minister’s propositions work better for the betterment of everybody. Then, of course, the other one, as I was about to say, was that Scrutiny Panels receive unredacted minutes, P.A.C. received unredacted minutes, but at no point do any of those minutes ever contain any of the legal advice. So the precedent is there already and when you get back down to the brass tacks of it, this is actually quite straightforward. There is no reason why Scrutiny should not receive unredacted minutes. Those unredacted minutes will not contain the legal advice; they do not at the moment and they will

not in the future. On that basis, I would ask Members to reflect on those points and I am going to support the proposition on this one. I think it is important on this matter that we see exactly what is going on and we do not expect to see the legal advice because it is not provided.

The Deputy Bailiff:

Does any other Member wish to speak on the amendment? Deputy Ahier, I saw your light first.

2.2 Deputy S.M. Ahier of St. Helier:

It was suggested yesterday that we should amend the proposition overnight to make it clear that the Corporate Services Scrutiny Panel does not call for the sharing of legal advice. As Members know, last minute amendments on the hoof do not generally happen in this Assembly. However, it is our view that an amendment is not necessary in any event. As Senator Vallois said in her speech, the intention of the proposition is clear and the information would be shared as per the code of practice, as agreed in P.56/2018, which was adopted by the previous Assembly on 10th April of that year. Paragraph 36 of the code of practice proposition is very clear on this point. It states: "It is recognised by the States and the law officers that the process of seeking and taking legal advice from the law officers is confidential." There is already precedent for unredacted minutes, which do not contain legal advice, to be circulated to Scrutiny Panels. Both P.A.C. and Economic Affairs panels have received such minutes. Also as this is a proposition and not legislation, the meaning of the proposition will be clear by looking at the code of practice and at Hansard; therefore, the language of the proposition is acceptable in these circumstances. It was never the intention of the panel to receive legal advice as a result of the main proposition. We had assumed that the code of practice would be in play. At no time did the Attorney General raise concerns with us about the proposition and any need for an amendment. The amendment restricts the ability of a Scrutiny Panel to see minutes, which given that other panels have received minutes during this term of office suggests that the bringer of the amendment is acting to discriminate against the panel. We hope that the Assembly will reject this amendment and support the openness and transparency that is at the heart of the main proposition, the aim of which is to support the effective work of Scrutiny in holding Government to account. Thank you.

2.3 Deputy R.J. Ward:

I am very pleased to follow Deputy Ahier. He has covered most of the technical points I was going to raise. I asked questions yesterday because my interpretation is exactly that as voiced there and in the email to Members that we received this morning to clarify. We do receive minutes from meetings. We receive Council of Ministers' minutes without legal advice. The situation regards whether we receive legal advice is in the code of conduct. I think the thing that worries me most about the amendment here is that it seems to have ... it is like a generic but gentle and ever-pervading lack of trust in Scrutiny at the moment, which is unfair. Not only is it unfair but it is dangerous for our governance. What Scrutiny has done is try to hold a government to account. That is not easy to do. Scrutiny is not resourced as well as Government. It is very difficult to get Members on panels because everyone is so busy. Scrutiny members work incredibly hard. I am quite happy to stand up in this Assembly and say to Ministers: "I believe I work incredibly hard as a Chair of a Scrutiny Panel and put in the hours. I am willing to have my workload and my day absolutely scrutinised as to what I am doing." So many members of Scrutiny do exactly the same, particularly if you are the Chair of a Scrutiny Panel. It concerns me that this amendment seems to chip away at that trust and what we are doing in Scrutiny. I am concerned about the future. I would like to reiterate some points that were made by Deputy Morel yesterday. I do not always agree with Deputy Morel but I think he spoke very well yesterday when he made some very key points about the future of Scrutiny and the future of what we are going to do in future Assemblies. I came into this Assembly as a party member and I believe in party politics. I have been wrongly suggested with regards using Scrutiny. Those sorts of suggestions are simply there to undermine the accountability regime that Scrutiny has. We need

to get right in this Assembly the triumvir, if you like, of Scrutiny, Government and oppositions that will come from party membership. Those 3 things exist in Parliaments around the world. One of the key points of that is giving Scrutiny the access to information and the quality of information that it needs so it can do its job, so it can track the development of ideas. It can track the development of policy to see where it fits in. I point to a Scrutiny panel hearing with the Minister for Home Affairs the other day, where he was courteous enough at the end to say: "I would like to thank Scrutiny for the work they have done on the Government Plan because it is raised issues that we had not seen." I was very pleased to say ... and the Deputy and I are very different politically but within that Scrutiny process I am pleased to say that we could hold our head up and say: "We have done good work to try and look at the Government Plan and uncover points from a different viewpoint." On that Scrutiny Panel is indeed different voices. That is the process that we need to understand here. If we all understand, and I am sure that we do, and put that right at forefront of what we talking about today, we can understand why we need to give access to these types of minutes without a fear that they will be misused, that confidentiality will be broken, and, third - which has been spelt out very well by Deputy Ahier - there is a protocol in place that will ensure that those things do not go wrong. I would say to you that in future any attempt, by any grouping, any party, to undermine that has to be resisted. But - and we all need to remember this, particularly those who have the reins of power - if you want to stop criticism or accountability, you are in a very dangerous position and you will not provide good governance because you will end up in an echo chamber of your own views only. You may not like to hear what is being said but you have to listen. Part of that, and I come back to this again and will finish with this, is releasing information as appropriate. This particular context around S.T.A.C. (Scientific and Technical Advisory Cell) minutes is so crucial for this Island over the last year and a half in what we have been through to give confidence to our population that the decision-making process has been appropriate to get the population onside because we may well need that again as we go through this pandemic. I see this amendment as unnecessary to the main proposition. The main proposition is a positive step forward and I really hope that people can put aside their partisan thoughts and look at this and say: "Yes, this is a good step move for this Assembly, it will open up accountability, it will open up governance and transparency" and that is desperately what we need at the moment to convince the people of this Island that we can value what we do in this Assembly. I urge Members to reject the amendment and go for the main proposition because it is a positive thing to do. Thank you.

The Deputy Bailiff:

There is a point of order from the Chief Minister.

Senator J.A.N. Le Fondré:

It is in relation to the Deputy of St. Martin who asserted that the minutes did not contain legal advice. I can confirm the Attorney General and other law officers have spoken and provided advice to Competent Authorities Ministers and, therefore, the minutes will contain a record of that advice. I cannot obviously go into what level of detail that will be and, therefore, would suggest that the Deputy has inadvertently misled the Assembly.

Senator K.L. Moore:

I raise a point of order on the comments of the ...

The Deputy Bailiff:

I am not sure that was a point of order.

[10:00]

Senator J.A.N. Le Fondré:

Well, he made an assertion that the minutes did not contain legal advice and what I am saying is - maybe it is a point of clarification - that is not factually correct.

The Deputy Bailiff:

The minutes are not in front of the Assembly and they cannot be in front of the Assembly, you have made your point. Thank you, Chief Minister. Senator Moore, do you have a point of order?

Senator K.L. Moore:

Yes, I believe that the Chief Minister has just ... I would like to clarify the point he has made. The point that the Deputy of St. Martin made very clearly, as did Deputy Ahier, is that the precedent that has been set is that unredacted minutes are being shared with Scrutiny Panels that do not contain legal advice. The legal advice is removed under the conduct of practice. It was most unfair.

The Deputy Bailiff:

This is not a point of order either, I do not think, but I follow what you say. Deputy Martin.

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

I listened very clearly every time the Attorney General spoke yesterday and I think a lot of other people should have done as well. The Attorney General will not get political but the Attorney General said he has read through 41 sittings of the Competent Authorities minutes and they are not separate because he has giving legal advice. We were shutting pubs down, we were shutting hairdressers down and what was the comeback on this. So the legal advice will be in the text. The Attorney General said: "How do I square this circle of not being redacted?" It does not matter about the code. The code was put to the Attorney General 3 times, twice by Deputy Ward and once by Senator Vallois. Then she stood up and said: "Because we have the code you do not have to release the advice." No, he does not but he would have to redact it. It says quite clearly "unredacted minutes". It does not get any clearer than that. If it had been written on a separate sheet of paper after ... I have been on P.A.C. and I do not remember getting much legal advice. I was on it for 3½ years. This is different. It was something that had never been done in Jersey. We were telling people to shut their businesses, go home. Civil liberties we were taking away and needed legal advice on that all the time. It was not written on the side, it will be in the minutes and that is the action, action, action. I do not know how you get around ... whatever the code is you cannot square the circle that literally the proposition as unamended says "without redaction". As clear as the day and is exactly what the Attorney General said yesterday, if he is ordered by the Assembly in the wording he would have to give over the minutes unredacted with all his advice in it. Then I come on to the proposition. We are on the amendment but when we go back. It is what they want to do with it. It is never going to go public, they are going to have to write a thing that would ... they want to have a good overview of what was going on in the rooms with the Ministers, what decisions were made. There must be a way that we can get it to the public without using that information. Then comes a real howler, a public interest test. It comes back here. We want to give it out. Again, they still have the legal advice in it. Legal advice is only that. All legal advice can be challenged by another solicitor and that is what we are going to put our Attorney General in because we will have to release an unredacted ... Senator Moore is shaking her head at me. It is unredacted legal advice that is in the minutes. Very much legal advice, the Attorney General said he had read through them all and he would be very uncomfortable if that was put out there. It is just one word. I do not know if they take it away and they say you can redact legal advice, that might work. We cannot do it today. I have to vote for the amendment because our legal advice ... whoever is Minister next time has the privilege of Council of Ministers and C.A.M. (Competent Authorities Ministers), who will be going on, of having good legal advice given directly, knowledgeably and in confidence. But, as I say, legal advice once it is out there can be challenged by another legal person. We do not want that. It is not as simple as now standing up, I had an epiphany overnight, we had an email overnight, it does not say ... what is on

the tin is what is in the proposition and what the Attorney General said is he would be put in a very, very awkward position. You kept trying to ask the question in a different way and he kept saying the same answer, he does not want his legal advice out there. This proposition says we cannot redact it, the circle will not be squared. Thank you.

Senator K.L. Moore:

Sir, may I ask you to offer some clarity to Members on this point because ...

The Deputy Bailiff:

Yes, I think I need to give a ruling on my interpretation of the effect of the proposition. Yesterday I was asked to give a view and I indicated that to some extent my view of the meaning of the proposition would depend upon a declaration on the part of the proposer as to what was sought. We now have that declaration from Deputy Ahier this morning. Of course, we saw the email communication from Senator Moore last night to the effect that there is no intention on the part of those proposing this proposition to conflict with the code of practice for engagement between Scrutiny Panels and the Public Accounts Committee and the Executive lodged in February 2018 by the Chairmen's Committee, which in clear terms at paragraph 36 recognised by the States and the law officers that the process of seeking and taking legal advice from the law officers is confidential. I have had the opportunity to read that code of practice overnight, which I am sure other Members have also had the chance to do, and my ruling now is that the proposition must be read alongside the 2018 code of practice. It does not conflict with it and there would need to be clear words in a proposition to oust or set aside the constitutional convention regarding advice from law officers regarding which the Attorney spoke yesterday. Accordingly, my ruling is that the proposition, when it speaks of receiving unredacted minutes, does not extend to the provision of legal advice from the law officers.

Senator J.A.N. Le Fondré:

May I ask a question of yourself just to understand a bit further the ruling? It comes a little bit to what myself, somewhat less eloquently, and Deputy Russell Labey, very eloquently, expressed last night. Does that redaction then extend to discussions over the legal advice that had been granted to Ministers?

The Deputy Bailiff:

That is rather a technical question about the extent of legal privilege.

Senator J.A.N. Le Fondré:

That is the problem.

The Deputy Bailiff:

I do not think that I can get into that. Obviously, if minutes speak to the legal advice that has been given and recites the legal advice then that material is privileged. If the minutes recite that certain things were done on legal advice then those things that were done are not covered by privilege and those minutes must be disclosed if the proposition is adopted. I do not think I can go into the detail of the effect of the ruling I have given because the minutes will need to be looked at, if they do refer to legal advice, carefully before they are disclosed.

Senator J.A.N. Le Fondré:

The code also says that it should not be referred to in the public domain that legal advice has been sought, for example.

The Deputy Bailiff:

Yes, I have just ruled that it is accepted by the proposer and my ruling is that the proposition, if adopted, will be read alongside the 2018 code of practice and is not intended to disapply or make inroads to it.

Deputy J.A. Martin:

A clarification, to be quite clear. What you are saying is if the minutes are released because of the code the legal advice will be redacted?

The Deputy Bailiff:

Yes.

Deputy J.A. Martin:

Thank you.

2.5 Deputy M. Tadier:

If it is okay at this juncture, the question I have for the Attorney General would be to clarify that first of all when we talk about legal advice being privileged, are we talking about that being an absolute exemption from it being disclosed or a qualified exemption? To give it context, the Attorney will know that there are some high-level precedents in Commonwealth Parliaments. One thinks of the Lord Goldsmith advice that was given on the Iraq war, which had to be disclosed in 2003 to the Chilcot inquiry about what that legal advice was. If, for example, it was not the Scrutiny panel who was asking for, let us say, the legal advice ... in fact the minutes but it could also be the legal advice to be given to them, it is not to be published publicly, I would add, if there was an F.O.I. (freedom of information) request, is it correct that as a presumption against giving legal advice out, but that is a qualified exemption rather than an absolute one and because it is qualified the public interest test would have to be applied, and if so where would the public interest test be applied in that and by whom?

The Deputy Bailiff:

Mr. Attorney, do you want to deal with that or do you want to reflect upon that?

2.6 Mr. M.H. Temple Q.C., H.M. Attorney General:

I am not sure how relevant that question is to the practicalities of this particular case. I think it is pretty clear the position has been established that the legal advice is to be redacted. The legal advice in question is law officer advice and, as I said to Deputy Tadier yesterday, that requires both the Minister and the law officer to agree to waive any privilege that applies. The privilege in that advice is absolute. The code itself, and this is the problem that we have been grappling with, permits the disclosure of legal advice in exceptional circumstances. That is the problem that we have been grappling with and that is the ambiguity in the code, in that it both agrees that the legal advice, law officer advice, is confidential and privileged but it also goes on to provide that it can be disclosed in exceptional circumstances. Something like Lord Goldsmith's advice concerning the Iraq war would probably be one of those exceptional circumstances. As I made absolutely clear yesterday, this in my view is not one of those exceptional circumstances. Paragraph 39 is not a basis for support for this proposition as unamended for saying that it does not mean that legal advice is to be disclosed because paragraph 39 expressly allows for the disclosure of legal advice in certain circumstances.

[10:15]

Going back to Deputy Tadier's question, the privilege is not absolute in that it can be waived in exceptional circumstances. But in this particular case we are not in that category of exceptional circumstances. I think that is as far as I can take the answer.

Deputy M. Tadier:

If I could just follow up quickly, the reason I think it is a relevant question in this context is that from what I understand - I did work on the F.O.I. law when I was on P.P.C. (Privileges and Procedures Committee) back in the early days, 2009-ish. From memory, when putting a freedom of information request in as a member of the public, legal advice is qualified exempt, it is not absolute. My concern or my question would be if a member of the public were to submit exactly the same request that the Scrutiny Panel are putting in, I would not want to think that they would have greater access to that information, because somebody would have to make a judgment call about where the public interest lies in the disclosure of the minutes, including the legal advice versus that information not being disclosed. Whereas in this case we are being told that there can be no wiggle room given to the Scrutiny Panel. It just seems to me, and that is the question to the Attorney General, whether somebody putting in the same request in under F.O.I. would have a better chance of securing the information that the Scrutiny Panel is seeking than presumably the sovereign state body Assembly putting that same request in?

The Attorney General:

I confirm that a member of the public submitting a freedom of information request, which asks for copies of the minutes unredacted, which would include the legal advice recorded in those minutes, would not be entitled to receive the unredacted copy of the minutes, which includes the legal advice because the legal advice is privileged and it is exempt under the Freedom of Information Law.

Deputy M. Tadier:

I know it is exempt; is it qualified exempt or absolute exempt?

The Deputy Bailiff:

I think the Attorney will need to look at the law and come back to you on that, unless you want to do that now?

Deputy M.R. Higgins of St. Helier:

Can I just say something that may help the Attorney General when he goes to look at it? I can remember being on the same panel and reviewing this. I asked for the panel to bring over people from the U.K. (United Kingdom). We got expert advice on it, and although the Attorney General at the time, our former Bailiff, wanted to have an absolute exemption the panel decided no, it could only be a qualified exemption in the sense that it had to go through a public interest test. Yes, the public interest test may be very high but it did not mean that the information could never be revealed. I think the point here is that any member of the public who have had an F.O.I. rejected would be able to go to the court and argue that it was in the public interest for the information to be given. Then it would be decided at that point. It is not an absolute exemption.

The Deputy Bailiff:

Does any other Member wish to speak on the amendment? Senator Farnham.

2.7 Senator L.J. Farnham:

Your ruling and following advice from the A.G. (Attorney General) has pretty much covered the points I was to make. I was going to raise the issue about paragraph 39 that allows for the disclosure of legal advice in exceptional circumstances and that might not apply to this instance. Is the Attorney General saying that none of the circumstances around Competent Authorities Ministers' work throughout the pandemic, past and future, would be considered as exceptional?

The Attorney General:

I cannot bind myself with regards to the future but I have looked at all the minutes from the previous advice and I am satisfied they do not fall into the category of exceptional circumstances.

Senator L.J. Farnham:

Just to conclude my short contribution, this is possibly for the Chief Minister to decide upon, but perhaps the ruling and the advice from the A.G. would almost satisfy what the amendment is seeking to achieve. I would also like to impress upon the Assembly that openness and transparency has never been an issue for Competent Authorities Ministers. All of us in our deliberations and work, whether it be Scrutiny or the Government committees, sub-committees, groups, working groups, do require productive and, in some case, safe spaces to work in. Simply we are seeking to protect the confidentiality that Government and Scrutiny need on certain occasions. But I would reiterate that openness and transparency is not the issue here in any way, shape or form. The Chief Minister will obviously take a view on this when he sums up on the amendment. Thank you.

The Deputy Bailiff:

If no other Member wishes to speak on the amendment, I invite the Chief Minister to reply.

2.8 Senator J.A.N. Le Fondré:

What I will do is say a few words and I will then seek some advice, given what has been said. We were very clear in our discussions that we did not want to be put in a position, for all the reasons that have been elaborated on in the last 24 hours, that put the Council of Ministers in direct conflict between a decision of the Assembly - because of how we viewed the exact wording of the proposition and any decision made by the Assembly we will abide by - and the issues around, for example, a provision of legal advice because it is incorporated in the minutes and, secondly, the comment about the safe space. Members will be delighted to know that on the basis of your ruling just now I am going to certainly curtail a lot of my speech. What I will say is 3 things. First, in relation to comments made by Deputy Morel yesterday when he said that we did not, as an Island, have any secrets. There was no need for secrets in this way. The idea of a safe space made his skin crawl and he stated if you need a safe space as a politician you should not be a politician. I do need to address that because unfortunately in my experience that is not correct. We do deal with confidential matters that impact on the long-term future of the Island. For example, should we publish, for example - and I will get to the reason we talk about publishing - all of our internal discussions and comments about the negotiations around the development of the T.C.A. (Trade and Cooperation Agreement) and right now about fishing? Do we play that hand in public? I would have to say no one in the right mind negotiates with all of their cards open to the other side. I am talking about the other side being off Island. Ministers do, therefore, need the ability to discuss matters freely in a safe space. Anyone who thinks otherwise frankly is ... the Greffe prepared minutes are not an outline sketch. I will reiterate the point and my concern is that is what they will become, not necessarily under us but under future Councils of Ministers depending where this goes in terms of how bodies act in the future. I do have to also make the point - and I accept fully in the past there have been leaks from the Executive side, there is no question - there have been leaks from the Scrutiny side. Within the last year, a Scrutiny officer deliberately released information. I understand the exact reasons why but that is what happened, and a panel inadvertently disclosed the full set of slides that were given to them on a confidential basis on their website. I think we need to be very clear that the confidentiality of that safe space needs to be respected. That will go on to all sides. What I will say as well is that ... I will quote the Attorney General, who was obviously very uncomfortable last night. I think he is looking a lot more comfortable this morning, I would suggest. What he said when asked was that he would be constantly thinking well into the future: how would this advice as it is recorded in the minutes look to some third party that the advice is not given to, that do not understand the context of the advice? How would that look and how would it look if it was published to the world at large who are not in the same position as the person who has asked for the advice in that particular situation? To quote: "It would put me in a more difficult position." He also referred to the fact that advice is given on sensitive issues and it is very important that that advice is frank and does not flinch from expressing the consequences of certain actions that may follow if that advice is not agreed, or if it is

agreed. That is the whole point of the problem; that is what we have been grappling with. It is not about not wanting to be transparent, it is how the presentation of information can change depending on how the giver of that information perceives it could be used in the future. That would not apply to the legal advice but it could apply to all the advice presented to Ministers. That was why, in consideration, we brought the amendment to try to achieve much of what the Corporate Services Scrutiny Panel seem to be seeking without the very difficult position I still believe it will create and the unintended consequences that could arise. However, we have also very much read the mood of the Assembly and I am mindful of the comments from Ministers - not only those that have just been made but I have also received while your ruling has been made - and on that basis I think possibly the best way forward is to seek leave to withdraw the amendment and, therefore, the Council of Ministers will not be opposing the unamended proposition. **[Approbation]**.

The Deputy Bailiff:

You want the leave of the Assembly to withdraw the amendment?

Senator J.A.N. Le Fondré:

That is the best way forward, I think.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Is the appel called for on that or are Members content for the Chief Minister to withdraw the amendment?

Deputy K.G. Pamplin of St. Saviour:

We failed to hear the rest of the Chief Minister's conclusion due to the foot stamping, which is always nice to hear but if he could just repeat it because we missed his conclusion, if that is appropriate.

The Deputy Bailiff:

All right, I think he just said he wanted to withdraw his amendment. I do not think there is any more to it.

Deputy J.H. Young of St. Brelade:

Apologies for losing the flow but please can you raise the défaut on Senator Ferguson so she can participate in the vote?

The Deputy Bailiff:

Are Members content to raise the défaut on Senator Ferguson? The défaut is raised on Senator Ferguson.

Senator L.J. Farnham:

Just to be of assistance, I believe the Chief Minister said following your ruling and the subsequent advice from the Attorney General effectively confirmed what the amendment was seeking to achieve, he was, therefore, proposing the amendment is withdrawn.

The Deputy Bailiff:

Are Members content to proceed on the footing the amendment is withdrawn? Yes. In that case the amendment is withdrawn. Back to the proposition as amended. Does any Member wish to speak on the proposition?

3. Competent Authorities Ministers: Release of Minutes of Meetings to Scrutiny (P.86/2021) - as amended.

Deputy M.R. Higgins:

Just to ask that the Attorney General still, at some point, come back and give us the answer to whether it is qualified or absolute privilege. I think we need to know that.

The Deputy Bailiff:

Yes. Mr. Attorney, are you ready to deal with that issue?

The Attorney General:

Yes, I have only been able to look at it on my iPhone so I cannot give a full answer but it is qualified privilege. I am aware that there was a ruling of the Information Commissioner in relation to a case concerning the toilet at St. Lawrence Church where the Information Commissioner did agree with the particular form of law officer privilege. As I said yesterday, that form of law officer privilege is a special form of privilege in that it requires both the waiver of the person who has requested the legal advice and also the law officer who has given that advice. It requires the agreement of both of those to waive privilege in that advice. But in response to Deputy Tadier's question, it is qualified privilege rather than absolute privilege.

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? The Connétable of St. Ouen.

3.1 Connétable R.A. Buchanan of St. Ouen:

I am very pleased that the amendment has been withdrawn, although it has taken up an enormous amount of the Assembly's time and in my view we should never have got to this stage in the first place because I believe that this issue should have been sorted out privately between Scrutiny and the Government. We should not have wasted so much of the Assembly's time debating something that frankly **[Approbation]** is in many ways administrative. I am grateful for your ruling because that has clarified the position very clearly.

[10:30]

I would just like to re-echo Deputy Morel's comments. I cannot believe how a Scrutiny Panel - and I have dealings with my Scrutiny Panel who are extremely helpful - can function without seeing the minutes in an unredacted form; it is extremely difficult. I think we just need to remind ourselves that Scrutiny is here as our critical friend, not as an enemy, and we need to make sure that they have full information so that they can provide us with helpful advice, which sometimes we will like and sometimes we will not. But nevertheless at the end of the day it is Government's choice whether we accept the advice but we need, I think, a check and a balance. Without the provision of these minutes, I think it would be incredibly difficult to do that job, so I shall be supporting the proposition. As I said, I am somewhat disappointed that we have spent so much time talking about it today when we could have been talking about things that are more important and perhaps more productive. Thank you.

3.2 Deputy M. Tadier:

I think this whole debate has shown that we are in a, I think, very delicate position when it comes to matters of transparency if essentially what is being asked for here ... it is not legal advice that was being sought by the Scrutiny Panel per se, they just wanted to have the access to information to do their job. What is quite remarkable for me, trying to take a step back and perhaps look at it as a member of the public listening might also look at it, is that Scrutiny do not want to publish any of this information necessarily, so there are already so many layers of protection in there. What this tells me is that I think in the 21st century the presumption of openness and transparency about how decisions are made have to change. I understand that there are exceptional circumstances already when legal advice can be waived. I cannot resist saying that I hope that when it came to the matter of the St. Lawrence Church toilet that the information helped flush out the truth in that respect. **[Laughter]** That is the first time I have heard the Chair laugh; you are too kind.

The Deputy Bailiff:

It is not the first time.

Deputy M. Tadier:

But maybe at one of my jokes, though, Sir. The point is I do not quite get this example. If the information is qualified exempt that must mean that the public interest must be applied. If the public interest comes back in favour of full disclosure, not redacted disclosure, we cannot simply say that there has to be some kind of quaint gentlemen's agreement whereby both parties agree to waive their privilege. It has to be because the Information Commissioner tells whichever party that the information needs to be disclosed. I think we have to get to that point, and I am not just talking about legal advice here, but I am not one of those who fully goes down the Deputy Morel point of view that there should be no safe spaces; I think I addressed that yesterday. The paradox is, of course, we have really one legal adviser in terms of the office. We have, of course, the Attorney General and the Solicitor General and I am very grateful for the advice that they give. They are very erudite - certainly I know the Attorney General better - but I know that they are also good individuals so this is not a personal criticism of them. But we have the paradox where, of course, if Scrutiny managed to ask the same question by chance of the Attorney General that the Ministers have asked as well, they can rest assured that they would hopefully be given exactly the same answer. But you have this kind of absurd ... I call it absurd from a public accountability point of view, but you cannot ask the Attorney General what question has been asked of him. We are even told that the Ministers cannot say whether they have taken legal advice, which is a bit crazy, because we know that it is a functioning fiction. Because, of course, you know that they are duty-bound to take legal advice on issues that are contentious or likely to be controversial or possibly illegal to prove to the Assembly and the public that what they are doing is lawful. So I think this whole episode has shown us that there does need to be a serious focus. I do not know who the right people are to do that, whether it is Privileges and Procedures or a special panel of Scrutiny. It may well be something that needs to be done after the next election. I think in order for this kind of debate to be avoided in future, it is really important that the Assembly knows that it can ask for full information when it needs it. Because certainly that is what the Freedom of Information Law envisaged, that the public interest test should always be applied and that the public should not have greater access to information than elected Members who might need that information to do the work that they are charged to do. In summing up, I fully support this proposition about what the Scrutiny Panel have asked for and I suspect it has been a debate which is focused on some niche areas which we did not think we would necessarily be focusing on so much. I hope now that the Scrutiny Panel can do that work and I thank them for the task that they have undertaken on behalf of the Assembly.

The Deputy Bailiff:

If no other Member wishes to speak ... Deputy Guida.

3.3 Deputy G.C. Guida of St. Lawrence:

We have talked about a few things here and, of course, legal advice has taken a lot of this. But I would like to come back to what is the essence of the problem and that is the notion of safe space. When we discuss policy development we need to be able to do it freely. I am going to digress quite largely but, do not worry, I will reach Jersey shores fairly soon. Six months ago I was offered an interview with the leading television channel in France about fishing methods. The Minister of the Sea had just threatened to cut our electricity and that leading channel wanted me on their prime hour, on their prime time, or offered the prime time, and wanted to record an interview. I spent a fantastic half an hour recording an interview with a French journalist who was learned and inquisitive and interesting and we had a fantastic discussion. Sustainability, we want to maintain the fishing for future generations. Our problem is to maintain the effort, make sure that not double the number of French boats will come into our waters. We spent half an hour discussing extraordinary subjects and

really going deep into the subject. At the very end of the discussion he said: "The Minister has threatened to cut your electricity, you must be worried." I said: "No, that is not terribly important. What is important is to sustain ..." "Wait, wait, the Minister has threatened to cut your electricity, you must really be fearful of that." "No, that is not terribly important to us. What is important is that ..." and he goes: "Sir, the Minister of the Sea has threatened to cut off your electricity, you must be in a panic." I said: "Listen, we have generators, we will fire them up and all that we can hope is that the smoke will blow off over France." **[Laughter]** **[Approbation]** Now which 10 seconds of the interview do you think went on prime time 8.00 p.m. television in the number 1 channel in France? Now, I have been doing pretty much this non-stop for the last 7 days and I must say I absolutely hate it. On one hand, you have to be persuasive, you have to bare your soul, you have to be truthful, you have to be forceful sometimes. On the other hand, you know that every single word that you utter may, and probably will, be used against you in exactly the opposite way that you have been trying to build other powers of conversation. Now, we are very careful of what we say here because it is exactly the same thing. It is a public forum and we are very careful. Most of us write down our speeches and edit them carefully to make sure that there is not a spare word, that there is nothing that can be taken out of context. We have Hansard that can prove retrospectively exactly what your speech was. Yet, sometimes little bits are taken off and used against us and used ... it is not against, it is the fact that it is used destructively. So, it is quite important when you are building up a policy, when you are having a discussion about policy, to have that safe space. Imagine if we extended the openness of the Government to our homes. You have a discussion with your spouse and that is going to be recorded because that is important. My discussions with my spouse are a very, very strong base of my ideas on policy. Are we going to record them? I hope not because at the least I would not make it out of this Assembly. We have to talk about everything and it is fantastic. We have this openness, this notion of being able to talk about everything. Now, I think that minutes in the Council of Ministers and in the Competent Authorities Ministers' meetings are primordial because it is essential that we keep access to those in case something serious happens. We may have an inquiry on what we did in C.A.M. and that would be legitimate. If you think that we have killed dozens of people in Jersey unduly, that we have not done our job and you need an inquiry, well, let us have it, and they should have access to those minutes. But if you say in advance those minutes are public, they are not going to be the same. That discussion will be very, very different. For starters three-quarters of it is going to happen in the pub beforehand and we will come in and say: "We do not need to discuss this much, here is our decision." What Scrutiny needs as far as C.A.M. is concerned is the initial document, what was used to make the decision, and the vote. What was the vote? To go into detail and say: "Wait a minute, somebody had to say: 'Oh, what if we do nothing and let everybody die?'" It is a question that needed to be asked but how important is it to point out who said that first, how they said that, how the people reacted? That has nothing to do with the issue. The issue is we were given data and we made a decision, so we are going to do things that are really not necessary here and they are taking away that safe space. If there is an inquiry, well, half of that discussion, half of that process will be hidden anyway because we will stop having it, we will stop making it. The Council of Ministers will last 15 minutes because we will do everything outside of that and I think that is wrong. I think it should be a free, safe space for everybody to discuss policy design, policy development. That is recorded because sometimes you do need to dig into it. If we start World War 3 with the French, somebody will have to look at why it happened and we need to have that recorded and we need to have those minutes. But the last thing we want is for our discussions on the negotiations, on the interaction, to be made public immediately. That is really, really wrong. Now, I am really sorry, but I think I must address the elephant in the room. Scrutiny should be a critical friend and most of it is and I must say that the panels I deal with are very professional. I am amazed because my Ministry's panel is led by Reform. They have shown fantastic maturity as a party, as politicians. They scrutinise, they do their job, they are extremely annoying, which is fair. It is a necessary thing, it is really important, they de-bug my policy. They came back with things I have not thought of. It is really good. It is really annoying but it is really important, really, really good.

They are doing their job, but not all the panels are the same. Some of our panels are destructive, they are the opposition. When Reform wants to be the opposition, they have a normal Scrutiny Panel that does its normal job and then they come out as a party or as individuals and bring propositions. It is their propositions; they may be against the Government but it is their propositions. They are fair. They are not mixing up the 2 and I think that is how it should be. Other panels will not do that. They bring propositions as a panel that are destructive, that are opposing, and that is wrong. So here, again, if we vote this what is going to happen is that there will be less transparency. The data will not exist when it should exist and there will be less transparency so do be very careful when you vote this, please. **[Approbation]**

[10:45]

Deputy I. Gardiner of St. Helier:

A point of clarification? I wanted to ask a point of clarification from the previous speaker, please. Previous speaker, Deputy Guida, said twice that the minutes will be made public and the public would know. I would like to ask from the previous speaker clarity that he recognises that the minutes the proposition is requesting, it is on a confidential basis to the Scrutiny and not to the public.

Deputy G.C. Guida:

I disagree a little bit. I understand that the minutes will not be made public but I also understand that Scrutiny wants them to do something with them, they do not just want them to have a little night-time read. So, if they do something with those minutes, that will become public.

3.4 Deputy J.H. Young:

I think I am going to change my speech after the last speaker because I think what we just heard was an argument that we have a choice. We can either run on a party political system or we can have a system where we work with Scrutiny; we work in partnership with Scrutiny and Scrutiny adds value. I think that issue plainly emerged to me. Yes, party politics gives you robust debates but I think this is a new thing for the Assembly. I think when we consider the proposition, we have to consider it as we are structured now. If things are to change in the future then, okay, when we get the report from P.P.C. about the way Scrutiny and the ministerial system is set up, I think that will lead to a debate and changes. With respect, I do not agree with my colleague on that. We work very well together all the time but I do not accept that, I am sorry to say. We have to deal with this proposition on its merits in our current context and the context is ... I think we have kind of drifted off of this a bit. It is about the minutes of the Competent Authorities Ministers. I have always had a problem with that group, not because I am not on it because, frankly, I am pleased that I was not on it, but what I found really annoying in the last 3 years is that every time the Competent Authorities Ministers make decisions, the media put: "The Ministers have decided. The Ministers, the Ministers, the Ministers." It is a subset of Ministers and on my understanding of its constitution - and this is the key point - there is not a proper constitution for it and there needs to be. As Deputy Morel told us, and he is absolutely right, the structure and the whole thing under the Emergencies Council is not satisfactory. We are not out of this pandemic yet, we are doing well, but we do not know what is ahead. I think it is really important because we do need this inquiry looking back - I do not know when it will occur but we do need it - and there needs to be disclosure for lessons learnt. So I think I would like to see commitment somewhere that we will have a look at that structure and get it right. Because the debate we have had about the legal complications, I think a lot of that just went over my head, it was such a really focused discussion on the legal issue. It seems to me that if you have a proper constitution, the constitution gives you the rules, then if you have a constitution with the rules, we will follow it, and we do not have that. I think the debate to me has illustrated further evidence that we do need to have a proper constitution. Because what that body is, my understanding is, it is the Ministers, their laws already give them decision-making authorities on matters that are germane to an emergency plus other invited Ministers. Of course, we know that from when we lost our former Minister for Children

and Education. The former Minister for Children and Education was not included. Of course, I am quite happy there is such a body but I think what is difficult is not knowing, not knowing on the basis of what information and what decisions are made. I think it is a perfectly reasonable proposition which is in the spirit of openness and transparency. So it absolutely is unequivocal for me, I am going to support the proposition.

3.5 Deputy M.R. Higgins:

I must admit I found Deputy Guida's speech excellent, to be perfectly honest. I know exactly what he means about the media. Again, I recently gave interviews to French media and I always believe in being open when I give my views, as I do in this Assembly, but at the back of your mind, again, you are always thinking about the editing. It is not just French media, it is local media. We all talk to the media, I think most of us have a good relationship with them. We do not know what they are going to use, and what can be a straightforward interview can be turned on its head, and so we all have to be very careful of the words that we use. Now that is one thing. I must also say, Deputy Guida, I hope you do not have a smart speaker in your home because Alexa is listening to your conversations with your wife and it may get out that way, so be careful. I must also say that I have always been in favour of transparency, and in fact many of the questions I was asking the A.G. ... I can remember going back to the F.O.I. discussions in P.P.C. 13 years ago and we got experts over from the U.K. I do believe in being as open as possible but it can bite you being very open. I can remember in my very first term I was Chair of the Economic Affairs Scrutiny Panel and we all know that Scrutiny Panels as government have private meetings and we have public meetings. I was so enamoured with the idea of transparency - and the rest of the panel agreed as well - we decided to have no closed meetings. So some of our private discussions were there and a member of the public, a certain blogger, put everything we said out on the web. Because we were having private discussions of what we thought about the Government policy and so on and how we should tackle this and some of our criticisms of it and almost our thoughts were there, I thought this person would be responsible - obviously I was very naïve - and it all went on the web and what did we do? We immediately went into private sessions when it came to discussing tactics and how we were going to go forward. Now, I can say as well, I personally have been very critical of the Scrutiny Liaison body. For a start, Chairs of the Scrutiny Panels do not come back and discuss the issues with us and say what they are planning on doing. Now our Chairs are on those panels, they should be discussing with it. I have asked for it to be minuted on the Scrutiny Panel that we get a report of what has gone on in Scrutiny: "Oh, it is just the same old thing, such-and-such a person is going on about that." No discussion. So, decisions are being made in my name as a States Member and propositions being brought and I have never been involved or ever been asked my opinion. Now that cannot be right. So, I am critical of part of what you do at Scrutiny. I do believe in Scrutiny as being a critical friend, I really do believe we need to be doing that. Some of what has come out of Scrutiny in recent years, I have to say, I think it is political, that is the way I view it. Now I can be critical of the Government but I can also be supportive of the Government if I believe they are right. That is my view, I am entitled to my own opinion. But if I am not being consulted and others are taking a different stance, I find that wrong. What I will say, though, is that if we were going to ask as a general thing for the Government ... and by the way, I am in 2 minds with this, I am not sure how I am going to vote. I still have my views about openness and transparency. Are Scrutiny also going to do away with their private meetings and their discussions or are their minutes going to be able to be read by the public as well? As I say, after being bitten once, I would be wary about doing it if I was you; I would think about it. You have your private discussions. Should Governments, everything they say be revealed? Should we have the same standard for all or what? So, all I would ask is, States Members, just think about it. What seems to be a simple thing is not necessarily that simple and at this point in time I still have not made up my mind how I am going to vote for this. I probably will support it but at the same time we need to be aware of the consequences of these things. Thank you.

3.6 Deputy R. Labey of St. Helier:

I enjoyed his speech too, but of course tonight's headline will be: "Deputy Guida starts World War 3 with the French." I am so relieved not to be having to vote against an initiative to increase openness and transparency and it would have been the very first time. I am concerned, though, that we are doing something we should never, ever do in this Assembly and that is vote for something that means one thing but says another. We are going to release these minutes, and that is the right thing to do, and we are going to release minutes but taking out the legal advice or certain references to the legal advice. Where in the world does that mean unredacted minutes? Only in Jersey, it seems, because what we are saying is this proposition says that, it says "unredacted minutes" and that is there in the law, but you have to go to the code and read the code alongside those minutes and then it does not mean unredacted. So it is not our finest hour.

3.7 Deputy R.J. Ward:

It is strange to be back in the Assembly standing up because agreeing with Deputy Guida makes me a little giddy and feel as I might need to sit down again. I am a little bit taken aback there. But I am really pleased that it has been recognised that on the Scrutiny Panel ... I disagree on a number of things but I disagree with one thing which is when he says I chair the panel as a member of Reform. I have to say, I know this is difficult perhaps for people to see, but I do not consider that membership of Reform is relevant to chairing that panel. I believe it is about doing a job on that panel because there are a number of Members on that panel. It is difficult obviously to get people who are really busy and often cannot attend the panel, so we have to make do a lot of the time. But there are a number of different voices on that panel and you need to listen to all of them. I would go as far to say it is good for me because, one, it gives different views, and, second, it shores up my opinions when they are tested so that I can bring forward ideas later on as a Member of this Assembly separate from the panel. I think a recognition of that role of Scrutiny being separate from other roles is very, very important because that is the process we are going to need to have in whatever system we have in the future. I disagree, I am afraid, with Deputy Young - I may have got the words wrong - when he said about you either have Scrutiny or you have party politics. That is not the case. Go and have a look at Assemblies around the world and you have party politics but you have Scrutiny and it is a process that we have to go through. But then that is where my agreement ends, I am afraid. The analogies with television interviews and kitchen conversations I think are somewhat flawed. The media are there for a particular reason and that is to just create a story, to sensationalise, to sell newspapers, to sell clicks on the website, let us be honest about it. There is evidence, if you have researched this, that on more developed democracies around the world, the reporting on medias from the most senior reporters. I think sometimes Jersey - it is very dangerous to be critical of the media - is a test bed at times for journalists when they are cutting their teeth. Sometimes that is why we get to those situations of sensationalist reporting and so on, so it is not blaming, it is just pointing that out. But Scrutiny is not there to sensationalise or just to make a story. It is there to try and analyse and produce information and guidance. I have to say recently when we have been trying to do more with press releases and so on, it has been really difficult for those officers to get an agreement from us as to what we are going to put through as a press release because we go through that Scrutiny process with a press release. I know that those officers are just tearing their hair out thinking: "I just want something simple to put out and you are going through every single word and analysing the meaning of every word. Just give me something to put out." It is difficult, so I think that analogy is false. In terms of this safe space, a safe space for discussion is fine, and we have to go through ideas. But I think what helps Scrutiny, and it is the Scrutiny Panel that will look at these minutes, is to see the development of these ideas, because if you can see the development of ideas you can see where perhaps errors were made in assumptions and you can then say: "Look, was this an error in assumption at that stage?", particularly around S.T.A.C. minutes, for example, and can we suggest that this was the error and where it was made, and you are giving Government a way out when you believe that there is something that is not working. So Scrutiny can be incredibly constructive in that process by knowing that information. I am going to repeat something that Deputy Morel said

yesterday because I think we are losing track. Minutes are not a transcript, they are not a transcript of a conversation, they are a summary of what was discussed.

[11:00]

I will say to Deputy Higgins in terms of minutes from meetings, they are online. The Scrutiny minutes from our meetings are all online, you can look them up, they are here. The closed meetings minutes that we agree in those meetings are all online for the public to see. There is full disclosure on them and those are the sort of minutes we are talking about. So I think this is a real step forward and what I would go as far to say is that I would ask the Government now to accept the proposition. I suggest in the spirit of transparency, in the spirit of saying: "Yes, we have nothing to hide", in the spirit of we want the public of this Island - and we are talking about the Competent Authorities Ministers here - the decisions that were made to remove the rights of people to do particular things; remember what we are talking about here. In the spirit of transparency over those issues, we need the Government to now say: "Yes, okay, we will go with this. We will go with this. Go with it and you can see these minutes for Scrutiny and there is another check and balance in place for the population and we will trust Scrutiny with these minutes." I urge Members to support this and I would say simplify this by the Government accepting this proposition and let us all move forward together and let us have genuine transparency in this Assembly.

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? Yes, Deputy Lewis.

3.8 Deputy K.C. Lewis:

I was not going to speak but was inspired by Deputy Guida's speech which I thought was excellent. I think I would tone it down very, very slightly inasmuch as obviously we must be open and accountable but the minutes as such, they just give a flavour of what went on, it is not the exact detail which has been expressed. So it can be misinterpreted in the actual minutes itself. I am a member of the Competent Authorities Ministers. It is a very responsible job which is not taken lightly by any of the members. I think we have had around 41 meetings since it was set up. I think the first one finished about 2.30 a.m. in the morning. It is very onerous, and we are very well aware of the responsibilities, which does weigh very heavily on us, and we are very well aware of the impact it has on the people of Jersey at large. As I say, I wholeheartedly agree with the sentiments of Deputy Guida but I think the minutes give a flavour of what goes on. Obviously it has been stated that the legal advice will be removed which, again, is like - how can I put it? - it is like giving somebody a recipe but taking out some of the contents, it alters things slightly. So I am not sure what use it can be to people but it will give a flavour of what goes on. I think I would reluctantly, in the course of openness, support it but I think it could be misinterpreted and I would advise caution. Thank you.

The Deputy Bailiff:

If no other Member wishes to speak then I call upon Senator Moore to reply.

3.9 Senator K.L. Moore:

I would like to thank everyone who has taken part in this debate. It has been an awful lot longer than we had expected and anticipated but, at the end of the day, together we got to the nub of the issues and we have clarified them, which can only be a good thing because ultimately that is part of the role of Scrutiny in itself. So thank you all very much for taking part in some Scrutiny in real time. I would like to offer a small piece of advice to Deputy Guida, both for giving media interviews and participating in meetings. It is generally not a good idea to make inappropriate comments during either of those occasions. That is my advice to you as a former journalist. For Deputy Higgins, there are S.L.C. (Scrutiny Liaison Committee) minutes provided for all Scrutiny members on the all Scrutiny members Teams channel so you can read them at your leisure. I take the point, I think that we ought to have more conversation about what is discussed at those meetings, but that is a matter

for another day. This proposition came about following a recommendation of the Corporate Services Scrutiny Panel's COVID response report, the first one that we published in March. Our work looking at COVID and the response to that continues to this day, as does the P.A.C. and their work on the same topics. Part of our job is to obviously follow up on recommendations that are made in our reports to ensure either if they are agreed to, whether that happens, and sometimes when they are rejected to follow up and perhaps look at it in a different way. So perhaps some of the confusion about whether these minutes are intended for publication with the general public or simply for the Scrutiny Panel and their understanding of this particular and very important subject is because our recommendation in that report was that the Government should make their minutes of Competent Authorities Ministers, Emergencies Council and S.T.A.C. public within 2 weeks of each of those meetings. That recommendation was rejected and so after some internal backwards and forwards and requesting the minutes privately under our code of practice to the panel, we sought the final straw, last possible option, which was to come to the Assembly and ask you for support in us having the ability to read the unredacted minutes but under our code of practice, without the legal advice contained, and so that is where we are today. It is a very simple request but it is one that we believe is really vital to this particular piece of work in terms of being able to hold the Government to account by understanding the conversations that have been conducted in those 40-plus meetings of the Competent Authorities Ministers. It is particularly important, as the pandemic has affected every single member of our community and, ultimately, we are all here simply to represent those members of the community. While the Government prefers not to conduct a committee of inquiry at this time, then it is the job of Scrutiny to hold the Government to account and continue to do this work, looking at the COVID response in our work in Scrutiny, which of course is an objective process. Therefore, that is why collecting information and evidence throughout that process is an absolutely vital part of it. I think that is all that is needed to be said at this point and, therefore, I would ask all Members to support this simple request and I ask for the appel.

The Deputy Bailiff:

The appel has been called for. I ask Members to return to their seats and I ask the Greffier to open the voting, which will include the placing of a link in the chat for those who are attending remotely. Greffier, are there sufficient links in the chat for me to close the voting? If all Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. I can announce that the proposition has been adopted:

POUR: 37		CONTRE: 5		ABSTAIN: 0
Senator L.J. Farnham		Connétable of Trinity		
Senator J.A.N. Le Fondré		Deputy S.J. Pinel (C)		
Senator T.A. Vallois		Deputy L.B.E. Ash (C)		
Senator K.L. Moore		Deputy G.C.U. Guida (L)		
Senator S.Y. Mézec		Deputy of St. Peter		
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				
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 of St. Martin				
Deputy of St. Ouen				
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 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)				

Senator K.L. Moore:

May I thank Members for their support and their confidence in the Scrutiny process.

4. Draft Employment (Amendment of Law) (No. 3) (Jersey) Regulations 202- (P.88/2021)

The Deputy Bailiff:

The next item is the Draft Employment (Amendment of Law) (No. 3) (Jersey) Regulations, P.88, lodged by the Minister for Social Security. For the purposes of this debate the main responder is the Chair of the Health and Social Security Scrutiny Panel. I invite the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Employment (Amendment of Law) (No. 3) (Jersey) Regulations 202-. The States make these Regulations under Articles 10(6) and 11(6) of the Employment (Jersey) Law 2003.

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

When I was first appointed as Minister for Social Security my assistant then was Deputy Southern and we asked J.A.C.S. (Jersey Advisory and Conciliation Service) to come in to talk to us and it was about zero-hours contracts or the abuse of. It was really interesting, 5 minutes into the conversation the lady from J.A.C.S. said: "If you really want to do anything to improve the Employment Law, you need to look at holidays and rest breaks." I said: "We do not have them?" "Oh, I have been telling the employers for years that they should be giving their employees a rest break." It used to work because some of them did not check our law. So I said: "No, absolutely we will do that." As soon as I completed Family Friendly, which took over a year, it got moved out, it got changed but it got through, everything got through in the end, I asked the forum if they would consult on daily rest breaks and statutory leave. Unfortunately, COVID halted the work but it came back in March 2021 and the Chair of the forum sent me her report and recommendations and then we sat down together and went through all the recommendations, explaining who she spoke to and why, because they consult so widely and, as I said, went through the details. The Draft Regulations we are debating today, if agreed, will come into force on 1st January 2022 and the evidence the forum gathered shows

clear benefits for employees' periods of leave and breaks for rests and refreshment. These Regulations will increase the minimum annual leave entitlement by a week and will introduce a daily rest break entitlement for the first time. The amounts of annual leave and daily rest breaks provided by employers varies. These Regulations, if approved, will ensure that every employee receives at least 3 weeks minimum annual leave and bank holidays and the right to a daily rest break. The forum recommends 15 minutes and I maintain the principles.

The Deputy Bailiff:

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

Deputy M.R. Le Hegarat of St. Helier:

I would just like to say that it will be Deputy Pamplin that will be the lead in relation to the panel of Health and Social Security.

The Deputy Bailiff:

Does any Member wish to speak on the principles? Senator Mézec.

4.2 Senator S.Y. Mézec:

It is simply to just very briefly say that in terms of the election manifesto that myself and my Reform Jersey colleagues stood on at the last election, we were absolutely crystal clear in this in that we had a very specific manifesto pledge, which was that we would support 3 weeks minimum statutory annual paid leave and, therefore, we can be delighted to be able to support this.

[11:15]

I only stand to make that point just to say that this is how politics is meant to be done, that you are clear about what you stand for before an election and then you can hold that up to your constituents and say: "I did what I asked your permission for me to do when elected." I would thank the Minister for bringing this and she has my and Reform Jersey's wholehearted support for 3 weeks of minimum statutory annual paid leave.

4.3 Deputy K.G. Pamplin:

I would just like to echo the words of Senator Mézec. As a member of this Health and Social Security Panel, again we worked constructively and in support of the Minister's intentions and our work here is to try and support. To echo the words of the Constable of St. Ouen earlier in the previous debate, it is a relief to be debating something that will benefit the people who put us in this Assembly, the lives of many voters and workers of this Island. The Health and Social Security Panel did produce a comments paper separately to the amendment we will get to very shortly on the breaks part. We did provide a separate comments paper on why the panel did not seek to bring an amendment to the increasing of the statutory annual leave entitlement. We did consider it, so I just thought it would be prudent to go through the comments notes for members of the public and Members who have not maybe read them in full. The panel received a report by the Employment Forum which had been produced, as the Minister stated, following public consultation on the current level of statutory annual leave entitlement and the rest breaks, which we will get to, and the proposal that the Minister is bringing today to increase to 3 weeks. The panel were surprised to learn that 2 weeks plus bank holidays was the statutory minimum for annual leave and was pleased to note that a number of employers offered their employees more on this Island, which is to be commended to those employers on this Island who do that. This is just a welcome tightening-up to support others who should be, we believe, and I think the Assembly, if they vote for this, will also. However, on the review of the Other Jurisdiction section of the report by the Employment Forum, the panel noted that the statutory annual leave proposed by P.88 would still be below the entitlement offered by some jurisdictions. For example, in the United Kingdom the annual leave entitlement is 5.6 weeks, which includes bank

holidays. For a U.K. employee working 5 days a week, 5.6 weeks is the equivalent of 28 days. If P.88/2021 is adopted, and we hope it is, a Jersey employee working 5 days would be entitled to a minimum of 15 days, plus 9 for public and bank holidays, totalling 24 days. The panel, therefore, did consider the wider benefits of annual leave for businesses and their employees, namely benefits to well-being and a good work-life balance providing a good quality of life. As we have all experienced over the last 18 months, a lot of questioning of that has been highlighted. While acknowledging that P.88 would provide an improvement to the minimum requirement for the annual leave, the panel considered that there was still further room for improvement. The panel, therefore, considered lodging an amendment that would increase the minimum statutory annual leave entitlement to 3.6 weeks. For an individual working for 5 days a week, the 0.6 of a week would equate to 3 days. The proposal to add 0.6 weeks as opposed to specifically stating 3 days would have made the entitlement proportionately equal for all employees, regardless of the length of their working week. However, after further discussions, the panel recognised that the changing of the statutory holiday entitlement to a proportion of the week would cause wider implications for employees. Article 11(4) of the law states: “Where the period of leave to which an employee is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.” Therefore, the panel understands that if entitlement to a fraction of a day is rounded up to the whole day, it could have had unintended consequences. For example, an employee could be paid more than they might be entitled to in the remuneration for annual leave. This would also have an unintentional impact on the employer, who would potentially have to pay an employee more than expected. The panel therefore were mindful that the amendment it was considering would not be inequitable because of the current wording of the law. Per Article 11(6) of the law, the States Assembly is able to amend the period specified for statutory annual leave through Regulations; however, a change to Article 11(4) would require a change to the primary legislation. This would take time and would delay the introduction of any increased entitlement to employees. Therefore, in the interests of improving the minimum statutory provision of annual leave at the earliest opportunity, which is why we are here today, the panel has decided not to lodge that amendment which would further increase statutory annual leave at this time. Echoing the words of Gregory Guida earlier, we did not want to wreck anything today. The panel is supportive of the element of the Minister’s proposition that will increase the statutory annual leave entitlement to 3 weeks but wishes to record its hope that the Minister, or any successor to that post, will be mindful to review the statutory annual entitlement again in the future and there is not such a lengthy period of time to bring a still way short of most other jurisdictions, but it is a welcome proposition and the panel supports that part of the proposition and we will speak to our amendment shortly. Thank you.

4.4 Deputy M. Tadier:

The first thing I will do is echo what Senator Mézec has said already that we know this was a Reform Jersey pledge and it is nice for us to be able to deliver on our policy even when we are no longer in government. I do not say that to detract from the work that Deputy Martin has done because clearly what we saw here is that Deputy Southern, even as an Assistant Minister with Deputy Martin as his Minister at the time, got to work very quickly. They had a meeting to look at one of their shared areas of interest which was the abuse of zero-hours contracts. As Deputy Martin said, when they got into the meeting, I think it was with J.A.C.S. she said, they said to consider raising the statutory entitlement for leave but also making sure people have their correct break times. The point is, it goes to show what can be done if you have progressive politicians in areas of influence and in ministerial office. Let us hope we have lots more progressive Members in the Assembly and in ministerial office after the next election. I am also reminded about that little anecdote that Deputy Martin said when she went to the meeting and the person said: “If you want to make the change, you do not want to do it like that, you will want to do it like this” about the Harry Enfield sketch and the character who always says: “You do not want to do it like that, you want to do it like this.” I think that is possibly

what I am going to say to fully support what is being proposed but in fact that we do need to look at this. It cannot be end of it, it has to be the beginning of the progressive work we want to do when it comes to employees/workers' rights in the workplace. So, for example, I think it is important that we keep going, that the actual statutory leave is increased to what we would expect it to be, to keep us in line with other more civilised countries in the world. But what I am also concerned about is people who have to work very long hours because it used to be the case that you would either get paid overtime ... and I remember my father who brought us up as the only real earner I suppose in our family; my mother did very meaningful work at home looking after us and took on the occasional cleaning job or other job to try and help balance the books. But I remember manual workers back in those days when my father was bringing us up, he said that he often relied on the overtime that he would get to help pay the mortgage and to help pay the bills. Overtime, of course, was paid at a different rate. It was paid usually at least time-and-a-half, double time if you had to come in at weekends and on Sundays. What we have seen in recent years is an erosion of that presumption by employers where overtime is expected, first of all, and it is expected that you will do overtime at a flat rate. I do not think that is right. I think that if overtime is given, it should be paid at the higher rate. I think that the Minister also needs to now look at what the maximum reasonable workload is for somebody in a week because ultimately we are looking at productivity more generally, not just in her department, but with the Minister for Economic Development, Tourism, Sport and Culture. It does not seem right to pay somebody, as I have seen, to do perhaps a 70 or 80-hour week at a flat rate of pay when in fact you could be taking on a second person to do that second job effectively. It means that the first person gets some proper leisure time and it also means that there is more work for somebody who perhaps cannot find work or who does not have that work. So while I welcome this particular proposition because I understand we cannot just talk about counterfactuals and things that are not in the proposition, I was just offering some hope that this is not the end of the road, is that this does provide some comfort for people in all sectors. Because while it is true that many employers, if you are lucky enough - I say lucky enough - to work for the States, or if you are lucky enough to work for a big employer perhaps in finance or in another, let us say, an office setting, or indeed Telecoms or one of those well-established big firms, you will get generally very good terms and conditions. But if you work for smaller, perhaps private companies, then you are more likely to be making do with just the current 2 weeks of leave a year, even though you might be working very long hours for the rest of the year. But what is also true is that we know that there has been a tendency for people again, an expectation that people should be working through their break times, that they should be working through their lunchtimes, that they should come in early and that they should leave late without necessarily expecting to get any pay for that. We know of course that happens in some jobs where a salary is paid, but where you are on an hourly wage I feel very strongly that people should be getting paid for the work that they are doing and that workers should not be doing any voluntary work for their bosses. That is something that applies and I have heard about from people in every sector. As we move towards more family-friendly legislation, there are those who sometimes legitimately I think ask the question about: "Well, what about me as a perhaps young professional who does not have a family, what about my statutory break times?" So I am glad that the Minister is bringing this today. I think it should not be the end of the road but it should be the beginning of it. Thank you.

The Deputy Bailiff:

If no other Member wishes to speak on the principles, then I invite the Minister to reply. Minister.

4.5 Deputy J.A. Martin:

I am very pleased that Reform will be supporting this. As they said, it is something they wanted to achieve and it has been achieved and that is really good. I hear what Deputy Pamplin has said and thank him for the remarks in supporting this bit and that they have looked at the Employment Forum's report, et cetera. Deputy Tadier, and to all of those speakers, I have started to write a legacy report

and this will be in it. Do not leave it more than 2 or 3 years; in fact, 2 years I would like this revisited. A new Minister may have a completely different idea. But we have not changed it, the 2 weeks has been there since I think Deputy Southern and I brought the Employment Law around 2004 ... well, we were in the Assembly when it came in and it has stayed the same. So, that is going in my legacy report. I think I heard mainly all of Deputy Tadier. I listened back but there were some really good points; again, they could go in my legacy report, working conditions, working hours. But do remember, I know people who are not having lunch hours, but we also have now introduced flexible working, so sometimes it suits people. I used to work right out at Rue des Pres and they gave me an hour. What am I going to do with an hour at Rue des Pres? I did not have a car, could not get into town, but I had to have the hour, there was no flexibility about it. But if now I was working there I could have 15 minutes and finish an hour early. I will definitely put that all in my legacy report and I maintain the principles.

The Deputy Bailiff:

Thank you. Is the appel called for or do Members wish to adopt the principles on a standing vote? The appel has been called for. I invite Members to return to their seats and I invite the Greffier to open the voting. Both in the Chamber and on the Chat there is a link. Greffier, are there sufficient votes on the link for me to close the voting? If all Members have had the opportunity of casting their votes I ask the Greffier to close the voting.

[11:30]

I can announce that the principles have been adopted unanimously. **[Approbation]**

POUR: 39		CONTRE: 0		ABSTAIN: 0
Senator L.J. Farnham				
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
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 Trinity				
Connétable of St. Peter				
Connétable of St. Ouen				
Connétable of St. Martin				
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 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)				

The Deputy Bailiff:

Deputy Le Hegarat, does the Social Security Panel wish to scrutinise this matter?

Deputy M.R. Le Hegarat:

No, Sir.

The Deputy Bailiff:

Thank you. We now move on to Second Reading. Minister, there is an amendment lodged by the Scrutiny Panel to Regulation 2. Are you not accepting that or are you accepting that, just so I am clear? It is not accepted. In that case we move to the Regulations. Minister, it is convenient, I think, firstly, for you to propose the first Regulation. Do you do so? It does not really say very much but we need to come on to Regulation 2, the amendment, separately. Do you wish to propose the first Regulation?

Deputy J.A. Martin:

Yes, Sir, I propose the first Regulation.

The Deputy Bailiff:

[Seconded] Seconded, thank you very much. Does any Member wish to speak on the first Regulation? Thank you. Can we record the first Regulation is adopted on a standing vote? Minister, do you propose the second Regulation?

Deputy J.A. Martin:

Yes, Sir, I propose the second Regulation.

The Deputy Bailiff:

Is that seconded? **[Seconded]**

5. Draft Employment (Amendment of Law) (No. 3) (Jersey) Regulations 202- (P.88/2021): Amendment

The Deputy Bailiff:

There is an amendment to the second Regulation lodged by the Health and Social Security Scrutiny Panel and I ask the Greffier to read the amendment.

The Deputy Greffier of the States:

Regulation 2, in paragraph (3), in substituted paragraph (1)(a), for “15” substitute “20”.

5.1 Deputy K.G. Pamplin (Vice-Chair, Health and Social Security Scrutiny Panel):

Again, the panel notes that P.88/2021 has reflected the recommendations provided to the Minister in the *Statutory Annual Leave Entitlement and Working Day Rest Breaks in Jersey Report*. The panel recommends to reiterate the point, the proposition to increase the statutory annual leave entitlement and also to introduce a requirement for a rest break into the Employment (Jersey) Law 2003. However, this amendment seeks to increase the uninterrupted rest period of no less than 20 minutes to each continuous period of working no less than 6 hours. The panel is supportive of the introduction of the rest period into the working day but would like the entitlement to be set at this minimum to ensure that employees are guaranteed a break for that amount of time if they are to work for a period of 6 hours or more. The panel highlights that the proposed change will not specify, really importantly, whether this new rest period is paid or unpaid if this amendment that we are presenting is adopted. This aspect will be left to the individual contracts of the employment between the employer and the employee. But the panel believes that 20 minutes is more appropriate of a minimum rest period, compared to the 15 minutes, for a number of reasons, which I will break down for Members. The survey undertaken by the Employment Forum specifically consulted with a reference to a 20-minute rest break. The panel believes that the response to the following question supported the 20-minute rest period and I quote: "If the Employment Law is amended to require a 20-minute unpaid rest break during the working day, should it apply where an employee has worked for; answer choice 6 hours or more in a day?" Where the response received 60.4 per cent of 183 responses: "Answer choice more than 6 hours in a day" only received 14.19 per cent. The majority of respondents to the survey felt that it would be suitable for a rest break of 20 minutes during a period of 6 hours or more than 6 hours in a day. The Minister for Social Security's instruction to the Employment Forum had been to consult on amending the Employment Law to provide that all employees in Jersey should be entitled to take a 20-minute unpaid rest break in each 6-hour period worked. However, the subsequent recommendation from the Employment Forum had been for a 15-minute rest break, despite what I just highlighted. The panel acknowledges that the Employment Forum received a variety of responses, covering a diversity of arrangements in the consultation and notes that the report references a number of comments about the importance of flexibility of rest periods, as the Minister mentioned earlier, for some employees and the terms agreed in individual employment contracts. However, the report does not specifically outline the scope of data and detail all the responses received that led the forum to recommend the rest period of 15 minutes, other than stating: "The members of the forum have decided to recommend a 15-minute rest break in a working period of 6 hours or more, rather than 20 minutes, because after studying the responses to consultation the former appears to be at the level most frequently operated by businesses in Jersey." The panel is of the opinion that an uninterrupted rest period during the working day is of great importance to the well-being of the employee. The panel acknowledges that each job will be different, however, is of the opinion, the panel, that a rest period should provide the employee with sufficient opportunity to take time away from their work space to check their own well-being, mental and physical needs, whether this is to take a comfort break, have some food, get a breath of fresh air, make a cup of tea, take a screen break, sit down, take a walk, go inside, whatever. Whatever they choose to do in their break, an extra 5 minutes could make a big difference to somebody's mental health. The panel notes some of the responses quoted in the report that a panel of employees already receive, and employers provide, more than 15-minute rest periods during the working day. However, the panel feels that introducing an entitlement to a rest period in the Employment Law is an important point in principle, especially for the employees who do not already benefit from a rest period from the terms of their employment contract and that setting a minimum time of 15 minutes would not be symbolic of best practice. The panel noted that both the United Kingdom and Northern Ireland are examples of jurisdictions where a rest break of 20 minutes is entitled if the employee is working more than 6 hours. This amendment would bring Jersey in line with that benchmark. Also, I would state the Isle of Man, which has a break of at least 20 minutes. Gibraltar, another island, has exactly the same and

Bermuda, another island, which has a 30-minute rest break after 6 hours, including a 15-minute break to be included if a worker has not taken that after 4½ hours, to give some geographical small-island context of where this amendment would put us alongside. As part of this amendment the panel also considered proposing a further increase to the statutory annual leave, as I outlined earlier, but we decided against that because of the delays that could and the complications that would arise with the law drafting. This does not seem to be the conclusion of this panel for this, as we believe this is the right thing to do at the right time. Our final points on this was the well-being of Islanders after the last 18 months has never been more critical, as we try to encourage people to continue the rise of productivity in this Island to work, as many people on this Island want to do, but we must understand that the world has changed in the last 18 months. We believe, though it seems like a small change for a large amount of Islanders, it will make a huge difference and I propose the amendment.

The Deputy Bailiff:

Deputy Pamplin, there is a point of clarification from Deputy Tadier. Deputy Tadier.

Deputy K.G. Pamplin:

Of course.

Deputy M. Tadier:

Thank you to Deputy Pamplin. The question I have is around the unpaid 20-minute break. First of all, could he clarify - he mentioned other jurisdictions - whether the panel considered that the breaks should be paid rather than unpaid? Did the panel or he have concerns that if the break is not paid, as is being proposed, that then there is a risk that some workers would feel perhaps pressured financially to not take breaks because they could not afford to lose that part of their wages in order to have an unpaid break?

Deputy K.G. Pamplin:

Thanks, Deputy Tadier, and he is quite right to highlight it. We did of course think about that. As I said at the beginning of my introduction to this amendment, we highlighted that the proposed changes that we are bringing does not specify whether the new rest period is paid or unpaid. This aspect will be left to the individual contracts of employment between the employer and employee. This is why we are in support of the Minister in bringing both parts of what she is bringing to the Assembly today because this is something that should have been in place a long time ago and will go some way, we believe, once passed to start doing the things that Deputy Tadier has mentioned. However, we just think to get this through today, this is enough to do that and then coming forward we could start work on the things that Deputy Tadier has mentioned, but I hope that was helpful.

The Deputy Bailiff:

Thank you. Is the amendment to Regulation 2 seconded? **[Seconded]** Deputy Maçon.

5.2 Deputy J.M. Maçon of St. Saviour:

The panel's amendment is not something that we can support at this time. The Employment Forum carried out a detailed consultation exercise and its conclusions and recommendations are clear. I hope Members, in preparation for this debate, have read the forum's 53-page report. The role of the forum is to provide expert discussion and advice to Ministers and it has done that for many years now. I cannot recall a time when recommendations made by the forum were rejected by this Assembly. The panel's amendment is not based on such careful analysis. The evidence clearly shows that a 15-minute break is provided routinely by most employers in Jersey and currently that is a split of around 40 per cent paid rest breaks and 60 per cent unpaid rest breaks, as demonstrated by question 31 in the forum's report. What is important for Members to note is the answers to question 27: "Would some employees lose pay where their work and finish times remain the same but the employer deducts 20 minutes from pay each day to accommodate an unpaid break?" Fifty-four per

cent responded yes, 28 per cent responded no, and do not know was 17 per cent. It is clear that, if adopted, the Scrutiny Panel's amendment for some employees who currently have paid breaks, this would flip to unpaid breaks unless contractually protected. We do not know how many have contractual protection. The panel have no evidence - and Scrutiny is supposed to be an evidence-based process - to demonstrate whether employees support this change when framed in this way. In addition to this, I would like to draw Members' attention to question 26: "Would some employees have to work an extra 20 minutes (unpaid) each day to get the same overall pay?" The responses were, yes, 41 per cent, no, 42 per cent, and do not know, 16 per cent. Adopting the Scrutiny Panel's amendment for some employees will mean that in order to get the same take-home pay some will need to work extra time, unless their employment contract states otherwise. Again, where is the evidence from the Scrutiny Panel to demonstrate that when framed in these terms the employees want this change? Where is the evidence to say that the panel's amendment will not have a negative impact on employees? There is no wider evidence or analysis provided by the Scrutiny Panel to support their amendment. I would remind Members that the law we are debating today is for unpaid rest breaks and not paid. Again, as the rapporteur has said, that is a matter which is contractually decided between the employer and the employee. Also, comfort breaks and lunch breaks are not included in this. The forum in a letter to the Scrutiny Panel concedes that this was not made clear during the consultation exercise or as clear as it could have been. This did lead to some responses saying that a longer rest break was needed to support lunch breaks. Again, I would like to make it clear that comfort breaks and lunch breaks are different and not for the purpose of this law, as the Minister has made clear in the comments responding to the Scrutiny Panel's amendment, which Members would have read. I did challenge officers and the Minister as to why we could not just accept 5 additional minutes in unpaid breaks. However, after being drawn to the relevant sections in the preliminary report, I am unable to support an amendment, which, according to the feedback provided to the forum, would flip paid breaks to unpaid breaks and cause employees to work extra time in order to receive the same level of pay, as evidenced in the forum's report. To change the recommendation of the forum will now also place an additional burden on businesses who may have already anticipated changes from 1st January and planned accordingly. We are taking the first steps today in legally establishing these rights by granting unpaid rest breaks. We do not rule out further increases in due course and the Minister has made a commitment to keep this under review. I would urge the Assembly to reject the Scrutiny Panel's amendment, support the Regulations as drafted and support the work of the forum.

The Deputy Bailiff:

Thank you, Deputy. Deputy Higgins.

Deputy R.J. Ward:

Sir, can I ask a point of clarification?

The Deputy Bailiff:

A point of clarification, if you will accept it, Deputy Maçon, from Deputy Ward.

Deputy J.M. Maçon:

No, thank you, Sir. [Laughter]

The Deputy Bailiff:

Thank you. Deputy Higgins.

5.3 Deputy M.R. Higgins:

I will be very brief. I am going to be supporting the amendment. What I do hope is the employers out there who claim this will be onerous are going to have to take into account the current labour market in Jersey and the fact that we are talking about increased shortages; people cannot get people.

If you do not treat your employees properly they will walk and I strongly recommend they do if the employers do not give them proper breaks and paid breaks.

[11:45]

The Deputy Bailiff:

Thank you, Deputy. Does any other Member wish to speak? Deputy Southern.

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

I wish I did not have to speak or feel compelled to speak but here we are again with a return to the lowest common denominator, worst practice supported by a Minister than is suggested by this amendment. I am almost speechless that this should be the case. I will wholeheartedly support 20 minutes over 15 minutes and a pour and in brackets it says otherwise.

5.5 Senator S.Y. Mézec:

We will be arguing over 5 minutes, essentially, for working people in the Island who, let us face it, in recent times have had a rough deal as it is. The rights that working people have at work in Jersey have lagged behind other jurisdictions for a very, very long time when it comes to things like parental leave, when it comes to things like annual leave. Now we are going to be asking for us to continue to lag behind other jurisdictions like the U.K. when it comes to these rest breaks at work. I do not think we should be arguing about 5 minutes, I think that we should just go with what was originally put to consultation, which, from what I can see from the Scrutiny Panel's report to their amendment, had majority support from those who engaged with that consultation. I can see only a quarter of those responding said that a 20-minute rest break should not be introduced. I think in this day and age, after the few years that we have had where pay for the lowest paid in Jersey has fallen behind, where real-terms earnings have continued to be frozen, where many people feel like they are facing a cost-of-living crisis in their lives, that to support something that, ultimately, will support the well-being of people at work, it just staggers me that that would be something to argue about. Just one final point to refer back to what I had said in the debate on the principles for this law, where we had said in our manifesto that we would support 3 weeks of annual leave - and, of course, we will do that and vote in favour of that - we said nothing on rest periods at work. We were silent on that. I think when you are silent on an issue like that at elections that is when values come into it. What is it you believe in at the end of the day? Do you believe in trying to make life better for the people you represent or will you take what I think is a weak political position of allowing ourselves to lag behind and to not support those basic rights which have been hard fought for and won in so many other places and to say to Jersey workers: "You are not as good as those in other jurisdictions and you do not deserve that right"? I strongly urge the Assembly to vote in support of this amendment from the Scrutiny Panel and do something nice for the people that we represent for once.

The Deputy Bailiff:

Thank you, Senator. Does any other Member wish to speak on the amendment?

Deputy M. Tadier:

Deputy Tadier, I am not sure if you have seen my request.

The Deputy Bailiff:

Yes, I think I saw the light of the Minister first. Do you want to speak on this one, Minister? Minister, do you want to speak on this? I saw your light first but I will ask Deputy Tadier to speak. Yes, Deputy Tadier, do you want to speak now?

5.6 Deputy M. Tadier:

I am glad somebody has seen the light, Sir. I hope that Deputy Maçon sees the light at some point. I was baffled by his speech because he was saying that there is a risk that if it is a 20-minute break, then employers may not pay that, but if it is a 15-minute break that they would pay a 15-minute break. Let us put it into perspective what we are arguing about, somebody on the minimum wage here. Those are probably the ones who need the most protection, the ones who are least likely to be working for big companies or companies with practices which are long established. We are talking about 5 minutes for 75p roughly and that might be 75p that they are giving up of their wages voluntarily to have a 20-minute break rather than a 15-minute break. Given the fact that the law is silent on whether or not the breaks are paid, as I understand is the case, we are not saying it is a choice between a 20-minute unpaid break or a 15-minute paid break. Were that the case I would opt for the latter because that is more tangible for benefit to the worker. It is about whether the worker wants to give up, potentially, another 5 minutes of their pay in order to have an unpaid break. If the employer is willing to pay for the break anyway, we are talking about 5 minutes of recharge time where the worker can have an extra 5 minutes and they get paid an extra 75p. Who knows, they may get paid a full pound for doing nothing. What if they are on the living wage? But they will probably feel much more relaxed and they will be able to chat to their co-workers. The reason I feel quite strongly about this is because while some people say - they do not necessarily say it to me, they say it to people - "Politicians have never worked in the real world", I remember from personal experience my first, I guess, proper paid job, if you like, was working at the tills and stacking shelves at the Co-op at 2 stores in St. Peter. I was paid £3.30 an hour and I was given, like everyone else, a 15-minute paid break once you had completed 3 hours of work, so long as you were on a 6-hour shift. What I would do, I would go to the canteen. I would probably either buy a sandwich there or more likely I would take something with me. I would have a cup of tea. You have time to boil the kettle, you have time to do that. You do not want to drink your tea when it is boiling hot because that is not good for you; you might burn your mouth, you might scald your mouth. You want to be able to digest your food and speak to your co-workers. That is good practice, it is good for the company. You might also wish to take a comfort break. I think you can do that in 20 minutes much easier than you can in 15 minutes. If we do go for the more parsimonious lower threshold here, again, bearing in mind, like I have said, we are talking about unpaid breaks here, effectively, then I would simply encourage workers to make sure they take a loo break on work time. Do not go to the toilet on your own time and make sure that you take at least 5 minutes because you do not want to rush yourself and give yourself a hernia because you will not be of any use for the employer. Has it come to the point where we have a Minister who is prepared to give an extra week of paid leave to these workers, perhaps with the worst current terms and conditions available? It is remarkable, I was expecting some Members of the States to vote against that because where are the people who stood up and said: "But how is this going to affect small businesses to have to pay for an extra week of leave?" It is fine if you are a big company and you have lots of profits or if you are a small painter and decorator. Where are all the champions in the Assembly for those small businesses to have to cough up for an extra week of pay? Yet when it comes to deciding about 5 minutes of unpaid leave, this is the sticking point. The Minister cannot do that, it is too rich for her blood, it is presumably too rich for the majority of States Members. I do not think this should be the issue on which the disagreement happens. We have already found unanimity on the fact that we need to upgrade and level the playing field upwards. I think the way we do that and send a strong message out today is that if you want to take a 20-minute break and it is unpaid, and if the employer is happy for you to pay for that, then by all means let people have 20 minutes during a 6-hour shift.

5.7 Deputy J.A. Martin:

I am sorry that I cannot support this. But I had sent out the forum and I asked them to consult on rest breaks and holiday entitlement to leave and I did mention, I said 20 minutes and obviously they went out and they speak to everybody, Chamber, I.O.D. (Institute of Directors), everybody. They have employers and employee representatives on the board, on the forum, they have union reps. They

went round and then they brought me the report and I sat down with them and go through the report and everyone who is given a break, and Deputy Pamplin and the whole panel, unfortunately, misunderstood the breakdown. The forum even wrote to them and said: "You have misunderstood the breakdown. The majority of paid or unpaid breaks are 15 minutes." Been doing it for ages, it works and that is exactly where it is, so 15 minutes. Again, what is Scrutiny? I said when I went in, I said: "Do you want me to move this debate back? Because if you really feel it is 20 minutes you could do some research on it and whoever you call in for evidence, et cetera." No. The only thing I heard from Deputy Pamplin was: "They do it in the U.K. and they do it in Northern Ireland." Yes, that was in the report, they do. But we are starting today on something that I do not want to make it worse for workers. Already the big supermarkets, retail, hospitality have all got their shifts ready for Christmas and new year but do not worry about that, these are workers who are working there, all got them ready. This comes in on 1st January, that will not be 15 minutes, and we say to those the majority are already doing it and the majority will be on 15 minutes. The split is half and half who is getting paid. Some are not getting paid, some are getting paid, but they have been doing this and worked around that. Because what my Assistant Minister has said: "If you flip from 20 minutes you disrupt all those shift patterns and everything, they are already arranged." Then what would I do as an employer? I will not pay the extra 5 minutes or maybe I have to do all this, completely change the shifts, I might not pay any of it. I am in that dilemma, it sounds like all 5 minutes. If Scrutiny had done a different piece of work and came up with a different conclusion from the forum, who have been doing this for years, who all industry asked me doing the consultation on minimum wage, industry want the forum back because they know them, they know the questions they ask, they are very thorough and they go back and they deliberate in the minimum wages a couple of pence here and there; this was 5 minutes and to keep people doing the jobs, that they will not lose money. The starting point, they said, should be 15 minutes, so that is what I accepted. I am not being the ... the Minister cannot give another 5 minutes. Toilet breaks, I think we have contacted J.A.C.S. People go to the toilet when they need to go to the toilet, they do not sit there for 6 hours waiting. Supermarkets, you close your lane, you go to the toilet, it is what it is. Screen rights, that comes under health and safety, you cannot sit at a screen for ever and ever. We do, we work for ourselves but we can. But there are rules, so I do not know what they are trying to cover. What annoys me, we are always talking about we want to do the best for the people out there. It does not affect me today if they pick 20 minutes or 15 minutes, in fact it does not affect anyone in here, does it? Because we get paid once a month at the end of the month and however many breaks we take or however many holidays. But this will affect a lot, we have 62,340 jobs now. All right, maybe not that many workers, but let us say 55,000 workers. It is just one of those, the forum have done loads of research over a good few months, spoke to Chamber, spoke to everybody and they came back with this because a starting point for less disruption to people not lose money, let us start with 15 minutes, it will work and they went through all the ups and downs for me. As I say, when Scrutiny lodged their amendment they even wrote to Scrutiny and said: "You misunderstood, the rates that you are quoting included lunch hours." It might have been better putting in a different question but in the letter they have put down employees, so this is representative of all employees, 24 responses received, which show the break period up to and including 15 minutes and 5 responses showed a period of 20 minutes.

[12:00]

Also, the 20 minutes, you will be getting 20 minutes if your H.R. (Human Resources) Department is a U.K. one because they follow the U.K. law. We are having a problem. When I made the family friendly more than the U.K. because theirs was more at one point and I said: "No, I do not care what you do, you follow our law. If you are more you can follow your law and if our law provides more, you follow our law." We have overcome that. As I say, it does not affect me or anyone in this Assembly, 20 minutes, 15 minutes, I want to make it better for everyone who is not entitled to such a break at the moment. It is not stipulated to be paid and half get paid and half do not. But if you say you do not know if it is going to be 20 minutes and you have to change everything else that is

going on and they will just say: “It is 20 minutes, big Government said we have to give people 20 minutes and we are not going to pay them now.” On a minimum wage that is about £15 a week loss. We do not know because, as I said, the forum, who is respected by businesses, unions and everything, went round and discussed it and they came back with 15 minutes. Scrutiny with the report and thought 20 minutes would be better. I would have pushed it back, I asked them to push it back, could have put the date back, could have come in in April. Do your research, come to me and say it will not affect those people if we flip it from 15 to 20. They cannot because they have not done the research, which is very disappointing. I like my Scrutiny Panel, we have always got on well, always give private briefings where they see everything first. They did not even speak to me and say: “What do you think the forum meant?” They could have spoken to the forum. But we are where we are. As I say, today it will go one way or the other. It will not have any effect on anyone sitting in here because we get paid differently and we can take our breaks when we want to. Think of the people you are always saying you are trying to help, if you are not sure, 15 minutes or 20 minutes. If you are not sure, 20 minutes makes them much worse off, do not go for the 20 minutes. Again, I will not leave this; that will go in my legacy report. I want all the Employment Law to be looked at by the next Minister because this Minister is sort of running out of time that Deputy Tadier sings rest breaks. Maybe next time when we know the economy is going way up again, I would stipulate they are all paid breaks, absolutely. But you can only take the employers with you at your pace and then you do not hurt the worker as well.

5.8 Senator K.L. Moore:

It appears that Scrutiny and the objective process that Scrutiny Panels perform is a matter of some discussion and perhaps lack of clarity today. I simply wanted to speak very briefly in support of the amendment and to remind the Minister and her Assistant Minister that the Employment Forum’s consultation was in fact silent on the time period. The Scrutiny Panel have simply looked at the practice in other places and used that to inform their thinking behind bringing this amendment and I hope that helps her in clarifying the position.

5.9 Connétable M.K. Jackson of St. Brelade:

To be honest, I do not think Government should get involved with this at all but if they had to, be realistic. I have employed a small number of manual workers all during my working life and have always given a 20-minute break mid-morning. It takes that to boil the kettle, drink the tea, eat the sandwich and have a comfort break. I would agree with Deputy Higgins in his comment that if you do not look after your workers you do not deserve to have any. I conclude by saying that Jersey has a large number of small employers who do not like interference and know how to look after their staff. This is not an area of large industrial employment, so why are we getting involved at all? But if we are let us be realistic and support this amendment.

The Deputy Bailiff:

Thank you, Connétable. Does any other Member wish to speak on the amendment? Yes, Deputy Le Hegarat.

5.10 Deputy M.R. Le Hegarat:

Yes, I see where the Minister for Social Security comes from in relation to it and says that we should have done more work on it. But the point is that as far as we were concerned the forum had been asked in relation to a 20-minute break, they did all their research, and then they came back with a recommendation. The questions obviously were not about the 15 minutes because they had been asked by the Minister for the 20 minutes. I am grateful for the Constable of St. Brelade because we simply felt that 20 minutes is more realistic than 15 because, as the Constable of St. Brelade says, to move away from wherever you are working, to get your fresh air, to make a cup of tea or have something to eat, it is quite difficult to achieve that in 15 minutes. We are quite fortunate in this

Chamber that we come and go as we need. We observed yesterday, Sir, that you are unfortunate, that you are not like the rest of us in here that you can come and go as you please. But it is important that we look after our workers and particularly at the moment we are struggling to get staff in retail, agriculture, hospitality, et cetera, et cetera. As somebody said this morning, U.K. firms already get 20 minutes. If I was an employee looking for a job I would think that 20 minutes looks more enticing to me than the 15 minutes do. I think really we do need to bring ourselves up to the 21st century. It is disappointing, as we said and I think the Minister acknowledged this as well, that when you look at the leave entitlement none of us realised it was only 2 weeks because most of us are very lucky to have had over our working lives significantly more than that. I think we just need to maybe consider how we would feel if we were being offered 15 or 20 minutes. I know which one I would take. It is the same as if I was offered 2 weeks, 3 or 4, I know which I would take. I just think we need to start considering our employees a little bit more and I am sure most employers will do the same.

The Deputy Bailiff:

Thank you, Deputy. Does any other Member wish to speak on the amendment? Deputy Ward.

5.11 Deputy R.J. Ward:

Just very briefly, I want to agree with what was just said. We are talking about 5 minutes and let us just uncover some of these main arguments again. This is about paid or unpaid leave, depending on the contract that you have of either 15 or 20 minutes. Personally I think all breaks should be paid because it is unrealistic otherwise. To be quite frank, I think most employers do that because they realise, as suggested by the Constable of St. Brelade, you want to keep your staff. If you look after your staff you may well keep them and we have a retention crisis on this Island of attracting and retaining staff as well. The other point to be made is that we are talking about minimum standards here. We are talking about 5 minutes on the minimum standards. If a business is seriously going to say: "If you add 5 minutes I will not pay you for all 20 of those minutes", so what type of business is that? I simply do not believe that is a valid argument and if it is that is not an employer that is, effectively, going to look after its staff. That is when we, as an Assembly, need to step in and say: "You need to look after your staff because they are members of our society here and we represent that society." This is 5 minutes, Members, 5 minutes extra, so that you might be able to digest your sandwich a little when you have a break. I think if there is a no-brainer this is it.

5.12 Deputy R.E. Huelin of St. Peter:

I am somewhat confused by this because we know in the Island at the moment we have a challenge in the recruitment and retention of staff. It is across the piece, not only those that will be looking at this 5 minutes but those in other forms of employment as well. We know the onus on that and to maintain those businesses is the business people, the owners, the employers. It is up to them really on how they want to look after their staff to ensure that they retain them, maintain their loyalty and maintain their productivity. I do not see whether 5 minutes here or there is making any difference. I cannot believe that those employees are going to worry if somebody comes back a couple of minutes late because they have not finished their sandwich or the kettle did not boil quickly enough. I am very confused as to what I want to do. I do not want to vote against the Minister for Social Security but there again I do not want to say that I am supporting an environment where there is not a degree of flexibility between the employer and employee relationship for the best positive outcome. I am probably going to toss a coin on this one, which sounds really particularly immature. But I do not really see it as an issue if we are living in a world where employers are looking after their staff and want the best for their businesses and the service that those businesses provide to the Island, so a bit of a weak, wobbly one that one.

5.13 Deputy J.H. Young:

I was not going to speak but I do not want to vote against the Minister for Social Security because she is such a hard worker and sincere and everything she says is true. But if it boils down to the argument that there is a risk that some employers will behave ridiculously by withdrawing what is already a 15-minute paid break and substitute a 20-minute unpaid one, is that how things really are on this Island? I would just think, to me, 20 minutes' break seems straightforward. Is it real world that the fear that unreasonable employees are going to abuse this if we go with what seems to be a sensible thing? I am really torn and I think I follow very much Deputy Huelin in this. I do not want to vote against the Minister for Social Security, I really respect everything her and her team does. I see the problem that when you have a forum you know you have to listen to them but I think there is almost a spectrum of something, a fear that I really have trouble in buying into that about this question that employers are going to pull the plug. Even now, are we really forced to vote? I ask the Minister, are we really forced to do that?

The Deputy Bailiff:

Thank you, Deputy. If no other Member wishes to speak, then ...

Senator J.A.N. Le Fondré:

Yes, Sir.

The Deputy Bailiff:

Yes, Chief Minister.

5.14 Senator J.A.N. Le Fondré:

I think I endorse the comments by Deputy Young saying that Deputy Martin is, in my view, certainly the longest serving and an exceptionally hard working Member of the Assembly and we see that as a Minister as well. I think there is one clarification, not being as close to this subject as perhaps I should have been, on the basis that I think fishing has been dominating our thoughts for quite a considerable amount of time. But one is, which the Members may have not understood, whether it is 15 or 20 minutes, it obviously is in addition to lunch breaks and so it is not just that that you get in your entire period. I am not too sure whether the analogies, about that is just time to eat your bacon roll or whatever it is, are quite accurate on the basis I am happy to be corrected but that is my understanding. I think, therefore, ultimately, the principle is we do have an Employment Forum; that is their recommendation. Yes, it is, quote, unquote, only 5 minutes but if there are unintended consequences, which is what the Minister for Social Security or the proposer of the proposition referred to, i.e. that if we go with the amendment we are debating that, potentially, could leave certain employees worse off or having to work the extra 20 minutes and all that goes with it, and bear in mind also that is 20 minutes every working day, it may be that that is the view of the forum. Obviously, as the Minister has already said, the forum is made up of a wide range of representation, both employee as well as employer. Free whether Members wish to go with that recommendation or come up with something else, which does not seem to be what I would call Jersey-specific and in the context of Jersey. But I think the principles are we do have a forum, we have their advice, which is the 15, which is what the Minister for Social Security I think rightly is going with and it is an improvement, let us be very clear and I hope that is welcomed. Remembering or reminding Members that lunch break is an additional to this; that is my understanding.

[12:15]

That is where I was informed that there could be unintended consequences if we go with this amendment. On that basis, certainly I will not be supporting the amendment, reluctantly I have to say, but if there are unintended consequences that come as a result, then I go with the advice that we get. I really suggest that might be the best way forward for other Members but obviously we will see how the vote goes.

5.15 Deputy S.M. Wickenden of St. Helier:

I do not know why anyone would be doing this job on the Employment Forum at the moment anymore. Any time they come to us with a recommendation where they have gone out and they have spoken to businesses, they have spoken to employees, they have gone and done a piece of work, they bring a recommendation, it comes through the Social Security Department to this Assembly and almost every time somebody goes: "I just want a bit more or I want to change it." It is almost every single time that they go out and do all the hard work and say: "This is the evidence that we have received from Jersey, from Jersey people, from employees, as well as employers, to say what they can do." Then every single time somebody goes you have said £2, they are going to say £3, said 15 minutes, they are going to say 20 minutes, you say 20 minutes, I am going to say 25. Why would anyone bother being part of that Employment Forum when we do not listen to their recommendations and all the work that they do anyway? I know it is just 5 minutes here but they have consulted on this. They were not silent on it and they have turned round and asked the questions and what came back was 15 minutes is the right level for what the Island thinks that it is the right level from the consultation that they have done, not from other jurisdictions but from the people here, the people that live in this Island. I am not going to support the amendment. I am going to stick with the hard work and show some gratitude to the work of the Employment Forum and thank them for what they do.

5.16 Deputy S.J. Pinel of St. Clement:

I completely endorse what Deputy Wickenden has just said. Having worked with the Employment Forum for 6½ years, they do work exceptionally hard and they consult very broadly and come up with recommendations. It would be, in my view, totally wrong to ignore their recommendations.

The Deputy Bailiff:

Thank you. If no other Member wishes to speak, I invite Deputy Pamplin to reply.

5.17 Deputy K.G. Pamplin:

Again, I thank all Members for joining in this important debate, which does, thankfully, mean we are debating Islanders' lives. Instead of going through each speech individually, the main arguments against seem to be along the lines of the research that the Scrutiny did in bringing this amendment. I would just state that our research and our work in bringing this amendment is based also on the Employment Forum's findings. In the Employment Forum findings they do mention other jurisdictions, they do mention the Isle of Man, they do mention the United Kingdom. We did have a consultation with the department Minister and the Employment Forum themselves and it was very, very good and helpful to us. There was a commonality that on both sides may have misread and misinterpreted things and we both agreed that point. But we said there was enough inside what we had seen in the Employment Forum's recommendations. Again, the benchmarking that we did in the short time period that it was acceptable for this Assembly to have a debate because, after all, that is not what we are here to do. Is that not what we are here for? If Scrutiny does find something in a piece of work, it is to bring it to Members to make their decision; that is all we are here to do today. I do not want to get dragged in again to all this political posturing that is going on about things, it is not who I am as a States Member, it is not what I signed up to and I just will not get dragged down to that level of argument because I just think it is unfair. Again, we are hearing things like why would anybody want to work in a body forum if we do not agree with it? But, again, I have the utmost respect and I have enjoyed the last 3½ years having consultation and working with the Employment Forum and they do a great job. I think it is brilliant that members of our society come forward and take part in the Employment Forum, in the Citizens' Assembly on Climate Change, in the jury for assisted dying, it is brilliant. But all it is is a certain base of work to inform our decision-making. This Assembly is where we debate and bring all debates, all arguments, all research for us to make the decisions. Anybody could recommend something to a Minister, I have been told to do this, so

shall we just do this, rubber stamp it? What is the point of the Assembly? We are here to debate, that is what we are doing, that is what the purpose is. I do not want to get dragged again into this and maybe because it is my first experience of building to an election, that is not what this proposition ... it was brought in good faith based on what we read and what we discussed with the Minister; we have discussed also with other people. It is up for Members' consciences and their decision-making on what they want to do. But I will draw attention back into what we put into the comments paper, which I am sure everybody has read, where the question was put to the people that they consulted, which I must add it was presented to the Minister in March of this year, based on all the work, as the Minister did say, which was delayed last year. Again, this year in the fast-moving pace that has been the pandemic and the impacts that we are only now starting to see with the impacts of the pandemic and the slow impacts of Brexit and other issues around this at the moment with what is happening with the French fisheries dispute, that these things are starting to have an effect on everybody. Yes, this is a really good piece of work from the Employment Forum and we all thank them for it but in the last few months things have changed. As we are seeing, rising inflation, the rising prices and cost of fuel and the concerns for holding a job for next year, I just think we need to keep that in mind for the moment we are debating it, which is today. I draw back to the comments paper. I was going to say where the question that was put forward: "If the Employment Law is amended to require a 20-minute unpaid rest break during the working day, should it apply where an employee has worked for 6 hours or more a day?" the response had 60.4 per cent. Neither a 20-minute rest break should be not introduced, only received a 25.41 per cent response. Basically what everybody has kind of been loosely saying, my colleagues to the left about good employers who would support their staff with a roughly 20-minute break if they were late, it is great. We would expect nothing more of the Jersey employers of this Island and as the Constable of St. Brelade highlighted as well in his speech. All we are saying is if you have read our comments paper we just simply say we think there is enough for this debate today that this will not have the unintended consequences that we have heard. Equally, as Deputy Young was sort of posturing earlier about the impacts on businesses, I have every faith in the businesses of this Island to employ Islanders, from small businesses to big businesses, they put the well-being of their staff first. I do not believe if this amendment came in on 1st January that the great employers of this Island, from small businesses to big businesses, would suddenly get rid of their staff or cause problems when everybody needs staff, when this Island needs to pull together. All those people who went above and beyond during the pandemic, from the shops to the nurses to people who work in offices around the Island, all we are saying is this can be achieved. This is a minimum as well, this is a minimum for our Island to bring us in line with Gibraltar, Bermuda, the Isle of Man, Ireland, United Kingdom and other parts of the world. This is an amendment from a Scrutiny Panel who saw that in the research that was provided to us and the discussions we had with the department. Whether you agree or not with us I will not take that to heart, but do not question our integrity, do not question the work that we have done and do not question the Island who is looking to us to do something today. I propose the amendment. **[Approbation]**

The Deputy Bailiff:

Thank you. The appel, I think, has been ...

Deputy J.A. Martin:

Can I seek a point of clarification, Sir?

The Deputy Bailiff:

Yes, if you ...

Deputy K.G. Pamplin:

No, Sir, I think we should move to the vote.

The Deputy Bailiff:

That is not accepted. The appel has been called for and I invite Members to return to their seats and I ask the Greffier to open the voting and place a link in the Chat. If all Members have had the opportunity of casting their votes, I ask the Greffier to close the voting. It is a close vote and we will need to confirm this when the names are out, but the amendment appears to have been adopted:

POUR: 22		CONTRE: 20		ABSTAIN: 0
Senator T.A. Vallois		Senator L.J. Farnham		
Senator K.L. Moore		Senator J.A.N. Le Fondré		
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 Trinity		Connétable of St. Peter		
Connétable of St. Mary		Connétable of St. Ouen		
Connétable of St. Martin		Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		Deputy of Grouville		
Deputy M. Tadier (B)		Deputy K.C. Lewis (S)		
Deputy M.R. Higgins (H)		Deputy J.M. Maçon (S)		
Deputy of St. Martin		Deputy S.J. Pinel (C)		
Deputy G.J. Truscott (B)		Deputy of St. Ouen		
Deputy J.H. Young (B)		Deputy R. Labey (H)		
Deputy K.F. Morel (L)		Deputy S.M. Wickenden (H)		
Deputy of St. John		Deputy of St. Mary		
Deputy M.R. Le Hegarat (H)		Deputy L.B.E. Ash (C)		
Deputy S.M. Ahier (H)		Deputy G.C.U. Guida (L)		
Deputy R.J. Ward (H)		Deputy of St. Peter		
Deputy C.S. Alves (H)		Deputy of Trinity		
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

Deputy K.G. Pamplin:

If I may, can I thank Members in support of our amendment? But can I pay tribute to our 2 Scrutiny Officers who are going above and beyond limited resources to help us with our work and our fellow panel members? Thank you.

Connétable of Trinity:

Sir, if I could just say that, unfortunately, I had a ring-binder moment there and my computer has a social conscience more than I do and it managed to press the pour button after I had pressed contre initially. **[Laughter]**

The Deputy Bailiff:

All right. Well, there we are. We now return to Regulation 2 as amended. Does any Member wish to speak on Regulation 2? In that case, I close the debate on Regulation 2. Do Members wish to adopt Regulation 2 as amended on a standing vote? In which case those in favour please stand? The appel has been called for by Senator Farnham. The appel has been called for on Regulation 2 as amended. I invite the Greffier to open the voting in the Chamber and on the link.

[12:30]

If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. Regulation 2 has been adopted as amended:

POUR: 41		CONTRE: 0		ABSTAIN: 1
Senator L.J. Farnham				Deputy J.M. Maçon (S)
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
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				
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 S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
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)				

The Deputy Bailiff:

Minister, do you wish to propose Regulations 3 and 4 together?

Deputy J.A. Martin:

Yes.

The Deputy Bailiff:

Are they seconded? [**Seconded**] Does any Member wish to speak on Regulations 3 and 4? No. Are Members content to adopt Regulations 3 and 4 on a standing vote? I invite Members to stand. The appel has been called for and I invite the Greffier to open the voting. We will need more time to arrange the link. I invite Members to return to their seats and in a moment the Greffier will, when she is ready, open the voting in the Chamber and on the link. The voting is now open and I invite Members to cast their votes. I invite the Greffier to close the voting. I can announce that the Regulations 3 and 4 have been adopted:

POUR: 36		CONTRE: 1		ABSTAIN: 0
Senator L.J. Farnham		Connétable of St. Brelade		
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
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				
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 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)				

The Deputy Greffier of the States:

The Connétable of St. Brelade votes contre.

The Deputy Bailiff:

Minister, do you wish to propose the Regulations in Third Reading?

Deputy J.A. Martin:

Yes, I would love to propose the Regulations in Third Reading and I would also like to thank all my officers who support me and absolutely support the Employment Forum. Some days obviously they go out and do their work and it translates differently here. I fully understand what Deputy Pamplin says, we have the last say. At the end of the day, it will be for them to decide whether it is worth carrying on really, I suppose. Thank you.

The Deputy Bailiff:

Thank you. Are they seconded? **[Seconded]** Thank you very much, Deputy Maçon. Does any Member wish to speak in Third Reading?

Deputy M. Tadier:

I did want to address this issue that has been raised about the Employment Forum must feel undervalued.

The Deputy Bailiff:

I will just remind you that the debate in Third Reading shall be confined to the content of the draft as adopted in Second Reading, Standing Order 75.

5.18 Deputy M. Tadier:

So of course the reason that the content of the Second Reading is as it is, is because we have taken into account what the Employment Forum have said and we have seen fit to amend a certain part of that. We have done that not because we do not think there is any value in having the Employment Forum, but simply to say that it is possible for 2 different bodies to look at the evidence and come to different conclusions. That is because, at the end of the day, we are the politicians who have been elected to make judgment calls and political judgment calls. We do that weighing up a variety of factors, including our own personal consciences and sometimes we also use pieces of office equipment to make that decision for us when our consciences fail to. I did think it was particularly revelatory that we have seen a stance on the content of the Second Reading where the Schrodinger's party, the Alliance Party, if we can call them that, at least were very well disciplined and following their party whip. But it was quite interesting to hear what I thought was a very good joke from the Constable of Trinity saying that his ring-binder has more of a social conscience than he does. Because of course that is what you get if you vote for the Alliance Party, you get a party where inanimate pieces of office equipment have a better social conscience. The point is, if you want well-drafted Second Readings, you need to vote for progressive politicians to get that. Therefore, I think I will leave the comments there because I can see your facial expression and I am not sure if that is directed at me. But I think it is at least tenuously all linked to what should be contained in the Third Reading. Thank you.

The Deputy Bailiff:

The Connétable of St. Saviour, do you want to make a contribution?

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

No, I do not want to make a contribution, because I am not looking to be elected next year. **[Laughter]**

5.19 Senator L.J. Farnham:

I am pleased to support this in the Third Reading. I am pleased to support the proposition as amended. We had a lengthy debate over whether 5 minutes was a long time or not. While it might not be in the

terms of a tea break, it certainly is sometimes when listening to speeches in this Assembly. Thank you.

The Deputy Bailiff:

I call upon the Minister to reply.

5.20 Deputy J.A. Martin:

As Senator Farnham said, we had a good debate. At the end of the day the Assembly thought the 20 minutes was better than the 15. We will see. Let us hope there is not too much disruption for companies and workers do not lose any money. We will know from 1st January. Thank you.

The Deputy Bailiff:

Is the appel called for? Yes, the appel has been called for. I invite Members to cast their votes in the Chamber and on the link. The Greffier has opened the voting. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. I can announce that the Regulations have been adopted in third reading:

POUR: 39		CONTRE: 1		ABSTAIN: 0
Senator L.J. Farnham		Connétable of St. Brelade		
Senator T.A. Vallois				
Senator K.L. Moore				
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				
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 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 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 World Trade Organisation (Privileges and Immunities) (Jersey) Regulations 202-(P.89/2021)

The Deputy Bailiff:

The final item of public business is the World Trade Organisation (Privileges and Immunities) (Jersey) Regulations lodged by the Minister for External Relations and Financial Services. For the purpose of this debate the main responder is the Chair of the Economic and International Affairs Scrutiny Panel. I invite the Greffier to read the citation.

The Deputy Greffier of the States:

Draft World Trade Organisation (Privileges and Immunities) (Jersey) Regulations 202- The States make these Regulations under Article 12 of the Privileges and Immunities (Diplomatic, Consular, et cetera) (Jersey) Law 1998.

6.1 The Connétable of St. Ouen (Assistant Minister for External Relations and Financial Services - rapporteur):

As I am sure is apparent, the Minister for External Relations and Financial Services is not with us today, so it falls to me to present this. As Members will recall, on 1st January 2021, the U.K.'s membership of the World Trade Organisation was extended to Jersey, creating a long-term international trade objective for the Island. In order to meet the obligations of the W.T.O. (World Trade Organisation), Jersey needs to provide W.T.O. diplomats with certain immunities and privileges as required by the Marrakesh Agreement establishing the World Trade Organisation. Indeed, all W.T.O. members have legislation in place, which provides for these privileges. It should be noted Guernsey, and Members may not think that is any recommendation at all, has also recently put in place similar legislative provisions. The draft Regulations, if adopted, would therefore codify Jersey's commitment to do the same. Draft Regulations presented today are implementing legislation to fulfil Jersey's existing international obligations. The Regulations are made under the Privileges and Immunities (Diplomatic, Consular) (Jersey) Law 1998. Indeed, the draft Regulations provide under Jersey law something similar in effect to the U.K.'s number 266 W.T.O. Immunities and Privileges Order 1995, which grants W.T.O. diplomats identical immunities and privileges. The Regulations, if adopted, give the W.T.O. legal capacity of a body corporate under Jersey law and will provide privileges and immunities to the W.T.O. itself and for W.T.O. representatives, high officers and officials. For the organisation, the Regulations provide exemption or relief from taxes, rates and custom duties, immunities from suit and legal processes, and exemption from prohibitions and restrictions on the importation and exportation of goods. These are standard and normal arrangements for international bodies. For the representatives of the W.T.O., the Regulations provide immunity from suit, legal process, exemption in respect of personal baggage, and relief from taxes and rates with exceptions. The Regulations do not confer any privilege or immunity on a representative or official who is a representative of Jersey, the United Kingdom, or a British citizen. In respect of the high officers of the W.T.O., namely the Director-General and their Deputies, privileges include those given to representatives in addition to relief from parish rates, exemption from taxes on the importation of personal effects, the refund of customs duty paid on any hydrocarbon oils. A high officer who is a British citizen or resident of Jersey or the United Kingdom may enjoy

these privileges and immunities but only in respect of official acts performed as part of their functions. It should be noted that these restrictions to immunities of Jersey residents are suitable and internationally recognised and reflected in each of the W.T.O. member countries for their respective citizens. The Regulations then set out privileges and immunities for other officials of the organisation, apart from those recruited locally and paid hourly, including exemption from income tax, customer duties and excise duties. The privileges and immunities for other officials only apply to the extent that they have not been waived by the member states that person represents. The extension of W.T.O. membership is a political decision and one that we closely liaised with Scrutiny with regard to timings, agreements, negotiations, exemptions, and the mechanisms to facilitate this substantially. Bringing into force any new legislation, in this case through Regulation, is a matter that should be considered and debated by the States as we are doing so today. As Members would expect, we have worked closely with the Law Officers Department to ensure that these Regulations reflect precisely the obligations required by W.T.O. membership. We have similarly consulted policy officers across Government who may be affected within their respective policy and enforcement portfolios.

[12:45]

It is never easy or especially desirable to present Regulations with which we, as a bailiwick, have little objective other than to comply, although the prize is of course membership of the W.T.O. Membership of the W.T.O. ensures that Jersey companies have access to global rules on trade and services, goods and intellectual property, with other W.T.O. members, including E.U. (European Union) member states and the majority of countries worldwide. There is no direct impact on Jersey's economy as a result of bringing into force these privileges and immunities. Finally, it is important to remember that diplomatic immunity is not meant to shield people from criminal or negligent activity. It is supposed to protect diplomats from hostile foreign government. It is extremely unlikely that such a regrettable situation would occur. However, in such a rare event, Jersey will work closely with the U.K. Government in our response and review the privileges and immunities granted in line with Jersey's own offer. We can amend these Regulations by further Regulation under Article 12 of the Jersey Privileges and Immunities Law. In the Regulations themselves, and in accordance with W.T.O. powers and privileges, immunities may also be waived by the W.T.O. itself. That means that, for instance, where a serious crime has been committed, the W.T.O. could waive privilege, and that would mean the person involved would be tried in local or foreign courts as the case may be. However, we need to remember that these provisions are only for the fulfilment of international requirements. So any amendments would need to be considered very carefully and obviously assessed case by case. I ask Members to continue to support our international objectives and obligations to ensure that we can continue to grow our international personality and maintain our status as a responsible, credible, global partner. I move the principles.

The Deputy Bailiff:

Thank you. Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Deputy Ward.

6.2 Deputy R.J. Ward:

I just have some questions from what was said there. These are genuine questions and I will try to word them carefully. This does seem to be to produce a diplomatic immunity for those officials of the World Trade Organisation that will be necessary, it appears, if we are to become part of that in order to negotiate or be part of those trade negotiations that the U.K. will take on following Brexit. So there is a link to these things. But what I would like to know is, and I think that what we have to do in this Assembly is to look at some worst-case scenarios so that we understand what we are voting for and perhaps giving permissions for, if one of the people who has this immunity commits a crime in Jersey, a serious crime, and we can all imagine what type of serious crime that might be and we

all think about some situations in the U.K. with driving on the wrong side of the road and creating an accident perhaps ... I am just trying to think of some scenarios. I would like to ask the Assistant Minister what would that mean here? Because what we have heard is the W.T.O. could remove this immunity, we could go to the U.K. and ask for that diplomatic type immunity to be removed. But we need to know what we are signing up for here in terms of the way people can come to the Island and behave and perhaps be immune to prosecution. Because I do not see why those 2 things have to be linked to be part of a world trade deal. There is something within my conscience that says I am afraid I cannot vote for that because I do not see it as necessary. So those are my questions. I am absolutely convinced there will be more if other people speak but that is it for now. Thank you.

6.3 Deputy D. Johnson of St. Mary:

Simply to record that the Economic and International Affairs Scrutiny Panel did have a presentation on this matter. We understand the rationale behind it and are supportive of it.

6.4 The Connétable of St. Brelade:

This does concern me in the same way as Deputy Ward. I would like to know from the rapporteur what the benefit to the Island of membership of the W.T.O. is and to understand why any of its members or those involved should have the sort of immunity suggested, such as not paying rates. Now, that is a pretty exceptional thing to do and I cannot see the justification for that in the papers as presented. It involves great risk. We are not used to this sort of thing. I would be interested to hear the answers. Thank you.

6.5 Deputy J.H. Young:

I would like to ask the rapporteur about the likely practicalities of this in terms of a local organisation. Obviously, the exemptions, as the previous speaker said, are very wide. Looking at this, it does look as if it also exempts from income tax and so on in terms of employees and persons of an organisation. It also says that these privileges will be eligible, unless I have misread the report, a person who is a British citizen or a resident of Jersey. Therefore, does that mean, for example, that if there has to be an office set up in Jersey in order to facilitate this new post-Brexit world, is that we need to provide exemption from income tax, rates, all those things? Is that a practical possibility? Because I will be honest with you, I am quite concerned about that. So I would like to hear more. Is it intended that there will be an office here? Does it need to be an office here? Is it intended that will be staffed by local persons or persons as a part-time role that are already here? Will these exemptions be enjoyed by those people? I would like to know a little bit more about what we could end up with here. Thank you.

6.6 Connétable D.W. Mezbourian of St. Lawrence:

Following on from Deputy Young, my concern too is that, should an office be set up over here under Article 4, they would receive relief from rates, and under Article 5 and 6 we see that members and high officers will also be liable to not pay rates should this be passed. I would like the rapporteur to explain why rates should be exempt from payment by these individuals and this organisation. I cannot think of any others who are exempt from paying rates.

6.7 Deputy K.F. Morel of St. Lawrence:

I have no intention of standing in the way of the Regulations at all. I just want to cast Members' minds back to when we first debated this a few months ago. This is a new direction for the Island, being covered by the W.T.O. I hope the rapporteur can confirm that this is the case, we do not know if it is in our interests or not, if it will be in the long term in our interests or not, to remain a party to the W.T.O. We have done it effectively because of Brexit. It is yet again one of those things that came up. It may be advantageous. But I would like confirmation from the Assistant Chief Minister that he is maintaining a watching brief on the effects on Jersey. Because, if we were to find that it is against our interests, we at some point in the future would need to acknowledge that and to withdraw

from it. I totally understand that these Regulations would need to be passed to facilitate that membership. I am a fan of the rules-based international order. That is ultimately how as a world we work together and slowly bring a more peaceful society around the world. But at the same time, as a tiny Island, we can have changes forced upon us and be forced to accept goods that we do not want to accept into the Island through organisations such as the W.T.O. The W.T.O. is also an organisation that in itself is trying to find its place in the world. There are lots of pressures on the W.T.O., some of them reasonable, some of them unreasonable. But we also have to be aware that the W.T.O. in 10 years' time may have changed dramatically or may even cease to exist, depending how things go. So I just want that confirmation really that the department is not taking it for granted that this is the right thing and is constantly looking to see, or will be constantly looking to see, whether our membership of the W.T.O. is to Jersey's advantage or not. Thank you.

The Connétable of St. Lawrence:

May I ask the A.G. (Attorney General) a question in due course please?

The Deputy Bailiff:

Yes, you may. Do you want to ask it now?

6.8 The Connétable of St. Lawrence:

Referring to Article 4(d), which speaks to the privileges and immunities of the organisation itself rather than the officers, reference is made there to the relief from rates as in accordance with Article 23 of the 1961 Convention Articles. My question is: does the 1961 Convention Articles take precedence over the Rates (Jersey) 2005 Law?

6.9 The Attorney General:

The answer to that is no, it does not, unless this Assembly decides that it should. The purpose of these Regulations is to confer on the organisation immunity from rates. I have not looked at Article 23 of the 1961 Convention but I would guess that it would say that there is an obligation to confer immunity from local taxes on the organisation. By these Regulations, the States would be conferring that immunity on the organisation, were it to set up an office here.

6.10 Deputy M.R. Higgins:

I just wanted to say a few words about the World Trade Organisation itself. Listening to Deputy Morel, we would think it was a new body. It has been around for quite some time. Its basic job is to facilitate world trade and to reduce disputes, it has a dispute mechanism. It serves for the benefit of 164 member states and we either join these bodies ... and all these international bodies do tend to have a provision for their members to have certain privileges in the member states and so on. We have the same with the Commonwealth Parliamentary Association. One of their members was trying to get diplomatic rights for the Secretariat. All I can say on this is we either want to join these bodies and benefit from the advantages of being a member, or we do not. If we want to join, we do not really have much choice. What I would say is I do not see that what is being offered here is any more onerous than anywhere else. Thank you.

The Deputy Bailiff:

Thank you, Deputy. If no other Member wishes to speak on the principles, then I invite the Assistant Chief Minister to reply.

6.11 The Connétable of St. Ouen:

If I can address Deputy Ward's point first, it is quite clear from the briefings that I had that if a serious criminal offence was committed in Jersey then the W.T.O. would revoke the diplomatic status of that person and they will be brought to justice. In terms of a number of the other points, Deputy Higgins has summed it up perfectly in that we do not have any choice for this, we either accept the conditions

that are imposed by the W.T.O. or we do not join. There is definitely no intention for the W.T.O. to open an office in Jersey and it is very unlikely that we will ever end with an official in Jersey. We are simply not big enough on the world stage for that to happen. I cannot see that there will be any substantial economic loss to the Island in terms of taxation or rates. Even if one official came to the Island we are probably talking £400 or £500 worth of rates on an annual basis plus whatever income tax they paid. But it is a fact that if you join the W.T.O. you have to accept the Regulations that they impose and that includes giving certain non-local people immunity from taxation and other impositions. Deputy Morel makes a good point in terms of advantage, but Deputy Higgins answered that in saying that obviously the W.T.O. is a world trade organisation for the facilitation of trade. We do already, in some respects, take advantage of that in that we have trade with the States, which is done under W.T.O. rules. As I would remind Members, when we were debating the T.E.C.A. (Trade and Economic Cooperation Agreement), one of the options for that was that we would have to trade with Europe on W.T.O. rules as an alternative, which sets out minimum rates of tariffs and taxes. So there is considerable advantage in being a member of this organisation.

[13:00]

Of course, Deputy Morel was right, we do keep these things under review. We do not just blindly accept that we need to be a member of the W.T.O. We have done it because we feel we need to benefit from membership of that organisation, especially as the world seems to be moving in different directions and the independence of Jersey as a jurisdiction is becoming more and more important rather than less important. So membership of these bodies is particularly important, in my view, as part of that move. I think I have covered all the points and I thank Deputy Higgins for his contribution because he covered a lot of them for me. On that basis, I would like to move the principles.

The Deputy Bailiff:

Are Members content to adopt the principles on a standing vote? The appel has been called for. I invite the Greffier to open the voting. She has done so both in the Chamber and shortly in the link. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The principles have been adopted:

POUR: 37		CONTRE: 1		ABSTAIN: 0
Senator L.J. Farnham		Connétable of St. Brelade		
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
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				
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 of St. Martin				
Deputy of St. Ouen				
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 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)				

The Deputy Bailiff:

Assistant Chief Minister, how do you wish to propose the Regulations in Second Reading?

The Connétable of St. Ouen:

With the indulgence of the Assembly, I would like to take them *en bloc*.

The Deputy Bailiff:

Are the Regulations seconded? **[Seconded]** Does any Member wish to speak on the Regulations in Second Reading? Accordingly, I close the debate in Second Reading. Is the appel called for? Are Members content to adopt the Regulations in Second Reading on a standing vote? Will those please show? Thank you. The Regulations are adopted in Second Reading. Do you wish to propose the matter in Third Reading?

The Connétable of St. Ouen:

Yes.

The Deputy Bailiff:

Are the Regulations seconded in Third Reading? **[Seconded]** Thank you. Does any Member wish to speak in Third Reading? Connétable of St. Brelade.

6.12 The Connétable of St. Brelade:

While I appreciate the principle of the proposition, I think we ought to take care about being sucked into these things and the consequences of them. The Minister mentioned it is only going to cost £400,000 or £500,000 in lost revenue. Well, that is a significant sum in these straitened times. It does have an implication on rates in the parishes, probably particularly St. Helier. So I feel that consequences need to be considered before bringing these things through and some clarity over the benefits, which may accrue.

The Deputy Bailiff:

Does any other Member wish to speak in Third Reading? I call upon the Assistant Minister to reply.

6.13 The Connétable of St. Ouen:

I have the greatest respect for my colleague from St. Brelade but I did use a figure of £500, not £500,000. But I accept that whatever figure, there is a small or large in economic consequence. Membership of these bodies is, as always, considered carefully by the External Relations Department and, he is quite right, we do keep these things under regular review. If we felt it was no longer of benefit to the Island to belong to this particular organisation then we would bring a motion to the Assembly to change the position. But at the moment it is our view that is not likely. In closing, I would just like to thank my Scrutiny Panel once again for their helpful input. As always, it has been very useful in this particular instance. With that, I would like to ask for the appel.

The Deputy Bailiff:

The appel has been called for. I invite Members to return to their seats and I invite the Greffier to open the voting. She has done so both in the Chamber and in the link on the chat. If all Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The Regulations have been adopted unanimously in Third Reading:

POUR: 34		CONTRE: 0		ABSTAIN: 0
Senator J.A.N. Le Fondré				
Senator T.A. Vallois				
Senator K.L. Moore				
Connétable of St. Helier				
Connétable of St. Lawrence				
Connétable of St. Saviour				
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. Ouen				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy of St. Ouen				
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 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)				
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ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Deputy Bailiff:

That concludes public business for this meeting and I invite the Chair of P.P.C. to propose the arrangement of public business for future meetings. Deputy Alves.

Deputy C.S. Alves of St. Helier:

There have been some changes to the arrangement of public business since the Consolidated Order Paper was published. An additional 3 items have been added to the meeting on 14th December. These are the Draft Finance (2022 Budget) (Jersey) Law 202-, P.100; the Draft Social Security (Amendment of Law No. 16) (Jersey) Regulations 202-, P.101; and the Draft Health Insurance Fund (Miscellaneous Provisions) (Amendment No. 3) (Jersey) Law 202-, P.102. There are a number of items listed for the next meeting on 23rd November, including some significant debates; therefore, I would anticipate that the next meeting will be longer than this one as a result. I also believe the Greffier received a question yesterday about whether the meeting in December will start on the Monday afternoon with questions so that the Government Plan debate could start straight away on the Tuesday morning. As things currently stand, this has not been decided, although I think it would be a good idea and it is within the Assembly's power to decide this. So if Members could let me know if there are any objections to this before the next sitting, we can then make a decision on it. With that, I propose the arrangement of public business for future meetings.

The Deputy Bailiff:

Your proposal for 23rd November, is that in accordance with the Order Paper?

Deputy C.S. Alves:

Yes.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Does any Member wish to speak? Thank you, Deputy Alves. Before adjourning, I take the opportunity to remind Members that there is a contested election for jurats on Monday morning. There are 2 new jurats to the Royal Court being appointed, and of course all Members are members of the Electoral College and invited and entitled, and indeed urged, if your diaries accommodate this, to attend and vote for the new jurats. Thank you. The States is adjourned until Tuesday, 23rd November.

ADJOURNMENT

[13:09]