

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 17th JANUARY 2024

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[9:30]

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

**Deputy B. Ward of St. Clement:**

May I raise the défaut on the Connétable of St. Mary?

**The Bailiff:**

Yes, the défaut is raised on the Connétable of St. Mary.

**Deputy R.S. Kovacs of St. Saviour:**

And can I raise the défaut on Deputy Porée, Sir?

**The Bailiff:**

Yes, the défaut is raised on Deputy Porée.

**Deputy P.F.C. Ozouf of St. Saviour:**

Sir, the Constable of St. Lawrence was défaut but Members will be aware that she has suffered a bereavement. It may be because of that that she is not here. I have got no notice of that, but just in case.

**The Bailiff:**

I fully understand that, Deputy Ozouf. But as she was here yesterday, I think one must assume that she is back, unless she informs us to the contrary.

**Deputy P.F.C. Ozouf:**

I will find out, Sir.

**PUBLIC BUSINESS - resumption**

**1. Reduction of lodging period**

**The Bailiff:**

We now continue with Public Business. As I mentioned yesterday, before we arose, there is a matter that Deputy Scott wishes to bring before the Assembly at this sitting and she first needs to make an application that the various lodging periods are waived. She is not present at the moment, but I understand, Deputy Coles, she has asked you to make that part of her application pending her arrival. Then the Assembly can decide when to take it after her arrival, if they agree to accept it. So would you like to do that?

**1.1 Deputy T.A. Coles of St. Helier South:**

Yes, sir. Thank you. As with the results of yesterday, we find ourselves in a situation where Standing Orders and the law requires that we appoint a new Chief Minister Designate, as well as a new Council of Ministers. Unfortunately, this has fallen in a point where many Members, like myself, have already made plans to be off-Island next week, some for just leisure reasons as breaks are not always possible during the Christmas period for some, and also for family reasons and other reasons that other Members may have. So we request that we can bring forward P.3 of Deputy Scott to allow the debate to take place on remote participation while Members are actually off-Island for just this single instance. I do move the proposition and hope Members would support the early lodging.

**The Bailiff:**

So you are making a movement for the early lodging and the fact that it be debated at this hearing. Very well. Is that proposition seconded? **[Seconded]** Does any Member wish to speak on that proposition? Those in favour, kindly show. Those against? The proposition is adopted and therefore

this matter will be listed. At the moment, it is not listed at any particular place, and the norm is that it will be positioned at the end of the Order Paper. But if Deputy Scott, when she arrives, urges upon Members to take a different view, well, that is a matter for her and we will deal with that as and when it arises. Excuse me, I apologise for the cough that has been prevalent over yesterday and will continue to be so a little bit today. I apologise for that; as if by way of illustration.

## **2. Draft Planning and Building (Amendment No. 8) (Repeal) (Jersey) Law 202- (P.90/2023)**

### **The Bailiff:**

The next is the Draft Planning and Building (Amendment No. 8) (Repeal) (Jersey) Law lodged by Deputy Bailhache. The main respondent will be the Minister for the Environment and chair of the Environment, Housing and Infrastructure Scrutiny Panel. I ask the Greffier to read the citation.

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

Draft Planning and Building (Amendment No. 8) (Repeal) (Jersey) Law 202-. A law to repeal the Planning and Building (Amendment No. 8) (Jersey) Law 2022. The States, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following law.

### **2.1 Deputy P.M. Bailhache of St. Clement:**

This might appear, after the drama of yesterday, to be a minor matter but I think it embodies a significant principle. That principle is that people in Jersey should be free to do what they would wish to do, unless it is necessary in the interests of the community that that freedom should be curtailed. All civilised people care about trees. The questions are how you protect trees and, indeed, which trees you should protect. The answer to the last question, according to the Minister, is all trees, because that is what amendment number 8, which I seek to repeal, provides. It provides that no work on any tree shall be done without planning permission. I have been accused of being alarmist. Alarmist nonsense is what the Minister called that statement. But it is not nonsense. It is what the law says. The law says, and I quote: “To carry out on the land an operation to or involving a tree is development and requires planning permission.” It is true that the Minister can, by order, accept operations from that requirement, and I shall come to that in a moment. But the starting point is that under amendment number 8 work on any tree requires planning permission. One Member said to me a few weeks ago that one needs planning permission to knock down a house so what is the problem with extending that to trees? That question goes to the heart of the problem. Before the Occupation anyone could buy a house in Jersey. Any landowner could develop his land as he wished without any permission from anyone. In 1949 and 1946, respectively, those freedoms were curtailed by the Housing Law and Planning Regulations, and rightly curtailed because the interests of the community required it. Since then, we have removed many other freedoms. You cannot have a dog without a licence from the Constable. You cannot use a surfboard without the permission of the Government, and so on. We are probably the most highly regulated society in western Europe. But that does not mean, in my view, that we should carelessly give up more freedoms. On the contrary, we should be very reluctant to give up any freedom unless the public interest absolutely requires it. I do not think that the Minister feels the same way. His Ministerial comments state: “I understand there are concerns regarding over-regulation.” Note that the Minister does not seem to mind about over-regulation, but that he understands that there are concerns. In fact, my concerns are not about over-regulation but about regulation itself, unless it is absolutely necessary.

[9:45]

I was asked to withdraw this proposition if ... and I declined because I do not think that defining development to include any work on trees is the right approach. It is a sledgehammer to crack a nut. It is a good thing that projet 71 was withdrawn by the Minister because those proposals were, frankly, unworkable. It was fortunate that that proposition had not been adopted before Storm Ciarán hit the Island. Just imagine the chaos in the Planning Department if permission were needed to work on any

trees with a diameter of more than 25 centimetres, unless covered by the exemptions set out in that law. At Longueville, past which I drive many days, there are 2 or 3 mature trees, which have been ripped off by the storm at a height of about 10 feet. They were not dead, nor diseased, nor a danger to the public, nor damaging any building. It does not sound like routine management. As far as one can tell, none of the Minister's exceptions applied to them, so planning permission would have been required before they could be cut down or pollarded to remove the jagged edges. There must be thousands of such trees across the Island, all of which would have required the intervention of officials before anything could be done about them. What a nightmare was narrowly avoided. The truth is that if you start from the position that work on any tree needs planning permission unless it is exempted by order, you are starting in the wrong place. Defining development as including any work on trees was a clever legal construct, but it does not work in practice. I do not believe it is possible to think of all the circumstances in which people should not be allowed to work on trees without making any application to the authorities. There are a myriad of such circumstances. Too many. What would happen is that the orders would be drafted to make sure that the offending circumstances were caught but that would inevitably suck in many unintended consequences. Why should law-abiding landowners, the vast majority of whom care about trees, have to go to the trouble and expense of applying for planning permission when they want to do something unexceptionable? I think that amendment number 8 was misconceived, and that is why I am asking the States to repeal it. The professionals, architects, tree surgeons, countrymen whose daily work involves working with and looking after trees all, so far as I am aware, think that amendment number 8 is not the right approach and their opinion must surely count for something. I want to say a few words in conclusion about how I think trees should be protected. The Ministerial comments state that: "Deputy Bailhache seeks to repeal the potential use of the Planning Law to protect trees", and that is not correct. I made it clear in my report that the Minister's powers, under chapter 2 of the 2002 law, to make a protected tree order are very important. I think that attention should be paid to the obligations of the Minister under Article 58 of the 2002 law. The Article is headed "Minister to protect trees by maintaining a list of protected trees", and the procedure is set out quite clearly. To cut down or damage a protected tree is a criminal offence and an offender is liable to an unlimited fine. But to make it work, one needs to know precisely which trees are protected. I do not wish to be impolite, but the current list of protected trees on the government website could generously be described as woefully inadequate. If one goes to the list, the first item on the list of 71, describes the protected tree in this way: "Intention to provisionally list. There are several fine specimen trees, especially the monkey puzzle tree." That is it. Has it or have they been provisionally listed? It is not possible to say which tree has been protected, if any. Article 58 states clearly that the description should be sufficient to identify the tree. If properly operated, the list of protected trees is a very effective way of protecting special trees. A tree can be provisionally listed very quickly if there is a perceived risk of felling. Once a tree has been listed, no one can cut it down, lop it, or damage it in any way. In summary, amendment number 8 is flawed. It would be an administrative nightmare because the pressures on an already stressed Planning Department would be greatly increased to the detriment of the public. Controlling work on thousands of trees will inevitably require more civil servants when many people are saying that our bureaucracy is growing too much. Finally, it would be an unnecessary intrusion on the freedoms of our fellow Islanders. Unnecessary because there is no evidence of a problem which cannot be addressed through the existing law. I hope that Members will agree that amendment number 8 is flawed and should be repealed. I move the principles of the Bill.

**The Bailiff:**

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

**Deputy E. Millar of St. John, St. Lawrence and Trinity:**

Sir, may I raise the *défaut* on Deputy Farnham, please?

**The Bailiff:**

Yes, the défaut is raised on Deputy Farnham.

**Male Speaker:**

May I raise the défaut on the Connétable of St. Saviour and Constable of St. Brelade?

**The Bailiff:**

Yes, indeed.

**2.1.1 Deputy S.G. Luce of Grouville and St. Martin:**

Members will be pleased to know that I have very little to add, because I thank Deputy Bailhache for his opening speech, and as ever, he says everything I would say in a far better and more eloquent manner than I could ever possibly wish to. When I first saw this draft legislation come across my desk, and I am looking back at the date here of 25 April 2022, so it is nearly 2 years ago, I went home and wrote a very long speech, which took quite a bit of finding because it is so long ago now, but it was certainly very angry, it was very incensed, and I do not intend to use it today. But Deputy Bailhache is right, this is not alarmist nonsense. This is absolutely necessary what we do today, because this proposition to “protect trees”, and I use that in inverted commas, is unnecessary. I am going to be very brief. It is my view that this has been brought about by one or 2 cases where unscrupulous developers have taken down trees inside development sites for their own benefit. In hindsight, those trees should have been protected. Maybe we should have seen that coming. But this proposal from the Minister for the Environment is not the way to solve this issue, as Deputy Bailhache has outlined. There is a lot of money that has been spent on this already. If that money had been put towards subsidising tree planting and maybe the cost of civil servants to add more trees to the listed trees list it would be completely unnecessary. We have laws in place already, as the Deputy said. I am not going to go on. I think we should just move on with this as quickly as we can. We should reject it completely out of hand and get on. I do not see this as a move about the environment. I see this as a move about control, and I would reject it wholeheartedly.

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

Before I do, could I just raise the défaut on the Constable of St. Brelade?

**The Bailiff:**

It has already been raised, I think, but yes.

**Deputy P.F.C. Ozouf:**

And St. Lawrence, Sir.

**The Bailiff:**

And the Connétable of St. Lawrence. Absolutely. Thank you very much.

**2.1.2 The Connétable of Trinity:**

Just to say that I stand as guilty as agreeing to bringing this matter under the scope of the Planning Law, and I realise that it was a rather heavy-handed approach to protecting trees. I will be absolutely supporting the Deputy in his proposition today.

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

I do not think we should rush into this. We need to think about this. First of all, the current situation, and I thank the Solicitor General for some information earlier to just give me some clarity, is that a preservation order is needed. It was interesting to hear Deputy Bailhache say that the - and I wrote it down, and I am in the same boat of having very poor handwriting as a number of others in this Assembly - it is woeful, I think the phrase was, of how preservation orders are currently established.

That should ring an alarm bell to say that the system we have at the moment is not protecting our environment. It was interesting to hear Deputy Luce say one or 2 developers may have got rid of some trees, they should not have. This is very significant, because I think if you remove all protection in this way and just wait for the preservation orders process, which is woeful, that is just a free rein to have, if you like, a wild west development and not worry about what happens to our environment. We have an issue here. What the law that was coming through, the policy that was coming through, and this is a policy issue, was that all trees will be protected automatically and there will be carve outs for specific areas. For example, and this is the way I understand it, perhaps the Minister can speak later and confirm this, so the carve outs, for example, in your garden, particular sized trees, particular areas, would mean it is a lot easier to just go and you would not have to go through that process. That blanket protection is something ... and this is where the crux of the issue is. It does seem to be that what we have is a strangely libertarian approach. We have to be very careful when we take that libertarian approach to our environment, because we have to think: where does it stop? We have marine protection areas. I think they are very good because they are necessary. They are not liked by everybody, but they are necessary. We have protection areas for biodiversity on this Island, which are absolutely vital. The protection of trees in our environment, and we all know in towns and cities in St. Helier, for example, which is not green enough, the protection of trees in that area it is far more important that we realise the protection of trees in our cities to provide shade and healthy air for us to breathe, et cetera, is vital. I would be very wary of taking a pre-emptive strike to say we will remove all protection and just use what we have at the moment and hope it works under the notion that that is freedom. I think that is a very strange sense of what freedom means, because the freedom for those who own, to do whatever they want with something that is vital for our environment, is a different issue, and we have some difficult choices to make. Do we have the freedom to remove from our environment essential parts of our environment? My question would be, I am afraid that what is needed from Government is some clarity in that area. I would like to have seen the policy coming forward in depth rather than just being removed, if I am absolutely honest, so we could have had that debate in this Assembly, and that policy developed and Scrutiny looking at that policy and developing that policy in detail, rather than just removing blanketly this provision within the law. I do worry that if we do this we are left with nothing. If preservation orders are the way forward, and that is great, what I would like to have seen is something added to this which says that this is the process of preservation orders we will therefore move to.

[10:00]

Or a direction to the Minister to say: "Part (b), you will develop in the next 6 months protection orders, which come to the Assembly, which are adequate for us to say, therefore, we can remove this after that is done." At the moment we are at risk of voting to leave nothing. If we leave nothing we lose that protection en masse. I would be very concerned about that. Even if that is a short-term loss of protection, development on this Island, in my opinion, is often not as controlled as it should be because the driver - and I can understand why, it is a business - is to make money. Even within the bridging Island Plan we allow in St. Helier, for example, developments to be made and say: "Yes, you have to provide some sort of green space. It does not have to be on the development. It can be anywhere, it can be down the road somewhere. It can be over somewhere else." So we have flawed systems. So what we have to do, and I believe this is the key, is to develop those systems. What Government does needs to be effective. It needs to be accepted and it needs to be understood fully rather than just throwing everything away. Finally, I would just say that in removing en masse a law in this way, what we end up with is a vacuum, and whenever there is a vacuum it will be stepped into and exploited. I think we have to be incredibly careful of allowing that to happen. I think this is a very rushed decision and we need to prevent this. I think it would have been a good idea for the Deputy to either postpone or remove this and have some sort of contact with the Minister, and whoever becomes Minister because we are at a time of change. So there is an opportunity there to make these changes rapidly for somebody, whoever steps into that position, who might want to make



change. I think this is the wrong time for this. I unfortunately, therefore, have to say I would urge Members to reject this proposition.

#### **2.1.4 Deputy L.M.C. Doublet of St. Saviour:**

Yesterday a flippant remark was made by a Member - I cannot remember exactly who it was - about frivolous items on the Order Paper and trees being one of them. I was actually aghast to hear that because while there are lots of important things that this Assembly deals with, that if the planet that we are living on is not the most important thing then I do not know what is. I admire the Deputy who is bringing this proposition. I admire his faith in human nature, because much of his argument rests on the fact that we should trust people and have faith in people to keep the trees that are growing on their land. As a humanist, I do, I applaud that point of view. But I am also a realist, and I want to remind Members that we are in a state of climate emergency. I believe that whoever is going to be the Minister for the Environment should continue working to protect trees. I am not sure if I have used this before, but this is a saying that the young people use. Imagine if trees gave off wi-fi signals, we would be planting so many we would probably save the planet but it is too bad they only produce the oxygen we breathe. This law, I think much of the purpose of this law will be almost like the seatbelt law. It is a culture change law. It is an indication to our citizens that trees are very important for some really obvious reasons, which I think we all are behind, are we not? None of us want climate change to continue at the pace it is continuing. It is a culture change law. I am sure the Minister for the Environment, whoever he or she is going to be, will take on board some of the feedback from landowners and bring something forward that will work towards tackling climate change while respecting the views of those landowners. But just to bring Members back to the importance of trees. I reflected on the Youth Parliament because, of course, we should be listening to our young people. They are the ones who are going to be living well beyond us and living on this planet, and we have a duty to safeguard this planet for them. Indeed, as an Assembly, we have a duty to think about their rights. Article 24 of the U.N.C.R.C. (United Nations Convention on the Rights of the Child) states, among other things: "Every child has the right to a clean environment." So we have a duty to safeguard the environment for them. I have some words from the Youth Parliament, some of which - I am looking at the document they produced, the previous Youth Parliament - at least one of these children was in my class when I was a reception teacher, and Cal said: "Biodiversity and trees are the most important thing about this world. Without them, we could not exist. We could not have food or materials. I think biodiversity is the most important thing we should be worrying about." Ava says: "I think it is important to protect our environment because it provides us with things that the younger generation might not have due to deforestation and rising sea levels." So please, I implore Members to listen to Cal and Ava and the other young people who would like to have a planet to live on. I reject this today so that we can come back with something that will protect our trees and protect our children's future.

#### **2.1.5 Deputy M.R. Scott of St. Brelade:**

My apologies for arriving late to the States Assembly. Thank you for excusing me. I think already I have identified some misunderstandings about where we are in terms of the original regulations that the ... or the law that this proposition is proposing to repeal, which has not been implemented yet. Approving this proposition will not create a vacuum. It does not change anything because the law has not been implemented. I happen to have quite a bit of knowledge of the background of the law, which I will, as briefly as possible, share with States Members, because basically ... I accept we all love trees. I have worked with 3 Ministers for the Environment now in respect of tree protection, raising my concerns in my former role before becoming a States Member, known as a somewhat feisty chair of the St. Brelade's Bay Association, who raised a general concern that the development of an area of the Island was insensitive and ... they were not actually against the development contrary to what some people might say. They just wanted it to be done sensitively for a key tourist attraction. One of the things that they raised was the extent to which trees had been planted extensively in the

area to beautify the area after the devastation of I think it was the 1987 hurricane, and all these trees had been planted as an incredible piece of work; the 1989 St. Brelade's Bay Environmental Improvement Plan. Then what people were seeing were these trees were coming down because the Bay happened to be attracting developers who wanted to create sea views for luxury houses, and the current Planning Law and the way in which trees were protected were not sufficient. May be some States Members remember part of the fuss that was made about a fig tree in the Wayside car park, on which there had been a tree protection order, but whoosh, it just went with the whole development. I, on behalf of the Association, worked with 3 Ministers for the Environment, basically saying these things need to be improved. One of them, the former Minister for the Environment, was Deputy John Young, who was a Deputy of St. Brelade, who basically said he would be working on a tree strategy and in the meantime he would seek to bring in a temporary provision that perhaps provided some blanket protection. I had no input in that. I had no hand in the content of it. But basically what we are debating now, I believe, was his proposed solution. There are some problems with that, one of which is it is not temporary; it is not expressed to be temporary. But also the fact remains, and I very much take on board what Deputy Rob Ward said, that perhaps it would have been more ideal if this proposition had been debated after a proposition that I had brought myself on tree protection, which is to be debated in the next States Assembly, and that is proposition P.98/2023, which I did briefly discuss with Deputy Bailhache, and which has been amended. But we did not really have any further discussion about a strategy in terms of how this was put forward. I have also discussed the contents of P.98 with the Minister for the Environment, which has led to my deferring that debate until the next States meeting. But basically, just to come back to where we are, in terms of the alternative, what was worked on before the current Minister for the Environment took his position was a tree strategy. I know Members might think that praise does not come from me easily, but this was a really impressive piece of work and it is quite amazing how it was done because it was actually done I believe during the lockdown, I recall. It involved extensive collaboration with many different stakeholders regarding trees. It involved the farmers. I was involved as a community representative. You had the National Trust charities. An amazing collection of people who knew about trees and the problems we were having in protecting them, and the concerns about being too heavy-handed because, frankly, some people just plant a tree in the wrong place and they do not realise, and then it needs to come down. One of the questions is, should they be penalised for that, if they want to bring it down, having to go and pay a fee for planning permission, these sorts of thing? To be honest, that was not really part of the debate because none of us quite knew what the Minister was proposing in the background. It produced this tree strategy, which my proposition does refer to. I have to commend the chief officer, who was involved in this, because, as I said, it was incredibly well structured. It was one of those collaborations, and it does not always happen with planning, unfortunately, where people did really feel involved. That is very important with this community. What it proposed was some actions, which did include working on the current tree protection provisions that are in the Planning Law, and coming up with some ways of better providing that in these situations where outside the countryside, where you have got developers who might be tempted to just raise some beautiful trees perhaps in a suburban area, even an urban area, that there would be some way of countering that. I have listened quite carefully to the arguments about why we would carry on with the proposed proposal that Deputy Young came up with at the time. I am in favour of the proposition that Deputy Bailhache has brought. That is because the mechanism that the law that this proposition now is trying to repeal entails. Again, it is a bit technical. I doubt that States Members who did approve the original law thought it through too much. But what we have learned, many of us as States Members, is that the law generally creates this blanket if you are going to fell or deal with a tree or perform an operation on a tree that is a development operation. Generally you must get planning permission to deal with that tree. That is every single tree. Then it allows certain operations to be excluded by Ministerial Order. That is, if the law is implemented, which it is not yet. That Ministerial Order, States Assembly does not have any control. I think it is a Ministerial Decision ... no, it is a Ministerial Order. Anyway, it is a mechanism which we do not really have a

control over. It is a Ministerial Order, sorry, yes. We could repeal it, but if we did, you are in danger of having a much more drastic ... just basically this general provision that all trees, however you dealt with them, it would be development. You more or less would have to accept whatever Ministerial Order comes up first just to have any exemptions. If you did not like the Ministerial Order, well, you are in real danger if you get it repealed.

[10:15]

So it is a very unsatisfactory way of dealing with what is a complex issue, a sensitive issue that even now I have been discussing ... I discussed some concerns. I believe possibly the Jersey trees association might have too with the Minister about the current content that we have seen in the current Ministerial Order in terms of certain trees that it might not include, because trees, of course, come in different shapes and sizes. What essentially I believe this community wants to do is protect special trees, heritage trees, trees that are really loved in certain places and trees in certain areas in certain environments. But being mindful of generally that we want to encourage people to plant trees, and you are in real danger that that is not going to happen if you are basically saying, well, at any time you might be exposed to a law that says you have to pay if you do that and go through the planning system and all these things. So, as I say, I hope that when we come to the point of debating the proposition that I am bringing, hopefully in the next States sitting, that I might have some support in improving tree protection that way. In the meantime, I urge States Members to support Deputy Bailhache's proposition.

#### **2.1.6 Deputy K.F. Morel of St. John, St. Lawrence and Trinity:**

I fear Jersey has just entered the culture wars. I also fear and I believe there has been a great deal of misunderstanding, as I understand it, about this law. That is the bit which really concerns me. This law was actually brought in by former Deputy Gregory Guida, who is certainly a Deputy who was, in every conversation I spoke to him, very much anti-regulation. He was not somebody who was in this Assembly choosing to bring forward regulations for the sake of regulations. He was almost certainly aligned with Deputy Bailhache on that item or that matter. We all know that the orders that were being brought in, or attempting to be brought in by the Minister for the Environment, caused a great deal of consternation. I understand that and I believe there was validity to those concerns; no question. Obviously the Minister for the Environment then chose to withdraw them. Now, my understanding of the law, as it is here today, is quite simply that it gives the Minister powers to make these orders and the Minister can choose how to define trees, how to define which trees are ... not how to define trees but how to define which trees are to be protected. That could be everything from the age of the trees, the size of the trees, the species of the trees. In fact, I believe it could be used to protect individual trees. It gives the Minister that ability. Now, I believe it was in the making of the orders that the current Minister made errors, kind of effectively political errors. The scope was far too large. But this is a case of do not throw the baby out with the bathwater because while we may fall back on tree protection orders - because they do, I understand it, remain in law as it stands - they are close to utterly useless. That is the real issue I have here. Why did Deputy Guida want to bring this law forward? Because he understood that the current tree protection order regime is useless and, Deputy Scott has already referred to it, the fig tree in St. Brelade's Bay was a really good example of how utterly useless the tree protection order current system is. What happened, as I understand it, there was a fig tree that was protected for whatever reason. It does not matter, do not know, I cannot remember. One day it disappeared. The chief officer who is, under the current law, the chief officer of Planning is the kind of guardian of that law and so is the guardian of protected trees. It is the chief officer who chooses whether a protected tree should be delisted or listed, if it is not yet protected. Yet, when I made enquiries, the chief officer had done no such thing in this case. The chief officer had not said take away the tree protection order on that fig tree. Because a planning application had come in which, and these were pretty much the words that were said to me at the time: "Well, the planning application did not show the tree" and so when that planning application was passed that

tree was no longer protected. So while the planning application did not refer to the tree, it just showed it as being not on the plans. Nobody or very few people would have realised that that tree was going to be for the chop, despite it having a tree protection order on it. That really showed the weakness, the massive hole in the current tree protection order regime. There are other holes. You have to identify individual trees. Somebody has to be motivated to identify individual trees. They have to find out then how to protect that tree because, believe me, it does not make it clear on the government website how to do that. So we have, going off Deputy Bailhache's words, a mere 71 trees in Jersey that are protected. Would any of us really know what to do if we liked a tree, thought a tree was particularly fine? Now, we do know that, as Deputy Doublet has said, trees are essential for life. I mean, they are. It is that simple. Landowners do not always value the trees. Deputy Bailhache can say it but I have spoken to landowners who treat trees and view trees as weeds on their land. They see trees as in their way. Now, that is not all landowners, this is one or 2 landowners that I have spoken to but that has been said to me. So it cannot be the case that we all see trees equally. Some people do not care for them, some people we know care immensely for them. But when a tree is cut down the one thing you really do not know is who appreciates that tree. Now if you wake up every morning and you are in your kitchen having your breakfast, and there is a tree on somebody else's land just over the road but visible from your kitchen, and one day that tree disappears that has an impact on you. It can have a severe impact on some people. They have enjoyed the squirrels running through those trees, they have enjoyed the birds landing, nesting, roosting in those trees. They have enjoyed the whole ecosystem that exists around that tree. So, effectively, I think I really kind of agree with Deputy Ward here; the issue really was that the Minister for the Environment brought forward the wrong orders. It was not that this particular law in itself is wrong. Now, this law could perhaps be changed so that instead of bringing in orders, it should be something which passes through the Assembly. That would have been perhaps a better way forward so then you could debate whether those regulations were right or wrong. But because this current tree protection regime, in my view, is so unbelievably weak as to be close to useless, I find the idea of just throwing out a law, which I know was proposed by a gentleman who was completely anti-regulation or more regulation ... he did not want the proliferation of regulation, I do not want the proliferation of regulation. I have been very, very worried about Jersey losing or potentially has lost that fleet-footed, nimble agility that we talk about because we have covered ourselves in regulation. Regardless of what happens over the next week or so, I will continue to say that, no, Jersey cannot bring in more regulations. So in this case, it is about the Minister for the Environment. This law, as it stands on the books today, if it was to be brought in, is about the Minister for the Environment getting it right and making sure that the protection of trees is proportionate. That was the mistake that was made. But it is not the law that is the mistake, it is the way the Minister for the Environment chose to bring ... the orders that the Minister for the Environment chose to consult on. Actually, I believe it was consultation, I am not sure if he was bringing it in, he was asking for people's opinions. Those opinions were given overly forcefully in my view. So I really do ask Members to think very carefully. The tree protection regime that we have in place at the moment is inadequate, it does not and will not serve the purpose that it is apparently there for. The current law that has not quite been brought in, this amendment number 8 law, does give power to the Minister for the Environment to protect trees. Obviously, the States Assembly can call in an order at any time and can debate it as well. For me, that is where the role of the Assembly really should be. It is in policing the order-making power of the Minister to make sure that those orders are proportionate. I am concerned about the signal this would send to younger people, because I started by mentioning culture wars, and there is no question that the younger generation in Jersey, as around the world, are deeply concerned about the environment. The younger generation, as we know, find it hard to engage with politics. They find it hard to understand why we do things which in their views are harmful to the environment. So I would question the message that repealing this ... what would it send to the younger generation, the people who will be living here for 70 years? I will not be here for another 70 years, that is really simple, but my daughter is likely to be and her friends and so on. So I just ask Members to think really carefully about is there not a

better way. Yesterday I made an argument to say we need to collaborate a lot more. I feel, and I fear, that this proposition is set to create more division. Rather than working together to find a better solution, it just says throw something out and rest on a law which has proven over decades, or however long it has been in, to be utterly inadequate.

**Deputy B.B. de S.DV.M. Porée of St. Helier South:**

Sorry, can I raise the défaut on Deputy Tadier, I forgot to do it earlier?

**The Bailiff:**

Yes, the défaut is raised.

**2.1.7 Connétable M.K. Jackson of St. Brelade:**

I am pleased to follow the previous speaker, who I know has strong connections with Trees for Life in Jersey, who are really an authority here. I have to hold my hands up to the Assembly by saying that I was responsible as a result of some previous experience in bringing amendment 21 to the 2021 Government Plan, I think it was, to give some funding to the protection of trees. That was successfully accepted. That was stimulated by some concern, I think probably going back to the previously mentioned Wayside fig, I might call it, with which I was familiar, and I just did scrape up the correspondence which I had at the time regarding that. It was quite interesting, in that particular case the Minister had determined the matter under appeal and was advised in that respect by a planning inspector. The planning inspector, having considered all material factors in his report to the Minister, addressed the issues of trees and replacement planting in paragraph 75 of his report. At the end of that it says: "The department has raised no issues in relation to the loss of the trees." There was clearly, I think, fault in that decision-making process. So that was added to a little bit later during our ongoing discussions regarding the use of the Overdale site for a future hospital, whereby on a visit, together with others, I noted that alongside the old McKinstry Ward there was this magnificent turkey oak tree and it in fact is called the Presidents Oak. It was planted in 1937 in celebration of the opening of Overdale as an isolation hospital. I did consider we should perhaps look at renaming it the Farnham Oak at that time but we have moved on from that particular discussion. It is a magnificent oak. So, at that point, I was trying to establish whether, in fact, it was protected. I did discuss this point with the department, clearly it was not, and the officer at the time gave me advice as to how that might take place.

[10:30]

It really is quite convoluted. I felt at the time that we needed to do something about it. I remember being told, when I got to the next stage, we cannot do anything because there is no funding. So that led to the amendment to the Government Plan. Having done that, I know the department has been working on bringing it into law. I did discuss this at the time with Deputy Guida and Deputy Young, who were both keen on having something in statute to give some sort of protection. In parallel to this, I witnessed the cutting down by a large, well-known developer of a magnificent blue cedar on a property not far from where I live, and not far again from where I live some magnificent beech trees are under threat. I have to say, when I hear chainsaws starting up, it does fill me with horror. I believe the Minister is going in the right direction but clearly the feedback from industry and the public in general has indicated that that direction is not to their liking. He has adjusted the proposals, the law, which is, I think, more practical. I wonder whether that is the right direction but I think that, in truth, we have got to get these tree protection orders right. I do not believe they do exist at the moment as such as tree protection orders. It is a planning permit but not in the way in which it used to exist up to a number of years ago. They were got rid of for whatever reason. Clearly that was a mistake. The U.K. (United Kingdom) set up whereby if a landowner or developer cuts trees down and advantage is created, there can be a financial fine balanced with the increase in value by the views being created. It is an area for consideration but difficult to manage I would think. In

summary, I think that we need to find some sort of palatable structure for protecting our more important trees. Nobody wants to control what landowners do on their own land, but some of our more magnificent specimens really do need protection. I have looked in depth at trees. In fact, my grandfather was a dendrologist and he travelled the U.K. listing big trees. I have some of his old tomes and there really are some magnificent trees in the country. When you get to trees at 100 and 200 years old, you do not really want to see them cut down. In answer to this proposition, I would like to hear from the proposer how he anticipates the protection of trees being dealt with. By accepting this proposition, are we walking away and leaving it as it is, which I believe is unsatisfactory, or is he going to propose a different direction forward to support the Minister in protecting our very important trees.

#### **2.1.8 Deputy E. Millar:**

I agree. I think we are all agreed that we all love trees. This may sound trivial because there are many times I turn the news on and feel that I want to cry with what is on TV, but one of the pieces of news that hit me absolutely - I would use the word - devastatingly this year was the news that someone had gone out and cut down the tree at Sycamore Gap. I almost have no words for how awful that was. I have been to see that tree many times. My brother lives nearby. He has worked in forestry his whole life; I am sure he was also devastated. We have also seen reports, I cannot remember if it was Portsmouth or Plymouth, where people were protesting because the council had come out in the middle of the night and cut down a line of very well-established trees in the city centre. Some years ago, in the late 1990s, I went to Peru and we ended up in a town, I think it may have been Cusco, where there were people protesting and in a square trees were balanced on stumps and supported by scaffolding. Exactly the same thing had happened. The council or the local authority had come out in the middle of the night and cut down the trees, and the people were so incensed they had propped them back up on the stumps and were protesting against the council. My point in saying all that is that despite the fact that we all love trees, it is very clear that people do, as a matter of fact, really stupid, thoughtless, incomprehensible things where trees are concerned. The Constable of St. Brelade has just given us some very good local examples, so I do believe that we need some protection for trees. I have a small garden which has quite a large tree, it is a beautiful tree, it is a flowering cherry tree and in May it looks absolutely stunning. In the last 20 years that I have lived there we have had gardeners come in twice to prune the tree because otherwise I would not see out the upstairs windows. From my understanding of what the Minister is proposing in terms of exemptions and controls, my maintenance of that tree in my garden would not be caught. It is nonsense to suggest I would have to go and get planning permission to prune a tree that really needs pruning in my own garden. I do not believe that is the Minister's intention. When all the news first broke on this and people became agitated, I thought: "Oh, there is that other thing" and I went out to check whether something else ... whether I would need to get planning permission to remove something. But I am also satisfied it is just a large shrub and that I do not need planning permission to remove that. I am sure the Minister will say more but I believe in developing his initial proposals there was a public consultation to which over 3,000 people responded. They all agreed with the strategy of enhanced protection for trees, and this seems to be a perennial problem. We have a consultation, Ministers come up with proposals based on that consultation, based on support of that consultation, and then another group of people who perhaps did not participate become aware of it and object. We come across this many times, but to give the Minister his absolute credit he has listened to that and he has adjusted the rules and he said he will do so again to make sure that we do get it right. I do think on the basis of the, as I say, idiocy that we see regarding trees - I will use that word - and the fact that people do do things for their own benefit that just the rest of us will never understand, I do agree that we need to have some degree of protection for trees. We need to find a way of doing that and I will be supporting this proposition.

**Connétable M. Labey of Grouville:**

Can you hear me?

**The Bailiff:**

Yes, we can hear you, Connétable.

**2.1.9 The Connétable of Grouville:**

Thank you very much. I support very much the proposal. Having spent most of my life in the farming industry, many of whom have spent a great deal of time and effort planting trees and indeed looking out of my office window at a very grey and dull day today, in the old days many of the farmers who had large staff teams on such a day would have found an odd job for their staff to do. They should have been planting spuds in Le Cotil but today they would have been planting trees or some other job. I was very disturbed to hear that many of them would not do so in the future because they would be worried that they would have to get planning permission to trim these trees when they got to a certain size. I indeed, in my own capacity as a landowner and farmer in the old days, used to plant trees on such an occasion and, in fact, I planted hundreds of my own. A hundred of which I planted specifically for firewood. Again, they are getting to the size at which I require planning permission to do that. My most disturbing contribution to this was a very large estate manager said to me, having planted over 1,000 trees last year alone, that he would be reticent to consider carrying on with such a matter because of this law. That disturbed me greatly. I really do think that we should enhance our current legislation. As previous speakers have said, the protection of trees needs to be tightened up. Deputy Morel and everyone should be working towards that and the tightening of such legislation and not introducing legislation that could actually stunt the future planting of trees. That very much concerns me. Thank you for letting me speak.

**2.1.10 Deputy J. Renouf of St. Brelade:**

I find myself in a slightly strange position responding as the Minister when I will not be the Minister and not be bringing these forward. So to respond as the Minister in these circumstances is slightly strange and my speech as a result is slightly more complicated and different than the one I had prepared. I do want to go into it in a little bit of depth, however, because I do think that the proposals have been misunderstood. I take my share of responsibility for that, but I do think it is important to understand the context in which we got to this position and why. Actually, I think it is a very simple decision to reject this proposition because it does nothing more than keep a theoretical power in our back pockets for if we might want to use it in the future, should the Assembly wish to do so. When I cycled in this morning, I came around St. Aubin's Bay, a rather wet cycle ride, and as you look towards town, the view that you see is made up of 3 elements. There is what you might call the base geology, the low lying bay area, the escarpment, the valleys. These have been shaped by millions of years of geological processes and constitute what is known as our geoheritage, now being recognised by the listing of a number of sites around the Island which allow us to protect those sites which are of particular geoheritage significance. Then the next thing you see are the buildings, the homes, hotels, offices and so on. These elements of the built environment are part of our cultural heritage. Again, we protect our cultural heritage in a variety of different ways through planning controls, listing and soon conservation areas. Finally, the third element that makes up the view are the trees. Climbing up the escarpment and marching across the skyline. These are part of our natural heritage and their value has been increasingly recognised over the last few years, yet this element of our environment is the least protected. That is the context in which proposals for greater tree protection have been under consideration over the last few years. So the questions that arise are: do we need better protection for trees? If so, what is the best way by which it can be achieved? Before I get to those points, I do want to say something about the context in which we are discussing this matter. I am a Minister in name only and this matter will be taken forward by a new Minister. Had I been carrying this matter forward I would have made clear that I would have withdrawn proposals under

amendment 8 and that I wish to start afresh considering this matter. I am therefore in a slightly unusual situation in that I am arguing for the retention of a law that I would have said I had no current intention to use. But, as I have said earlier, I think the important thing is that we keep it as in reserve. It is a power that we need to keep as an option. I am going to explain why I think that is. It is worth acknowledging, however, that one of the many reasons why I think those proposals should be put on hold for now is the impact of Storm Ciarán and I accept, as I am sure most Members of the Assembly do, that this is not the time to be discussing tree protection in the manner that we had because the people who deal with trees have the matter of dealing with the storm aftermath, which for most of us, going about our daily lives, we may tend to forget, but is still very much going on. I have been having to take cycling detours on my way to work because the railway walk is closed in sections because some of that work is still going on and will be for some time, and many landowners will be dealing with that. It is not right that we should be asking them to also think about the details of planning protection. But, having said that, I am still going to argue strongly against P.90, which would repeal the part of amendment 8 to the Planning and Building Law that relates to tree protection. My argument is that it is a disproportionate step to take, that it is not necessary and that it would remove potentially useful options that could be used in the future. The key safeguard here is that nothing can be enacted through the amendment number 8 route without the approval of the Assembly.

[10:45]

That is why I say that P.90 is unnecessary; there are already safeguards in place. The nub of the argument is that we need to consider whether we have enough protection for trees currently available. Currently, there are only 2 protective mechanisms available to stop trees being felled. The first, which has not been mentioned so far, is through the Wildlife Law. It is illegal to fell a tree in which there is a nest - squirrel, bat or most bird species nest or home, if you like - even if the nest is inactive. This is to protect the habitat which that tree clearly represents to a protected species. In simple terms, the tree is the home of an animal that we are trying to protect. This is, however, only a very limited protection for 2 reasons. First, in practice, unless someone spots the tree is about to be felled before it is felled, sees that it has a nest, and is able to point this out to the person doing the felling or to the authorities, it is very difficult to use. Rummaging around in the detritus of a fallen tree to find a nest may provide some evidence but it is unlikely. I was contacted last year by someone who took photos of a tree before it was felled that clearly showed a nest in the upper part of the tree before it was cut down, but when officers investigated there was not enough evidence to prove that the nest did not come from one of the few species that are not protected, such as crows. Second, of course trees are only protected where a nest is present in a tree. So, in other words, that protection is a by-product of being a habitat. It is not a protection in itself of the tree. The second means of protection is the listing of trees. Now, the key point about the listing of trees is that it requires anticipation. We need to know in advance what tree or trees we wish to protect. That is fine in some cases, for example, spectacular specimen trees that are known and loved in the landscape, trees for which there is a known threat. However, there are many cases where trees have great value that may not be immediately obvious and cannot therefore be listed. The tree strategy that Deputy Scott referenced that was produced in 2022 identified many different ways in which trees might be valuable but not immediately visibly valuable. There is a section in that which talks about the value and benefit of trees and it talks about the importance of them for nature. That is fairly obvious, I think, through their life cycle trees, woods and hedgerows provide corridors and habitats for wildlife, plants and insects. Again, this point about corridors is important. One of the things that legislation may be able to do, working in conjunction with the Wildlife Law, would be to ensure that wildlife corridors were preserved. A landowner may not know in advance that their trees form part of that corridor but an approach along the lines that was outlined through the planning route might enable that to be done. Might. For resilience and climate change, as Deputy Doublet has already talked about. To reduce soil erosion and increase soil quality and this is a particularly relevant example on the anniversary, as it is today, of the Grand Vaux floods. We have spent quite a lot of time thinking about how we



can prevent or mitigate floods like Grand Vaux in the future. A key part of that is likely to be through nature-based solutions. It is likely to be through managing the catchment to slow the passage of water into the Grand Vaux valley and that might be done by preserving hedgerows, preserving trees which have root systems which hold water and slowing down the release of water. Now, we cannot possibly wander around the Grand Vaux catchment listing every single tree because we have to remember that listing is an exceptionally, exceptionally draconian form of regulation. It prevents all work and requires a process, a considerably complex process, of appeal to be delisted before it can be felled. So listing is not the answer in places where you cannot go around listing every tree without creating a very high regulatory burden. There is again the potential here, and I say the potential because, as I have said, at the moment, certainly as I was Minister, I would not have had plans to bring that forward without much further consultation. To add nature and beauty to built-up areas, roads and other routes. Trees soften the environment. They bring birdsong, dappled shade. These things are valuable in society and they are part of a community benefit. I think Deputy Bailhache is right to highlight that there is an element here of a principal debate, which is about the balance between individual property rights and community interest. I think there is a valid community interest in these areas, like flood protection, like the amenity value of trees. They have a value for people and we should acknowledge that that conflict exists. If Deputy Bailhache's proposition succeeds then we are essentially saying that, aside from a few listed trees, that conflict is resolved in favour of the landowner. They may do what they wish with their trees. As I say, I think that we need to consider other ways of bringing the community interest into this, and the planning system is one way of doing that. There may be other ways, which is why I said I wanted to consult more widely. In an era of climate change, of course, trees also provide a climate benefit. They provide shelter in a built-up environment, they provide shade, they - as I have mentioned already - produce slow down in run off when we are expecting more flooding situations. The reasons for protecting, not just through the listing route, are that listing cannot capture all the eventualities, we cannot anticipate work and it would be a draconian response to spread the listing of trees too far. I am absolutely certain that we can do more with listing of trees. We absolutely can. Whoever takes the environment portfolio next should do that work. I think that is something that is already underway, in fact, in the department, as is work on the tree sounding board and other aspects of the tree strategy. That is necessary and good work that should be done. But even if it is done to the satisfaction of Deputy Bailhache and others, it will not capture all the circumstances in which we might want to protect trees. There will need to be something beyond just listing. All this amendment number 8 to the Planning Law does is create a possibility for that to happen in the future. The final point I would make is that it took a long while to devise amendment number 8. It was called in by Scrutiny, it was amended itself, a lot of thought went into it and it was adopted with only one dissent at the time it was passed. It was not adopted lightly, it was not a casual moment, it was the result of a lot of consideration. I think we should be thinking very carefully before we throw away a power that was created with that degree of thought, with that degree of consideration of all the issues. I would say that if this proposition passes the problem will be that when we are contacted by constituents or Islanders who say: "Why was that tree cut down? Why did you not do something about it?" the answer, if this proposition passes, will have to be: "Well, I am sorry, that is a matter for the landowner. We did not know the tree was under threat. We did not realise that it was important so there is nothing we could do." That will be the situation if we pass this proposition. I think we should reject this proposition. We should keep amendment number 8 in our back pockets, if you like. We do not have to use it. The Assembly remains in control. The protection is actually stronger than Deputy Morel alluded to, it actually needs a commencement Act. It is not just an order that the Minister can make, it needs a commencement Act. The commencement Act, as I was planning to do, would be accompanied by the orders that would explain how the law was going to be brought in. It is possible to bring in very wide exemptions, very wide exemptions, to have consultation around those and indeed to work in a staged manner. There are many different versions. As Deputy Ward said, there are many ways in which this could be useful in the future. It is a hasty and unnecessary

act to remove a piece of legislation over which the Assembly retains complete control in the future. In summary, I would say I believe we should keep the legislative option open. That is all we are voting on today. We are not voting on any of the proposals, any of the policies, the draft orders, anything of that kind, the proposition is merely about keeping the option open.

**2.1.11 Deputy A. Howell of St. John, St. Lawrence and Trinity:**

I love trees. We all do. We realise the importance of them in producing oxygen for us to breathe, our very existence, as beauty in our landscape, a home and shelter for birds, invertebrates, red squirrels, bats, shade against the searing summer sun, nuts and fruits, wood for furniture, creativity, to keep us warm and so much more. I appreciate that as a result of a few rogue developers and reports that they fell trees on development sites, the last Assembly sought to protect trees from their chainsaws. However, to class all work on trees under development in the Planning Law to protect them was sadly proving counterproductive. Up until November 1st and 2nd when Storm Ciarán hit Jersey, we were sadly all receiving news that suspect trees were being cut down before any new proposed legislation came into force. There was, as the Constable of Grouville mentioned, a general disinclination to plant any more trees for fear that they might become subject to a planning decision. Islanders do not want to have to send a photo of a tree using a smartphone to the Planning Department to ask a member of staff for permission to cut off a branch, wait 28 days for a decision as to whether they can go ahead, or else be required to pay for a full planning application. Tree surgeons were up in arms, farmers and landlords were incensed. The proposals are an example of bureaucracy gone mad, of too much power for the Minister for the Environment, more red tape, an affront on our personal liberties, liberties our predecessors fought so hard for. The proposed legislation suggested by the Minister flew in the face of trusting Islanders to do the right thing, letting them protect the trees they love, just as they have done for generations. This is especially true now when trees have fallen during Storm Ciarán. I dearly want us all to support the Lieutenant Governor and Trees for Life in planting trees to replace the thousands that have been lost during the storm. A fund has been set up and the purpose of this new initiative is to raise money to cover the cost of replanting trees and hedgerows destroyed by Storm Ciarán across the Island. I want to encourage my grandchildren and friends to join this initiative and to plant sweet chestnuts, acorns to grow into oak trees, beech, apples in built-up areas, in Parishes, including St. Helier, school playgrounds, gardens and fields around the Island and along roadsides. But I want them to be able to do this without the fear that in a few years' time they will have to file a planning application if they find that their tree has grown a bit too tall or is in the wrong place.

[11:00]

I do not want them to worry about planting for fear that their tree might become subject to a planning application with a possible financial penalty in the future. I urge Members to apply common sense. By all means, put proper tree protection orders on more specific trees and more trees on the Island but please reject the idea that all trees should fall under the bureaucracy of the Government's Planning Department. Please vote in favour of Deputy Bailhache's amendment. Let us rescind any notion that work on trees should be classed as development. We should not keep this law in our back pocket. If we find that people are taking down a lot of trees, we can always bring it back into law in the future but we do not need to keep this in our back pockets. Let us acknowledge the importance of trees on our landscape. Let us join the Lieutenant Governor, Trees for Life, Jersey Heritage, the National Trust, GROW, the Pollinator Project, our landowners, farmers, tree surgeons, arboriculturists, utility companies, banks and charities. Let this be our mantra: let us all plant trees, tend and nurture them and protect them as best we can so that we look after Jersey for today and for future generations and we leave Jersey better than we found it.

### **2.1.12 Deputy T.A. Coles:**

First I would like to congratulate this Assembly for not going down the route of barking up the wrong tree, feeling stumped or turning over a new leaf in any of their speeches so far. Sorry.

#### **The Bailiff:**

I do feel there should be a Standing Order about that. **[Laughter]**

#### **Deputy T.A. Coles:**

I would agree with you. Sorry, I have kind of lost my train of thought. I stand to speak because there are certain elements of this debate which have been very interesting to hear. Hearing Deputy Morel and Deputy Ward agree over this Assembly is very interesting and the fact that I agree with them both is also interesting. The travesty which was the Sycamore Gap tree being cut down shows that there are insensitive people who just do not understand the value of trees in any sense, be it through just their beauty of where they are positioned through the power of what they do for our environment, but they are very, very important to us in many, many ways and many, many aspects. But I feel a lot of that has been missed over what this proposition seeks to do, is to remove the power, to find better ways and better methods of controlling where trees are protected, not protected, cut down. Also the tack being used as the soon-to-be former Minister said that this still has to come to the Assembly for approval. That is why P.71 was in existence, the fact that that power he has to bring this option, this proposition, to the Assembly still has to be ratified by this Assembly. I was going to say for the Minister that one of the things that was really lacking for me with his proposition P.71 was the lack of briefings given to States Members and the clarification that was required, as hearing from some people and members of the public and what have you that they were getting confused by the difference between diameter and circumference, many people were saying that this 21 centimetres diameter was only this big. Well that would be circumference because a 21-centimetre diameter is probably closer to, to use old money, 31 inches in circumference. It is a vastly bigger tree than what people are anticipating, especially when then you are also talking about being a metre-and-a-half off the ground. It was providing confusion which has then led to this overarching - I am sorry about this - chop down, this power away from the Minister where we do need protections. Hearing the Minister talking about the methods of using trees to help slow the water flow into Grand Vaux maybe needs more of a protection area where trees should not be chopped down or they should receive better protection because he is right, the idea of going round and listing individual trees. On the Planning Committee we went to one site in St. Brelade where there was a magnificent tree in the garden but had no protection. It was not old but it was still able to be trimmed down and taken away for development rights where the owners were never going to put it forward to be listed. Is it the right of the public to put forward the right for a tree to be listed? I do not know. Does the public know? It sounds like it is a very long-winded process and not very workable, manageable in a modern age. So I think this Act to completely remove the Minister's power, or the future Minister's power, to bring this with no other method to accompany it is very short-sighted and I feel that if we remove this power now, nothing will come and we will see, as Deputy Howell has mentioned, where people are already chopping down trees, that more trees will be lost and we will lose a lot of very good shade, a lot of good protection for soil. There are so many consequences to what happens where we lose trees and biodiversity. One of the things, as we are receiving hotter days - every summer now we are having a day which is going over 30 degrees in the middle of summer - my favourite place to go is St. Catherine's Woods at that point because if it is 36 outside of the woods, it is only 26 inside the woods. We have this plague of plastic grass which is coming which, if you have ever been to Springfield when they are playing one of their football matches there, the heat that you feel coming off the 3G AstroTurf is unbearable just to stand there and watch, let alone for the people who are running around and playing. This all increases our ambient temperature within our environment. You have to go to different places to try and avoid this, whereas trees in the right places protected and made sure that we are providing shade; this really, really does help to reduce our ambient

temperatures and provides us the ability to feel more comfortable without having to turn on air-conditioning, which then adds to more energy use and then can potentially cause more problems because, let us face it, still a lot of energy is produced through fossil fuels around the world. I will leave it there. I do not believe this proposition to remove this power from the Minister for the Environment is the right way to do it, not without anything else being brought in as an alternative.

#### **2.1.13 Connétable R.P. Vibert of St. Peter:**

Unsurprisingly, I will be supporting Deputy Bailhache and voting for this proposition. I touched on this yesterday because, certainly speaking with parishioners and also having attended various meetings, it was absolutely clear that large landowners and farmers were pretty much insulted by the first iteration of the Minister for the Environment's law which followed on from Article 8. Exactly why we would want to keep something in our back pocket; why do you want to keep something in your back pocket just in case you want to use it on some occasion to introduce yet another draconian measure? As a project manager we were taught that you had to take people on a journey. If you wanted a successful implementation you needed to take them on a journey, and that is exactly what you need to do. Dictating to people what they can or cannot do with trees that they have planted is not really acceptable. What is the evidence that people are not looking after our hedgerows, not planting trees? I certainly heard, as the Constable of Grouville has already noted, of someone who had planted tens of thousands of trees over the last few years and saying that as a result of what the Minister had suggested he would not be planting any further trees because why should he plant trees if he then at some point could no longer manage them in the way that he wished to? You cannot introduce this sort of thing. I do not like blanket legislation which then uses carve outs to say: "Oh, well, yes, but you can do this because we will have an exception for that; we will have an exception for that." It is a bit like saying: "Well, we will not allow parking on any road but we will introduce the exceptions to where you can park." That would be ludicrous but it is a similar thought. I have very little else to say other than the regulations that followed on from this have been extremely unpopular, and I am pleased that the Minister has now said that he would abandon these if he continued to be Minister, but I think we have to start from scratch. I think we all agree, those of us who were responsible for voting for this in the first place, that we rushed into things at the time. There were incidents. We were reassured by the then Minister for the Environment there would be substantial carve outs and we did not need to worry. As we now know, that did not happen. The regulations that followed on were draconian, they have not been accepted by the Island and they are extremely unpopular, so I would ask you to support Deputy Bailhache.

#### **2.1.14 Deputy A. Curtis of St. Clement:**

I do not intend to spend long on this because I think some good points have been made. I thought I would rise because Deputy Bailhache and I enjoyed talking to the year 5 class of St. Clement's Primary School late last year, I think it was after Storm Ciarán, and we discussed many topics with the students who were about to come in the next week into this Assembly. The conversation was pretty orderly, we moved between topics until somehow the topic of trees came up and, would you believe it, it was impossible to move this class off the topic of trees. Their interest was piqued, they were excited, and the teacher had to try their very best to say: "Is this next question about trees?" to which all the hands went down, and we slowly moved on to topics such as the mace. What did come out of that was the exact discussions about liberties, freedom and the rights of the community. The concern at the ability to lose large areas of woodland that are in private ownership really did concern people; the concern about canopy cover in areas concerned those students. But really I want to ask the same question the Connétable of St. Brelade is asking the proposer which is: if not this, then what? What fills the void? I think we have heard from many places that the tree protection order approach is not going to be fit for purpose; we need something. I have no concern saying that I have my challenges with a definition in law that requires exemption for trees but I was not party to the conversations that landed on why that was a choice. I think maybe there is a solution with regulations

by which you define what does require development, not what does not, but, as I say, I am not familiar with why we landed on a definition that requires exemptions. So I want to hear in summing up from Deputy Bailhache how he thinks we can provide the relevant safeguards for the trees that are on the Island while maintaining an enthusiasm within the community to plant new trees and grow new trees with the least bureaucracy because right now I have not seen that approach forthcoming. We have heard arguments of, I dare say, fear that we are getting what Deputy Renouf has proposed in the past but we have heard that is not what is forthcoming either and would not be of his choice, so that probably is not the right place to allay one's fears. I do see why one keeps something in their back pocket. If we do pursue an alternative legal instrument to potentially another amendment to the Planning and Building Law but we find there is a very good legal reason why we had to use a definition of trees with exemption rather than a definition of trees with inclusion, we just have to go through the same leg work again. I would prefer to see something that included regulations and not orders but until this Assembly votes on a commencement day Act of amendment number 8, I do not see anything that scares me. I would like to think that I would stand up with the courage to take a vote the right way on whatever is proposed. Without sufficient information, detail and protections for tree owners, I would not want to support commencement on such a piece of language that defines any activity on a tree's development except for otherwise. But I think until we see those options and until we hear from the proposer as to how he intends to deliver on greater protection for trees, I think we can keep this in our pocket and wait for another day and not act with haste.

[11:15]

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

I thought I would break my silence after yesterday. I found it very cathartic but after a while I did feel like a Trappist monk who was on a Buddhist meditation retreat and I hope it had some cathartic effect on me. The good thing about having a WhatsApp group is that you can get all of your puns, which in this case might be tree-related, out in the WhatsApp group so I do not need to do what Deputy Coles did and bore you with any of those. I do want to share a few thoughts which may not necessarily come down on one side or the other but I think need to be put on the record because clearly this whole tree law is something that has struck a chord with many members of the population, and perhaps unusually, but we know that planning tends to be something that does engage people in our Island and that is good to see when there are other areas of apathy towards politics. It is certainly frustrating sometimes as a constituency Deputy when we get emails or phone calls after the facts asking questions: "Why are these trees being cut down?" or: "Why are these branches being cut down?" Sometimes there are good reasons for that; other times it seems to be fairly arbitrary. So when Deputy Morel gave the example of this mature fig tree which had just been cut down, what I note there is that it was not a deficiency in the law that we have, it is this tree already had a protection order on it but for some reason that protection order was not sufficient to stop the tree from getting cut down. Moreover, we are told that there were plans that were submitted in an application which simply did not put the tree on those plans. My question would be: well then what happened to the person or the organisation that submitted those plans because that should be a de facto offence, I would have thought? If you have submitted a planning application and you have omitted to put something on which has a material consequence, especially when there is a protection order on it, it seems to me that it could either be an accidental act of omission but it could also be a fraudulent act where you have not alerted the Planning Applications Panel or the Minister to that on the application, and there should be consequences for that. So that leads me to think, well, do we therefore need a new law to come into place or do we simply need to apply the laws that we already have? It is not exactly the same area but we already know that when we look at buildings, and I know that both buildings and trees, certainly in the urban area, do have a great impact on the visual and aesthetic aspects, when we see historic buildings which also have planning orders on them, i.e., listed buildings but there is no compulsion to maintain those buildings, we can draw a parallel with perhaps what happens with trees. There is power in the Planning Law which says if a building is falling into

dilapidation, the chief officer, not the Minister, is delegated responsibility to contact the owner and say: "Please will you do your building up?" and ask them nicely initially and then compel them to do that. We know that we have been told by the Assistant Minister, the outgoing Assistant Minister, that they do not like to use those powers because they are too draconian but of course that has never been tested, that is just an opinion. It will be nice if they did that, and I would suggest that the same could be applied when it comes to trees. I also do have some sympathy with the comments of the Constable of St. Peter, and I think we ignore at our peril the many emails and phone calls and social media interactions that there have been, and it seems to of course largely be from residents of the countryside but I do not think exclusively, who no doubt feel very strongly about the areas that they live in. If you live in the countryside it may well be that you have chosen to live there and you do that because you value the bucolic nature of where you live. Other people choose to live in urban areas partly out of convenience but often there is no choice when it comes to housing and where you end up living. So to simply say that all those who have been contacting and lobbying do not care for trees I think, first of all, cannot be correct, and it is also dangerous and probably insulting to those who have got in contact with us. I think of a scenario whereby what is it that we are trying to legislate for and are there potentially unintended consequences? Imagine you have a garden, so I would ask a simple question: what is better, a garden which has 5 trees in it where somebody decides they need to or want to cut down one of those trees for whatever reason or a garden which does not have any trees and never had any trees in it and will never have any trees in it? Because in that last scenario that the person who perhaps does not care for trees at all and they have not put any trees in their garden because they prefer to have concrete or they prefer to have Astroturf in their garden - and that is fine, they can do that if they want to, there are practical reasons why you might like that - they do not have to worry about this law. They do not have to apply for permission to cut down a tree because they do not have any trees but you can imagine somebody saying: "Well, the reason I have got 5 trees in my garden, and I am 70 now, is because I planted those trees when I was 20. It just happens that one of those trees I no longer need or it is getting ill" and if they feel that they have to go through a long-winded process to remove one of those trees, you can understand that they might not like the label to say: "But why are you cutting down trees? We need trees. Trees are valuable, trees have birds in them and they are good for the environment." They say: "I know, and that is why I planted 5 trees in the first place." I think we both need to be very careful about the message that we are sending out within the way we engage with the public on this and also what the intention of the law is because the law is only as good as the enforcement that comes with the law. In my time I think I have seen both probably overzealous enforcement of laws but often in the Jersey context we talk about light touch regulations but we often have this contradiction where Ministers want to have really powerful, often over-reaching laws, but then which are simply unenforced because they would never be accepted by the public or there is not the administration. We know also, I think it has to be said, that the Environment Department is historically and currently chronically understaffed. I simply put those thoughts on the record, I think it is important that they were said, but I will listen to the rest of the debate and we will see where we go from there.

#### **2.1.16 Deputy P.F.C. Ozouf:**

I recall reading about a speech that a Deputy of Grouville made to this Assembly, I think it was around in 1974, when there was a law before the States called the Regulations of Undertakings Law, a law that gave this Assembly the potential power to regulate all sorts of activity. The detail was not set out but that would come later in orders and regulations. It was a law to control the carrying out of undertakings and to regulate further development of Jersey, the power to regulate. It was said that the law would be fine because the States would then be consulted later on the detail of it. That law was passed and it was kept in the pocket of the States, it was used to protect Jersey, the arguments were advanced, to protect Jersey. It was to protect how much building work could happen, how many people could be employed, who could work. That law was used to regulate, it was put on and it was put off by orders and regulations many times. I joined the States and I was part of a committee that

was using powers granted by a previous Assembly before 1999 to decide on who could be employed, which capital projects should we do, which building developments could be undertaken. This tree law was advanced because of a concern of a developer that had cut down some trees prior to putting a planning application forward. The Regulations of Undertakings also could have been used to stop that. It was often used for capital projects in land that had been reclaimed from the sea. Jersey has for centuries reclaimed land, that land had to be then used. The Dean is here; outside his Parish church at St. Helier is an old sea wall. Land created after that sea wall was where the Pomme d'Or is today and the old abattoir, now the bus station, all are harbours, commercial buildings our Island and St. Helier has expanded over the centuries and it has been subject on and off of regulation. That Regulations of Undertakings Law was repealed and it was replaced by an omnibus law which has less powers and much, I would argue, better powers in the Work and Housing Law. It was also repealed because there was a power in the Competition Law that allowed abuse of dominant position. A dominant operator of a land banking, a land owner that wants to put a planning application in, might knock down some trees, which I think was true; a big developer had sawn down a load of trees before a planning application was put forward, to consider whether or not building could be made. The Deputy in his opening remarks spoke of Longueville. I am from Longueville, it is part of where I live, it is part of St. Saviour, it is where I represent, it is where I was born, it is where my father and grandfather and great-grandfather planted many trees, many of which have been unfortunately destroyed in the recent Storm Ciarán. This debate is about a power of this Assembly to have something in one's back pocket that could be used. Professor Sir John Vickers reviewed the way the Competition Law analogous to the Regulations of Undertakings Law, analogous to the Planning Law, of how that could be used. He said in small places it is important that policy and regulation has particular challenges. It says conducting competition and regulated policy is hard but it can have economic benefits. There can be benefits in this law, it can, but Professor Sir John Vickers said: "There are 2 things that were worth stressing. The first is an importance of principled pragmatism. All competition authorities have a duty to make use of scarce resources." Use of scarce resources which are trees maybe: "In small jurisdictions it is especially important and challenging and a prioritisation is key and should take account of what happens in a local environment" so laws can be well-intentioned. I have got no doubt, and I have been looking back to see ... I was not part of the States Assembly when the original Planning Appeal Law No. 8 was brought in but I note that, as is a requirement of all Jersey law, there is a human rights statement stated in it. Deputy Bailhache quite rightly spoke about freedoms, about how laws can curtail freedoms, and we are subject to the E.C.H.R. (European Convention of Human Rights). Two rights were cited in the citation that was based ... it is not legal advice, but the Law Officers give Members indications of whether the law could curtail those rights and they give advance notice of that. Interestingly, the law that was brought before the States addresses 2 rights that could be curtailed. I have not seen many laws that set out such detail of those rights. Rights to peaceful occupation of possessions was one, and there are numerous paragraphs about it, and also rights to a fair trial, and how the Planning and Building (Jersey) Law 2002 could be then amended and could potentially fall foul - potentially - of those fundamental human rights. Those fundamental human rights are important and must be guarded and must be protected. They are universal and if they are not regarded, and if they are not protected, then they basically mean that we are less free. Deputy Bailhache said that we are an over-regulated Island, and I must say that I think that there is a consensus among Members that we are but how do we get that regulation? We get that from laws and then we are told: "It is okay; it will be okay later on."

[11:30]

If you do not have the openness and transparency of the way that the law is enacted, and the Minister has said there is an Appointed Day Act, and only by the Appointed Day Act will orders be made where 3 types of legislation ... I am not giving the States Members a lesson, they know that, but it is really important. There is a primary law passed by this Assembly subject to Privy Council approval, regulations only passed by the States, then it is law, and then there are orders, which is a Ministerial

Order which is signed by a Minister. It is a piece of legislation that is only put on the Order Paper and they are rarely called in but it is an order-making power but it is subordinate legislation. I think what Deputy Bailhache is saying is that the order-making power is the thing that was potentially faulty. It was potentially faulty - and the Minister has said himself that it was faulty - because it was an over-reach of what was intended but the fundamental thing was, is that because trees fell within the development rights meant that the order was lawful. The order was lawful but it went to a great extent further than the intention of the States and that is the issue. Is this power that the States has with the law remaining acceptable? Is it proportionate, is it right and is the law right in terms of its protections not to be abused in the minds of some people by an overzealous Minister for the Environment who would bring forward an order which may or may not be noticed? Everybody would say that I think that the order was overzealous. In Storm Ciarán some members of the public said: "Did Storm Ciarán require planning approval to rip down those beautiful trees in Longueville?" which was subject to not just the hurricane but the tornado. Deputy Bailhache is right, it ripped through Rue des Pres and it cut down trees that were over 150 years-old and it scourged them and we are trying to plant them back. Some of them, I declare, are owned by my sisters and myself and my late uncle; trees that had been planted for years. They might not have been known about, there was no intention to take them down, but they were planted, they were there, but they were very, very old trees. Now, does the Planning Department have the resources to go round with a notebook and note every single listed tree? There are issues about listed buildings. There are many, many buildings in Jersey which are subject to rules that mean you cannot do anything. A listed building means that your rights are curtailed. There is a planning application which I am aware of in Trinity which is now required because of a regulation passed because of this bridging Island Plan and another amendment that requires now a planning application to have a thermal report carried out. That thermal report costs £300; this planning application is for a veranda, so it is not the house but because it is covered, because it is listed, a thermal thing needs to be done for the portico. That costs £300 and I found out that it is the Planning Department that is paying for the £300. Is a thermal report required for a porch going into a house that you cannot change because you cannot put glazed windows on it? It is nonsense, it is disproportionate. It is not pragmatic, it is not proportionate, it seems to be overzealous. That is because a listing is involved. Deputy Bailhache is quite unique in this Assembly in bringing forward a piece of legislation as a Backbencher and repealing it. He knows how to write it and he has had advice from ... but he is just repealing a part of a law. I think that the law is faulty because it gives too much power, potential power, and I think the best situation, because there has been such a kerfuffle about this, and there is clearly a more pragmatic and proportionate and limited way of dealing with this, would be for the legislation to be repealed and for it to come back with the right and proportionate powers that do not deprive people's rights and give this Assembly the right ... and I say no underhand tactics here. I am not saying there are things done wrong but there clearly is a prioritisation that when we have now after Storm Ciarán and the tornado and the flooding, do we want to do that and spend lots of resources on building a massive database on trees, creating a requirement to have planning permission for ... if what the Minister would have carried out but is reversed would have happened, it would have been a really controlled society where we would have massive controls over every single tree. That is the risk. If you give power, power can be used rightly, pragmatically and properly, but it can also be used wrongly. In this example we have got a law that was passed in good faith for one reason but then it was used for a blanket possibility. Democracy worked, Members made their views clear, and then it was stopped but the underlying principle is the law gives the Minister by order the power to do the same thing again and I wonder whether that is right. I would welcome Deputy Bailhache's summing up of whether or not he thinks ... because many Members that have been in this Assembly a long time understand, and all Members now understand, how laws are passed and how the regulatory rights can be given. I am not a great regulator, I do not like a regulated Island, I like freedom to enjoy property freedoms, and there should be a very, very good reason to regulate - a very good reason to regulate - and that regulation probably should be regulation by regulation and not by order because the regulation means it comes



through a debate in this Assembly, not by order of the Minister. So, I think the legislation, much of the bridging Island Plan was faulty in its thinking, in my view, some decisions were made on erroneous information. We have a housing crisis, we need to get on building because that is the right to homes, and we have the right to protect the environment too, so we have got a lot of prioritisation to do. I suspect the right decision is to repeal this law and for it to come back with a proportionate and right approach which is probably not an order-making power but a regulatory power, and I would listen to the summing up very carefully for the mover of the proposition's observations.

#### **2.1.17 Connétable D. Johnson of St. Mary:**

I do wonder if we are making worry over much of this. The number 8 amendment was brought in to address a particular situation which still persists. We do not want rogue developers knocking down trees without any form of prior planning application. That was passed, not quite unanimously but almost, by the Members at the time with good reason. It has since sat there and we have waited for the regulations to expand on what it was intended to do. The first attempt, maybe second attempt, was greeted, if that is the right expression, with some disdain by the public at large and, again, rightly so. Again, to his credit, the Minister has accepted that and has gone away and said he would not bring those regulations forward in their present form. So we are in a situation where, as has been said before, and I am very much in the camp of the Constable of St. Brelade and Deputy Curtis on this, we are in the camp of remaining in control. There is no Appointed Day Act and it may not be a bad thing to have it in our back pocket. The problem is, as Deputy Ozouf just said, is there a better way of dealing with this? I think it could well be that the way forward is to appeal amendment number 8 but simultaneously bring in a new law which sets out in the legal framework more particularly and more accurately what the powers are to be, and that hopefully will allay some of the concerns that the public at large have but we are not there yet and, for the moment, I am not sure what this repeal in itself will achieve. As I say, we are in control at the moment as an Assembly and the matter we do need to address is, if we are to appeal this law, how are we going to protect trees which are or could be the subject of the same sort of treatment that rogue developers have shown in the past. That is the nub of the problem. Again, like others, I invite Deputy Bailhache to offer any solution he might have to that problem.

#### **2.1.18 Deputy T. Binet of St. Saviour:**

I hope yesterday's events will not result in my speaking doing more harm than good to this proposition, and I have to say, to my shame, I have not prepared a speech, given the events of the last fortnight, so this could be very ramshackle but I am going to try and attempt to make a point if I can. Everybody has spoken this morning very romantically about wildlife corridors and young people being concerned about trees but I just cannot believe how out of touch this Assembly is and how much arrogance has been displayed because there seems to be absolutely no understanding of how the trees that we are all keen to preserve have got there. I started planting trees in good numbers in 1975 because at about that time, people may or may not remember, we had Dutch elm disease and the Island was absolutely ravaged. People like myself and hundreds of others paid a lot of money to get bulk excavators in to dig out hedges, clean the roots, buy trees, replant them, water them, look after them and bring them to fruition. We did not need Broad Street and we did not need this Assembly in order to achieve that. In 1987 we had a storm and that took out between 20,000 and 25,000 trees; nobody filled in a form to take those down, they just came down. Once again, the countryside was ravaged and, once again, good people in the countryside put their hands in their pockets, spent their money and restored the countryside, this lovely countryside that we have got to preserve for everybody. It is interesting because I know, for myself, an awful lot of the stuff, the money that I had invested to put fine trees up, I lost a lot of trees in 1987, as did a good number of other people. We are facing the same situation now, and I will make the point again, 20,000 to 25,000 trees have been torn out, where did those trees come from? They were people's private property, people that loved the countryside and had spent their time and their money nurturing them. Okay?

Up to this point in time nobody has required any laws for that to happen and I just think at the moment ... I will tell you a little story. I was contacted when the laws first came out by some people in the countryside, they said: "Will you convene a meeting?" I convened a meeting, I expected a dozen people, 70 people turned up, landowners, dairy farmers, woodland owners and so on, tree surgeons, and I have never seen such outrage in the whole of my life. These people said: "We do not need this and we do not want this. We do not want to be interfered with" and it is a relatively small number of people now that are looking after all this. I would say, please, before we do anything, when we come to press our buttons today, consider these people, because they are the people that are going to put right the countryside that has just been torn apart. The amount of trees that were taken down in the storm, 20,000 to 25,000, compare that to the small number that people have taken out because people are focused on them. We had consultation. When I spoke to the 70 people I do not think one of the 70 people had filled in the consultation form. They are busy, they are out there doing stuff, they are looking after the countryside. Lots of people that look out their window concerned about the countryside fill in these consultations, and we act on that, and we look at the people that are doing the job for us and we ignore them. So when I say we are out of touch, we are chronically out of touch, and I believe that we are behaving extremely arrogantly. I think I will leave it there and I will ask people to take that into consideration when they come to consider the proposition.

**The Bailiff:**

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

**2.1.19 Deputy P.M. Bailhache:**

I am grateful for all Members who have spoken in this debate and I think it has been quite a good debate, probably a better debate than took place in 2021 when amendment number 8 was adopted, but one of the things that struck me about the debate in 2021 was what Members were told by the Minister at the time. Deputy Young said: "This is not about protecting every tree, choices are going to be necessary. The way it all works is you put the power in the law and then you pass subordinate legislation to be able to say what can be done without having to make application."

[11:45]

I would say 99 per cent would be dealt with in that way; it would be madness to do anything else. There are all sorts of options of what we can do about trees but the last thing I have got in my head is applications. Deputy Young at the time had rather a different sense of how this law would work to what I think the current Minister has had. I do not want to criticise the current Minister because he conceded that he got it wrong. The first iteration that was put forward of controlling all trees except those that were under 8 centimetres in diameter was obviously absurd. The next iteration of controlling all trees except those with a diameter of less than 25 centimetres I think was only marginally better. The problem with amendment number 8 is that it gives a Minister too much power and a number of Members have made that point. It is true that the law requires an Appointed Day Act to bring it into force but once the law is in force the Minister has a completely unfettered discretion to make orders which affect what country people can do with their trees and with their properties. I appreciate that orders can be challenged after the event but it seems to me that the law gives the Minister too much power. When taking away freedoms, freedoms should be taken away by the States because the States has the opportunity of balancing the needs of a community with the needs of the individual. So that is the first point I want to make. The second point relates to the fig tree about which Deputy Morel and Deputy Scott, I think, spoke. I am not familiar with the detail of the fig tree but, as I understand it, it was a listed tree but a developer took no notice of the listing and cut it down and nobody did anything about it. Well, if that is the case, it was a gross failure of administration. It may be that the developer did not mark the listed tree on the planning application which was put in. He should have done but if he did not, the department should have known that in

this particular property there was a listed tree and the developer should have been asked to amend his drawing and put the tree on or, in any event, the department should have taken into account the fact that somebody had taken the trouble to list the fig tree. Who is accountable for that? Not the current Minister, I am glad to say, but his predecessor certainly was responsible, because the Minister is accountable for the deficiencies in his department. A number of Members asked me what I would do to improve things and it is a good question and a fair question. I must say that when the first draft of this legislation was prepared by the law drafter, I did have included a suggestion as to how the listing procedure might be improved. I took it out because I wanted to simplify the law because I think at that stage the Minister was talking about further consultation and I thought that the suggestion could better be brought up in the context of that kind of consultation. But what the law currently does is to provide for a list of protected trees. There is no reason why the law should not be amended if Members thought it was the right thing to do to say that then every oak tree with a diameter of more than a metre or more than a metre-and-a-half was *ipso facto* protected and subject to the protections set out in the law. Different diameters might apply to different species of trees because they grow at different rates. It is a discussion that I had with the chief executive of the Trees for Life organisation. As I say, I think it is a matter which could be brought in, it is a matter which would need careful consideration, particularly because the diameter of any particular tree which was going to be automatically protected would be subject obviously for debate and different people would have different ideas about what should be done. My own preference is rather on the lines of the Constable of St. Brelade, I think that when a tree has been around for a 100 years or more then it probably deserves to be looked after and protected, but I do not think we want to bring in a blanket control which protects all trees and imposes a bureaucratic burden. The body indeed which Deputy Scott's proposition envisages setting up is the very kind of organisation which might be consulted on a change in the law of this kind. The third point I want to make, and it relates to arguments that a number of Members have made, which is we should not take away protections that we already have. But of course the position is that we have no protection at the moment because the law is not in force; it needs an Appointed Day Act to bring it into force. I think that the - well I have made that point - the law is not in force. A number of Members spoke, Deputy Doublet spoke and Deputy Morel, I think, spoke of setting an example for the young but it seems to me that it is more important to give a message to young people that we want to protect the environment, and we want to protect trees, but we want to do it in a sensible way. With the amendment number 8, as I said in my opening speech, we are starting in the wrong place. The Minister thought it would be a good idea to have this law in the back pocket, but that seems to me to be the argument of the bureaucrat and does not pay sufficient regard to the need to protect the freedoms of the individual which ought to be important to every Member of this Assembly. We should not control all trees, we should control and protect trees which are important by reason of age, size, position or whatever may be. We need a fresh approach. This law does not allow us to make that fresh approach because it starts from the premise that every single tree is protected and is liable to planning controls unless it is exempted by Ministerial Order. I think, and this probably was the point essentially being made by Deputy Binet, we should trust people, we should trust those people who are in fact planting trees and looking after trees, to do the right thing. Occasionally there will be mistakes, occasionally there will be a Sycamore Gap, but you can never avoid tragedies of that kind because people will do wildly bad things if given the opportunity. I think that, as I say, this law takes us nowhere and I hope that Members will support its repeal. I move the principles.

#### **The Bailiff:**

Do you call for the appel? The appel is called for. I invite Members to return to their seats. The vote is on the principles of P.90 and I ask the Greffier to open the voting and Members to vote. If Members have had the opportunity of casting their vote, I ask the Greffier to close the voting. The principles have been adopted: 27 votes pour; 21 votes contre; no abstentions.

<b>POUR: 27</b>		<b>CONTRE: 21</b>		<b>ABSTAIN: 0</b>
Connétable of St. Helier		Deputy G..P. Southern		
Connétable of St. Lawrence		Deputy M. Tadier		
Connétable of St. Brelade		Deputy L.M.C. Doublet		
Connétable of Trinity		Deputy K.F. Morel		
Connétable of St. Peter		Deputy R.J. Ward		
Connétable of St. Martin		Deputy C.S. Alves		
Connétable of St. John		Deputy I. Gardiner		
Connétable of Grouville		Deputy K.L. Moore		
Connétable of St. Ouen		Deputy S.Y. Mézec		
Connétable of St. Mary		Deputy T.A. Coles		
Connétable of St. Saviour		Deputy B.B.S.V.M. Porée		
Deputy C.F. Labey		Deputy H.M. Miles		
Deputy S.G. Luce		Deputy J. Renouf		
Deputy M.R. Le Hegarat		Deputy C.D. Curtis		
Deputy S.M. Ahier		Deputy L.V. Feltham		
Deputy I.J. Gorst		Deputy H.L. Jeune		
Deputy L.J. Farnham		Deputy M.E. Millar		
Deputy P.F.C. Ozouf		Deputy R.S. Kovacs		
Deputy P.M. Bailhache		Deputy A.F. Curtis		
Deputy D.J. Warr		Deputy K.M. Wilson		
Deputy M.R. Scott		Deputy L.K.F Stephenson		
Deputy R.E. Binet				
Deputy A. Howell				
Deputy T.J.A. Binet				
Deputy M.R. Ferey				
Deputy B. Ward				
Deputy M.B. Andrews				

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

Those Members voting pour: the Connétables of St. Helier, St. Lawrence, St. Brelade, Trinity, St. Peter, St. Martin, St. John, St. Ouen and St. Mary, Deputies Labey, Luce, Le Hegarat, Ahier, Gorst, Farnham, Ozouf, Bailhache, Warr, Scott, Howell, Tom Binet, Ferey, Barbara Ward, Andrews and the Connétables of St. Saviour and Grouville and Deputy Rose Binet. Those Members voting contre: Deputies Southern, Tadier, Doublet, Morel, Rob Ward, Alves, Gardiner, Moore, Mézec, Coles, Porée, Miles, Renouf, Catherine Curtis, Feltham, Jeune, Millar, Kovacs, Alex Curtis, Wilson and Stephenson.

### **The Bailiff:**

Does the Scrutiny Panel wish to call the matter in?

### **Deputy S.G. Luce (Chair, Environment, Housing and Infrastructure Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

Do you move in Second Reading, Deputy Bailhache?

**2.2 Deputy P.M. Bailhache:**

I move the Articles of the Bill in Second Reading.

**The Bailiff:**

Are they seconded for Second Reading? **[Seconded]** Does any Member wish to speak in Second Reading? If no Member wishes to speak in Second Reading, then I close the debate. Those in favour of adopting in Second Reading, kindly show. The appel is called for. I ask Members to return to their seats and I ask the Greffier to open the voting and Members to vote. The vote is on Second Reading of P.90.

[12:00]

If Members have had the opportunity of casting their vote, then I ask the Greffier to close the voting. The law is adopted in Second Reading: 27 votes pour; 18 votes contre and no abstentions.

<b>POUR: 27</b>		<b>CONTRE: 18</b>		<b>ABSTAIN: 0</b>
Connétable of St. Helier		Deputy G..P. Southern		
Connétable of St. Lawrence		Deputy M. Tadier		
Connétable of St. Brelade		Deputy L.M.C. Doublet		
Connétable of Trinity		Deputy R.J. Ward		
Connétable of St. Peter		Deputy C.S. Alves		
Connétable of St. Martin		Deputy I. Gardiner		
Connétable of St. John		Deputy S.Y. Mézec		
Connétable of Grouville		Deputy T.A. Coles		
Connétable of St. Ouen		Deputy B.B.S.V.M. Porée		
Connétable of St. Mary		Deputy H.M. Miles		
Connétable of St. Saviour		Deputy J. Renouf		
Deputy S.G. Luce		Deputy C.D. Curtis		
Deputy S.M. Ahier		Deputy L.V. Feltham		
Deputy I.J. Gorst		Deputy H.L. Jeune		
Deputy L.J Farnham		Deputy M.E. Millar		
Deputy K.L. Moore		Deputy R.S. Kovacs		
Deputy P.F.C. Ozouf		Deputy K.M. Wilson		
Deputy P.M. Bailhache		Deputy L.K.F Stephenson		
Deputy D.J. Warr				
Deputy M.R. Scott				
Deputy R.E. Binet				
Deputy A. Howell				
Deputy T.J.A. Binet				
Deputy M.R. Ferey				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy M.B. Andrews				

**The Bailiff:**

Do you move in Third Reading?

**2.3 Deputy P.M. Bailhache:**

I move the Bill in Third Reading.

**The Bailiff:**

Is it seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading?  
Deputy Ozouf.

**2.3.1 Deputy P.F.C. Ozouf:**

Very briefly. We are just doing an example of how we pass legislation so quickly through this Assembly in 3 readings in succession. Other Parliaments do not do that, they put it back for ... and I just urge whoever is responsible, this should not be the message. I do not want to send the message out that we do not care about trees; we do want something. A replacement, I hope, can come very quickly for something that is proportionate and right and that will command the Assembly's approval.

**2.3.2 Deputy M. Tadier:**

I think it is a reasonable observation although it only seems to get raised when one does not like the particular law that has been put through. It is no doubt an underlying quirk of our Assembly, which Ministers will on the one hand say it is valuable because it means we can be very expedient and get legislation passed quickly in Jersey. Just to comment, first of all, it could have been called in by Scrutiny, so there is a check and balance in that process and the Scrutiny Panel, I am not sure who they are, I think it is Deputy Luce and Constable Jackson, but no doubt who already supported the proposition strongly, so I guess they are not going to scrutinise it if that is the case. It does also show that of course that Bank-Benchers can move legislation, albeit this is fairly minor in the terms of the administration that is required for it. We do have an unusual position here where we do not have a Government that we have confidence in anymore but we are able to pass legislation through a private member, which I think is probably something we need to retain in our system which is valuable. I have no problem adhering to the will of the Assembly, even though I do not support this particular proposition.

**2.3.3 Deputy M.R. Scott:**

I just wanted to say that I agree with Deputy Tadier that to the extent that you did have separate readings, so I do not think it is appropriate and useful when you have something so simple as this particular type of amendment. It is very straightforward. It does not really need much in the way of scrutiny. I scrutinised it and it took me about 10 minutes. If that were ever considered, the proposal that Deputy Ozouf mentioned, I would hope that would be taken into account.

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

In supporting the proposition I too will come back to the Assembly, I am sure others will be, to ensure there is a tree protection order process in place which is easily dealt with by the general public and acceptable to the general public, which this proposal clearly was not. We cannot let it stand here, there is no question about that. I, for one, whether it will be through Scrutiny or as a Backbencher, will certainly take that forward.

**2.3.5 Deputy R.J. Ward:**

I want to speak because I want it on record my concerns that what has just happened is we have removed a protection with nothing in place that is effective, would seem to be ineffective. There will be a significant delay before anything comes back. We now have what some people necessarily might call a gap in the market. There will be unfettered access to make changes out of things to trees

that are protected and it is carte blanche for developers and those, particularly the wealthiest who buy large properties on the edge of the Island and want their views, to cut down trees with absolutely no comeback. I think we have made a huge error in this Assembly today by doing this and not having anything in place. This has been rushed and perhaps the solution is to take the Third Reading or the Second Reading later on. We have not done that today but we have made a significant change to a law and it is significant. I am slightly disappointed it was not scrutinised to see the impact of this removal and to track and see what will happen with this. Because there will be an impact of this wholly libertarian approach, this supposed freedom and that freedom is really for developers to do what they want and we have just allowed that. I think it is a real mistake today and I just want to make sure that that is on Hansard for me to come back to at some point.

**The Bailiff:**

It is of course open to Members to make a proposition that a matter is called into Scrutiny. It is not simply a matter for the Scrutiny Panel.

**2.3.6 Deputy J. Renouf:**

I will just make one point, which is that I do think it is a shame that we have removed this power and I do think I would ask all Members to remember when they do receive letters and representations from members of the public saying: "Why has this tree been cut down? Why has this happened?" that the response will have to be we had a potential power to do that but we chose to remove it from our statute books and I think that is a shame.

**2.3.7 Deputy C.F. Labey of Grouville and St. Martin:**

Yes, just listening to Deputy Robert Ward there, I would disagree, there is something in place. As the Constable of St. Brelade has said, we have protection of trees. We can take out orders. In actual fact in my own Parish when I was first elected I took protection orders out on the 2 yew trees in the churchyard. Later on, when I realised that developers were moving into Gorey village, I took out protection orders for the willow trees and they were preserved and the estate was called after them. There is something in place. My worry is by having draconian measures, as was being suggested, people in anticipation of the laws coming in are taking down trees and that is a reality of the situation. But also if people know or are minded that they have got to seek planning permission and go near the Planning Department to maintain their trees, they simply will not plant them. That, to my mind, is the effect of bringing in these kind of measures. I would just like to make those points.

**The Bailiff:**

Does any other Member wish to speak in Third Reading? If no other Member wishes to speak in Third Reading, I close the debate and invite Deputy Bailhache to respond.

**2.3.8 Deputy P.M. Bailhache:**

I do not believe that the Assembly is doing anything other than the right thing in removing a law which is not yet in force, which has no practical effect upon anyone except, as the Deputy of Grouville has said, conceivably to encourage people to take down trees before any controls are brought in. I remind the Minister that the law delegates to his chief officer the responsibility for the list of protected trees. While he is still in office I would urge him to ensure that his officials make sure that the system works considerably better than it seems to be working at the present time. I move the Bill in Third Reading.

**The Bailiff:**

Is the appel called for? Yes, the appel is called for. I invite Members to return to their seats. The vote is on the Third Reading of P.90 and I ask the Greffier to open the voting. If Members have had the opportunity of casting their vote, I ask the Greffier to close the voting. The law is adopted in Third Reading: 29 votes pour, 18 votes contre, no abstentions.

<b>POUR: 29</b>		<b>CONTRE: 18</b>		<b>ABSTAIN: 0</b>
Connétable of St. Helier		Deputy G..P. Southern		
Connétable of St. Lawrence		Deputy M. Tadier		
Connétable of St. Brelade		Deputy L.M.C. Doublet		
Connétable of Trinity		Deputy R.J. Ward		
Connétable of St. Peter		Deputy C.S. Alves		
Connétable of St. Martin		Deputy I. Gardiner		
Connétable of St. John		Deputy S.Y. Mézec		
Connétable of Grouville		Deputy T.A. Coles		
Connétable of St. Ouen		Deputy B.B.S.V.M. Porée		
Connétable of St. Mary		Deputy H.M. Miles		
Connétable of St. Saviour		Deputy J. Renouf		
Deputy C.F. Labey		Deputy C.D. Curtis		
Deputy S.G. Luce		Deputy L.V. Feltham		
Deputy M.R. Le Hegarat		Deputy H.L. Jeune		
Deputy S.M. Ahier		Deputy M.E. Millar		
Deputy I.J. Gorst		Deputy R.S. Kovacs		
Deputy L.J. Farnham		Deputy K.M. Wilson		
Deputy K.L. Moore		Deputy L.K.F Stephenson		
Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy D.J. Warr				
Deputy M.R. Scott				
Deputy R.E. Binet				
Deputy A. Howell				
Deputy T.J.A. Binet				
Deputy M.R. Ferey				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy M.B. Andrews				

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

Those Members voting pour: the Connétables of St. Helier, St. Lawrence, St. Brelade, Trinity, St. Peter, St. Martin, St. John, St. Ouen and St. Mary and Deputies Labey, Luce, Le Hegarat, Ahier, Gorst, Farnham, Moore, Ozouf, Bailhache, Warr, Scott, Howell, Tom Binet, Ferey, Alex Curtis, Barbara Ward, Andrews and the Connétables of St. Saviour and Grouville and Deputy Rose Binet. Those Members voting contre: Deputies Southern, Tadier, Doublet, Rob Ward, Alves, Gardiner, Mézec, Coles, Porée, Miles, Renouf, Catherine Curtis, Feltham, Jeune, Millar, Kovacs, Wilson and Stephenson.

### **3. Amendment to Standing Orders - Political Awareness and Education Privileges and Procedures Sub-Committee (P.92/2023)**



**The Bailiff:**

The next item is Amendment to Standing Orders - Political Awareness and Education, Privileges and Procedures Sub-Committee, P.92, lodged by the Privileges and Procedures Committee, and I ask the Greffier to read that proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to make the following amendment to the Standing Orders of the States of Jersey, with immediate effect.

**Deputy K. Wilson of St. Clement:**

Sorry, Sir, I just wanted to ask if the défaut could be raised on Connétable Troy. I understand he is receiving hospital treatment at this moment in time.

**The Bailiff:**

Right. Yes, it is not the défaut being raised, I think you want me to mark défaut excuse.

**Deputy K. Wilson:**

Sorry, excuse, yes, thank you.

**The Bailiff:**

In the light of that information, Members accept that that should be défaut excuse. Yes, very well. Connétable Troy is défaut excuse. Thank you very much indeed, Deputy Wilson.

**Connétable K. Shenton-Stone of St. Martin (Chair, Privileges and Procedures Committee):**

Deputy Alves, who is the chair of the sub-committee is going to take this proposition.

**3.1 Deputy C.S. Alves of St. Helier Central (Chair, Political Awareness and Education Sub-Committee - rapporteur):**

I thank the chair of P.P.C. (Privileges and Procedures Committee) for allowing me to take this proposition forward as the rapporteur. P.P.C. has lodged this proposition which proposes to amend Standing Orders to include a specific sub-committee under P.P.C.'s remit to cover political awareness and education matters. When I was first elected in 2018 I was shocked that such a sub-committee did not exist. Growing up in and being educated in Jersey I never had any political education during my school years and even into my adult life. In fact I think I learned more about politics when I was at university because there was a U.K. general election and it felt like everyone was talking about it for about a year before. I was fortunate enough to have a parent who did take an interest in local politics because they had learned about politics when they were in education abroad, otherwise I probably would not have been engaged at all. When I reflected on those who come to work and live on this Island from outside, I was acutely aware and concerned at the lack of awareness-raising events and information given around the whole process of voting in this Island, especially as our system is so unique and different compared to other jurisdictions. Not everybody is as fortunate as I was to have a parent with political interests and having been raised in a home where discussions on politics took place, which makes the work of this sub-committee even more important. It is within P.P.C.'s terms of reference to raise awareness and engage with the public about the work of the Assembly. Encouraging the general public's interest in the politics of Jersey, particularly among children and young people, is vital to ensuring that the people of Jersey can take an informed approach and active interest in the democratic process. Therefore, in consultation with P.P.C. and the current Greffier, I decided to propose a need on this sub-committee, which was first established in 2018. I was fortunate enough to be re-elected and able to reinstate the sub-committee again this term. I would like to take this opportunity to thank all Members, past and present, who have contributed and been part of the sub-committee and its work. P.P.C. are confident that the provision of a permanent sub-committee

with this remit will ensure that this work is given the importance and focus it deserves, as well as providing long-term oversight and political support to the Greffe's digital and public engagement team and safeguarding the continuation of our efforts to increase the public's engagement with the work of the Assembly. Sir, I move the proposition.

**The Bailiff:**

Thank you. Is the proposition seconded? **[Seconded]**

**3.1.1 Deputy M. Tadier:**

I am happy to support this. I have had a longstanding interest in political education and I am reminded that it is obviously one of the jobs of this Assembly and P.P.C. I hope you do not mind me saying that in other Parliaments it is also something that falls to the role of the Speaker to engage with the public and engage with education programmes. I know that we have a different system and I am not here to open that debate up at all. I will simply say that it is, therefore, even more important that P.P.C. is the competent and relevant body that should deal with that.

[12:15]

I also think that there is a wider societal issue and what we have seen at the moment is that there is a great deal of interest in politics at the moment. If you turn on the radio in the morning you will see that there is some half-decent political commentary for once in the Island. But for the other 364 days of the year or perhaps 365 days of this leap year you cannot necessarily guarantee that. Of course when the media are suggesting that some people may not be interested in politics, you cannot always expect them to be interested if we do not have the milieu in which that political thought is encouraged. One thing I would encourage P.P.C. to do is not to simply focus on the work of the States Assembly, which of course it has to do because it is a body of this Assembly, but to go much further back than that and to talk about politics in the abstract and also to talk about philosophy in the abstract and to build on the many centuries of political thought that go before us, not just in Europe but of course perhaps in the wider world. Because I am often both encouraged and discouraged when I look at the state of the current modern society where people do not have fundamental grasps of the basic logical or philosophical concepts, which, therefore, they cannot build on. It is not simply that the States Assembly is the be all and end all; other models of democracy are available. I think if we teach our young people in particular about the basics of democracy and what lies behind that, they may well come into the States Assembly and rather than us teaching them about it they will teach us about democracy. They will say: why is it that you do things like this? Another point I think is that the whole point of democracy is one of aspiration and about representing the people. When we have certain restrictions in place that bar certain types of people in our society from ever holding office because of their nationality that is basically racist. I know that previous Assemblies have struggled with this concept and one of the reasons I am sad to see the current Chief Minister go is because at least I knew that in certain areas where her bread was buttered politically. I think I am correct in saying that it is not just an outgoing Chief Minister who stood up for the rights of women to access the Assembly but she is also somebody who supported the rights of non-British nationals to be able to come into this Assembly to represent themselves. I hope that continues and I hope that we have a less chauvinist Assembly now and I certainly hope that P.P.C. will lead in that regard. Because how on earth can we engage with, let us say, Portuguese, Romanian, Polish, Kenyan nationals who may be in our school, who may not hold British passports and who may choose or not for technical reasons never to have that nationality but who are, nonetheless, part of our hard-working community and valuable parts of our community at all levels, if we say to them you cannot stand for election because you are not British and we are a British Assembly and we are increasingly becoming a monolingual Assembly and a monolingual society? I know that those are wide-ranging issues but they are clearly within the remit of this debate I think and certainly within the remit of the work of P.P.C. I do hope that P.P.C. will take those comments on board. I hope that they will be progressive, that they will

look at democracy and politics in the round and not simply limit it to the walls of this relatively modern building but look at the underlying ideas that are really vibrant when it comes to political thought, which we do not have the monopoly on.

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

The Deputy has my wholehearted support with this proposition and I am impressed that it is going ... I hope that it is going to be made permanent. I really hope Members will support it because I think all of the aims of this sub-committee are ones that we should all be agreeing with. What I wanted to mention, and especially given the current context, there are many different ways to make an impact in this Assembly that go beyond just being a Member of Government or being a member of Scrutiny. P.P.C., I think there are 2 standing sub-committees if this one is approved and Diversity Forum of course is another, which the Deputy is chair and I am the vice-chair, that kind of innovation and establishing committees and joining committees and adding to the work of different committees, like C.P.A. (Commonwealth Parliamentary Association) as well I think has evolved significantly and continues to evolve. I want Members to be mindful of the fact that Government and Scrutiny are not the only ways that we can have impact. I certainly think that the impacts of this committee will continue if it is established permanently and go beyond the work and the passion of Deputy Alves, who is absolutely driving this, and I hope she will continue to do so for as long as possible.

### **3.1.3 Deputy M.R. Scott:**

I am very much in support generally of political education and of ensuring that members of the public understand their rights and the importance of democracy and the workings of the States Assembly. I am aware of so much work that the Greffe does already, particularly at the school level and working with the Youth Assembly and bringing schools into States Chamber. I have to confess that I am not so clear about how much of that is directed by the current sub-committee. I would be grateful if Deputy Alves perhaps would just add a little bit more in terms of particularly what the current sub-committee has achieved, what work it has done and the impact. Because I do think it is important before you say something is permanent that you at least are quite clear what it is doing and what impact it had, particularly because it does take up Members' resourcing and it is always best to be clear about whether things have been done more than one way and what exactly the particular impact that is being done by this sub-committee. I was slightly uncomfortable when Deputy Tadier suggested there should be more of a general political programme perhaps advanced by the sub-committee because I do not know, it just means that the messaging has to be so important, whether people might say it sounded a bit biased this way or that way. It has started making me feel a little uncomfortable about subparagraph (a), unlike the rest of the paragraphs of the proposition. I would just ask Deputy Alves perhaps to inform me a bit better on those matters before the vote.

### **3.1.4 Deputy P.F.C. Ozouf:**

This Assembly has adopted the E.C.H.R. conventions, which include also various rights which Members have alluded to. One of them is the right to educate I think; it is an underlying, it is a fundamental right and many of the rights that we have are important. Education is the way that you can change the world; Nelson Mandela said and he was right. When people determine they can overcome everything, the most difficult thing is not to change society but to change yourself and you change yourself by education. He said education is the most powerful ... I think he used the word "weapon" but I am not sure he would use that word today, the most tool that we can use to change the world. If P.P.C. is changing our world by education and helping us with this and percolating that and strengthening that, then that is a good thing and it is something that we can be proud about as our external image is one of a democratic Island, a fair Island and an Island which treats people with respect, with courtesy and does not discriminate, whether they be men, women, whether their sexual orientation, whether they be whatever, age, whatever, freedom of discrimination; their fundamental rights and this is part of them. If there had been E.C.H.R.-compliance statement for this, which this

is not because it is a Standing Order, it would say that it complies with E.C.H.R. I would say that from an external relations point of view that I currently have, it is great that we do this because we are better off as a society when we educate.

### **3.1.5 Deputy K.L. Moore of St. Mary, St. Ouen and St. Peter:**

I am really pleased to see the Privileges and Procedures Committee sub-committee bringing this forward. I am a big believer in greater education. Of course what we have to focus on is turning around what can only be described as abysmal voter turnout records. We really need to engage our community in the work of this Assembly. The feedback that we consistently receive is that people do not feel that their vote exercises any change or that their vote counts and so there is an awful lot of work to do. I simply would like to put a question to the proposer of this proposition and to ask whether they are proposing that the work will expand to cover the remit of our parochial system. I am a massive fan of our Parish system. It can be democracy in action and a very powerful thing to see but, equally, it is vital that people engage with our Parish system. We saw yesterday the strength of the lobby of Constables. We heard from the Constable of St. Brelade, how he considers that importance in his role and absolutely right it is. But equally, we need to educate our population as to how to engage in that part of our political system.

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

While I wholeheartedly back this proposal, no question, I do wonder if the people who need education are ourselves. I refer back to the comment I made yesterday about my daughter listening to the States Assembly and saying: “Oh, my goodness, it is so slow and so boring, how do you cope?” Were her words. I think it just speaks volumes, this is a teenage girl listening to us in action and not appreciating it certainly. I do wonder if this could be a 2-way committee, not just educating people in our community but also educating ourselves as to how better to connect with those people in our community.

### **The Bailiff:**

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

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

I would like to just thank everybody for their contributions. I did not expect to have so many and thank you for your positive feedback on the work of the sub-committee so far, which probably brings me quite nicely to Deputy Scott’s comments around what kind of work we have done so far. In 2018 when I was first elected we did not have a Members’ resources team and I am sure a lot of Members remember that. We also did not have a digital and engagement team, they just simply did not exist. In fact we only had our current Greffier and she will not mind me saying, who was Deputy Greffier at the time, basically working on the side of a table, so to speak, to work on these kind of issues. It was important to have this sub-committee constituted because then we were able to secure funding for this and put together things like programmes, an educational programme that was approved at the time by the Curriculum Council to get that into schools, which was something that we had not had before. Yes, we did have the year 5 visits but that was quite poorly resourced because it was other members of the Greffe that were having to do that and bring that all together. Now we have very well-resourced primary school visits. We also have, for example, Members are now able to get into schools and schools are inviting us into schools, which was not really happening before. I think there was that reluctance for that to happen. Those are some of the things that has happened. Deputy Moore also mentioned about including the parochial system. We do have Constables on the committee and, in fact, I am in the process of arranging to meet with the Comité des Connétables around some of the recommendations that have been brought forward from members on the sub-committee. I think there is probably still some work to do with regards to maybe getting information

out there about things, elections that happen in the Parishes, for example, Centeniers and things like that. I think there is definitely still some work and discussions to do around that. Unfortunately, some of the sub-committee's work last time was stopped in its tracks due to COVID. We could not get into schools. We would arrange meetings and then people would be short-staffed, as I am sure people can appreciate. I think that is also where - going back to the school visits - we are now being invited in to speak to classes; that is where the point that Deputy Morel, I think, brought up about educating ourselves on how to connect with the community as well.

[12:30]

That is a connection that we have made and I think the team that we currently have in place are working really hard to make other links with other organisations to enable that facility to continue. I think Deputy Tadier raised some good points around how this role, the responsibility is normally placed in other jurisdictions and that just highlights the importance of ensuring that this sub-committee does become a permanent feature. Some of the comments he made around the current media organisations taking a real interest, and there has been a lot of political discourse recently. I would just like to put on the record that I am quite sad to see the live broadcasting on BBC Radio Jersey that was ceased because I know that so many tuned in and I know that a lot of Members were contacted by the public about that. In the absence of our own sort of dedicated TV channel, like they do in Westminster, that was the next best thing, so I think it is a shame. There were comments around restrictions on nationality as well, obviously personally I would welcome that change. Deputy Doublet raised a good point that this is also another way that people can support the work of the Assembly outside of Scrutiny and Government. I would like to thank Members again for all of their contributions. We will take all those thoughts and comments back to the sub-committee. I would also like to remind Members that anybody can join the sub-committee and we always welcome to have more members because it is always good to have views from across the Assembly, and often that is where a lot of ideas come from when people raise things that maybe others may not have raised before or thought of. Thank you and I hope all Members will support this, and I maintain the proposition.

**The Bailiff:**

Those in favour of adopting the proposition, kindly show. The appel is called for. I invite Members to return to their seats. The vote is on P.92 and I ask the Greffier to open the voting. If Members have had the opportunity of casting their vote, I ask the Greffier to close the voting. The proposition has been adopted: 41 votes pour, no votes contre and no abstentions.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Connétable of St. Martin				
Connétable of St. John				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				
Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				

Deputy S.M. Ahier				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy L.J Farnham				
Deputy K.L. Moore				
Deputy S.Y. Mézec				
Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy T.A. Coles				
Deputy B.B.S.V.M. Porée				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy K.M. Wilson				
Deputy L.K.F Stephenson				
Deputy M.B. Andrews				

#### **4. Amendment to Standing Orders - States Decision Tracker (P.93/2023)**

##### **The Bailiff:**

The next item is also an Amendment to Standing Orders - States Decision Tracker, P.93, lodged by the same committee and I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to make the following amendment to the Standing Orders of the States of Jersey, with immediate effect.

##### **4.1 The Connétable of St. Martin (Chair, Privileges and Procedures Committee):**

P.P.C. has lodged this proposition which proposes to amend Standing Orders to include a new provision under the Privileges and Procedures Committee terms of reference. The proposed amendment, if approved, would allow P.P.C. to develop and maintain, in collaboration with the Government, a States decision tracker. The tracker would be updated every quarter and published to the States Assembly website to ensure accessibility by States Members and the public. The committee believes that the States decision tracker will make it easier for Members and the public to

question Ministers or committees about the implementation of decisions and to scrutinise the reasons given for delays. It would also offer more transparency around reasons as to why a decision may not have been implemented. The committee has discussed this with the Chief Minister and it was agreed that the tracker would be administered and owned by the Members' resources team at the States Greffe and maintained through correspondence and engagement with the Government. I move the proposition.

**The Bailiff:**

Thank you very much. Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

**4.1.1 Deputy M.R. Scott:**

Just to say I support the tracker in principle, I am just a little concerned from the current form that I have seen of it that it seems to come over as a general list, which we have a whole list of propositions. We have propositions listed on our website and I understand that perhaps the intention of this is to monitor the extent to which States decisions are implemented or not. Maybe the P.P.C. could give some consideration on whether that list might be refined and also perhaps how you assess whether they have been implemented or not; that is all.

**4.1.2 Deputy M. Tadier:**

Yes, and I think it is something that we can make a little bit fun. We have just been talking about engaging people with politics, so we could have some fun, emojis or icons on it. For example, if you want to type in the hospital, it will come up with a wheel of death perhaps, which we are all familiar with when it just will not load or it could say loading, the waiting time is 10 years or you can reboot it if you want to. We could also have that icon where it is basically a U-turn, so any decisions that have been taken but which have then been completely reneged on by the person who moved them initially when they were not in a certain position, can have the little road sign next to it. I am sure there are other ideas that we could have there just to make sure that we engage with the public. I think it is great to have a tracker but surely we also need some decisions to be made to put into the tracker and I think it is the latter which we might have the problem with.

**4.1.3 Deputy A. Curtis:**

The only part of this I want to pick up on is the reference that the tracker will be updated every quarter. I would like to ask the chair if she believes this is sufficient and we need to have such a slow cadence or long cadence between updates. I am sure that Members' resources team, as and when changes are found, especially as when States decisions are made, even if they are not enacted, will go in the tracker and I think the public would like to see a live tracker and not something necessarily that only reports per quarter. My question in her summing up would be: does she feel that the wording of part (k) that will be inserted would prevent us from keeping a more live data thread of what the tracker has in it, must re-conform to the quarter or will that become our statutory longest period? Because I think that the Assembly want quick, rapid data and I think there are other threads of information like the delay on Ministerial Decisions going online and that the Assembly would like far quicker and members of the public would like far more up-to-date data, and I think we can be a bit more ambitious.

**4.1.4 Deputy A. Howell:**

Can I just say thank you to the Members' resources team because I am sure this has taken an awful lot of work for them? Just to express the views of the Assembly how grateful we are for their work.

**4.1.5 Deputy R.J. Ward:**

Just very quickly, I think it is a very good idea. I do like the spreadsheet we have been sent and I do like a spreadsheet. I think what Deputy Alex Curtis mentioned about a live tracker is something I

think to aspire to. This is a starting point. What it does not produce is this notion of Government saying: “Hang on, we cannot do that because it just takes too long and there is too much going on in this site”, there has not been but perhaps there will be. The other important point about this is to have real clarity on where these things are because sometimes it could be the development of something that comes from a piece of legislation, could have specific times but I think I am sure we can include that. The other thing or point about this is - and this was very important, I was going to say in the last debate - I think we need to be a little bit more upfront about what we do do and the work that we are trying to put in and what we are trying to change, and we need to stop talking ourselves down. Just because we have debates, as we have had, they may be necessary and we make those decisions, we make difficult decisions. I think there are people who are going to talk to us and say you are in a difficult job and you are trying your best and you are working hard at it, and I think that is important that we say that. This may help us, would direct people and say: “Look, these are the things that are happening and these are the changes that are happening that affect your lives; get involved in politics because politics is life.” It gives me an opportunity to quote The The in the Assembly and say: “If you cannot change the world, change yourself.” That is a song that I thought of then that Deputy Ozouf said. This might track how we are making those changes.

**The Bailiff:**

Does any other Member wish to speak on the proposition? If no other Member wishes to speak on the proposition, then I close the debate and call upon the chair of P.P.C. to respond.

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

I thank all those who have spoken and I thank Deputy Ward for referencing The The. I would just like to answer briefly that, yes, in answer we have put it that it was quarterly because this is obviously very new. But I take Deputy Curtis’ point that it would be good to be live. I might have to talk to the Members’ resources team about that. I am sure that eventually it would become live. I would like to thank the Members’ resources team because I do know that they have put a huge amount of work into it. Yes, Deputy Scott, we are very happy to tweak the list. As I say, it has not become live yet, so we will be doing that. It is very good to have this because I think it will show the work of non-Executives and the Government about how much work is in the pipeline. For example, one of mine, road safety, which I think is 2020 or 2021 and it kind of got lost in the mire and that is bubbling up again to the surface at the moment. I would just ask everybody to vote for this because I think it will help everybody across the board in this Assembly and help, as Deputy Ward said, members of the public to see just how much work does go on. I ask for the appel.

**The Bailiff:**

The appel is called for. Thank you, Connétable. I invite Members to return to their seats. The vote is on P.93 and I ask the Greffier to open the voting. If Members have had the opportunity of casting their vote, I ask the Greffier to close the voting. The proposition has been adopted: 42 votes pour, no votes contre and no abstention.

<b>POUR: 42</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Martin				
Connétable of St. John				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				



Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy S.M. Ahier				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy I.J. Gorst				
Deputy L.J Farnham				
Deputy K.L. Moore				
Deputy S.Y. Mézec				
Deputy T.A. Coles				
Deputy B.B.S.V.M. Porée				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy K.M. Wilson				
Deputy L.K.F Stephenson				
Deputy M.B. Andrews				

Is the adjournment called for?

**LUNCHEON ADJOURNMENT PROPOSED**

**Deputy I.J. Gorst of St. Mary, St. Ouen and St. Peter:**

Sir, just before we do ...

**The Bailiff:**

Yes, of course.

**Deputy I.J. Gorst:**

... could I just inform Members that I would like to move P.95? I know there is an error and it was not on the Order Paper, so I took that as it having been moved. Now it is back on because there was an oversight but I would like it moved, please.

**The Bailiff:**

You are going to defer it.

**Deputy I.J. Gorst:**

Yes, correct, thank you.

**The Bailiff:**

Very well. That is helpful to Members.

**Deputy H. Miles of St. Brelade:**

Yes. In a similar vein as a consequence of yesterday, I would like to defer P.97, the Public Order Law, so that it can be taken through by the new Minister.

**The Bailiff:**

Very well. There is an absolute right for a proposer to defer a proposition, so those 2 matters are deferred. The Assembly will return then at 2.15 p.m. to deal with the remainder of public business. Thank you.

[12:42]

**LUNCHEON ADJOURNMENT**

[14:15]

**5. Draft Cold Weather Bonus and Payments (Amendment - Extension of Eligibility) (Jersey) Regulations 202- (P.99/2023)**

**The Bailiff:**

We now continue with the next item of Public Business, which is the Draft Cold Weather Bonus and Payments (Amendment - Extension of Eligibility) (Jersey) Regulations, P.99, lodged by the Minister for Social Security. The main responder will be the chair of the Health and Social Security Scrutiny Panel. I ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Cold Weather Bonus and Payments (Amendment - Extension of Eligibility) (Jersey) Regulations 202-. The States make these regulations under Articles 8 and 18 of the Income Support (Jersey) Law 2007 and Article 4(2) of the Social Security (Bonus) (Jersey) Law 2014.

**5.1. Deputy E. Millar (The Minister for Social Security):**

Just to clarify, notwithstanding the current state of play regarding Ministers, I do intend to proceed with these regulations because they are simply implementing a decision of the Assembly taken last year and I do not think they will be controversial. The Government provides support with heating costs to low-income families through 2 separate schemes. Firstly, the Cold Weather Bonus scheme supports pensioners who do not receive income support but have a low household income and, secondly, cold weather payments are made through the income support scheme and help income support households, which include a pensioner, a young child or an individual with a high level of disability. Both schemes provide the same level of financial support across the winter period. Members will recall that last year they approved my proposal to maintain for this winter a guaranteed £70 a month payment to eligible households under both schemes running from October to March and

notwithstanding variations in temperature. Members also agreed last year to support a proposition from Deputy Porée to extend eligibility for cold weather support to working-age individuals who are receiving an L.T.I.A. (long-term incapacity allowance) award at 100 per cent and who live in eligible low-income households. These regulations extend to the eligibility of the 2 existing payment schemes. Deputy Porée's amendment proposed an extension to the Cold Weather Bonus scheme. These regulations go certainly further and also extend support available through the Cold Weather Payment scheme in a similar fashion, which is logical. Payments under both schemes will be extended to any eligible household that includes a working-age person receiving a 100 per cent long-term incapacity award. If approved the regulations will support additional payments in respect of January to March 2024 and future winter periods. I propose the principles.

**The Bailiff:**

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

**5.1.1 Deputy B.B. de S.DV.M. Porée:**

I would just like to take this opportunity to thank the whole Assembly towards this proposition and also I would like to thank the Minister to bringing now to date.

**The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak, then I close the debate. Do you wish to respond, Minister?

**Deputy E. Millar:**

Sir, I think I will just maintain the principles, please.

**The Bailiff:**

Those in favour of adopting the principles, kindly show, those against. The principles are adopted. Does the Health and Social Security Scrutiny Panel wish to scrutinise the matter?

**Deputy R.J. Ward (Chair, Health and Social Security Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

Very well. Do you propose in Second Reading?

**5.2 Deputy E. Millar:**

Sir, may I propose *en bloc*, please?

**The Bailiff:**

Yes. Are they seconded for Second Reading? **[Seconded]** Does any Member wish to speak in Second Reading? Those in favour of adopting in Second Reading kindly show, those against. Do you propose in Third Reading, Minister?

**5.3 Deputy E. Millar:**

Yes, please, Sir. I maintain the regulations.

**The Bailiff:**

Are they seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading? Those in favour of adopting in Third Reading, kindly show. The appel is called for. I invite Members to return to their seat. The vote is in Third Reading on P.99, the Cold Weather Bonus. I now ask the Greffier to open the voting and Members to vote. If Members have had the opportunity

of casting their votes, then I ask the Greffier to close the voting. It has been adopted in Third Reading: 41 votes pour, no votes contre and no abstentions.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. John				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				
Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy S.M. Ahier				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy K.L. Moore				
Deputy S.Y. Mézec				
Deputy P.M. Bailhache				
Deputy T.A. Coles				
Deputy B.B.S.V.M. Porée				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy L.K.F Stephenson				

Deputy M.B. Andrews				
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## **6. Draft Employment (Amendment No. 15) (Jersey) Law 202- (P.100/2023)**

### **The Bailiff:**

The next item of Public Business is the Draft Employment (Amendment No. 15) (Jersey) Law, P.100, lodged by the same Minister. The main respondent will be the chair of the Health and Social Security Scrutiny Panel and I ask the Greffier to read the citation.

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

Draft Employment (Amendment No. 15) (Jersey) Law 202-. A law to amend further the Employment (Jersey) Law 2003. The States, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following law.

### **6.1 Deputy E. Millar (The Minister for Social Security):**

I would also like to continue with this amendment law. I do not think it is a matter of significant policy and it is seeking to put into force a recommendation of the Employment Forum made last year, which will be beneficial within our employment framework. With that introduction, in May 2023 the Employment Forum published its report into the operation of zero-hour contracts, together with a review of employment protections more widely. The consultation exercise which the forum undertook revealed situations in which an employee who was usually employed on a zero-hour contract where the number of working hours is not guaranteed was, nonetheless, consistently working a pattern of regular hours. That would ordinarily merit a different and more stable contractual arrangement between the employee and their employer. The forum considers, and I agree, that the continuing use of a zero-hour contract when regular hours are being worked is an unfair practice that puts the employee at a disadvantage and needs to be addressed. The overriding interest for many employees is to have as predictable a working pattern as possible, particularly when an employment contract does not provide that level of security. The forum's recommendation is to give an employee the right to request a variation in their terms and conditions of employment to reflect the actual work pattern which has been established over a given period of time. For example, even if someone is on a zero-hours contract but they are consistently working the hours of 9.00 a.m. to 1.00 p.m. Monday to Friday, they then have an established pattern. This amendment will give the employee the right to request such a change. An employee will be able to ask that their contract is varied to reflect the reality of their working pattern. The forum has recommended that the working pattern should be evidenced over a significant period of time, being 6 months. This length of time will provide strong evidence and a presumption for a change in contractual arrangements. The amendment also provides that an employee has a right to ask their employer to review a refusal to agree a change to the employment contract and, ultimately, to make a complaint to the Employment Tribunal. An employer will have a defence to a refusal to agree a variation in the terms of the contract. That defence is closely drawn in the amendment and reflects the fact that because the employee can demonstrate a consistent pattern of working hours, it will only be in very limited circumstances that the employer can refuse. I am also taking this opportunity to propose a second amendment to the Employment Law. This is a change to the right of an employee to request flexible working arrangements. Currently an employee may make a request for flexible working arrangements only once in a 12-month period. The amendment increases that to twice in a 12-month period. The COVID-19 pandemic inevitably saw a dramatic increase in the use of flexible working arrangements, whether that be hours, times or place of work, to enable businesses to continue operating and employees to keep their jobs. Even though we have returned largely to normality, it is clear that the ability to work flexibly continues to be important, if not more so now. As I make clear in my report, flexible working has far wider benefits than the immediate working relationship between an employee and their employer. It contributes to the success of a business, the ability to retain

experienced staff and supports families and the community in creating and maintaining a good work/life balance. For all these reasons I commend the proposed amendments to the Assembly and maintain the principles.

**The Bailiff:**

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

**6.1.1 Deputy G.P. Southern of St. Helier Central:**

I rise to thank the Minister for bringing this particular proposition and ask her a question in that, as with lots of benefits, the key to making sure that those benefits are used and obtained is that of sanctions. My question would be: what sanctions exist now and what sanctions will exist in the future to try and enforce and to ensure that these rights, which are newly acquired, are fully endorsed by the employers on the request of the employee?

**6.1.2 Deputy M. Tadier:**

I think this change is welcome. Could I ask the Minister whether she has come across any cases, I seem to have heard of them, where a case has gone to tribunal and an employment contract is offered ostensibly on a zero-hour contract but the tribunal has judged that in practice it is a fixed-hour or full-time contract and, therefore, the zero hours is disregarded? If that is the case, could she state, first of all, whether there have been precedents already where simply because one has a zero-hour contract that does not constitute it in law if in actual fact it is being used otherwise? Will she maybe comment to what she thinks the extent of that abuse of contract is, something we might call a sham zero-hour contract I suspect? Could she also clarify, she did mention in her speech that it is important that employees know that they have got regular working patterns, I would suggest it is probably even more important that they know that they have a regular income? Even if the actual working shift pattern may change and we know that some workers may vary between earlies and lates and anything in between and find that they are working different days and different patterns, one of the more important things is to know that they can guarantee a fixed income, a minimum income at the end of each month. Will she also explain whether that is going to apply to some of the issues that the sub-panel that Deputy Porée ably chaired to do with workers who come here on work permits, who often find that they have got variable contracts in practice, so they will be brought over to the Island on a promise of a certain number of hours a week or a month but in reality they are being given much less hours than they want to, so somewhere in between a zero-hour contract and a full-time contract and does that have any implications for them?

**The Bailiff:**

Does any other Member wish to speak on the principles? If no other Member wishes to speak, then I close the debate and call upon the Minister to respond.

**6.1.3 Deputy E. Millar:**

If the Deputies do not mind I will try and answer those questions in reverse. Firstly, Deputy Tadier's question about work-permit holders. I believe it is a rule that when someone comes here on a work permit they are guaranteed 40 hours a week and that the contract must be for 40 hours. If an employer was to reduce those hours, then they are in breach of the work permit regulations. I am afraid that particular aspect sits closely elsewhere than with me. My understanding is that the situation the Deputy is suggesting is not one that should happen at all and it is not necessarily an employment law matter. The question of guaranteed income, I think that really is a matter between the employer and employee. I think if the employer and employee, they may decide to ... zero-hours contracts, I think, can take various forms. My recollection of the Employment Forum report was that they had not identified significant abuse of zero-hours contracts and this was one of the few changes that they did suggest.

[14:30]

Some people will want flexible hours and they will be quite happy to work a Saturday one week, a Friday the next. But I think in terms of agreeing what the income is, that will depend on their arrangement with the employer and I do not think we can enforce particularly anything on that regard. Changes in working patterns, I am again assuming there Deputy Tadier is referring to a situation where someone cancels a shift, for example, at short notice. The Employment Forum, my recollection was that they did not recommend any specific penalty or compensation to be paid for very short notice of cancellation, although we did agree that we would do some further work in terms of really promoting best practice and making sure that zero-hours contract workers are treated fairly at all times because they do suit many employees. Deputy Tadier's question on tribunal, I am afraid I am slightly at a loss as to follow the question and I simply do not have that answer. I met the chair of the tribunal some months ago; this was not an issue that was raised with me. I think anybody on a zero-hours contract, they still have the same employment rights as someone else, including as to unfair dismissal and redundancy and all the other day-one employment rights particularly and they have the same rights to go to the tribunal. But I am afraid I simply do not have any knowledge of the situations that I think Deputy Tadier is discussing. To return, last but by no means least, to Deputy Southern. I think with this, if an employee on a zero-hours contract is working a settled pattern, what will happen is that they will go to the employer, ask for a revised statement of terms showing that they will work, in my previous example, Monday to Friday between 9.00 a.m. to 1.00 p.m. If the employer refuses they are entitled to request a review of that. The employer may only refuse in very defined circumstances and if they refuse incorrectly then the employee can go to tribunal. The employee, the normal employment rights as to statement of terms still exists. So for example Article 9 of the law will make it an offence for an employer to fail to give the employee a written statement of the amended particulars within 4 weeks. As is the case with other employment contracts, the penalty for that offence is up to level 3 on standard scale, which is £10,000. I would hope that employers will treat this in the spirit the Assembly are hopefully going to agree to. The employee of course retains all their other rights as an employee under the Employment Law. So I hope that has answered the Deputy's question, thank you.

**The Bailiff:**

You maintain the principles?

**Deputy E. Millar:**

I maintain the principles, yes.

**The Bailiff:**

Those in favour of adopting the principles kindly show. Those against? The principles are adopted. Does the Scrutiny Panel wish to call this in?

**Deputy R.J. Ward (Chair, Health and Social Security Scrutiny Panel):**

No. But I will say a few words on the Articles in a moment.

**The Bailiff:**

Certainly, yes. How do you wish to deal with them in Second Reading then, Minister?

**6.2 Deputy E. Millar:**

*En bloc* please.

**The Bailiff:**

Are they seconded in Second Reading? **[Seconded]** Does anyone wish to speak in Second Reading? Deputy Ward.

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

Sorry, I was concentrating so much on getting the right Article and this is where I think paper could be king because I have to scroll through this. I just make a point that the Scrutiny Panel does not want to call this in because we do not want to delay this in any way. But it is certainly something we will come back to, to look at the workings of this, the success of the working of this and the implications of this for employees and of course employers. There are many who have contracts and there are just a couple of things I will mention, and this may be me being a little pedantic, but I think sometimes pedantry is useful in these circumstances. In the draft, in the Article 5(b), it refers to that this can be refused by the employer if there is a serious detrimental effect on business. The word "serious" is there. Just to say that in the explanatory notes that word "serious" is not there. That may well be me being a little finickity, if that is a word, but I think it is important the way these things are applied. Because if it is just a detrimental effect, that could simply be it is inconvenient for an employer. However, a serious detrimental effect needs to be defined, and that is certainly something I think that the panel would track as to how that is being used and applied in these circumstances. So there are some details here that I think we need to be very careful of when we look at this Employment Law and this change. So that was the main one. I would also say that, in terms of applying for this, it is up to the employee to apply for this in writing, some sort of assistance for some employees to do that may be necessary. I know employees do struggle with these things. Standing up for their own rights, particularly young people, particularly those who are so reliant upon the job they are in, in Jersey, because the cost of living is so high and there are so many things they need to be paying for upfront. So many people who work on these contracts are living week to week, month to month, and do not have this backup in any way. So we need to be very careful to enable employees to do this and there needs to be something in place to enable that so this is an effective change and one that improves employment circumstances for people in Jersey. Other than that, I welcome this change.

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

I am perhaps being equally as pedantic as the previous speaker. When I notice that the Minister talked about that the refusal by the employer, the terms in which they can refuse are very tightly drawn. I would ask her to go back to the report and note that in fact the terms under which this can be refused are very widely drawn, I believe. I would like to hear from the Minister a justification of why she calls them tightly drawn, when I believe my reading of them was very much they were very loosely drawn and open to exploitation.

### **The Bailiff:**

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

### **6.2.3 Deputy E. Millar:**

Just to answer those points. I am not sure if Deputy Ward was saying that Scrutiny had not seen these. Sorry, that is my misunderstanding. I think both Deputy Ward and Deputy Southern have said the same thing broadly; queried the same thing. The employer can only refuse requests if the amendments do not reflect the employee's work pattern. So if an employee says: "I would like a contract that says I am working Monday to Friday, 9.00 to 1.00," and the employer says: "But you do not, you only work Monday to Wednesday 9.00 to 12.00," that is one option. The second one, it does say "seriously detrimental". The amendment to the statement would have a seriously detrimental effect on the performance of the employer's business. Now it would be for the employer to show that there is a seriously detrimental effect and I do not know what that would be because, if you have somebody who is working fixed hours, simply giving them a contract saying that would not have a seriously detrimental effect on the performance. But that is for the employer to show. Then the next group, the next category is the employer has reasonable grounds to consider that the employee's work patterns will change within 4 weeks or the employee's contract of employment is



due to end within 4 weeks, so someone perhaps is already working their notice. So those have been set out. The employer would have to be able to justify any refusal. The employee, as I have said, can request a review. If they say: "No, you have been unreasonable. Will you review it?" If they still refuse, the employee does have the ability to go to the tribunal. To pick up - sorry, I do not have very effective notes here - Deputy Ward's point. I accept that some people may struggle to deal with their employer and I believe that J.A.C.S. (Jersey Advisory and Conciliatory Service) is always there to provide assistance to employees who need help with employment matters and to give advice and guidance. So I think that is as much as I can offer at the moment.

**The Bailiff:**

Do you maintain the Articles in Second Reading?

**Deputy E. Millar:**

I maintain the Articles in Second Reading, thank you.

**The Bailiff:**

Those in favour of adopting the Articles in Second Reading kindly show. Those against? The Articles are adopted in Second Reading. Do propose in Third Reading, Minister?

**6.3 Deputy E. Millar:**

Yes, please.

**The Bailiff:**

Are they seconded for Third Reading? **[Seconded]** Does any Member wish to speak in Third Reading?

**6.3.1 Deputy M.R. Ferey of St. Saviour:**

Just before we move to the final vote on this, I just want to take a moment to thank the members of the Employment Forum. They are all volunteers and their bread-and-butter work is looking after minimum wage increases, and that is a yearly piece of work which takes up a lot of their time. It is nice for them to be able to move out of that zone and into other areas of the Employment Law where they can make small refinements like this, which in some cases can have a large positive impact on people's lives. So I know that some people from the forum may even be watching this afternoon, and I think it is fitting that we acknowledge the fruits of their labour by what has come through this afternoon.

**The Bailiff:**

Thank you very much, Deputy. Does any other Member wish to speak in Third Reading? If no other Member wishes to speak I close the debate. Did you wish to comment, Minister, on that?

**6.3.2 Deputy E. Millar:**

No, I completely endorse and agree with Deputy Ferey's comments and I maintain and call for the appel.

**The Bailiff:**

You maintain the law in Third Reading and call for the appel. The appel is called for. I invite Members to return to their seats and I ask the Greffier to open the voting. The vote is adoption in Third Reading of the draft law, P.100. If Members have the opportunity of casting their votes, then I ask the Greffier to close the voting. The law is adopted in Third Reading: 41 votes pour, no votes contre, no abstentions.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Connétable of St. Lawrence				
Connétable of St. Brelade				
Connétable of Trinity				
Connétable of St. Peter				
Connétable of St. Martin				
Connétable of St. John				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Saviour				
Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy S.M. Ahier				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy K.L. Moore				
Deputy S.Y. Mézec				
Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy T.A. Coles				
Deputy B.B.S.V.M. Porée				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy L.K.F Stephenson				
Deputy M.B. Andrews				

## **7. Amendment to Standing Orders - Roll of Elected Members (P.101/2023)**

### **The Bailiff:**

The next item of Public Business is Amendment to Standing Orders - Roll of Elected Members P.101, lodged by the Privileges and Procedures Committee and I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to make the following amendment to the Standing Orders of the States of Jersey with effect from the date of the 2026 general election.

#### **7.1 The Connétable of St. Martin (Chair, Privileges and Procedures Committee):**

P.P.C. has lodged this proposition which proposes to amend Standing Orders to change the order of which elected Members shall be called. This follows a briefing which was provided to all States Members in September asking for views on the proposed amendment. The proposed amendment, if approved, would provide for Connétables to be called first and the order determined according to the length of time each of them had held office as an elected Member. Deputies will be called second in the order determined according to the length of time each of them has held office as an elected Member. The committee has included specific provisions regarding the order in which Members shall be called. If 2 or more elected Members have held such office for the same length of time, the order between them will be determined according to alphabetical order of their surnames. If there is more than one elected Member with the same surname, the order between them will be determined according to the alphabetical order of their full names. There have been a number of views from the public about the importance of these proposed changes, and I wanted to address that today. The main purpose of lodging this amendment is to address the issues that were raised following the 2022 elections. There were 2 in particular; the first was that different rules apply for Connétables and Deputies. For example, that previous service as a Deputy does not count in determining the role of Connétables, but does for Deputies. The other issue raised was that those who have been Senator in the Assembly from 2018 to 2022 appeared after returning Deputies for the roll, although the opposite might have been expected. Any changes to the roll call to address issues such as these require amendments to Standing Orders, and those amendments can only be made with the agreement of this Assembly through the adoption of a proposition such as this. There is no other way to amend Standing Orders, however a small change may be required. I hope these changes will make it simpler for the next Assembly. If approved, the changes would not take effect until after the 2026 election. I move the proposition.

[14:45]

### **The Bailiff:**

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

#### **7.1.1 Deputy D. Warr of St. Helier South:**

This makes me so angry. I have been out at lunchtime today and so many people have said to me that the debate yesterday saw Jersey in a really bad light. Here we are navel-gazing day 2, surely this is insanity and we are just seeing ourselves navel-gazing. The outside world is looking at what we are doing. I cannot believe we even spend 2 minutes debating this.

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

I just want to make it quite clear that the Standing Orders are decided by us through a democratic process. We do not want that to be taken away from the Assembly and give responsibility to somebody else to impose the rules of this Assembly on to us. That is the reason why this amendment has to be brought to the Assembly.

### **7.1.3 Deputy M.R. Scott:**

I was just wondering whether the chair in her closing speech might address some questions I have about this majority view. Because I know that the P.P.C. contacted Members asking for their views and I was one who basically said I did not really care. I do not really care, let us just get on with things. So I wonder to what extent people who expressed that they did not really care, was that marked as a contre or an abstention in calculating this majority. Also, it was interesting that the chair said that an opposite view could have been taken. So basically we learned that for some reason, and I do not know because the States Assembly has a history and I am not party to every bit of it, but it seems like the Constables are addressed in a certain order and somebody suggested that there should be some consistency between them and the Deputies. But it has gone in the way of making Deputies consistent with Constables. It is Deputies who are put in the order of service. So why did it go that way? Was it because a number of Deputies had requested this? I am just interested how this even got here basically. But I have to say on reflection, as I thought more about this, thought about democracy, I do not even know why we should not just all be in alphabetical order. But it is as it is and I really did not care. I do feel, with every respect that I have for anybody who has managed to serve as long in the States Assembly, knowing what a tough job it is, that I did find myself feeling a little uncomfortable thinking it is a bit like we live in a democracy, everybody is meant to be equal, is this not the same as stuffing a hat with something that has been around for a while. So I just would ask those questions just so I am better informed.

### **7.1.4 Deputy M. Tadier:**

I can understand Deputy Warr's anger although I cannot help thinking it is perhaps anger for a different reason, which is manifesting itself into this proposition. I also think that it is slightly cheap and it is certainly not P.P.C.'s fault, as Deputy Alves has explained, that they are duty bound to bring these. What is the alternative? Do we do these things behind closed doors? Because the Assembly is here to debate large items, small items to do with running order, et cetera, and everything else in between. If we started making changes behind the scenes, the same public who wish to find fault would say: "Now they are being very secretive and what is going on here? They are changing their rules behind to suit themselves." We should not shy away from speaking in debates simply because we think that there is some external pressure from some dominant voices who do not necessarily understand our internal mechanisms. It does not mean we have to spend disproportionate time talking about them either, but we have to recognise that is something that we do. There is a paradox, of course, that the media on the one hand will spend so much time talking about this and fanning up the flames so that there is so much controversy that there are even columns designated to it in the *Jersey Evening Post* opinion pieces by the free workers that they use, the non-paid/unpaid journalists who do not even get, I suspect, minimum wage for their labours, talking about how they do not agree with it. So they have their opinions and they are the ones deciding that it is an issue, not P.P.C. or us. Now, if you had asked me 5 or 10 years ago what I thought of this, I might have objected very strongly, in stronger terms, and the Constable of St. Lawrence may well know what I am talking about because as soon as I see the word "Constable" in a proposition my eyes and ears used to prick up. The old Deputy Tadier, or rather should I have said the young Deputy Tadier, might have said something like, he might have quoted a line from Orwell's *Animal Farm* and said: "All animals are equal, but some animals are more equal than others." But that was the old Deputy Tadier, not the middle-aged Deputy Tadier that we have today. I will give you 3 reasons why I am quite comfortable with the Constables being called first. Maybe let us make it 4 even. The first point is that they are already called first now, so it is not really a change. But the 3 reasons that I am comfortable is first of all the Constables are the oldest class of Member that we have. So if we think that tradition is important, some people do think traditions are important, then the Constables were here a long time before the new kids on the block, who are the Deputies, and they were certainly here a long time before the Senators were here, and the Senators are no longer here, and of course the Jurats are no longer here and the Rectors are no longer here, but we do have one Dean, for whom I think we are

very grateful in some ways. When he does speak, he speaks wisely. The second reason is a practical one and a slightly selfish one, it means that if I know the Constables are being called first, it gives me slightly longer to get into the Assembly. So if I am in the corridor and I listen out very carefully and I know that the Constables are still being called, then I have at least a few more seconds to get to my seat and I know I will be probably third to be called after they have finished being called. The third reason, third/fourth, is that they may not be in the Assembly much longer, so let us let them have their day. I do have a slightly more serious point to ask, it is just to check, because I think the wording could have been tighter. I did point this out in an earlier debate because I think it is a fundamental point of fairness. It is wrong, for example, that Deputy Gorst, who is a longer-serving Member than I am, gets called after me. There is no fairness in that. So he should naturally be called before me on this internal logic that we have, if we are going to have any internal logic. So it is important that Deputy Gorst is recognised as being here longer than I am. I do question though, and I would like someone on P.P.C. to answer this: is there any recognition of continual service and is continual service differentiated from length of service at all? I am presuming from the reading that no difference is made. I raise this I suppose for a couple of points: we do have Members in this Assembly who were Members for a period, they took a break, and then they came back into the Assembly. I do not have a strong feeling on it one way or the other, but will they be treated the same as another Member who might have served exactly the same amount of time. This issue may not arise because one consideration is that, if you were elected between 2008 and 2011, you would have only done a 3-year period because the terms of office back then were 3 years and now they gradually moved to a 4-year term. But it does raise the question, should it be done on the years of service or the terms of service, because it is not somebody's fault who served between 2005 and 2008 that the term of office was just 3 years and if they have done another more recent term, they would have only done 7 years they have done 2 terms of office compared to somebody else who is done 2 terms of office, which is 8 years. So I just put that into the mix for thought. But this is not especially controversial, but what else would we be doing today if we are not debating this?

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

Most of us were not going to speak about that, but unfortunately somebody decided to raise a concern about it. After the last election, we lost the role of a Senator and therefore there were concerns raised that those people who had been Senators were then further down the roll call than those that were newer Members. This is a housekeeping matter, which was brought by P.P.C. because that is the role we have. There was a presentation from the Greffier about all of the options and what people's opinions and views were, and they were logged. Therefore that is why the decisions were made as they were. We were hoping that nobody would stand up and speak because we would have been all done and dusted, but I have to say that this is a housekeeping matter, we were briefed by the Greffe, and those people who would have gone to that presentation would have understood fully what was going on.

#### **7.1.6 Deputy P.F.C. Ozouf:**

I put my light on to speak before, but all of the points that I wanted to make have been made eloquently by Deputy Tadier and always he has answered exactly the questions about continual service. Because there are a couple of Members, I am one of them, that have taken a break and I just wanted to understand from P.P.C.'s perspective, Deputy, former Senator, Bailhache is another Deputy of Grouville originally. That long service to this Assembly is not reflected in the roll call, and I do not think that is exactly right. So equality for Members in terms their communitive lengths of service is what I would suggest is done, because I am looking back and seeing one Member who has been in this Assembly longer than anybody.

### **7.1.7 Deputy J. Renouf:**

I am afraid I will be voting contre. The problems that this addresses are trivial. Why should length of service be reflected in the roll call? I do not get it. I do find it interesting, as Deputy Tadier settles into middle-age establishment thinking, that he is so focused on hierarchical distinctions and the need to distinguish between lengths of service, whether it is continuous service or not continuous service. I guess it is an interesting sport, but I would be very happy to see this done randomly or by alphabetical order. I think there is a subtle message being conveyed when we say that Constables come first and their length of service comes before shorter service and I think those distinctions should not really exist. They should not be reflected in the roll call. The roll call should be an entirely neutral thing, so I shall vote contre.

### **The Bailiff:**

Does any other Member wish to speak on the proposition? If no other Member wishes to speak then I close the debate and call upon the chair of P.P.C. to respond.

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

I would just like to say that this is my absolutely least favourite proposition I have ever brought to this Assembly. My personal view is I do not really care where I am in the roll call. Addressing Deputy Renouf, he says: "Well, why do we not have it in alphabetical order, why do we not have it reverse alphabetical order?" He might be further up. The passionate outburst from Deputy Warr maybe shows that he does not understand what P.P.C. does. As he has seen today, we brought this along with 2 more important propositions today, and it is a democracy and we have to bring Standing Orders to the Assembly. We cannot make decisions like this, however trivial, behind closed doors. If someone asks us to look at it, like some Members did, then that is the role of my committee. In Housing you may have things that you do not particularly want to do, but we are a democracy and we cannot hide. I am very, very grateful to Deputy Alves and Deputy Tadier. Deputy Scott, my notes are so bad I cannot see what I have written. But I would like to cut this quite short and say that this has not come from me or particularly members of P.P.C.; this is something that is brought to P.P.C. that, as a democracy, we have to do. It is Standing Orders. I would just like to ask for the appel.

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

We did ask a question, Deputy Ozouf and I, about whether ...

### **The Bailiff:**

Are you able to answer that, Connétable?

### **The Connétable of St. Martin:**

I should be able to. No, there is not. With the new Standing Order there is no advantage given to continual service, so length of service will be determined by the total length regardless of whether it is continuous or done in bits. Sorry, I missed that off.

[15:00]

### **The Bailiff:**

In terms of interpreting the proposition that would be my interpretation of the proposition as well. Very well, the appel was called for. I invite Members to return to their seats. The vote is on the adoption of P.101, the amendment to the roll of elected Members. I ask the Greffier to open the voting. If Members have had the opportunity of casting their vote then I ask Greffier to close the voting. The proposition has been adopted: 30 votes pour, 11 votes contre, 1 abstention.

<b>POUR: 30</b>		<b>CONTRE: 11</b>		<b>ABSTAIN: 1</b>
Connétable of St. Lawrence		Deputy S.G. Luce		Deputy R.S. Kovacs
Connétable of St. Brelade		Deputy K.F. Morel		
Connétable of Trinity		Deputy S.M. Ahier		
Connétable of St. Peter		Deputy K.L. Moore		
Connétable of St. Martin		Deputy D.J. Warr		
Connétable of St. John		Deputy H.M. Miles		
Connétable of Grouville		Deputy M.R. Scott		
Connétable of St. Ouen		Deputy J. Renouf		
Connétable of St. Mary		Deputy A.F. Curtis		
Connétable of St. Saviour		Deputy K.M. Wilson		
Deputy G..P. Southern		Deputy M.B. Andrews		
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy L.M.C. Doublet				
Deputy M.R. Le Hegarat				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy S.Y. Mézec				
Deputy P.F.C. Ozouf				
Deputy P.M. Bailhache				
Deputy T.A. Coles				
Deputy B.B.S.V.M. Porée				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy B. Ward				
Deputy L.K.F Stephenson				

**The Greffier of the States:**

Those voting pour: the Connétables of St. Lawrence, St. Brelade, Trinity, St. Peter, St. Martin, St. John, St. Ouen, St. Mary, and Grouville, and St. Saviour online, and Deputies Southern, Labey, Tadier, Doublet, Le Hegarat, Rob Ward, Alves, Gardiner, Mézec, Ozouf, Bailhache, Coles, Porée, Curtis, Feltham, Miller, Howell, Ferey, Ward, and Stephenson. Those voting contre: Deputies Luce, Morel, Ahier, Moore, Warr, Miles, Scott, Renouf, Curtis, Wilson, and Andrews, and Deputy Kovacs abstained.

**8. Maximum Employment Probation Periods (P.103/2023) - as amended (P.103/2023 Amd.)**

**The Bailiff:**

The next item is the Maximum Employment Probation Periods P.103, lodged by Deputy Andrews. The main responder will be the Minister for Social Security. Deputy, you have lodged an amendment to your proposition. Do you wish to take it as amended?

**Deputy M.B. Andrews of St. Helier North:**

Yes, I do. I was wondering if it is okay to take part (a), (b), and (d), so (c) will be excluded.

**The Bailiff:**

You do not want to move part (c). May I just look at this please? So you do not want to move part (c).

**Deputy M.B. Andrews:**

Yes.

**The Bailiff:**

Yes, there is no reason why that cannot, but you wish it otherwise taken as amended?

**Deputy M.B. Andrews:**

Yes, please.

**The Bailiff:**

Very well, I ask the Greffier to read the proposition as amended. I beg your pardon, are Members content to take it as amended? Yes.

**Deputy E. Millar:**

Sorry, may I ask a question? I have submitted a comments paper rejecting this amendment. I am happy to continue the debate if Members are happy to continue the debate. I do not think it is a huge issue of employment policy, but I would just like to check that Members are content with that position.

**The Bailiff:**

You mean content in the light of the fact that we are in a period of uncertainty.

**Deputy E. Millar:**

Yes, we are. I think I am technically still in post, yes.

**The Bailiff:**

Nobody has raised any objection and it seems to me that it is the only way that the proposition can continue if someone is in a position to respond to it. Very well, would you read the proposition as amended please?

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to agree that employment probation periods should be amended within the Employment (Jersey) Law 2003 to (a) set a maximum employment probation period of no more than 6 months; (b) ensure that any extension in an employment probation period can only be made once and does not result in the total probation period exceeding the maximum employment probation period set out in (a); (d) ensure that any employee on a fixed term contract of 6 months or less will not be subject to a work probation period and to



request the Minister for Social Security to bring forward the necessary legislative changes to implement these amendments in June 2025.

### **8.1 Deputy M.B. Andrews:**

This proposition has come about due to me being aware of one particular case where an employee was on their work probation and unfortunately they had a very bad experience on the work probation. It happened to be extended on multiple occasions and the reasons given were inadequate. I thought, upon hearing this person speak, that something ought to be done. So I did a bit of investigating and I spoke to a couple of other people who also experienced hardship on the work probation period as well. Such as cases where individuals were being used for an employer who was essentially using them as a matter of convenience maybe due to a business situation where maybe somebody was on maternity leave and they were maybe coming back in a few months' time, and maybe the working relationship was not going well between the employee and the employer, so the employer gave reason to extend the work probation period for the employee. However, there is never going to be any permanency in the person being retained. Now I think it is very important to mention that a work probation period is a relationship that can be developed where the employer and the employee can raise concerns with one another that arise. I know certainly from my experience when I worked in, say, financial services, we would usually have a weekly catch up between week one to week 12 and any issues that arose with the employer, they would then discuss that with me, we would speak through maybe what went wrong and what could we then do to improve things. So it is about learning, about how to improve outcomes on the work probation period. Now, of course, there has been mention in my proposition in terms of other jurisdictions who have conditions set out the length of term for a work probation period. That seems to be in more social democratic countries and there is a reason for this, because what you do not want to see is people who are in a very vulnerable position, they have sought new employment and nobody wants to be in a position where they are willing to be open about the concerns that were raised with their employer about their performance, for instance, and nobody is willing to really go to a tribunal. Because, again, their name could be mentioned publicly and the case could be brought to the attention of the wider public. Of course many individuals who are on the work probation period are on a period of financial instability, because if you have proven yourself and you have got a permanent contract, then it is really showing that the employer has faith in you. So upon passing your work probation period there should be longevity in that working contract for the employee. But again that really depends on the type of contract that we are speaking about here. But a good employer should not be concerned about this proposition, because really a good employer should ensure that the employee reaches the standards to pass the criteria in order to then pass a work probation period and then to be retained as a permanent staff member. What we should not be seeing, however, is the exploitation of labour. That has been a common feature from when I lodged my proposition. I had several people come to me and they were saying there ought to be something that is done about this. In one particular case, somebody was in a very vulnerable position where they had their work probation period extended on multiple occasions before they were then essentially made redundant and they had to really give consideration for do they then dispose of their home. That was how serious this case became for that person. Now, I do not think it should ever get to that point where the employer is extending a work probation more than once, because really the working relationship between the employer and the employee at that point is fundamentally broken. The employee is fully aware that the employer has concerns with the employee's performance and therefore the working relationship is probably damaged beyond repair. When I spoke to one individual who happened to be an employer and they spoke to me about one case where they employed somebody and part of the work probation was about reaching sales targets in the industry that they worked for and they said: "Because the person did not reach the sales targets, I got rid of them." By doing that and basing this decision on sales, what you could be seeing is somebody who is very capable in the role, somebody who is perhaps a suitable fit in the team, being let go due to conditions that I believe could be fairly arbitrary and there are no safeguards for the

person, the person's well-being, and also an understanding of their position and their family's position. Because it may be the case you have a couple and they are working hard and one of them has to come home and say to their partner: "Well, I am sorry, but this is the circumstances, started my new job and my employer has told me that I have not passed the work probation period because I have not met a series of sales that were set out in the criteria." Now we could also argue that the employee was willing to abide to the terms in the employment contract and proceed with the work probation period under those terms. But, as politicians, we have a duty of care when we do hear about stories about hardship that people do face on the work probation period. As a decision-making body, we ought to be bringing forward proposals that are relative to our electorate and also will address some of the inefficiencies that may be very rare, however they do exist. I do understand that the Minister for Social Security does acknowledge this to be a potential issue that is maybe not so prevalent as maybe other issues. However, it is one that has been evident to me, and for that reason I believe something has to be done about it. Now, looking at the Employment (Jersey) Law, I definitely believe there ought to be enhancements in the future in a number of areas; when we look at unfair dismissal and other areas. But I think this proposition will allow for enhancements to the law to protect labour at last in this respect. Because, during your work probation period, it can be very tumultuous. A lot of people feel they cannot really speak up for themselves and, if they do, if they do have a bad employer, there is no real right for the employee to voice their concerns. That is probably one of the weaknesses that we see in Jersey's Employment Law that I think we probably should pay special attention to in the future. Now, the second part, really looking at the extension of probation periods, if somebody is on a work probation period and the extension of the probation period happens more than once, then quite clearly things are not working. There always must be some form of flexibility within the work probation period, but certainly from an employer's perspective you would like to see somebody fulfil the work probation period without any breakups in terms of having weeks or months on end where the person takes leave. Because I think that may be an indication that the person in some cases may not be a suitable or reliable employee for the employer. Now, looking at the 6-month fixed term condition that is set out in the proposition, this follows suit with the Netherlands and their regulations that they brought forward. The Netherlands have set out a number of conditions for maximum work probation periods but also the fixed-term contracts. So what I am saying is any fixed-term contract less than a period of 6 months, it is not necessary for it to be subject to a period of work probation. The reason for this is in many cases when you are looking at employers and they maybe just need to see an individual maybe come on board for a fixed term of 3 or 4 months, really it is a natural process where they are only filling the position. It might be they are covering sickness or maternity leave, et cetera. But there may also be cases where people are only coming on board for a certain amount of time and there may be an extension to the fixed-term contract that may be extended once again. However, it is trying to reduce layers of bureaucracy and trying to make the Employment Law a bit more flexible like the Netherlands. That is probably something that I personally would prefer to see. However, Members may differ to me, so that is all I have to say and I move the proposition.

[15:15]

#### **The Bailiff:**

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

#### **8.1.1 Deputy E. Millar:**

If Deputy Andrews does not mind, can I just pop back very briefly to the amendment law and our discussion about employees being able to ask for a change to the contract of employment to reflect their hours. I have in the interim had a message from the director at Jersey Advisory and Conciliation Service who has confirmed that they will have a proforma form that they will be able to help employees who wish to make that request to their employer. So J.A.C.S. will absolutely promote it and they will help employees who wish to request a change from a zero-hour to fixed term. Apologies

to Deputy Andrews for a little diversion. To return to Deputy Andrews' proposition, in his report attached to his proposition, the Deputy refers to potential unfairness which could occur in a situation where an employee's probationary period is extended beyond a period of 6 months. The Deputy calls for a maximum period of 6 months, subject to that period not being extended more than once. On one reading of the Deputy's proposition, it seems to be a solution in search for a problem. It is not at all clear that there is a problem in Jersey which needs to be solved and I made that clear in a reply to the Deputy's oral question, which I answered on 11th December 2023. It is important to bear in mind in the context of this debate that our Employment Law already provides a range of protections for employees, regardless of whether they are trainees, apprentices, full or part time, or probationers. It is important to emphasise here that an employee who is subject to probationary period is still an employee with all of the employment rights that entails. Employers are required to provide their employees with a detailed summary of their terms and conditions, which can include details of probationary periods. Everyone is treated equally under the law and has precisely the same rights. In particular, the provisions relating to unfair dismissal apply to all employees, but only once they have reached 52 weeks' service, as do claims for automatic unfair dismissal, which is a day one employment right and even someone on probation will be able to claim automatic unfair dismissal. The Deputy offers very little evidence that any of these employment rights are undermined by the lack of a maximum probationary period. As I said in my answer to the Deputy's oral question, the evidence points to probationary periods of between 3 and 6 months being the norm in Jersey. On that basis alone that renders his proposition unnecessary. The Deputy has referred to I think one or 2 cases where people have told him that they have had a bad experience or they felt aggrieved by virtue of the way their probationary period has been handled. I do accept that if somebody's probation ... if someone's employment is not continued at the end of a probation period, they may well feel aggrieved and they may feel let down by that employee. But this will not resolve the matter. It simply means that a person could be kept on for 6 months rather than 3 months and let go at the end of that period. It will not give the employee any greater certainty. As for the Deputy's suggestion that people are using probationary periods rather than fixed-term contracts to cover short-term hires, that is not something that has ever been pointed out to me. If someone wants a short-term hire to cover maternity, then I would expect them to get someone on a short fixed-term contract. So, again, I am not sure if that makes this proposition necessary. The crucial question is what extra protection for employees this amendment would put in place. An employee working a period of less than 52 weeks can still be dismissed after 6 months without the right to claim unfair dismissal. Where then is the benefit of a maximum probationary period? The risk to the employee is that the employer inserts a probationary clause of 6 months, no more and no less, and without this amendment they may have applied a 3-month period. I strongly suspect that is what would happen, that we will have employment contracts all over Jersey being changed to go to a 6-month period rather than a 3-month period because, in my experience in any sector, as soon as you put in a maximum that becomes the floor and not the ceiling. So employers will go for a 6-month period to give themselves the maximum flexibility. Complying with the amendment in part (b) of the proposition would in most cases avoid the need for an extension, but would place the employee in a far more invidious position, since the employment contract would not, on the face of it, give the opportunity for the employee's position to be confirmed at an earlier stage than 6 months. There may also be cases, and I think this is a very real risk, in regulated financial services positions where an employer may choose to end the employment if the employee has not clearly and fully met any relevant competency requirements, rather than extending the period a little to allow the relevant training to be completed. I am not aware of employers using probationary periods to exploit employees in the way the Deputy suggests. Ultimately this is a matter of good contractual practice which does not need the intervention of the Employment Law. The Deputy has mentioned foreign legislation, and I think he mentions both Ireland and the Netherlands. We have to be very careful in cherry-picking elements of law from other jurisdictions. The Irish legislation, for example, while it says in the private sector a probationary period cannot be more than 6 months, it does allow in certain circumstances for that 6-

month period to be extended. Of more concern to me, in the public sector it allows a probationary period of 12 months. That would almost certainly mean Government, if we were to adopt that route, and I am sure Governments in Europe, who routinely now have 12-month probationary periods, that cannot be in the interests of an employee to have that level of potential uncertainty hanging over them. Turning to the other main element of the Deputy's proposition, that those employees on a fixed-term contract of 6 months or less should not be subject to a probationary period. The principal plank to the relationship between an employer and employee is the same, regardless of the length or type of contract: is the employee right for the business and is the business right for the employee? There is a need for adequate training for an employee over a period of time, no matter how short the contract. If an employer cannot be confident that an employee can operate in a particular working environment without demonstrating the necessary skills, then a ban on a probationary period will potentially be to the disadvantage of the employee. This may be in industries where potentially dangerous machinery processes are involved, and it is entirely in an employer's interest to make sure that an employee can work safely and has the skills to do so. It is important that employees working during the probationary period are treated fairly. Flexibility is a key requirement of the employment relationship. There is no evidence that the lack of a maximum probationary period has led to significant unfairness in Jersey. Contractual probationary periods are of reasonable duration, generally between 3 and 6 months. They are a recognised and accepted part of the employment landscape. The law in Jersey is designed to reflect local conditions of employment and not to intrude into contractual arrangements between employee and employer unless necessary and where there is clear evidence of harm or disadvantage. The Deputy's proposition, in my view, has the capacity and potential to increase harm and disadvantage for an employee and I ask the Assembly to reject it.

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

I accept that Deputy Andrews has been conscientious in bringing this proposition in response to a concern raised by one of his constituents, and it is very important I believe to just think about the resources that are used to amend laws and the priorities of law draftsmen and look at the potential risks that are involved in pursuing a proposed solution. Having myself canvassed views among employers, a lot of what I have found simply is in line with what the Minister for Social Security has said. In addition, I might point the Deputy to some of the comments on the States Assembly Twitter account where he was explaining his amendment and some of them did make these same points: "I wonder how many employers the Deputy consulted when formulating his proposal. Recruiting and developing good people is hard and very time-consuming. Employers have a strong incentive to make each new hire work. What real world problem is this proposition seeking to solve?" The point about it is unworkable for regulated bodies such as police, which has a separate law, and clinicians such as paramedics who need to demonstrate competence and train on the job. Also there is a contractual requirement for certain qualifications such as apprentices. One person did ask a question of the Deputy, which he did not reply, about: "How many employees are under a contract with a probationary period less than 6 months?" Well, I do not think any of us could answer that quite yet. But essentially the purpose of probation is just to give the employee an opportunity to show how they will perform. At the end there is usually a review or a conversation that goes on between the employer and the employee about that performance. What can happen, either the employer is going to say: "I am really sorry, you are just not up to scratch and it is not working", and that sort of thing, or the employer might well say: "Well, look, there is this, that and the other and I feel we need to resolve these things in order for me to employ you, let us extend that probation period." The difficulty with this proposition is it is saying the maximum probation period will be 6 months, end of. It can take 6 months in order to fairly have somebody demonstrate employment and so there is that danger that basically, if the employer is just told, right, that is it, 6 months and then you cannot do anymore, that basically people will be let go, having worked in something, having had the opportunity to feed back on how they might adjust, improve their performance, and basically the employer says: "I would like to give you a chance to improve here but I am taking a risk and I cannot afford to do so. I am

sorry, goodbye and good luck.” The Deputy mentioned sales and that context as well. I do know and have friends among some certain businesses that do use salesmen, and I do not think it is an easy job at all. It is incredibly difficult to be successful in sales and it is pretty hard-nosed in the sense that a lot of the time people think you can do it, you cannot, and if the conditions are not right, if the product is not right. There are the people who are more suited towards sales, almost like they know that they are just selling something that people will not buy. If in fact there is not really, genuinely a market for that product, then I do not think that the contract is going to really last anyway. I understand that the Deputy is concerned about abuse of the vulnerable, and there has been a mention about who might this be, where are the instances we have where somebody vulnerable might be in a situation where they are being put on probation and it just keeps getting extended. I was contacted by one person, an individual, maybe other States Members were as well, who told a story about their situation. I, unfortunately, because that contact came at a time ... because I thought it is an interesting story and I just thought there are some things that I do not quite understand here. I do not understand if this is a person who is vulnerable. Why did this person not walk away? Because we have an employment market where people are crying for staff, so why did they not walk away? Then I thought maybe they are vulnerable, maybe they did not understand that. But then there was some mention of having used lawyers and that sort of thing, and I just thought I need to ask more questions. In an ideal world I would have asked for this proposition to have been delayed so that I could investigate it, and I have to apologise to the person who wrote to me because I just did not ... given the circumstances and the situation, I was not able to really get back to that person.

[15:30]

But ultimately I am just not convinced that the problem that is being addressed in this way, that it raises more risks and the potential of using resources for what might be a very unique situation. So I think it is great that this was brought to our attention, but I am in line with the Minister for Social Security on this occasion.

### **8.1.3 Deputy P.F.C. Ozouf:**

The backdrop of this proposition is, as Deputy Scott has just said, the recruitment market. One of the issues that the Council of Ministers has had from the start, this Assembly has had, is the fact that we have an Island which is in a recruitment crisis. We have a tightness in the labour market which has been set out very clearly on a number of reports. Last week, Members will have received the actively seeking work numbers and there are currently 720 people, 81 per cent of them are British Jersey people as described by the report. I also asked the Statistics Unit if they could provide some information, and I was grateful for them to do so, that there are also 10,000 weeks of lost work because of short-term incapacity of people. In other words, people ill. There were also over 4,500 people with long-term incapacity benefits. Now the challenges that many Governments are facing is how to see whether or not people who are sick, and short-term of course they are sick, but how can you encourage work for people that were off previously, working from home, et cetera, there are lots more work opportunities that are available. Flexible working markets, good standards of employment practice are going to encourage people into work and off benefits. That is what the Minister for Social Security and the Assistant Minister for Social Security are trying to achieve. The elephant in the room, unfortunately, and I was grateful for Deputy Andrews' proposition, which I think deserves some more thought and some more scrutiny, and it is very difficult, this is a Backbencher proposition. I enjoyed reading Deputy Andrews' report. I read the German constitutional, it is in their bill of rights, the probationary periods, the 6 months issue. I thought that was really interesting. The Netherlands issue that is there, that was the clicks that you can go through in Deputy Andrews' report, they are very interesting. We have a recruitment crisis. It is one of the biggest problems we have to deal with. Our Minister for Home Affairs is charged with work permit rules and, of course, probationary periods on 9-month short-term contracts, that is as good as nothing really because our work permit arrangements are for 9-month short-term contracts, they are extended.

It is not addressed here in the report, but worker rights in terms of work permits is something that I know the Minister is concerned about and other Members are concerned about and we have a massive problem with inflation, cost of living is rising, because of the labour market. It is something that the next Government is going to have to tackle because it is serious. The issue of encouraging people back to work is a challenge that whoever is Minister for Social Security is going to have to really take seriously, together with the unfairnesses that exist with the rights that work permit holders have. Work permit holders are not, in my experience ... a number of them have come to me where they are paid different rates of pay. Their probationary period of 6 months when they are on a 9-month contract is superseded by the ability for the employer, who has to provide the accommodation, deducts costs, all sorts of things that are really beneath the skin of what is a fair labour market. Externally, we need to promote Jersey as a place that is a really good place to work. A really good place to work with good rights, good responsibilities, and good pay rates. That is how we are going to attract people into our health service, into our front-line services, and in all the rest of it. Good standards, good rates of pay, with fair arrangements for when people are disgruntled. J.A.C.S. provides really excellent support for people. The Deputy has raised, as I have heard, from 2 constituents, issues about not just probationary periods but the way that people are treated in that first period of employment. The Deputy clearly has one example, but there are more of them where employers are taking on workers, and it is unclear whether or not the probationary period means that effectively they can be ... the Minister said that it is between 3 and 6 months, it will not make any difference, but there is clearly a standard, there is an E.U. (European Union) standard of a probationary period which is set out. I think that is encompassed in the Irish, the Netherlands, and the German standards, the minimum work time directive and all the rest of it. We need to make Jersey attractive for employees to come here. With rights come responsibilities, and we are talking about workers' rights here. It does need to be looked at. I do not know whether the Deputy is right to request this specific piece of legislation, but he deserves to be heard and this issue deserves to be scrutinised, as Deputy Scott has said, there may be some finessing of our work arrangements. There certainly has to be some work done on our work permit rules and the way that some people are treated versus others. A day's pay should be equal for all people and the rights for dismissal, the deductions on people's wages, which all form part of the disgruntlement between an employee and an employer. Currently work permit employees cannot argue. All the decisions are in the hands of the employer and there are some horror stories. As the Scrutiny Panel on work permits set out very clearly, there are some issues which are underlying this, not just probationary period but worker rights that are going to have to be looked into. If we are going to deal with the cost-of-living problem that we have, we have to provide plentiful opportunities for people to employ. That means housing and all the rest of it. Yesterday's debate was a lack of action on the Council of Ministers, the cost-of-living crisis. Well, the cost-of-living crisis is alive and well because the labour market is not working. The labour market is not working because of supply and Jersey is, I hope, going to be quickly having a new Government, which is going to send out a message of stability and certainty that we are a great place to come and live and work, get good rates of pay with great jobs, great futures, and with good standards when things go wrong between the employee and the employer. So Deputy Andrews has provided useful intelligence here. I will support his proposition in the spirit in which it is made. It is a Backbencher proposition which looks as though there is an issue which needs to be looked into further. It should not take up lots of resources. I have spoken for too long. I will sit down. I will support the Deputy because the massive issue underlying this whole issue is a problem in our employment market of which this is one subset, but there are lots more. I will be supporting Deputy Andrews because he has raised an issue that is our biggest problem.

#### **8.1.4 Deputy T.A. Coles:**

It is good to follow Deputy Ozouf on his speech, though I believe he was slightly off track, but he made some very good points in the fact that we are talking about employment rights here. Now I am not sure if I misheard the Minister for Social Security before or whether she misspoke about the right

of unfair dismissal being a day one right. It is not a day one right, just to be clear, it is only a day one right for discrimination, but otherwise you have to wait 366 days before you have the right to claim unfair dismissal. Unfortunately, this is where Deputy Andrews' proposition is unfortunately well intended, but in the wrong direction. If this proposition was to reduce the point at which you can claim unfair dismissal from a year down to 6 months, I thought that this would be a proposition that we could fully support and fully get behind. Because that would improve employees' rights. Unfortunately, with Deputy Andrews' proposition and the way it is worded and laid out, someone's probation period could be 6 months, 6 days, it does not matter, because that person can still be dismissed after 11 months and 9 days of employment with absolutely no right to go for any form of unfair dismissal, unless it is by discrimination. That is the only right that they would have at that point to claim anything and to support their rights. So I would like to say well done to Deputy Andrews for highlighting what he considers an issue and for bringing it to the Assembly, but unfortunately this will not achieve what he hopes it will achieve. What it might do is make more employers be concerned within that 6-month period and ruin someone's chances of improving over that next 6 months to prove that they are capable of the job for which they have been employed. So I will leave it there and then unfortunately I cannot support Deputy Andrews on this one.

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

My hearing is not great today, sorry. I just want to mention a couple of things. First of all, I think this is a problem that is being created that perhaps is not there. There are some unforeseen circumstances here in limiting the probation period. There are some professions where the probation period goes on, on purpose, because that is a required need for training. Within that probation period that training is provided. The area I know about is teaching obviously and when somebody starts in the teaching profession, that first year is the most difficult one you will ever have in the classroom and you need significant support in that time. If you were to look at somebody after 6 months and make that judgment, you would be failing as a trainer because there are steps, it is not a linear progression, to progress and then they plateau and then you increase again and that craft takes time to develop. That is true for other areas, ambulance, fire, et cetera, et cetera, the police in particular. So I think limiting this in a blanket way is not the way to do this. I want to say this because it is very important to state publicly, the issues around probation, in a unionised workplace with experienced reps who are trained and work well with employers, a careful eye is kept on the process of using probation and that is a really significant feature in protecting workers' rights. So that is one of the solutions if these problems arise. Finally, part (c) that was removed I thought was the only part that was protective. Unfortunately it is gone. Because if you have an illness or something happens within that 6 months, your probation period is over. That cannot be seen as fair in any shape or form because if you are on week 3 of your probationary period, you break your leg or something and then you go off for a while, does that mean you have lost your job? That, I am afraid, is Victorian work standards and we cannot do that. Therefore, there is no way I can support this. I think it has unintended consequences and I do not think it is the right thing to do.

#### **The Bailiff:**

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

#### **8.1.6 Deputy M.B. Andrews:**

I will start with Deputy Ward and I think he mentioned a good point about unionisation. Unionised workers happen to be protected because of course they are part of the union and they have somebody to support them in terms of bargaining power, and I have certainly seen a difference where somebody is not unionised. They are by themselves, they have no representative that they can take with them. In one particular case, I think it was quite evident, purely due to the fact that they were not unionised, that they were more vulnerable and they found themselves in the position that they were in, in the

end, and of course that was a more exacerbated issue that this individual unfortunately found themselves in. Now I know Deputy Cole also mentioned about unfair dismissal. There is nothing stopping the Deputy nor the Reform Party or even another Member bringing forward a proposition to complement the proposition that I have lodged today, because of course there needs to be an update to the Employment Law in several areas. It has to be said that this is a continued area of work that surely will form part of the next Council of Ministers once we see the States Assembly be reconstituted. Deputy Ozouf, he mentioned about Jersey having a very tight labour market now. I think there may be instances for some individuals where they had a degree of specialisation, there are only maybe a few select jobs that this person can be employed within, so they cannot migrate to other jobs within the economy if there is full capacity in those areas. That is maybe where we could see some workers potentially be vulnerable.

[15:45]

But, then again, maybe where there are jobs and where there is a plentiful supply of vacancies, then people can transfer across, and I think that is what we are currently seeing in the labour market at the moment where labour is able to bargain for higher wages because we see the level of vacancies essentially outstrip those who are unemployed and also those who are employed, they have more flexibility to move into new roles as well. I thought it was very interesting to hear from Deputy Scott, and she mentioned a personal point about I guess you could say the more business class of society, so those who are employing people and their views on maximum work probation periods and also just setting conditions in employment law in general. I could see there was definitely a demarcation in the views from employers, for instance, and those who are lower to middle class or those who are employees. I thought that was quite interesting just from the feedback that I got, for instance I could see on the States Assembly website where the video was promoted, there were quite a few comments in support of the proposition on Facebook compared to Twitter, where I would say probably more views were expressed being more antithetical to the proposition. But I think, just like Deputy Ozouf said, this is from a Backbencher perspective, I am limited in terms of the resources that I have at my disposal. However, I think that the intention is there to improve the Employment Law, because of course, though those cases are maybe rare, they do exist, and I think it is more than an inconspicuous issue because many people are frightened to stand up and to speak and say: "Look, this is what has happened to me." Because, again, it is drawing attention to the fact that the employer has no confidence potentially in that employee. So I think it could be quite difficult for some employees to speak about. So there probably needs to be a broader discussion in the future about this issue, because we have seen it in other jurisdictions where there is legislation in place. I looked at one website in particular and I was trying to source the legislation from the different countries and I really struggled because I was going on to pages and it was it was in foreign language, so I could not really provide the evidence. But I did happen to come across the Netherlands and German law that was in English, so it made it a bit easier for me to understand. But I understand that the Minister for Social Security has outlined her position and I happen to very much respect her, even if we maybe disagree on this occasion. But I think she has done a wonderful job in the time she has served and I would just like to thank her for all that. So I would like to call for the appel.

**The Bailiff:**

The appel is called for.

**Connétable A.N. Jehan of St. John:**

Could I ask for a point of clarification please?

**The Bailiff:**

Yes, do you give way for a point of clarification?



**Deputy M.B. Andrews:**

Yes.

**The Connétable of St. John:**

The Deputy said that you could only get representation if you were in the unionised environment. There is such a thing as statutory entitlement that includes the right to representation from a colleague who does not have to be a union representative. Would he accept that?

**The Bailiff:**

That was not strictly put as a point of clarification, Connétable, I think you would have needed to say: "Could the Deputy clarify whether ...". Because you have not spoken, you cannot clarify something yourself, you would have to ask the Deputy to clarify something that he said.

**The Connétable of St. John:**

It is to clarify the Deputy's summing up where he spoke about non-unionised environments could not be representative.

**The Bailiff:**

I think technically you would ask the Deputy, is he able to clarify whether in non-unionised environments, you could probably put it that way rather than saying something yourself.

**The Connétable of St. John:**

Sorry.

**The Bailiff:**

That is quite all right. It is just a method.

**Deputy M.B. Andrews:**

I can clarify if that is helpful. I would just say, regarding the Connétable of St. John's inquiry about this, empirically those workers who happen to be unionised, I find that they have probably seen better outcomes as employees if there are any difficulties that need to be resolved. Whereas I think those who are non-unionised workers, I think it is more difficult because again they do not really have a body to go to who can be that third party to support them. So you do see cases maybe where issues are not resolved as much compared to those who are unionised workers. So I hope that has answered, but if not I am willing to clarify.

**The Bailiff:**

The appel is called. I invite Members to return to their seats. Are you taking the whole thing or are you breaking them down?

**Deputy M.B. Andrews:**

I will take it whole.

**The Bailiff:**

Very well. They are all taken, of course that excludes paragraph (c), which the Deputy has not moved. So it is paragraphs (a), (b) as amended, and (d) of the proposition. I invite Members to return to their seats. The vote is on P.103, as amended. I ask the Greffier to open the voting and Members to vote. If Members have had the opportunity of casting their votes, then I ask the Greffier to close the voting. The proposition has been defeated: 4 votes pour, 35 votes contre, no abstentions.

<b>POUR: 4</b>		<b>CONTRE: 35</b>		<b>ABSTAIN: 0</b>
Deputy C.F. Labey		Connétable of St. Lawrence		
Deputy P.F.C. Ozouf		Connétable of St. Brelade		
Deputy K.M. Wilson		Connétable of Trinity		
Deputy M.B. Andrews		Connétable of St. Peter		
		Connétable of St. John		
		Connétable of Grouville		
		Connétable of St. Ouen		
		Connétable of St. Mary		
		Deputy G..P. Southern		
		Deputy M. Tadier		
		Deputy S.G. Luce		
		Deputy L.M.C. Doublet		
		Deputy K.F. Morel		
		Deputy S.M. Ahier		
		Deputy R.J. Ward		
		Deputy I. Gardiner		
		Deputy K.L. Moore		
		Deputy S.Y. Mézec		
		Deputy P.M. Bailhache		
		Deputy T.A. Coles		
		Deputy B.B.S.V.M. Porée		
		Deputy D.J. Warr		
		Deputy H.M. Miles		
		Deputy M.R. Scott		
		Deputy J. Renouf		
		Deputy C.D. Curtis		
		Deputy L.V. Feltham		
		Deputy R.E. Binet		
		Deputy H.L. Jeune		
		Deputy M.E. Millar		
		Deputy M.R. Ferey		
		Deputy R.S. Kovacs		
		Deputy A.F. Curtis		
		Deputy B. Ward		
		Deputy L.K.F Stephenson		

**The Greffier of the States:**

Those voting pour: Deputy Labey, Ozouf, Wilson, and Andrews.

## **9. Remote participation to the States Assembly for the purpose of election of a Chief Minister or Ministers (P.3/2024)**

### **The Bailiff:**

The final item of Public Business is that item which the Assembly at the beginning of the session this morning agreed to take, it is Deputy Scott's Remote participation to the States Assembly for the purpose of election of a Chief Minister or Ministers, and that is P.3. I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to agree in accordance with Standing Order 167 that the ruling of the Bailiff dated 28th September 2020 should be reviewed and that, further to the adoption of Vote of no confidence, Chief Minister, P.1 of 2024, any elected Member absent from Jersey as a result of any travel arrangement made by that elected Member prior to the date P.1 of 2024 was lodged, will be permitted to participate remotely in the subsequent meetings to select a Chief Minister Designate and other Ministers in the resulting new Council of Ministers.

### **9.1 Deputy M.R. Scott:**

I would like to thank Deputy Coles for his work in proposing that this proposition be brought forward for debate today and to thank States Members for supporting his proposition. I should also inform States Members that, like the Deputy, I have a personal interest in this matter of potential unintended disenfranchisement. Hopefully Members will have read the report accompanying this proposition, which explains the Standing Order mechanics that currently prevent States Members from attending States meetings remotely if out of the Island. In the absence of a review of your ruling regarding the interpretation of P.62/2002 in general situations with an unforeseen circumstance like the current one not having been identified, as with other States Members, I am mindful of arranging my time to be able to attend States sittings and have delayed making travel arrangements until I have notice of the dates of States sittings. This is provided in the form of a schedule of States meetings the Privileges and Procedures Committee generally publishes midyear. It is not easy for all of us to arrange family holidays around these published dates of sittings and Scrutiny commitments if another family Member, for example, has work commitments that make it difficult for them to take holiday during recesses or for other reasons, and in fact I did not succeed in taking a family holiday last year. So, for that reason, as soon as I had received notice of this year's States Assembly sittings, my partner and I arranged a long-awaited break from our respective work commitments to be out of the Island together. Unfortunately, for good reason, the schedule did not include notice of the meeting of the States Assembly to be held on Wednesday the 17th to elect a new Chief Minister or the States meeting that will be convened under Standing Orders 2 working days after that election to elect the rest of the new Council of Ministers. Why? Because it was unforeseen. Deputy Binet's proposition P.1/2024 was lodged only at the beginning of this year and, like most Members, I had no prior knowledge of the timing of the proposition or its content. States Members only received notice of the meeting to be held next Wednesday, which resulted from their approval of the proposition. So they only had received notice this week. Naturally, I am reluctant to cancel a family holiday to attend the unforeseen States Assembly meetings in person, particularly as the travel insurance does not cover such a cancellation, and with the possibility of remote attendance being available, which is consistent with Jersey being a leader in digital technology, which enables me to interrupt my holiday while away to attend the meetings remotely. I would be willing to attend the meetings remotely and hope that States Members will grant me and other States Members in a similar position to me that simple indulgence. I therefore request that the States Assembly support this proposition to grant me and the other States Members who will be in a similar situation to me the indulgence of being able to interrupt our prearranged travel or vacation plans while out of the Island to join them remotely at the 2 States

sittings to be held for the purpose of electing the next Council of Ministers as a result of the approval of the vote of no confidence.

**The Bailiff:**

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

**9.1.1 Deputy T.A. Coles:**

I just thought I would stand to confirm again that I am another one of these interested parties that has already had prearranged travel for which we booked back in June under similar methods with Deputy Scott. There is not always time. My wife is self-employed and so you might think that might make it a bit easier, but of course she has clients that take the time that she has available. So cancelling at short notice is not necessarily financially viable for us as we are not on what we consider a high salary between a lot of people either. So we also have to look when trips away are at the most affordable for us. So this is what we did in this instance as P.P.C. have had this published 6 to 18 months in advance, sometimes depending when you are travelling. Also as Deputy Scott alluded to, the technology now allows us to participate remotely. But what I did want to say is that this proposition does not give weight to change rules within Standing Orders that makes remote participation when off-Island allowed at all times; it is literally only speaking for these 2 instances about electing the Chief Minister and, if Members are still away, to elect the Ministers thereafter. I will only be away for the election of the Chief Minister as I am due to return on the Sunday, as that week had been completely clear. My next engagement was going to be for the Planning Committee on the following Tuesday, which coming back on the Sunday, gave me the Monday as the fall over should I need it, as I like to try to make sure I am back on-Island at least 24 hours before any States committees or any States sittings. So I do request that Members give some consideration to this proposition. It is a one-off for an extraordinary situation and maybe then we can get things done uniformly.

**9.1.2 Deputy P.M. Bailhache:**

I have some difficulty with this proposition, I must confess. I think the election of a Chief Minister Designate and election of Ministers indeed too are important matters, and that Members should really be present in the Assembly to take part in the debate. I am not comfortable at the vision of a Member sitting on a Caribbean beach with his or her telephone and participating in the debate in this Assembly. I have great sympathy for those Members who have made arrangements but I think that is just the way things go. If Members are away because of some pressing engagement or holiday arrangements or whatever it may be, then that is the way it is. But I think the principle that Members should be in the Assembly for such an important matter is over-riding and I shall not be supporting this proposition.

**9.1.3 Deputy M. Tadier:**

I was not going to speak, but I think I need to put a counter point to that. I think it is important to be flexible. This is effectively an internal procedure, albeit one which is of great public interest and will be highly scrutinised.

[16:00]

I think therefore the corollary to what Deputy Bailhache says, and I do have an element of sympathy, would be to make a different amendment, which would be that the 7-day notice period should be abolished and that the elections should therefore take place at the next States sitting, for which of course everyone would be expected to be present. I think there is a trade-off though, because we have 3-week sittings now and I think 3-week periods would be seen as too long a time to do without a Government for this Island. So I think this is very much a practical step. I also note that I am not sure whether anyone is going to be sitting on a Caribbean beach dialling in. Good luck if you are

doing that, you might need to go into the hotel. But the bottom line is that, while Members can ask questions, this is not an opportunity for Members to speak, this is very much about being able to hear and listen to all of the candidates who put themselves forward and simply being able to vote in one or more of the rounds. It is strange that we would want to stop somebody who wants to do their work, and that is all they need to do to do that, simply because they are away for a sitting which was not planned. So I think on the balance this is a very simple change for a one-off purpose, which we can do in the 21st century because we have the technology at our fingertips and we know through COVID that it works very well.

#### **9.1.4 The Connétable of St. Brelade:**

I am inclined to align myself with Deputy Bailhache but what I would be comfortable with is classifying those Members who are unable to be present because of pre-arranged trips away to be classified as *défaut excuse*.

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

Just to say, having always had a problem with off-Island participation anyway, but I have to say in this case I think the vote for the Chief Minister is something that we are expected to participate in. It has been a 7-day notice, people have booked, and it is not simple for some who have a very small window when they can take it. We do not work term time only, we work during holidays, and I have sittings sometimes, but the work continues; Scrutiny continues, work of Ministers continues, et cetera. That is the one part that we have. What this does is ... and the only reason I would even dream of supporting this is because it is a one-off in this particular situation, for the most important role in this Assembly, one might say, so that people's allegiance to that vote is made public and there is a simple solution. People can listen in and, as was said, you may be able to ask questions but you cannot make a speech. So you are in listening mode for that and then a voting mode. Also we have to say that what people are doing is saying, and it is strange that Members are sat here saying: "I will be on holiday, but I want to take a part of my holiday out in order to take part in this", and we do have the technology to do that. I much prefer being in the Assembly. For those of us who were here during COVID, my least favourite thing was sitting at home and being online for the Assembly. It is not a great way to do it, I recognise that, but that worked. The technology is there and it means that we are inclusive, so that everybody here can be part of that Assembly. I just say as well, I think it is in any workplace, would it be reasonable to say to somebody: "You will lose the break that you have booked at a time when you were available to have a break", and everyone needs a break at some time for their well-being? You may lose a significant amount of money. You may lose a significant ... it may put a significant strain on your relationship so that you can be here for what will probably be one morning, even though we have the facility to let people vote away from here and we could make that decision today as a one-off. I would also say, and this was slightly triggered by Deputy Tadier, a bit of a consequence of us going to 3-week sittings. If we were still in 2-week sittings, we could have just gone to the next sitting and it would have been that, and people would not have booked their holidays. If they had booked their holidays knowing there was a sitting, then that is their own fault. But unfortunately at this time that did not happen. People have booked things. Not myself, I am not going away at that time because we do not go away at that time. But I do feel for those who may well be voting very differently from me. It could be an advantage, but I do not think that is fair. I think we do need to just ... we have got the facility to respect our democracy. Let us just let this go at that time and then P.P.C. perhaps need to look at that and say: "Okay, let us look at future circumstances around the Chief Minister vote and see whether if that comes up again in coming years", because they do seem to be fashionable, votes of no confidence. Then we would know how to deal with that in future. So I urge people to support this and perhaps just give a little, so that people can participate fully.

### **9.1.6 Deputy P.F.C. Ozouf:**

Our oath of office says, inter alia, that we promise to attend meetings of the States whenever you are called to do so, and generally that you will fulfil the duties imposed on to you by virtue of the said office. I repeat, you will attend meetings of the States whenever called to do so. These are exceptional times. We have a Government that has fallen. This is a debating Assembly and we should be here present to do that. A number of meetings have been cancelled because the Government has fallen. In my case, external relations meetings with U.K. parliamentarians, they have all been cancelled and I will be here. I think there is a whole issue about out-of-office working. The only exception should be if you are ill, and we also pledge an allegiance when somebody is ill. We do an oath, that says that you ... in French, that we will expose our ... and then you cannot vote if you are ill. Maybe that there is an issue that somebody is ill and I know that there are another couple of Members online who are ill because they have COVID, or they are ill and they do not want to transmit that infection. They should be able to vote. But people who have booked a holiday I think are required to be here. These are exceptional times. We are a debating Assembly, and I am afraid that we need to put our oath of office front and centre and be here for that vote.

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

May I ask a question of the Attorney General?

### **The Bailiff:**

What is the question?

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

I am glad it is being vetted first. The question is to do with what Deputy Ozouf has just said with the oath of office. Of course, we are required to attend meetings of the States Assembly but is it correct that attending virtually can also be considered attending this Assembly? This is exactly what the proposition would enable, from a legal point of view.

### **The Bailiff:**

It is a matter of interpretation of Standing Orders, is it not?

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

I mean I can ask you, Sir ...

### **The Bailiff:**

With the oath it is a matter of interpreting the oath, and I am not sure it is a legal question as such. It seems to me part of the oath of office - I apologise for my coughing and inability to speak - if it is part of the oath of office that Members have to attend the meeting, then they must attend the meeting in the form that the Assembly itself agrees amounts to attending the meeting because the Assembly controls its own procedure. It is not prescribed in statute, and it would be open in theory for the Assembly to create Standing Orders in which all attendances were remote in all circumstances. So it seems to me that that is the correct interpretation of the oath of office. That is not to say, and I make no observation as to a view on it, whether philosophically that was what was intended when the oath of office was first drafted and Members have taken it. But that is a different question. In terms of wording, that is my interpretation of it.

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

Could I ask you further to clarify that, in fact, in the past that has been the definition because Members have attended remotely and they have been considered to have attended the meeting?

### **The Bailiff:**

Well, Members are attending remotely now and they are voting now. They happen to be doing it from within the Island, in accordance with the ruling that I gave on the interpretation of the Standing Order at that time. But yes, they are doing so now so therefore they have done it in the past, and we are all fully aware that Members attended on a number of occasions during COVID, from a remote point of view.

### **9.1.7 Deputy L. Stephenson of St. Mary, St. Ouen and St. Peter:**

I am uncomfortable with this proposition currently and I want to just explain to Members why that is and hopefully draw attention to some of the issues there. Because if I just ask Members to cast their minds back to when P.P.C. brought a proposal to the Assembly to discuss remote working for the future, I was really quite shocked and surprised at some of the contributions that were made by Members in that debate, and particularly around parental caring responsibilities. It surprised me that we were going back to, in what is my mind, a more conservative way of thinking that is less open to those flexible working arrangements. I think, if I am recalling correctly, we did not achieve any consensus on the way forward on that matter, and P.P.C. were going to go away and do some more work on it. I certainly came out of that discussion not feeling like we had agreed on a way forward, which is why I am uncomfortable in this situation, because, yes, it is different. Yes, it is an exceptional circumstance. But also it creates precedent towards something that we did not agree on in that discussion around a number of very real issues. I just wanted really to put on record that those are the thoughts that are going through my mind at the moment. Whatever way the vote goes today, I obviously do not want to inconvenience fellow Members. I absolutely appreciate that people have the right to make plans and have holidays. Absolutely. We know that there are Members in here today who know that more than others as well. Really, those are my thoughts on it. I would make a request that Members remember what they have said or thought today when we do return to that matter of remote participation as well and discussions around, as I come back to the parental responsibilities, I remember Members saying things like: "I would question if people are able to care for their children and to contribute as well or to listen in as well." I would say that is a judgment for those Members as well. There are a lot of things to unpick in these kind of discussions, and I think that perhaps it is not as clear cut as it is being made out today.

### **9.1.8 Deputy S.G. Luce:**

Of course, Deputy Bailhache is absolutely right, the election of Chief Minister and Ministers is really, really important. Members have to decide whether it is important enough that they sit here and we lose a few votes, or whether it is important enough that we have every vote counted and those people who unexpectedly find themselves off-Island are able to vote. I am concerned about remote attendance, and I make no bones about it. Currently, Members can vote if they are sick. They do not appear to be able to vote if they are on holiday. It might sound like a joke, if you fall sick on holiday and apply for a vote what is the answer? To be serious again, next week is unforeseen. It is really important. It is clear that there is a lot of work and thought that needs to go into a fair system for remote attendance if we are going to have it. I would, for myself, vote in favour of today's proposition, but charge P.P.C. to come back ... I know they are doing work on it, and I cannot say I am happy about the propositions they are coming forward with. There is a debate to be had. But maybe for next week we can agree it is unforeseen. Members who are away should be able to vote, but that in the fairly near future, let us get some rules in place about remote working, whether it is sickness, whether it is childcare, whether it is holiday, whether it is appointments in the U.K. for medical reasons, people could be away for medical reasons next week. They may have organised, as I have done in the past, to attend medical appointments between States sittings. That seems a bit unfair on them. But for today, for this issue, next week, I will vote in favour. But let us get some proper rules in place about who and where you can vote remotely.

**The Bailiff:**

It is a matter for Members, but it occurs to me that it might be helpful to the Assembly as a whole if Members who are likely to take advantage of this proposition, if it is passed, could indicate at this point. So we are talking, in effect, about possibly 5 votes in that case; 5 individuals. That just gives people an indication of the scale of the way that the meeting might attain. Thank you very much indeed. Does any other Member wish to speak on the proposition?

[16:15]

**9.1.9 Deputy C.S. Alves:**

I just wanted to address a couple of things that have been said. I think nobody here wants to set a precedent for anything and I think that that argument can be used for anything, basically. That is why P.P.C. was quite clear in saying that by supporting this we do not want to set a precedent. That is not what this is about. This is about unforeseen circumstances. I think we have to understand that this role is very different. If you were in a normal workplace, you would not have something like this crop up where you would all of a sudden have to cancel all your plans or whatever. I just want to also mention things like affordability. If people have saved up to go on holiday and things like that, not everybody has another income outside of this role. I am not one of those people that will be affected by this, but I will give you a personal example. I have gone from a 2-income household to a one-income household. My mortgage has gone up by 40 per cent. This is the only income I have, aside from maybe a little bit of tutoring that I can do here and there. For me to be able to even save up to go on holiday is quite a mean feat. Not all travel insurance companies would cover the cost of having to be called back to work. I think we really need to bear that in mind. I know that Deputy Luce was making a joke about being ill on holiday, but I do just want to draw people's attention to Standing Orders and that actually if you are off-Island, whether you are ill or not, you cannot apply for the Teams link. I just wanted to clarify that as well. In this instance, I am uncomfortable about people being off-Island. I do think there are circumstances where we should be accommodating to people. Another example I will give you was that in 2022, my grandma in Madeira was very ill. She was dying of cancer and we were still very much remote working at that time. In fact, we were fully remote but because ... I could have probably got away with it, but because I am not like that, I am very honest, I was going back to Madeira for 2 weeks and then paying to come back again for the week where we were sitting, even though we were completely electronic, to then pay to go back again to see my grandma for another 2 weeks, to come back again. I did that for about 3 sittings. That was quite a big financial cost to me. But I knew that my grandmother was going to die ultimately. But I was there for those 2 weeks. I was able to tune in to my other meetings. In fact, I think I was P.P.C. chair at the time as well, and I was able to successfully chair meetings online. I do think we have to be really mindful that there will be circumstances where this is acceptable. But like everybody else, I would not want to encourage it just for anything. So I hope I have given Members some food for thought for those people that may be considering voting against this, and to just think again and think about if you were in one of those circumstances how would you feel?

**9.1.10 Deputy I. Gardiner:**

The Members for the previous Assembly probably remember that I brought a proposition in April 2022, which was on the back that unforeseen circumstances, if something happened, if travel was delayed or I was in London with COVID, I could not go in and I could not bring the proposition for the Ukrainian crisis; the war that started at the time. I remember that I had been supported by the Assembly but - always a but - and this is why I am trying to see how we progress forward, because I do believe we need to allow remote participation. I have been very clear in 2022. In 2023, the Privileges and Procedures Committee was requested to bring forward amendments to the Standing Orders to enact this decision. The decision was made in April 2022. This decision has not been officially enacted and we are in January 2024. Whatever decision we are making when it is coming



back, it is really important to reflect because I cannot see any difference between somebody who, because of the travel disruption, could not be in the Assembly and represent their constituency to somebody that we have an emergency meeting and planned holiday and it is okay. From my perspective, I do not have any problem, but it is really important that we will stop, say, the holiday in a vote of no confidence, it is okay. But to represent your constituents in the Assembly if the flights were cancelled because of the snow, it is not okay. It is really important that we will be consistent. This is my point.

#### **9.1.11 Connétable R. Honeycombe of St. Ouen:**

The code says that you are to attend when called to do so. The Members who are not going to be here want to attend the meeting, the Assembly, and all they are doing is just asking permission from the Members here to be able to do so. I do not really see what the problem is.

#### **The Bailiff:**

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

#### **9.1.12 Deputy M.R. Scott:**

I thank Members for their various contributions, which raised some interesting points and some interesting perspective. Just going through these. Deputy Bailhache; thank you, Deputy Tadier, for actually addressing ... thank you, Deputy Tadier, for returning to the room and for addressing this point that was raised about the possibility of one of these Members who had made previous arrangements to be away, dialling in from a beach with cocktails. I do not really think that is practically how anybody can attend a States meeting personally. I would expect them to be booking a meeting room, attending from a hotel room. Seriously, that is not a way to spend a holiday for most people. It is a sign of commitment to suggest if for example, that they are spending a week with family and that they should give that all up to attend the Assembly for a day, when in fact other people who might be ill in the Island can attend. I am sorry, I feel that shows a lack of compassion and I very regret having to mention that the Deputy, himself, has been absent from States meetings himself to accompany a relative or because of family reasons. I would not have had a personal problem if he had dialled in, were he in the unfortunate situation, which I hope he never will be, of accompanying a relative to Southampton, because they were there for oncology reasons and wanted to dial in. I would also like to point out to him, because I know he has a legal background, that there are certainly human rights I have not really gone into, but one of them is to do with family time. There are others to do with disenfranchisement. I feel rather disappointed that this particular Deputy has taken this position. I note that Constable Jackson appeared persuaded, and I hope that he might reconsider his position. I also will point out that for all this thing about the interpretation of the oath, and I do believe that Deputy Tadier today raised the fair point that, yes ... Deputy Ozouf has now gone out the room, but he was the one who - Chamber, sorry, Sir - raised the issue that, yes, we have an oath to attend States meetings and that has been extended by virtue of Deputy Gardiner's work and with the States Assembly's agreement to remote attendance. I would like to point out to States Members, because it does seem quite extraordinary that I not only attended a States meeting remotely when I was unwell with COVID, because I had that level of commitment, but I also stood and gave a speech to challenge for the chair of the Economics and International Affairs Panel. I was supported by the States Assembly in this position. I really do not think, and this is a fair point, maybe I could have been away on holiday and been ill. What difference would it have made to you? I am sorry, Sir, to the Members. Deputy Stephenson has raised this issue, as has Deputy Gardiner, and I agree. There was this debate about the possibility of working a little bit more with Deputy Gardiner's proposition and the circumstances in which one might attend remotely. I was supportive of the idea that that might be done to support those who perhaps had childcare issues or other caring issues. Of course, that did get rejected by the States. But I remember because Members just were not

comfortable with this idea about allowing this generally without knowing the circumstances. In fact, I do remember, because I have got quite a good memory usually, that the Constable of St. Saviour raised this very question of the chair of the P.P.C. He said: “What do you mean by ‘unforeseen circumstances’?” I remember the response because I half chuckled to it because she said: “I do not know, because they are unforeseen.” Well, here we go. We have now got an example that nobody thought about or even raised at the time. For that reason, here is an example. I do agree that there could be potential in the future to say maybe that Standing Orders might be or the proposition or the Standing Orders be refined for a particular circumstance like that, where we do not even need to do this. We only need to look at the situation in hand, what has happened. The actual human rights elements, if you care about that sort of thing, the compassion elements, the fact that you do have Members of the States Assembly who have had difficulties arranging time with family, have got that commitment to attend remotely. The technology is there. It would be available for anybody in the Island were they unwell or anything under Standing Orders anyway and I therefore urge and request Members, please support this proposition to show compassion and logic in this particular situation, and not be accused of anything such as potential spite or anything else. Thank you very much. I am sorry, I call for the appel.

**The Bailiff:**

The appel is called for. I invite Members to return to their seats. The vote is on P.3 Remote participation for the purposes of the election of the Chief Minister and Ministers. I ask the Greffier to open the voting and Members to vote. If Members have had the opportunity of casting their vote then I ask the Greffier to close the voting. The proposition has been adopted: 38 votes pour, 5 votes contre, one abstention.

<b>POUR: 38</b>		<b>CONTRE: 5</b>		<b>ABSTAIN: 1</b>
Connétable of St. Helier		Connétable of St. Brelade		Deputy L.K.F Stephenson
Connétable of St. Lawrence		Connétable of St. Saviour		
Connétable of Trinity		Deputy S.M. Ahier		
Connétable of St. Peter		Deputy P.M. Bailhache		
Connétable of St. Martin		Deputy M.B. Andrews		
Connétable of St. John				
Connétable of Grouville				
Connétable of St. Ouen				
Connétable of St. Mary				
Deputy G..P. Southern				
Deputy C.F. Labey				
Deputy M. Tadier				
Deputy S.G. Luce				
Deputy L.M.C. Doublet				
Deputy K.F. Morel				
Deputy M.R. Le Hegarat				
Deputy R.J. Ward				
Deputy C.S. Alves				
Deputy I. Gardiner				
Deputy K.L. Moore				
Deputy S.Y. Mézec				
Deputy T.A. Coles				

Deputy B.B.S.V.M. Porée				
Deputy D.J. Warr				
Deputy H.M. Miles				
Deputy M.R. Scott				
Deputy J. Renouf				
Deputy C.D. Curtis				
Deputy L.V. Feltham				
Deputy R.E. Binet				
Deputy H.L. Jeune				
Deputy M.E. Millar				
Deputy A. Howell				
Deputy M.R. Ferey				
Deputy R.S. Kovacs				
Deputy A.F. Curtis				
Deputy B. Ward				
Deputy K.M. Wilson				

**The Greffier of the States.**

Those voting contre: the Connétable of St. Brelade and St. Saviour, Deputy Ahier, Bailhache and Andrews, and Deputy Stephenson abstained.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**The Bailiff:**

That concludes Public Business. I invite the chair of P.P.C. to propose the arrangements for future business. I might at this point remind Members that the next sitting will be on Thursday next, 25th January, for the purpose of electing a new Chief Minister Designate.

**10. The Connétable of St. Martin:**

As the Bailiff has just said, the next meeting of the Assembly will be on Thursday, 25th January, at 9.30 a.m. for the purpose of electing a Chief Minister. But please keep Friday, 26 January, free in case the election goes into 2 days. I make the proposal.

**The Bailiff:**

Do Members agree to the proposal made by the chair of P.P.C.? Very well. That concludes the business of the Assembly and we stand adjourned until 9.30 a.m. on 25th January.

**ADJOURNMENT**

[16:30]