

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 22nd NOVEMBER 2006

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

PUBLIC BUSINESS – RESUMPTION

1. Wireless Telegraphy Act 2006: extension to Jersey (P.117/2006)

The Deputy Bailiff:

We come next to the Wireless Telegraphy Act 2006: extension to Jersey - Projet 117 - in the name of the Chief Minister and I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to signify, in pursuance of Article 31(1)(b) of the States of Jersey Law 2005, whether they agree that a request be made to the Privy Council for the making of an Order in Council would extend to Jersey with appropriate modifications and adaptations, the provisions of the Wireless Telegraphy Act 2006, as summarised in the report of the Chief Minister dated 26th September 2006.

Senator F.H. Walker (The Chief Minister):

May I ask that the Economic Development Minister acts as rapporteur for this item, please?

Senator P.F.C. Ozouf (The Minister for Economic Development - rapporteur):

The new system of government requires that this Assembly should decide, and it is the decision-making body as to the requests to the Privy Council, to extend U.K. Acts to Jersey: this has to be, in my opinion, right and it effectively means that it is this Assembly that is asking the Privy Council to extend laws which will become laws for Jersey. Having said that, this Act that is before the Assembly this morning is very much a tidying-up Act. The U.K. Telegraphy Act is a consolidation of existing Regulations concerning wireless telegraphy, but the provisions cover the whole range of wireless telegraphy Regulations for managing the available radio spectrum; measures to avoid or reduce radio interference; to licensing of radio stations or equipment. The matter is urgent because it is very important that the new regime takes effect in Jersey at the same time that it takes effect in the United Kingdom, which will be on 23rd January 2007. Ofcom, the U.K. licensing body, will be operating a new licensing system on that date and effectively if we do not agree this it will be very difficult for Jersey to not act in a concurrent system with the old system in respect of Jersey. Effectively we would have a hiatus in the operating system of Jersey. There is a comprehensive report attached by the Chief Minister's Department on the issue and, Sir, I move the proposition.

The Deputy Bailiff:

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

1.1 Deputy R.G. Le Hérissier of St. Saviour:

I wonder if the rapporteur could indicate whether or not Ofcom will indeed have jurisdiction over Jersey, or whether it will be kept at arms length.

The Deputy Bailiff:

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

1.2 Senator P.F.C. Ozouf:

Yes, indeed this does mean that we are at, effectively, a standstill position. The U.K. has made a consolidation of a whole series of legislation, and indeed, giving Ofcom... Ofcom was created a couple of years ago to be the "one-stop shop" for the licensing of telecommunications matters, wireless telegraphy, et cetera. Effectively it does mean that we will continue with a situation that the U.K. will be responsible for the allocation of the spectrum. Now this is something that I have

asked as to whether or not it is appropriate for this to continue, and I am advised that the sheer scale of the work that is required if the Island were to take responsibility for the allocation of its own spectrum would be very significant. The U.K., for example, argues on behalf of the insular authorities, and Jersey specifically, for the issue of the allocation of radio frequency. For example, in the matter of the transfer of terrestrial to digital television, we have to get some spectrum allocation in order to be able to roll-out digital television. Now, it is Ofcom, in communication of course with our local regulatory authority and ourselves, that do go and argue for that spectrum, and there is a conference once in a while - it happened most recently in Geneva last summer - where spectrum is allocated. So we are asking Ofcom to be our regulator for the purposes of many of these matters, and in view of the complexity of this, and also in view of the fact that we are not, at least at the moment, an entirely independent state, it is appropriate that we do use the U.K. for these purposes. Having said that, Ofcom does communicate with our own regulatory authority and the Council of Ministers, and as appropriate the Chief Minister's Department or E.D. (Economic Development Committee), in order to do things which are in the interests of the Island. So it is outsourcing of a local requirement. I hope that is clear to the Deputy, so I move the proposition.

The Deputy Bailiff:

Very well, all those in favour of adopting the proposition, kindly show. Those against. The proposition is adopted.

STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

2. The Minister for Health and Social Services - affect of airport industrial action on transfer of patients to the United Kingdom:

Senator S. Syvret (The Minister for Health and Social Services):

Could I just make a brief statement about a matter I addressed yesterday? I was asked a question in respect of the airport industrial action, whether it may affect health and transfers of patients. And the answer to that is, no, it will not. Emergency transfer flights remain completely unaffected, and even in the event of a routine patient transfer becoming urgent we would then use Aviation Beauport, or some such organisation, to transfer the patients. So we can be assured that patients will not be affected by any industrial action at the airport and there is, I say again, goodwill from the Union on this question.

PUBLIC BUSINESS (continued...)

3. Le Marais Low Rise Redevelopment Phase 2: redefinition of boundaries (P.121/2006)

The Deputy Bailiff:

We come next to Projet 121 - Le Marais Low Rise Redevelopment Phase 2: redefinition of boundaries, in the name of the Minister for Housing. I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion, (a) to agree that the public should enter into contract or deeds of arrangement with owners of various properties forming parts of the north western, northern and north eastern boundaries of Le Marais Estates, St. Clement, in order to redefine those boundaries prior to the redevelopment of the site; with the public being responsible for any costs associated with enclosing any of the boundaries and all resultant legal fees; and (b) to authorise the Attorney General and the Greffier of the States to pass the necessary contracts on behalf of the public of the Island.

The Deputy Bailiff:

You are acting on behalf of the Minister for Housing, advising this?

3.1 Deputy J.A. Hilton of St. Helier (Assistant Minister for Housing):

Yes, I am, Sir. Hopefully it should be a straightforward proposition. [Laughter] P.19/2004 was adopted by the States on 9th March 2004 and agreed to the redevelopment of part of the Le Marais Estate. The first phase of the scheme was completed in June 2006 and the new homes are now occupied. Detailed design work is well progressed and legal research by the Law Officers Department has brought to light some uncertainty about the exact position of the boundaries of the north-western and north-eastern boundaries of the public's property at Le Marais, towards the Eastern Good Companions Club and to the northern and north eastern boundaries towards the number of private properties at Le Clos de la Mare - the properties listed on the proposition in front of States' Members. It would seem to us that it is essential that these boundaries are defined prior to final designs for the redevelopment being submitted to the Planning Department for approval. It will therefore be necessary for the public to either be party to any sales of the aforementioned properties, or to enter into deeds of arrangement with each of the owners at Le Clos de la Mare, and with Rotary Club of Jersey to redefine the north-western and north, and north-eastern boundaries of Le Marais towards the Good Companions Club and to Le Clos de la Mare, with the public being responsible for erecting any boundary enclosures required and the payment of legal fees incurred by the owners of the said properties. This proposition if approved will not have any manpower implications for the Housing Department but will result in costs estimated at £15,000 in respect of boundary enclosure works and legal fees. Thank you, Sir. I move the proposition.

The Deputy Bailiff:

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

4. Draft Family Allowances (Jersey) Regulations 200- (P.123/2006)

The Deputy Bailiff:

We come next to Projet 123: the Draft Family Allowance (Jersey) Regulations, lodged by the Minister for Social Security, and I will ask the Greffier to read the proposition.

The Greffier of the States:

The Draft Family Allowances (Jersey) Regulations 200-: the States in pursuance of Article 6 of the Family Allowances (Jersey) Law 1972 have made the following Regulations.

The Deputy Bailiff:

Yes, Minister?

4.1 Senator P.F. Routier (The Minister for Social Security):

These Family Allowance Regulations increase the family allowance by the cost of living figure that was in June of this year of 2.9 per cent, and it will come into effect in the first week of January. I propose the Regulations, Sir.

The Deputy Bailiff:

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

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

Would the Minister explain to Members why, when the rates are to be indexed by 2.9 per cent, the annual income levels at which the various rates apply have not been indexed in any way, and could he tell us when they were last indexed and lifted and, given that time span, what impact that has had on the actual rates? And whether during the course of the year, as the Income Support Scheme takes shape, any consideration will be given to up-rating, as it were, with hindsight, the levels at which these apply? It seems to me that if they have not been up-rated for a number of years the actual effect of this benefit has been seriously diminished over those years, and will he take that into account in devising his new Income Support Scheme when he comes to setting levels and assessing what is appropriate, because there has been, I think, a serious slippage in the value of this particular allowance.

The Deputy Bailiff:

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

4.1.2 Senator P.F. Routier:

The Deputy is quite right to identify that the annual income amounts have not been altered. They have not been altered since 2001. The reason for that is because the family allowance is made up of 3 different variables. One is the data income, and one is the decline point and also the benefit amount. We have an overall benefit budget which has been increased by 3 per cent overall for this coming year and the way we have to decide how we are going to apportion that is to decide what is the best use of that money, and is it going to support people who are on the lowest incomes? So what has been decided since 2001 is that it is far better to ensure that those on the lowest incomes get the full benefit up-rating. If we were to have used the other mechanisms to adjust the figures in the other area it would have reduced the amount we could have given to those on the lowest incomes. So, that is the decision that has been made and it has been supported by the States every year since 2001. Of course, we do recognise that the income support system will be in place and all of these variables with regard to income support will no longer exist. It will be a totally different system with income support, where people's income will be assessed on a pound-for-pound basis, and be reduced and receive additional benefits according to the amounts of income they have. So, with regard to the future, certainly we do recognise that these bandings that we currently have could be far better and with the income support system that will certainly be the case. I do not believe there has been any serious slippage in people's benefits they have been receiving. What has happened is that the people on the lowest income have received the full possible benefit that we have been able to give from the budget that we have been able to allocate. I hope that answers the majority of the questions that the Deputy had, and I maintain the regulation, Sir.

Deputy G.P. Southern:

Can I seek a point of clarification, Sir, I believe it is? Can he clarify for me, he appears to be saying that the intention of not up-rating the annual income levels is to better benefit those on the very lowest incomes. Whereas, my calculation says that even on the minimum allowance one might be getting, if one were dependant totally on the benefit as a single person... that would be about £150 a week - or about £7,800 - you would already be on the second level on the very minimum income you could possibly be on. So, in fact, there must be many people who are excluded from getting the maximum rate, because minimum benefit levels of £150-something is £7,800. You are already on the second band, and you have lost £20.

The Deputy Bailiff:

What is the point of clarification, Deputy?

Deputy G.P. Southern:

He says that it is to benefit those on the lowest income, and that appears to be untrue. Can he clarify whether he wants to stick by that?

Senator P.F. Routier:

Certainly, Sir, I would like to stick by that. The whole intention is to ensure that those on the lowest income did receive the most benefit we could possibly give to them. I do appreciate that the Deputy's difficulty with the bands of income and that is exactly why we will be moving to the new system which will be in the income support system. I maintain the Regulations, Sir.

The Deputy Bailiff:

Very well. All those in favour of adopting the principles of the Regulations, kindly show. Those against. The principles are adopted. Now Deputy Breckon, as chairman of the relevant Scrutiny Panel, do you wish to have the Regulations referred to your Panel?

Deputy A. Breckon of St. Saviour:

Bearing in mind the date for implementation is 2nd January 2007 and there is already a sub-panel in operation now looking at the income support, the answer to that would be no. There will be a view given of that, but it will not impede the people's right to get the benefit, but it will be looked at.

4.2 The Deputy Bailiff:

Thank you. Minister, do you wish to propose the Regulations *en bloc*?

Senator P.F. Routier:

Yes, Sir. They are very straightforward.

The Deputy Bailiff:

You propose Regulations 1 to 3? Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Regulations? Very well, all those in favour of adopting...

4.2.1 Deputy G.P. Southern:

Yes, Sir.

The Deputy Bailiff:

I beg your pardon, Deputy.

Deputy G.P. Southern:

Your glance went past me as I put it on. I would ask the Minister to give me a full written explanation of how he believes that the intention to better target those on the lowest incomes is being achieved by this particular scheme. Furthermore, I would like him to give me a full history of the levels of annual income, and how often they have been indexed in their history, so that we can properly examine the value of this particular benefit and how it might have fallen over the years to be less than what was originally intended, so that we can genuinely examine how best we should get this into low income support.

The Deputy Bailiff:

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

4.2.2 Senator P.F. Routier:

I am quite happy to do that, Sir. I am not sure what benefit it will help, how it is going to fit into income support, because income support is a totally different concept. It does not reflect anything that this family allowance system does. As I say, it is a completely different benefit and calculated in a totally different way, so I would ask the Deputy to withdraw that request, because it will take

the time from my officers who are trying to work to bring forward the income support system. It will be a totally useless request, but if the Deputy insists, I will do that?

The Deputy Bailiff:

Very well, all those in... **[Interruption]** you are after the appel? The appel is called for then in connection with Regulations 1, 2 and 3 of the Regulations. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 35

Senator S. Syvret
Senator F.H. Walker
Senator W. Kinnard
Senator P.F. Routier
Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Connétable of St. Saviour
Connétable of St. Mary
Connétable of St. Peter
Connétable of St. Clement
Connétable of St. Helier
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy of St. Martin
Deputy G.C.L. Baudains (C)
Deputy C.J. Scott Warren (S)
Deputy R.G. Le Hérissier (S)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy P.J.D. Ryan (H)
Deputy of St. Peter
Deputy J.A. Hilton (H)
Deputy P.V.F. Le Claire (H)
Deputy D.W. Mezbourian (L)
Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy I.J. Gorst (C)

CONTRE: 3

Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S. Pitman (H)

ABSTAIN: 0

The Deputy Bailiff:

Do you propose the Regulations in Third Reading, Minister?

Senator P.F. Routier:

Yes, Sir.

The Deputy Bailiff:

Seconded? Is any one going to second it? **[Seconded] [Laughter]** Does any Member wish to speak on Third Reading? All those in favour of adopting the Regulations in Third Reading, kindly show? Those against? The Regulations are adopted in Third Reading.

5. Draft Bankruptcy (Désastre) (Pensions)(Jersey) Regulations 200- (P.124/2006)

The Deputy Bailiff:

We come next to the Draft Bankruptcy (Désastre) (Pensions) (Jersey) Regulations - Projet 124 - lodged by the Minister for Economic Development and I would like to ask the Greffier to read the citation.

The Greffier of the States:

Draft Bankruptcy (Désastre) (Pensions) (Jersey) Regulations 200-. The States, in pursuance to Article (8)(a) of the Bankruptcy (Désastre) Jersey Law 1990, have made the following Regulations.

Senator P.F.C. Ozouf (Minister for Economic Development):

May I ask the Constable of St. Lawrence, the Assistant Minister in Economic Development, to be rapporteur on this item, please?

The Deputy Bailiff:

Yes, Assistant Minister?

5.1 Connétable G.W. Fisher of St. Lawrence (Assistant Minister for Economic Development - rapporteur):

As Members may recall, the Bankruptcy (Désastre) (Amendment No. 5) Jersey Law, came in on 1st August this year. One of the provisions of that amendment was a new article permitting the States to pass Regulations relating to the treatment of pension rights held by a person who is the subject of a désastre. Under the Bankruptcy (Désastre) Law, the law, upon being declared insolvent all of the property of a debtor becomes available to satisfy his creditors. This general principle is subject to any Regulations the States may pass. The rights that a debtor may have to a pension are a complex matter. Most obviously, the rights may be contingent upon the debtor reaching a certain age that may be many years in the future and so any attempt to liquidate those pension rights is likely to incur significant penalty fees and is unlikely to secure significant assets. In addition, there is a public interest issue, insofar as it is not clear that it is desirable to deprive an insolvent person of their rights to a future private pension, as it is likely that the States will largely be required to make up much of the shortfall that person suffers during retirement. Pensions are long-term investments and should not be regarded by either the person who makes the contributions, or by his creditors, as being available to meet everyday debts. The Regulations propose taking a similar approach to this matter as that taken in the U.K. The Regulations propose that when the Viscount takes in the assets of a debtor in a désastre, certain pension benefits should be excluded from the debtor's estate. These are, in brief, pension schemes approved under the Income Tax (Jersey) Law, those granted by a foreign government to its employees, or annuities purchased in relation to either of those arrangements. Where the debtor has other pension rights, for example a private pension that he accrued while resident in the U.K., the Viscount may enter into an agreement with the debtor in relation to how those assets are to be treated in the désastre, with a view to ensuring that the needs of the debtor and his family are adequately - though no more than that - catered for in retirement. The Viscount will continue to have a power under Article (17)(d) of the Bankruptcy Law to recover excessive pension contributions from a debtor. In other words, while the Regulations will permit a debtor to retain a modest pension that he or his employer has funded, there is no loophole that could be used by a person facing bankruptcy to place his or her assets into a pension and out of the reach of creditors. Any attempt would fall foul of the Law. The Regulations will encourage people to invest sensibly in private pensions in the knowledge that such an investment will be secure

provided the amount paid in has not been excessive, or aimed at defrauding creditors, even if the person subsequently becomes bankrupt. I trust that the House will support these Regulations and I propose the principles.

The Deputy Bailiff:

Does any Member wish to speak on the principles?

5.1.1 Deputy P.V.F. Le Claire of St. Helier:

I wonder if the rapporteur might give us an indication as to whether or not it would be possible under these Regulations for somebody to build-up a property portfolio as part of their pensions, and thereby when they become *désastre* maybe, having at their disposal within their pensions several properties. It just seems that that might be an opportunity to investigate in this question. I do believe that property portfolios are becoming more of an investment issue when it comes to pensions and I would just like to know whether or not it is going to be reasonable to assume that the adequate provisions would exclude the retention of properties that have been purchased by way of securing a pension.

5.1.2 Deputy R.G. Le Hérisier:

Building on Deputy Le Claire's point, I wonder if the Assistant Minister could tell us, although someone may not have a formal pension - by annuities and so forth - would an assessment be made, for example, if they had simply accumulated a little pile of savings which they regarded the interest thereon as their pension?

5.1.3 Deputy G.P. Southern:

Yes, furthermore, I am just wondering what reasonable estimates would be made of what constitutes a modest pension. It seems to me that anyone, for example, using a roll-up fund to cater for that pension would have to pass this via the Comptroller of Income Tax and that, in his opinion, it was not excessive and was reasonable, and sometimes these could be quite substantial funds. I am wondering how that definition of modest is arrived at and given that the Comptroller of Income Tax already examines matters like this to see if they are reasonable, whether almost any pension fund would not therefore qualify, given that the Comptroller of Income Tax has already said: "Oh, this is a reasonable amount to stick in your pension fund."

The Deputy Bailiff:

Does any other Member wish to speak? Very well, I call upon the Assistant Minister to reply.

5.1.4 The Connétable of St. Lawrence:

With regard to Deputy Le Claire's question about property funds, if the debtor had purchased a portfolio of property, that itself would not be a pension fund and therefore the property would fall into the estate for dealing with by the Viscount. However, if the property were in a "pukka" pension fund - as I mentioned, that is defined as one that has been approved under the Income Tax (Jersey) Law or granted by a foreign government, or annuities purchased in relation to either of those arrangements - then the same rules would be applied to determine whether that portfolio is just adequate to support the debtor in retirement, regardless of whether the pension is made up of properties or any other assets. A little pile of money, I think Deputy Le Hérisier mentioned, and again if it is not a formal pension fund as approved by the Comptroller of Income Tax or a foreign government or annuity related thereto, as mentioned, the same would apply - that if it is just a little pile of money and the individual says: "Well, that is my pension fund" - well, unfortunately from the debtor's point of view that would not be exempt and would fall into the estate to be handled by the Viscount in the normal way. The third point was raised by Deputy Southern about a modest pension and that will be for the Viscount to judge, not the Comptroller of Income Tax, because the approval of the fund initially is by the Comptroller of Income Tax, but that may be many, many

years in advance of the time when the pension falls in. So, it would be up to the Viscount to establish, sometimes many years forward, what is going to be a reasonable modest pension at that time. So, it is going to require some skill on behalf of the Viscount, but I am sure he is up to the job so I have no worries about that. I maintain the principle, Sir.

The Deputy Bailiff:

All those in favour of adopting the principles of the Regulations, kindly show. All those against? The principles are adopted. Now, Deputy Southern, you are the Chairman of the relevant Scrutiny Panel. Do you wish to have these Regulations referred to your Panel? Very well. In that case we can come to the Regulations themselves. Do you wish to propose them all at once, Assistant Minister?

5.2 The Connétable of St. Lawrence:

Yes, Sir, one to 5. Thank you, Sir.

The Deputy Bailiff:

Very well, Regulations one to 5 are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Regulations? Very well, all those in favour of adopting Regulations one to 5, kindly show? Those against? Regulations one to 5 are adopted? Do you propose the Regulations in Third Reading?

5.3 The Connétable of St. Lawrence:

I do, Sir.

The Deputy Bailiff:

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

6. Draft Administrative Decisions (Review) (Amendment No. 2) (Jersey) Regulations 200-(P.127/2006)

The Deputy Bailiff:

We come next to the Draft Administrative Decisions (Review) (Amendment No. 2) (Jersey) Law 2006 (Appointed Day) Act - Projet 127 - lodged by the Privileges and Procedures Committee and I will ask the Greffier to read the Act.

The Greffier of the States:

Draft Administrative Decisions (Review) (Amendment No. 2) (Jersey) Law 2006 (Appointed Day) Act 200-. The States, in pursuance of Article (12)(2) of the Administrative Decisions (Review) (Amendment No. 2) (Jersey) Law 2006, have made the following Act.

6.1 Connétable D.F. Gray of St. Clement (Chairman, Privileges and Procedures Committee):

This is the final stage of improving the functioning of the administrative appeals system. It will be, in my opinion, more understandable for the public in how they can make a complaint. The system is well explained in a leaflet which is entitled *How to Complain to the States of Jersey Complaints Board* which is available to the public from the States' Bookshop, but more importantly it is also available to Members. Copies are adjacent to their pigeon holes, so if they would like to see the booklet there is an opportunity for each Member to have one. I would like to thank Mrs. Canavan and her panel, who are responsible for operating this Complaints Board, but I would also like to thank, certainly, the earlier work done by the Deputy of St. Martin and Deputy Scott Warren, who

really started the process going. Having said that, Sir, it is only an Appointed Day Act, 1st December, so I hope the States will agree to adopting the Act. I move that.

The Deputy Bailiff:

Is that seconded? [**Seconded**] Any Member wish to speak?

6.2 Deputy S.C. Ferguson of St. Brelade:

The panel states that it wishes to ensure the findings are more widely available to the public, but it only talks about paper copies. Will the Chairman of P.P.C. (Privileges and Procedures Committee) make sure that it is also available on the States' website?

6.3 Deputy R.G. Le Hérissier:

Yes, I would like to congratulate the President and, as he quite rightly said, Deputies Scott Warren and Hill, who did a lot of the work behind the scenes to bring this to fruition. An excellent example of Member-driven legislation. The point I would like to make - and it is in here, one of the big issues of course - was that everybody says: "Oh, I want an Ombudsman. I want an Ombudsman. Why have you got this complex, lumbering structure?" And of course, within the structure now, there is in a sense an Ombudsman, and it would be nice, I would say, in the booklet, Sir, rather than overwhelming people with bureaucratese - which in a sense the booklet is, I am afraid, I know it has to be that way because of legal implications and so forth - if that point could jump out much, much more clearly, that there is a quick way based on one person intervening, of looking at a case and very quickly getting a decision to a person, Sir. I would really like that emphasised, because that is a major reform that has been undertaken and it has rather disappeared under the welter of information.

The Deputy Bailiff:

Does any other Member wishing to speak?

6.4 Deputy A. Breckon:

I think this is a welcome step. It has been a long time coming because, in general terms, sometimes if the public have wanted to complain about something it has been hurdles and hoops that they have had to jump over, and it can be a daunting experience for a member of the public to get the case together, and I know a number of States' Members have been involved, helping people to do that. So anything that makes it more user friendly and accessible - which of course it should be - because it is the people's public service, it is not ours or the civil servants, it is for them to use and feel comfortable with. And what Sarah said, there is always a suspicion if you have to complain to the person who made the decision: "They would say that, would they not, and they will stick by it." So, then perhaps people have felt uncomfortable when you have to go back, somebody has made a decision, go back and ask him to reconsider. So: "Okay, I will reconsider - no. Go away." And I think, if you have a body - be it an individual or a group - that can get involved with that process then that has got to be useful. As Deputy Le Hérissier mentioned, I do not want to mention Clothier but it did say in there, there should be a public sector Ombudsman - I think it was in chapter 8 or 9, that the converts have never quoted recently - but the idea was that that person would get involved in this sort of process. I think an example, Sir, we had a report on our desk yesterday from the Employment Tribunal and the number of referrals do not see the Tribunal at all, so if somebody is there, focussed, with the assistance of J.A.C.S. (Jersey Advisory and Conciliation Service) in that case, then it does happen. So, sometimes I think Members' fears of setting something up and it is going to cost millions and be a bureaucracy does not happen. It gives people involved in a dispute a great deal of focus when it knows that somebody can look over them and do it for them if they do not do it themselves. So I think it is a welcome step, Sir, but it is a step and I do not think we are there in the comfort factor for how the public feel about using the services and perhaps getting involved in some of these processes.

6.5 Deputy F.J. Hill of St. Martin:

Yes, I give Deputy Breckon a bit of reassurance because one of the amendments that I put forward was that, in future - indeed, when we have agreed to this Appointed Day Act - that there is a right now for the complainant to discuss the matter with the Chairman of the Board, to discuss the way forward. I think it is going to be much simpler now - much more user-friendly - because you will not have this business about having to find a States' Member or some person to take the case for you. There will be a way now whereby we may be able to take the heat out of the situation by discussing the thing with the chairman. The Chairman then can possibly pick up the phone with the Minister and say: "Look, there may be a way here we can resolve this without going to appeal." Can I say that that has happened with me. I have had an appeal. It was discussed beforehand and we did not have to have the appeal because a suitable arrangement was arrived at, so I would like to reassure Deputy Breckon, I think the system is going to be much more user friendly and I am sure that the Chairman of the P.P.C. will confirm.

The Deputy Bailiff:

Do any other Members wish to speak?

6.6 Deputy C.J. Scott Warren of St. Saviour:

The renamed Complaints Board will, as it has been said, have much more weight in many important respects and, as has been said, disputes will sometimes be able to be formally resolved on a one to one basis before even coming to the Board. However, the crucial factor still remains, despite the fact it has greatly tightened-up the procedure of this, that the Board cannot impose its decision on a department as a formal appeal will be able to do.

The Deputy Bailiff:

Does any other Member wish to speak? Very well, I call upon the Chairman to reply... I do beg your pardon, I saw the Constable of St. Saviour just getting to his feet. [Aside] Very well, I call upon the Chairman.

6.7 The Connétable of St. Clement:

I would like to thank all the Members that have contributed. I would like assure Deputy Ferguson that we are investigating putting on to the website the decisions and I noted also the remarks of the other Deputies and I would agree totally with the Deputy of St. Martin, that it is going to be a simpler system. You will be able to get direct access to the Chairman or the Vice-Chairman, depending who is available. I would just like to point out to Deputy Scott Warren that even if we had an Ombudsman system here, as they have in the U.K., they have no authority to impose decisions on the relevant departments, so it is no different here than it is on the mainland. So, having said that, I would like to thank again everybody who has contributed and move the adoption, Sir.

The Deputy Bailiff:

All those in favour of adopting the Act, can you show? Those against? The Act is adopted.

7. Draft Human Rights (Jersey) Law 200- (Appointed Day) Act 200- (P.140/2006)

The Deputy Bailiff:

We come to the Draft Human Rights (Jersey) Law 200- (Appointed Day) Act - Projet 140 - in the name of the Chief Minister, and I will ask the Greffier to read the citation of the Act.

The Greffier of the States:

Draft Human Rights (Jersey) Law 200-, (Appointed Day) Act 200-. The States, in pursuance of Article (18)(2) of the Human Rights (Jersey) Law 2000, have made the following Act.

7.1 Senator F.H. Walker (The Chief Minister):

The Human Rights (Jersey) Law 2000 was adopted by the States on 8th February 2000. It was registered in the Royal Court on 16th June of the same year, and this Act will bring that Law into force on 10th December 2006. The 10th December has been chosen, (a) because it meets the commitment given by the Council of Ministers - or given by me on behalf of the Council of Ministers - to bring this Appointed Day Act to the House before the end of the year, but also because it is the 58th anniversary of the adoption by the United Nations of the Universal Declaration of Human Rights, and many individuals and communities worldwide will be commemorating and celebrating 10th December and pledging a commitment to maintain and improve human rights wherever possible. Jersey has been signed-up to the European Convention on Human Rights since 1953 and the implementation of the Human Rights (Jersey) Law 2000 does not confer any new rights or obligations. The basic difference is that in future anyone in Jersey with a human rights issue will be able to have that heard in the Royal Court of Jersey rather than have to take it to the European Court. That is really the principal difference in terms of adopting the Human Rights Law and appointing 10th December as its implementation date. So there has been a delay in bringing forward this Appointed Day Act, caused for a multiplicity of legislation needs, including amendments to the Mental Health Law, the Regulation and Investigatory Powers Law, Police Procedures and Criminal Evidence Law and also some review and changes to the Prison Rules, and that is why it has taken so long to get to this point. Although I need to inform the House that we do not have a complete raft of legislation at this point, it is considered by our legal advisors that we have done enough to ensure compliance and hence bringing forward the Appointed Day Act today. It is possible, we are told, to bring the Human Rights Law into force and, Sir, I put the Act.

The Deputy Bailiff:

Seconded? [**Seconded**] Does any Member wish to speak?

7.2 Deputy P.V.F. Le Claire:

I would like to congratulate the Chief Minister and the Council of Ministers on finally bringing this forward. There have been a lot of criticisms of the States of Jersey in the past for the delay that has occurred and I think rather than dwelling upon the delay - which will delay us further - we should move on and agree this. But I would just like to say, very briefly, that we also owe a great deal of thanks to the Law Officers and the Law Draftsmen for what has been an enormous amount of work. There are departments and individual Ministers that could be singled out, but rather than change my nose colour from pink to brown, I think I would just like to say that it is a good day for Jersey, Sir, and congratulations. At last it is here.

7.3 Deputy G.P. Southern:

Yes, the Chief Minister is to be congratulated and not only for making a SMART target for where the important letter is "T" meaning "timed", but achieving that SMART target, so I personally would like to congratulate him for indeed succeeding in bringing this measure, which has been long overdue, before the House now, as agreed. Two questions spring to my mind, though. I have just forgotten the first one, so I will start with the second one. The second one is, now that we will have a Human Rights Law in Jersey and may pursue a rights case through our own courts rather than through another court, any cases which are in the pipeline for that other court in Strasbourg, in Europe, would they be able to revert - to come out of that system - and to come before our courts now? Because I believe there are possibly a number of cases which are in the pipeline to be dealt with by Strasbourg and which could be more appropriately cheaper and quicker dealt with here, because that is certainly the principle behind what is happening. And the first question was whether the relatively, I hope, minor adjustments that need to be made in the series of laws like Police and

Criminal Evidence Act, *et cetera*, expose us to the possibility of risk of further court cases being brought in the near future? Finally, I have had an ongoing debate with the Attorney General over the impact that the adoption of this might have in Jersey. I believe that we will see an increase in court time spent on these sorts of issues and that may well be - certainly in the initial years - quite extensive, and that may have a knock-on effect in terms of court expenses. So, it is not just time, but it is expense. What is the Minister's view on possible increase in court time spent, and court cases brought in the near future, as the bottleneck has been broken? Will we see a rush of cases coming to court?

7.4 Deputy J.G. Reed of St. Ouen:

Basically, I would like to just follow the last question that Deputy Southern has raised, which is that of one of cost. Under the heading "Financial and Manpower Implications" it clearly states here that no immediate manpower, revenue or capital consequences directly arise from bringing this Human Rights (Jersey) Law into force. However, I too am extremely concerned about the likely costs of not only implementing this Law, but also the obligation that this Law will now place on the States' administration and all other public... and I presume private, individuals and companies, to act in a way which is compatible with those Convention rights. Equally, I am also aware that we recently approved within the Strategic Plan, that all new laws would describe and show the full cost of implementation, and it seems to me that we have not had that provided for us. Maybe the Chief Minister would choose to expand on the costs and implications of including this Human Rights Law into our legislation.

7.5 Deputy G.C.L. Baudains of St. Clement:

During the debate 6 years ago, I think it was, I voted against the legislation. If I recall correctly I was the only person who did. I was somewhat disappointed with that because there were quite a number of Members who had spoken to me prior to the debate who said that they were not going to support it, but bottled out at the end, Sir. I fully support human rights and that is why I oppose this legislation, because it removes people's human rights and I beg indulgence for a brief explanation of why I maintain that position, as it is now some 6 years since that debate. I will only be a couple of moments, Sir. For example, I have recently been trying to assist the mother of 3 children abducted from Jersey 18 months ago. Human rights legislation has been no help there, and I do not believe this Act would make any difference. The children are still in Norway with practically no hope of their return. And what happens in other countries that have similar legislation, such as the United Kingdom? We hear about children running riot at schools and teachers unable to control them because of the children's human rights, and later on those same children sue the schools claiming that the education was not adequate, they have been denied a good education. It is quite absurd. We have just recently learned in the United Kingdom that the government has been apparently successfully sued for banning prisoners from taking heroin in jail. Apparently their human rights were abused. We know that those monsters who sexually abuse little children, torture and sometimes kill them now cannot be executed because human rights legislation gives them the right to life - something denied their victims. Sir, in my view this legislation ensures the rights of murderers, paedophiles, rapists and the like but removes ordinary people's rights in the process. Like the Deputy of St. Ouen, I also challenge the report accompanying this proposition. Under Financial and Manpower Implications, we are told there are no immediate manpower, revenue or capital consequences, but I maintain this is misleading, Sir, because there may well be no implications today or tomorrow, but in the future I believe this will cost the Island millions, especially in frivolous and vexatious court cases. I am afraid I cannot support this well-intentioned, but nevertheless misguided, legislation, Sir.

Deputy K.C. Lewis of St. Saviour:

A point of clarification, Sir. It is my understanding that the prisoners in the U.K. were not stopped from taking heroin. They were forced to go “cold turkey” which is not quite the same thing, but I do support the sentiments of the Deputy.

The Deputy Bailiff:

Was that a speech? It was not. An interjection.

7.6 Deputy C.J. Scott Warren:

Many Members of this House will know that the late Sir Martin Le Quesne was involved from the very beginning in the discussions to establish this human rights legislation. We therefore had a very important link in Jersey from the first days and therefore I think it is a very important - I personally feel this is a very important day for Jersey that we are bringing this Appointed Day Act today.

7.7 Senator S. Syvret:

I would just like to briefly address some of the issues raised by Deputy Baudains and the Deputy of St. Ouen. Deputy Baudains said that the European Convention on Human Rights removes people’s rights. Well, I do not think it does. That is simply not the case, and the issue he referred to in terms of the domicile of children is in fact dealt with by entirely other different and separate Conventions and Regulations, so it has no bearing whatsoever on this particular Law. He spoke of children running riot in the United Kingdom and so on, and teachers not being able to control them. Well, I take it that is a euphemism for not being able to smack them around the head or cane them, or whatever used to be done in the old days. It did not work then and it certainly would not work now. The fact is that if you have children who are running riot, causing trouble, breaking the laws, it is usually because their parents, their families and the society around them has failed them in a big way, and they have gone off the rails. Seeking then to impose punishments on children, such as using violence against them, is utterly perverse, unhelpful and entirely the wrong thing to do. The use of violence against children who have been failed by society must be something that we must leave behind, surely. The issue of prisoners which the Deputy raised, I would say that as far as the drug usage was concerned, and as a previous speaker pointed out it was not that they were being allowed to carry on taking drugs in prison, it was the fact that the “cold turkey” was imposed upon them upon confinement and it was that which was considered medically not a good thing to do, and not a desirable thing, and I think that was the basis upon which they won. So I do not think that is a particularly strong argument. I would also point out that in respect of murderers and child killers, and people that commit these kind of grievous crimes which the Deputy referred to; it really is up to the legislature - either here or in the United Kingdom - to lay down the appropriate laws. If it is the wish of Members of this Assembly for there to be a mandatory life sentence for child killers then it is up to us to pass the relevant legislation. It is not a matter for the European Convention on Human Rights. Moving on to the Deputy of St. Ouen; he said he was worried about the requirement to observe Convention rights that will be placed on public authorities and other organisations by this enactment. I do find that a rather strange point of view to take. In my view, adhering to the basic human rights enshrined in the European Convention is a desirable thing, and a good thing for society. Not something that need be regarded as onerous or problematic. Some Members will be aware of this but perhaps not all, that the European Convention of Human Rights grew largely out of the aftermath of World War 2, when it was decided by European countries that we really never again need to go down the path of the people being treated so appallingly. So, the council of Europe decided to form this Convention on Human Rights and they did so. It was largely drafted by British lawyers, in fact, at the time. It has been in place for many, many years. As the Chief Minister pointed out, we are already bound to the European Convention on Human Rights. We voluntarily became a party to it many, many years ago. All this enactment does is make the Convention rights judiciable in the courts in Jersey as opposed to having to go to Strasbourg. It is a far better thing from a domestic point of view than the existing situation. I do hope Members will support this. It is

a step forward. Virtually every civilised country in Europe have signed up to the Convention in this way and can have it tested in their own courts, and I think Jersey should do so as well.

7.8 Senator M.E. Vibert:

I regret some of the direction the debate has taken because this should be a day for celebration. We are at last becoming a bit more mature in signing-up to and introducing human rights within our local legislation. One can have concerns about the way some of these human rights are interpreted by the courts and have been interpreted in the past. I believe they set a basic standard that we should all agree with and support. I really do think that to be critical in the way that some people have is doing the Island a disservice. We should be celebrating the fact that we are now bringing Human Rights Law into Jersey. It is long overdue and, in fact, it will be a great boon to people in the Island because they will be able to pursue their rights locally rather than having to go to Europe as they have up until now. That is a cause for celebration; not for nitpicking.

7.9 Deputy S.C. Ferguson:

As I understand it, originally the U.K. agreed to work out the human rights laws and so on for the United Nations but was not particularly concerned about it. In fact, it was not Home Affairs that dealt with it, it was the Foreign Office. They were not concerned because it was felt that in the U.K. human rights was covered in legislation such as the Bill of Rights and common law and was not written down. The problem with this is that the public perception is that the system is being worked by people. For instance, the human rights of victims are being ignored. There is no commonsense being used. Now this may be the fault of the tabloid press but there are examples and there is public concern that commonsense should be used in the application of this Law. The recent case with the father and his inebriated son; whose human rights were we talking about? It is the commonsense angle that is bothering the public. I think we must make sure that the commonsense is applied in the application of this Law.

7.10 Deputy J.J. Huet of St. Helier:

I do not think I will be signing up to this. I know it says this is a lengthy and expensive process which only a handful of people have followed and I think that is a good thing. I think that is an excellent thing because we see so much abuse of it. Sir, I am not saying that I do not believe there is a need for Human Rights Law because I do believe there is a need for Human Rights Law. But I believe the need for Human Rights Law is in other countries. I am not convinced that it is needed here. I have a list of 12 Parishes in my head. I thought, do we have torture in Trinity? Not that I know of. **[Laughter]** Do we have murder in St. Peter? Not that I know of. I have got 12 of them, Sir - because I thought I did not want to leave any of the Connétables out - of all the different ones. Of all these different ones not one of them, as far as I can see, have we got in Jersey. So why are we having it? So, Sir, I have been sort of keeping an eye lately on odd things that have been reported and I will tell you what I think is wrong with this Human Rights Law; certain cases that have been recently in the public, which is as Deputy Ferguson said. Sir, I am sure you remember George Blake. I know it was quite a long time ago. It was in 1960. This was the spy that by spying in England he caused the death and imprisonment of over 400 people. He was caught; tried. He was given 42 years in sentence in 1960. He escaped in 1961. Now just recently, Sir, he wrote a book. Well, he wrote the book after that and it was not allowed to be printed in England because of what the man had done. But do you know what? He took it to Human Rights and he had £4,690 awarded to him because of his human rights had been abused because he was not allowed to publish this book in England. That is the taxpayers' money. Now if that was my money, I would be really narked about it. Somebody that causes 400 deaths and gets human rights. Now what else did I find? Yes, I found that the prison service in England had to allow pornographic material into cells because if they did not they were abusing the prisoners' human rights. That sounded good as well I thought. Then the one I read last week was about a paedophile. He wanted to join a gym and this gym was in England and it was in a town and it was on school premises. But they could not refuse

it because they would be abusing his human rights. So you have a paedophile going to his gym classes on school premises. That sounds really good in my books; really excellent. I am really protecting my children like that, am I not? Sir, we had one recently here. It was slightly data protection human rights. We were asked to give a list of people that could do with a Christmas hamper because they might need it. No, no, no, no, you could not tell anybody who could have this Christmas hamper. That was infringing on their human rights so they go without the Christmas hamper. Now, you know, what I am saying, Sir, is if this is what human rights is about, that is not my scene at all. I believe in human rights desperately in parts of the world but I do not believe it is necessary in Jersey. I just quote those cases and I think this is what the general public believe. They think it has gone too far, much too far. We have a good record here. I can go through the other 10 Parishes if you really wish me to with my list but I will not. But I will give it to you privately afterwards. It was like no health services in St. Helier. We have got most of the brilliant health services in St. Helier. False imprisonment in St. Brelade. I do not think they have got anybody locked up in jail anywhere. **[Laughter]** No schooling in Grouville. You know, we have got all these things. Why are we going down this road? It is ridiculous. Sir, I will not be signing up to it. Thank you very much.

The Bailiff:

This is difficult for Members, as Appointed Day Act debates always are, but the principle of the Human Rights Law is not before the Assembly for debate. The Assembly has approved the Human Rights Law. It has been sanctioned by the Privy Council and registered. What is at issue this morning is whether the Human Rights Law should be brought into effect on 10th December 2006.

7.11 Deputy J.B. Fox of St. Helier:

I think one of the problems is that many things have come to light since it was discussed in this House; like 9 hijackers from the Middle East being released because it was their human right instead of the due process that was given out by the courts at the time and what seems to be commonsense. This is one of the problems. Human rights were brought in because of tremendous, serious violations that have been occurring in the world. Yes, there is a need for human rights in Jersey because we should stand up and support that which is happening elsewhere in the world and to safeguard from anything that potentially could happen here and give people the surety, *et cetera*. But I understand where the last speaker is coming from and others because it goes against the natural justice. It might be legal justice but it goes against the natural justice and that is why people like me who believe in natural justice have a conflict. The conflict to us is do you ratify something where you see things that go against what you believe is right? But on the other hand you have got to look at the big picture. I am in a dilemma on this one. I will be quite honest with you; my natural instinct is to say no to it. But I also agree with the statement that you have just made. It might be too late for what we are dealing with but it does not alter the fact that wrongs have occurred in natural justice. It might not be in legal justice for them. We might not have all the facts. But that is the dilemma that will inevitably cause. I shall be very interested to hear on the responses to the things that have been brought up today.

7.12 Senator L. Norman:

Just briefly, I do have a lot of sympathy with what Deputy Huet and Deputy Baudains and one or 2 others have had to say. But the real point is that Jersey is signed-up to the Convention on Human Rights. That anybody who feels their rights are being infringed under that Convention has the right to go to court. The only difference is they can only go to court in Europe. The advantage of the Jersey Law and bringing in the Appointed Day Act is that anybody who feels their rights have been infringed can have their case heard here in Jersey. The big advantage of that to me is they might get some more sensible decisions in Jersey then they get obviously in mainland Europe. **[Laughter]**

7.13 Senator W. Kinnard:

I just wanted to say what a day it is - and a delightful day - for me. I was the person who stood here 6 years ago taking that Law through the House. Little known to me at the time that I was then going to be the person who had to deal with all the other pieces of legislation that came afterwards in order to get to this tremendous day. It is indeed, I believe, a tremendous day for people in our Island who will be able to have their rights asserted and dealt with in our own courts. I will just deal with a couple of specific points that were raised by Deputy Southern. He asked whether there were any potential challenges under the fact that part 5 of P.P.C.E. (Police Procedures and Criminal Evidence) had not yet been brought into force. The answer to that, Sir, would be that the majority of the Police Procedures and Criminal Evidence Law has already been brought into force in 2003. Part 5 only remains and this part will not be in force by the time that, obviously: the Human Rights Law comes into force here on 10th December. But we do not expect a challenge in respect of these custody periods as the States of Jersey Police will operate in the same way as they did previously before Code C was in force. They will comply with the human rights principles in any case as if the Law were in force. So I think that answers Deputy Southern's point. The issue about human rights and whether or not we should be signing-up to it now, I am grateful to Senator Norman for pointing out that Jersey has already been signed-up to this since 1953. This is just a matter of bringing rights home. Again, I believe, contrary to some of the speeches here, that this is an exceptionally exciting day for the people of the Island. Many of the examples that have been used to criticise the Law, in fact, this morning have been issues that have been raised as a result of other legislation and not necessarily specifically at all to do with the Convention of Human Rights. I think that is one of the difficulties is that sometimes there is a tendency to either treat the Convention on Human Rights as a panacea to cure all ills or as a sort of something to be battered and criticised as causing all ills. The reality is we have been signed up to this since 1953 and today we are bringing those rights home to our Island people and I think that we should all vote in favour of it. I would hesitate to tell my Members how they should vote - my other Members here in this House - but I think it would be a very sad day if the rest of the world sees that we are not all at one in giving these rights to our people at home in our Island today voting unanimously.

7.14 Connétable K.P. Vibert of St. Ouen:

I agree with the last speaker. I think this is a momentous day and one that we should take and grasp with both hands. But, on the other hand, I do have a certain amount of sympathy with the points which have been raised. But I do not think that they should cloud the issue which is before us. I am afraid that we are suffering from the level at which our media have sunk to in that only the cases which have been mentioned ever appear in the press. The good cases - the cases where human rights have protected the ordinary, everyday citizen - never appear in the press because they do not sell newspapers. I think that we need to be mindful of the issues that have been raised and if we are mindful of them we raise them within other areas where we might be able to influence the judicial system to making decisions which the public might feel are more in their interests. I think we need to look above those cases at the moment and look at the good which this Law can bring to every other person in the Island.

The Bailiff:

I call upon the Chief Minister to reply.

7.15 Senator F.H. Walker:

I am grateful to everyone who has participated in the debate. I am grateful to Deputy Le Claire for his thanks to the Council of Ministers, which are warmly accepted, as are the congratulations of Deputy Southern. I would like to warmly endorse the comments made by Deputy Le Claire and thank also directly the Law Officers for the tremendous job of work they have done here in dealing with a huge amount of legislation. I really am, as are the Council of Ministers, very grateful. Deputy Southern's question about the risk of not having the laws complete was, I think, very

adequately dealt with by Senator Kinnard. In terms of the question on cases currently in progress, I have been advised by my department that they are likely to continue unchanged, but perhaps that is something the Solicitor General might wish to comment on. It does seem to me that if they wish that after 10th December they should have the choice to bring the case to the Royal Court as opposed to pursuing it through the European court. Perhaps the Solicitor General might comment on that.

Miss S.C. Nicolle Q.C., H.M. Solicitor General:

It seems to me that it will really be a matter, firstly, for an applicant. An applicant who wishes to withdraw a pending case can withdraw it and can then - subject obviously to matters of prescription - commence in the Royal Court. Equally, it is a matter for the European Court whether it will wish to say that domestic remedies have not been satisfied. That is something I cannot answer because obviously I cannot second-guess what stance the European Court will take. The European Court of Justice does go by the principle that domestic remedies must be exhausted. But until that question is put to that court I cannot say what the result will be.

Senator S. Syvret:

Might I just ask a question on that point? Is it not the case that the court in Strasbourg does have the ability to waive that requirement under particular circumstances?

The Solicitor General:

Yes, it will be in the hands of the European Court. As I say, I simply cannot forecast what it will do.

Senator S. Syvret:

Indeed, the point I was going to make is that I would have thought that the introduction of the domestic legislation in a jurisdiction would perhaps be a circumstance that they might bear in mind when deciding still to allow a case to go to the court in Strasbourg.

Senator F.H. Walker:

I am grateful to the Solicitor General, Sir, and to Senator Syvret. I think the important point here is there would be no locally imposed bar on local people wishing to switch any case they may have to the Royal Court but it would be, as the Solicitor General has said, a matter for the European Court in the first instance. Deputy Southern, followed by the Deputy of St. Ouen, asked questions - perhaps coming from a different point of view - about the additional time that the Law could take up in the Royal Court. Of course at the moment it depends on the take-up how many local people consider they have a possible infringement of their human rights. It has to be said that the number of local people who have taken cases to the European Court has been very small indeed. The fact is - as Senator Norman so vividly reminded us - they have had that ability now for many, many years. I do not see any reason why there should be a sudden explosion of cases merely because they can be heard locally rather than be heard in Europe. I have no doubt there may well be some additional cases but I doubt very much that there would be an explosion. Staying with the subject of costs, quite a number of the additional costs have been taken up in the propositions on the regulation of RIPL (the Regulation of Investigatory Procedures Law) and the Criminal Evidence Law. That is where the costs, generally speaking, will apply and those have been covered under the propositions for those laws. Deputy Baudains said that he voted against it in the year 2000 - and of course he did - but this is not a question of whether we embrace human rights; it is a question of when. It is a question of switching the jurisdiction to the local court for anyone who has a complaint. Deputy Scott Warren says this is an important day for Jersey and I think she is right. I am grateful to Senator Syvret for picking up a number of the points made by other speakers and for his enthusiastic support for the Law. As Senator Vibert says: "This is a day to celebrate." Then we heard some comments from Deputy Ferguson. She was concerned about the fact that there is no

commonsense in the way the law is sometimes applied in the U.K. and perhaps elsewhere. But I share Senator Norman's confidence in our ability in Jersey - in our courts and in our administrative procedures - to apply a great deal more commonsense than has been the case in some cases, as the Constable of St. Ouen pointed out in his speech. Deputy Huet and Deputy Fox are concerned that the whole thing similarly has gone too far. I understand where they are coming from. We all know of some ridiculous cases but, again, I think the Constable of St. Ouen put his finger on it when he said these are the headline-grabbing cases and the vast majority of cases we never hear about. I think that is absolutely right. Deputy Huet said she is not convinced that a Human Rights Law is needed in Jersey. I would make 2 points on that. First of all, if there is no need then there should be no problem with the Law because if we do not have a problem then the Law will not be used. That seems to me to be a statement of the obvious. But the second point is if Jersey does not go... first, if the Deputy or any other Member of the House does not want this Appointed Day Act to come into force then they will need ultimately to bring a proposition which calls for Jersey to extract ourselves from the European Convention on Human Rights. I would not like to be the politician who brought such a proposition to this Assembly but, of course, it is open to any Member of the States to do so if they wish. But I very much hope that before doing so they would give serious consideration to what that says about Jersey. What it says about Jersey domestically and what it says about Jersey internationally. Basically we would be saying that Jersey and Jersey alone - because Guernsey are going down this route; the Isle of Man are going down this route - Jersey and Jersey alone has decided that we are not going to give our residents the benefit of exercising their human rights in the way that every other member of every community around us has. We are discriminating, in other words, against the people of Jersey. That does not seem to me to be a very tenable position for any politician to take and I doubt very much that any politician would take. But they do need to realise if they are thinking that way of how serious the consequences are for Jersey and principally for Jersey people. Senator Kinnard has had a delightful day and an exciting day. I am very pleased to have brought her such pleasure **[Laughter]** but I would also like to thank the Senator warmly and her team because they have put in - she herself referred to it - a huge amount of work also on the various pieces of legislation necessary to enable me to stand here today and to propose this very welcome Appointed Day Act. I am very grateful to the Senator and her team indeed. I have already referred to the speech of the Constable of St. Ouen but I would like to go back to Senator Norman's speech because he put his finger right on the button. The point at issue here is not whether we adopt the European Convention on Human Rights. We have done that more than 50 years ago. The point is that local people can hear any such cases in the Royal Court rather than having to go to Europe. That is the difference and, like him, I have confidence in the ability of our courts to take more sensible decisions than perhaps some of those we have heard elsewhere. Sir, I very much hope that on reflection Members will realise the seriousness of voting against this proposition. Realise the futility indeed of voting against it and will agree that this is a forward step - a big forward step - for the people of Jersey and agree that we need to bring this Law in. Already delayed, we need to give this Law effect now as soon as possible and on, indeed, the due day of 10th December. Sir, I reaffirm the proposal and ask for the appel.

The Bailiff:

I ask all Members who wish to vote to return to their seats in the Chamber. I will ask the Greffier to open the voting which is for or against the proposition of the Chief Minister.

POUR: 44

Senator S. Syvret
Senator L. Norman
Senator F.H. Walker
Senator W. Kinnard
Senator P.F. Routier
Senator M.E. Vibert

CONTRE: 1

Deputy G.C.L. Baudains (C)

ABSTAIN: 0

Senator P.F.C. Ozouf
Senator B.E. Shenton
Senator F.E. Cohen
Senator J.L. Perchard
Connétable of St. Ouen
Connétable of St. Saviour
Connétable of St. Mary
Connétable of St. Peter
Connétable of St. Clement
Connétable of St. Helier
Connétable of St. Lawrence
Connétable of St. John
Connétable of St. Brelade
Connétable of St. Martin
Deputy R.C. Duhamel (S)
Deputy A. Breckon (S)
Deputy of St. Martin
Deputy C.J. Scott Warren (S)
Deputy R.G. Le Hérissier (S)
Deputy J.B. Fox (H)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy S.C. Ferguson (B)
Deputy of St. Ouen
Deputy P.J.D. Ryan (H)
Deputy of Grouville
Deputy of St. Peter
Deputy J.A. Hilton (H)
Deputy G.W.J. de Faye (H)
Deputy P.V.F. Le Claire (H)
Deputy D.W. Mezbourian (L)
Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy S. Pitman (H)
Deputy A.J.H. Maclean (H)
Deputy K.C. Lewis (S)
Deputy of St. John
Deputy I.J. Gorst (C)

8. Committee of Inquiry: Mobile Telecommunications (P.144/2006)

The Bailiff:

We now move to Projet 144 which is “Committee of Inquiry: Mobile Telecommunications” in the name of Deputy Ryan. May I ask the Greffier to read the proposition?

Deputy A.D. Lewis of St. John:

Could I just declare an interest here? One of my companies has an interest in one of the telecommunications companies from a public relations point of view. Although I do not have any direct contact with the particular client I think it would be inappropriate for me to remain in the Chamber for this part of the debate, Sir.

The Bailiff:

Very well, Deputy.

Deputy of St. John:

I wish to withdraw, thank you.

The Bailiff:

The interest of the Deputy of St. John is noted.

The Greffier of the States:

The States are asked to decide whether they are of opinion: (a) to establish a Committee of Inquiry in accordance with Standing Order 146 in order to investigate: (i) the health risks associated with the emissions from mobile network antennae and dishes; (ii) the environmental impact of the proliferation of multiple network infrastructures and to report to the States thereon within a period of 6 months from the establishment of the committee; and (b) to request the Minister for Planning and Environment to suspend consideration of all new and existing planning applications involving the mobile telecommunications network infrastructure pending the results of this investigation.

8.1 Deputy P.J.D. Ryan of St. Helier:

Well, I think I would probably be stating the obvious because we have all had the letters, we have all seen the articles in the newspaper, we have all seen the reports. Sir, there is huge public concern over the health issues surrounding mobile telephony masts. There is considerable environmental concern over the environmental and visual issues on the same subject. Indeed there is confusion over the benefits of competition in the mobile market. I hesitate to mention the last one because my projet, in fact, specifically and deliberately excluded the question of competition and those issues. However, the comments from the Council of Ministers do refer to the competition issues and that is why I mention them this morning and may refer to them also in my speech, simply because the Council of Ministers have chosen to bring the competition issues into the debate. So let us talk about the health issues first. No one can doubt that there is conflicting evidence at best or at worst - depending upon your point of view - and much evidence also giving rise to serious worries coming from some seriously and some very eminently qualified experts. Sir, this is not diminishing. It is not as if this is going away. It is not as if the body of evidence is setting people's minds at rest in any way. What is happening is that the more studies are carried out, the more the concerns are growing. One cannot help but perhaps to compare this to the early stages of the debate on cigarette smoking. One just cannot help but to look at that and see some of the parallels. Sir, we have 45 square miles and we have 4 different sets of infrastructure possibly that are being mooted. This will mean that we will have one of the highest concentrations of mobile antennae and infrastructure in the world. That, Sir, is without taking into consideration or into account the very high powered police T.E.T.R.A. (Terrestrial Trunk Radio) network system that apparently does not even need approval from the Planning and Environment Minister because it is covered by other laws. My information, just on the T.E.T.R.A. side, is that Jersey is one of only a very few places in the United Kingdom to have taken the risk of installing such a system. But going back to the fact of having possibly 4 sets of infrastructure, it is impossible to have that level of infrastructure without a serious impact on the environment. I, therefore, turn to that side of matters; the environmental and the visual side of it. Surely, Sir, commonsense alone says that we only need really one set of infrastructure. I am hearing a lot of people saying that they feel let down by their leaders. How has this happened? What is to be done? Sir, only an inquiry, I believe, and a halt to further planning approvals until that inquiry reports, will be acceptable to the public. Unfortunately, a 6-month delay will be needed for this to happen properly, I believe. The issues can be examined carefully and calmly, any changes to policy can be recommended and we can see where we go from there. The Council of Ministers has said that the proliferation of masts is as a direct result of the public's wish for more competition in telephony. I have had it said to me, even in private by another Member,

and I am quoting - I will not say who it is - but: "Sometimes you have to show leadership. The public do not usually know what they want anyway." Sir, there are times when strong leadership is indeed necessary. I give as an example; when we need to bring in unpopular taxes or something like that. One only has to look toward Senator Le Sueur to see that that is right for examples of it. But in this particular case this surely is about choice. The public must be given the opportunity to express their preference for or against the proliferation of masts, the necessity for the best mobile coverage in the world, the blots on the skylines and in green fields and whether or not competition in this month's mobile gizmo for the techno yuppies; is that relevant in the Jersey context? In that respect, Sir, I notice I cannot even go and have my burger on a Sunday morning on Rozel Pier now without being confronted, within 5 metres, with a brand new mast attached to the side of the toilet block down on Rozel. What is going on? The public really do not know what is going on and I certainly do not. The Jersey public are not alone in this; it is common all over the country. I have a newspaper article here from... I have mislaid it for a second but it is here somewhere: The *Peterborough Evening Standard* which says that the public are amazed at the proliferation of masts in their area. 255 masts, apparently, have appeared in Peterborough over the last 3 months. We are not alone. This is a phenomenon that is taking place all over the country. Do we really want to take the health risks at this point as well when so many unknowns exist and maybe live to regret it at some future point in time or should we be taking a very conservative line on the proximity of masts to where people live?

The Bailiff:

Deputy, I am sorry to interrupt you but this is meant to be a helpful interjection. Standing Order 146 provides that the States may appoint a Committee of Inquiry to inquire into a definite matter of public importance and report on it to the States. Now what your proposition invites the Assembly to find is that this is a definite matter of public importance which requires to be investigated. But the States is not debating at the moment whether there are health risks associated with emissions or whether the environmental impact is such that... it is an important point of principle and I do not want the States to get into debating health issues or debating environmental issues when that is not the issue before it.

Deputy P.J.D. Ryan:

I suppose that I am led down that line principally by the comments from the Council of Ministers which do go into several of these issues.

The Bailiff:

Well, I shall say the same thing to any other Member who is tempted to debate these issues.

Deputy P.J.D. Ryan:

Although I suspect inevitably you are going to be interjecting quite often in that case.

The Bailiff:

One tries.

Deputy P.J.D. Ryan:

Well, where do I go? The J.T. (Jersey Telecom) licence allows the J.C.R.A. (Jersey Competition Regulatory Authority) to intervene. We need to look at that in the public inquiry. Maybe the shared Jersey Telecom infrastructure can be improved but surely does not need to be duplicated. That again can be looked into in the public inquiry. Anyway, I will try to keep to the point, Sir. Local mobile coverage into every nook and cranny of Jersey's countryside is surely unnecessary. How many Members indeed have problems receiving calls on their mobile phone now? Is it not good enough now? I have also heard a couple of Members say that rather than a public inquiry, why I was not considering a Scrutiny inquiry? Well, I think what I would say to that is that the question of

whether or not it should be a Scrutiny inquiry is secondary to the question of whether there should be an inquiry. If we can decide whether there should be an inquiry I think we can move on to whether it should be a Scrutiny inquiry or not. Let us first of all decide whether an inquiry is necessary. I think regardless of whether it is Scrutiny-led or a public-led inquiry we are going to need 6 months to do it. Sir, the public want an inquiry. Whether it is Scrutiny-led or not, as I say, is secondary. But will the Minister for Planning and Environment be prepared to delay any decisions on new masts until after an inquiry has finished and presented its report? I would be interested to see whether he is prepared to do that, whether it is Scrutiny-led or indeed a public one. Finally, my purpose in bringing this to the States is it is not intended to be criticism. This inquiry... it is not my intention that it will be used as a vehicle to allocate any blame to anyone. It is not even really to see why the situation has arisen. I think we can all see why the situation has arisen. Why we are where we are, we can see that. But it is important to establish the facts, seek a sensible and publicly acceptable way forward. That is the crux of the matter. We need to move forward and we need to move forward in a way that is sensible and will be publicly accepted. We are not at that point now. I do not want politics also to get in the way. I do not want this to degenerate into some form of clash of wills. You know, who decides? The Council of Ministers or Scrutiny or the States as a whole? To get embroiled in that kind of politics is to fail in our duty to the public. That is why I believe that we need this inquiry. It should not be seeking blame. It should be seeking the right way forward and the publicly acceptable way forward, Sir. I move the proposition and open it to debate.

The Bailiff:

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

8.2 Senator F.E. Cohen:

I will endeavour not to stray into the area too much of assessing health risks. If you feel, Sir, that I am doing so, please stop me, but I do feel that I need to explain something of the science in relation to the decisions that I have been making up to now. I fully understand that some Islanders have concern about the health implications surrounding mobile phone masts. Quite properly a number of politicians are now articulating their constituents' concerns and I know that a number of politicians have personal concerns about the health risks. There are genuine and honestly held concerns in the community. It is the role of the Health Protection Department rather than Planning to determine health safeguards for the public. However, when I came into office at the beginning of this year I recognised that there was concern over the potential health impacts of mobile phone base stations and requested an informed opinion from Health and Social Services as to their likely health impact on the basis of sound, scientific evidence. The Health Minister has provided you with a copy of this report today. The report from Health Protection in April 2004 was clear that no sound or reliable scientific evidence has been produced which indicates that exposure to the emissions from base stations is harmful in any way to human health. The levels involved in Jersey are only a small fraction of the level of emission recommended as safe by Lord Stewart's independent expert group on mobile phones in 2000. Adoption of these safe levels was an integral part of the precautionary approach recommended by Lord Stewart's report. I have followed this advice over the last year and consulted with the Health Protection Department on every telecommunication planning application. On 26th October, again due to renewed public concern over potential health impacts and claims that new evidence existed to indicate previously unknown health risks, I called a moratorium on the determination of telecommunication applications. I invited Islanders to submit representations on health concerns. These representations were considered by the Health Protection Department last week who have now advised that nothing submitted altered the advice they gave in April. Not only has the Planning Department complied with the Health Department's recommendation for these telecommunications' applications but I have gone beyond these recommendations and beyond the best practice in the U.K. by requiring that all applications provide the estimated levels of emissions and by only giving temporary permissions. I require that following the commissioning of the installation the actual levels are measured by an engineer and verified by the Health Protection

Department before permanent permission is granted. Thus I can say with confidence that we are among the most cautious jurisdictions in the world. It should be noted, however, that estimated levels of emissions are a theoretical maximum based on ideal circumstances and our worst-case levels. The actual emissions from a base station can be expected to be 100 to 10,000 times less than the estimates. Notwithstanding this, at individual sites the estimated level of emissions proposed in Jersey is well within the maximum international guidelines for emissions which were set at a significantly lower level than those levels tested as having any effect on human health. This international reference level for maximum exposure for the public is a precautionary approach in itself. However, most of the information provided to me as a result of the moratorium was research that questioned the international guideline. The estimated level of emissions in Jersey is also well within the levels recommended by the best know alternative reports including Salzburg, Dr. Sherry and Dr. Hyland. These recommended a maximum emission of one milliwatt per metre squared against an I.C.N.I.R.P. (International Commission on Non-Ionising Radiation Protection) safe level of 4.5 milliwatts per metre squared. We are much lower - I repeat much lower - than either. As a way of background, the emissions received from a base station are known as electromagnetic emissions, which is the energy stored in an electromagnetic field. Electromagnetic fields are emitted not only by mobile phones and base stations but also broadcasting equipment, radar facilities and all electrical and electronic equipment. To advise the House as a comparison, the body absorbs up to 5 times more of the signal from F.M. radio and television than from mobile phone base stations. F.M. radio and television is an existing energy field that surrounds us at all times. Radio and television broadcasts have been in operation for the past 50 or more years without any known adverse health consequence being established. Mobile phone base stations emit the same type of electromagnetic field as these other transmitting stations. To provide some comparative figures, I cite the following examples. The standard leakage of a microwave oven is 140 times greater than from a mobile phone base station. A digital cordless home phone is more than 11 times greater than those from a base station. Baby monitoring devices are more than 8 times greater than those from a base station. So you see, an inquiry into the health risks of mobile phone technology cannot logically be solely about mobile phones. If the House considers there to be enough valid and reasonable concern about the health risk of electromagnetic emissions it should be considering an inquiry into all sources of electromagnetic emissions including all wireless technologies, A.M./F.M. radio, T.V. broadcasting and all electrical and electronic household devices. This, however, is the purpose of many different international commissions with budgets of many hundreds of millions of dollars. I simply cannot see that Jersey can make a useful contribution to the world research into this issue by holding a public inquiry at this stage. I am confident that our health professionals are completely competent in this area and are up-to-date with all the research and all the new studies. To this end I am satisfied that a 6 month inquiry is unlikely to add more to the international knowledge base in this area. There have been reports that other countries have adopted exclusion zones or set minimum distances from mobile phone base stations to residences. The main countries that have been stated as having exclusion zones are France, Australia and New Zealand. The fact is that none of these countries have adopted any statutory or federal exclusion zones or any other arbitrary additional safety factors beyond the exposure limits set by the international guideline. I have had direct written confirmation from the French Agency for Environmental and Occupational Health Safety and the French Minister for Health that: "France has not adopted any specific regulations relating to exclusion zones between mobile phone base stations and schools or residence." That is an exact quote. I have also had written confirmation from the Australian Radiation Protection and Nuclear Safety Agency that Australia, and I quote: "Does not have any distance requirements between facility and other land uses such as residence, schools or hospitals." New Zealand has a trans-Tasman agreement that adopts the standards of Australia and, thus, also does not have any distance requirements. There are reports of a proposed law in France that will introduce exclusion zones too. This proposed law is a private bill put forward by one member of parliament, Mr. Christophe Masse. The private bill has not yet been to general discussion of the Assembly and is currently with a commission to test its validity. The

process for private bills in France is similar to that in the U.K. The process is lengthy and it is reasonable to presume that it will be in the order of years for this bill to make any progress whatsoever. However, despite other countries not having exclusion zones the practicality of Jersey adopting exclusion zones would be impossible. It would be impossible to find enough land parcels in Jersey to support a mobile network that was 300 to 500 metres from any home or school. There have been several installations to date that have been within this distance. The conclusion is that despite exclusion zones not being adopted by any government worldwide, the reality is that in Jersey it would not be possible to physically achieve these exclusion zones. Thus, insisting on exclusion zones would render mobile competition impossible and, more importantly, if applied retrospectively it may require the complete dismantling of the existing networks. There has been criticism that we are not doing all we can to make mobile phone companies share or use the existing infrastructure in the Island. Again this is simply untrue. All existing infrastructure that can physically support additional equipment is currently being shared by 2 or more companies. Each company begins planning their network by siting installations on existing towers and shared rooftop sites. It is simply cheaper for the companies to put equipment on existing infrastructure than to build a new mast. However, there are areas on the Island where there is no existing infrastructure and, yes, these are mostly in the countryside. Where there are no lattice towers or appropriate rooftop sites the companies apply for a new mast. In these instances I have insisted that the new mast be a wooden clad replica telegraph pole design. This design hides as much equipment as possible inside the wooden pole and is the most appropriate design for Jersey than the mass-produced designs seen in the U.K. I have gone to considerable effort to ensure that the wooden masts that are acceptable in Jersey are the very best that we can possibly find and they are extremely costly. But despite the high cost we have insisted that if you want to put up a mast in the countryside you have to go the wooden telegraph pole route. I would say to the House that I do have some concerns about the attached equipment. The attached equipment comprises of one or 2 boxes. They are visually intrusive and I am doing my very best to ensure that they are camouflaged as much as possible. I have recently written to one of the new communications companies in the Island advising them that they have not done enough to camouflage the cabinets and that they must do so within a period of 30 days and I think we are halfway through that now. To continue: the disadvantage of the wooden clad pole is that it cannot be shared. The reason for that is that a lot of the electronics are hidden within the pole. The pole has a hollow metal centre within which a lot of the electronics are contained. The only way more sharing is possible would be to build structures that can be shared. That is, large lattice masts like Five Oaks or Les Platons. This is considered to be detrimental to the environment and the visual amenity of the Island and far more so than allowing a number of wooden clad poles. To put it into perspective, had we gone the lattice mast route I understand that we would have required 20 to 30 new lattice masts of the size of those at Five Oaks. I believe that would have been an unacceptable impact. To go on to numbers. The anticipated total installations for all the 3 companies currently on the Island will be approximately 150 installations. Of this total, between 70 to 80 will be wooden clad telegraph pole designs and, of these, about 40 are already in place. The remainder are installations on existing lattice towers or on rooftop sites. There are currently over 100 installations erected over the Island, about 40 of which, as I have said, are wooden clad telegraph poles. It is important to appreciate that there are, therefore, only a further 40 to 50 installations to be installed, not all of which will be wooden telegraph poles. Therefore, the purpose of an inquiry must be carefully considered. What could an inquiry constructively achieve? We have 2 mobile phone companies with almost complete networks. The third company has a third of its installations already approved. If the House considers health risks of these types of emissions as significant then we must logically question all forms of technology that emit these emissions. The key question is whether or not Members believe that there really are any grounds for concern in relation to health risks. I believe there is no risk and, consequently, I believe it is my obligation to reassure Islanders that having considered all the evidence I believe they represent no identifiable risk to Islanders. These masts emit waves that are not different in principle from the waves emitted by a variety of installations and household

appliances. I can reassure, therefore, open-minded Islanders that I would not mind having a mast near my home. Indeed, I live near one of the main T.V. masts. I have brought up 4 children there without worrying for one moment that they were constantly being exposed to radio emissions. I believe in the accredited science and, therefore, I will be voting against the proposition and I urge other Members to do the same.

8.3 Deputy K.C. Lewis:

I will be supporting the Committee of Inquiry into mobile telecommunications. Not only will we have a tripling or quadrupling of transmission masts but I believe the technology is different. As where Jersey Telecom use the existing landline to send the signals to the transmitters, the new providers transmit the signals to the transmitters by microwave. Not only do we have a transmission from the transmitter but a microwave signal to the transmitter. With a potential 150 to 200 new transmission masts being erected, this is indeed very worrying. It is also my understanding that contracts have been signed with the new mobile providers. I would be obliged if the Solicitor General on her return to the Chamber would answer the question as to whether we would be open to legal challenge if these new providers were to be stopped or delayed in starting their new mobile networks.

8.4 Deputy R.C. Duhamel of St. Saviour:

Members, of course, will be aware of Standing Orders, in particular Standing Order 79 which allows any Member of the States to propose without notice that the debate on any proposition be suspended and the States request the relevant Scrutiny Panel to consider having the proposition referred to it. I rise, Sir, to invoke this particular clause and to suggest...

The Bailiff:

Sorry, which Standing Order is this?

Deputy R.C. Duhamel:

This is 79, Sir, page 40. Standing Order 79 clauses 7 and 8 also says that if the relevant Scrutiny Panel has any doubt as to which Panel or Panels should be assigned the scrutiny of the topic to which the proposition relates then the Presiding Officer, Sir - which is yourself - shall take the advice of the President of the Chairmen's Committee, which is me, Sir. On that basis I would advise the House that I would consider in that capacity that the proposition relates to 3 Panels: the Health and Social Security and Housing, the Environment Panel and the Economic Affairs Panel. I make the proposition, Sir. This will be for those Scrutiny Panels to come back to the House at the next meeting and to decide whether or not that they consider that the comments in relation to the comments that have been put forward by the Council of Ministers as to why a Committee of Inquiry should not go ahead, whether or not in fact, Sir, all the reasons for the inquiry going ahead or not have been covered within those comments.

The Bailiff:

You say there are...

Deputy R.C. Duhamel:

There are 3 Panels, Sir.

The Bailiff:

I just wonder if that is practical, Deputy.

Deputy R.C. Duhamel:

I think it is practical, Sir, because we have 3 collections of persons and Committees who are capable of looking independently from their own particular perspective.

The Bailiff:

Standing Order 79(1)(b) says: “That any Member of the States may propose without notice that the States request the relevant Scrutiny Panel to consider having the proposition referred to it.” You are inviting me to construe that as meaning any relevant Scrutiny...

Deputy R.C. Duhamel:

No, Sir, it goes on; if you read item 7, it does say that the relevant Scrutiny Panel is the Scrutiny Panel or Panels - plural - assigned scrutiny of the topic to which the proposition relates and it goes on further, Sir, to say that if there is any doubt as to which Panel is relevant then the Presiding Officer shall take the advice of the President of the Chairmen’s Committee.

The Bailiff:

And that is you. **[Laughter]** So, you are... okay, yes. Deputy, I am sorry, neither the Greffier nor I caught the third... you say the Health Panel is obviously one, the Environment Scrutiny Panel and the...

Deputy R.C. Duhamel:

Sorry, there are 3 Panels. Economic Affairs Panel.

The Bailiff:

Economic Affairs. Very well, Standing Order 79 allows any Member to propose that the debate on a proposition be suspended and that the States request the relevant Scrutiny Panel or Panels to consider having the proposition referred to it. Deputy Duhamel has made such a proposition. Is that proposition seconded? **[Seconded]** Very well. Well, the debate on Deputy Ryan’s proposition is now suspended and the matter before the House is the proposition of Deputy Duhamel, that the debate on Deputy Ryan’s proposition be suspended so that the matter may be referred to the relevant Scrutiny Panels to determine at the next meeting whether or not they wish to have the matters referred to them.

Senator S. Syvret:

Could we hear from Deputy Ryan whether he might be prepared to accept that proposition or not? It might save time

Deputy G.W.J. de Faye of St. Helier:

Sir, can I raise a point of order?

The Bailiff:

Yes.

Deputy G.W.J. de Faye:

It does seem to me that the Standing Order is quite clear. Once a Member has raised this it is up to the States to request the matter to go ahead, which seems to me that requires a vote of the States to determine whether the States is requesting that or not and I believe that at the very minimum the States ought to be able to debate whether this element of Standing Orders is to go ahead or not. It does say the States has to request it and frankly, although I respect Deputy Duhamel, he is one member of the States, not the States.

The Bailiff:

Standing Order 79(3) says that if the States agree to the proposal the debate shall be suspended until the next meeting. So, there is a debate to be had and the Assembly must now decide whether or not to accede to the proposal of Deputy Duhamel.

Senator S. Syvret:

Sir, we are waiting to see if the proposer of the main proposition would accept the...

The Bailiff:

It is still a matter for the Assembly, as Deputy de Faye has pointed out, but I do not know if Deputy Ryan wishes to address the Assembly at this stage.

Deputy P.J.D. Ryan:

Yes, I do. The public want...

The Bailiff:

Yes, he wishes to address the Assembly. [Laughter]

8.4.1 Deputy P.J.D. Ryan:

Can we have a vote on that, Sir? I will start again, Sir. The issues are quite simple. There is huge concern out there on health, on environment and there is confusion over the commercial side, the 'do we need the competition in mobile phones'? Certainly we need the competition in fixed lines and broadband and all of those other things but do we need them in mobile phones? The question of whether it is a public inquiry or whether it is a Scrutiny-led inquiry, to be honest, is secondary in my opinion. So, Sir, if Scrutiny want to lead this inquiry then I would support that route, yes.

Deputy G.W.J. de Faye:

I would encourage the House to reject this particular plan of action, for a number of, I think, very sound reasons. First of all I entirely dispute the suggestion that there is huge concern out there among the public of the Island. Well, I hear chuckling from some Members who clearly must walk around with their eyes closed, which does not come as a surprise in some cases. The fact is that there are more mobile phone handsets in this Island than there are people and if there really was a genuine concern about the risk of emissions caused by mobile phones, which we already know are tens, hundreds or thousands of times greater than the emissions from mobile masts, then people would stop using mobile phones. But, no, they do not; they issue them to their children. So I disagree entirely that there is a huge level of public concern out there. There is confusion and that is because a number of politicians have added their names to the confused people who are talking and debating about whether there are indeed health issues and the only reality that one can attach to that is that one cannot prove...

Deputy J.A. Martin of St. Helier:

Would the Deputy give way a minute, Sir?

Deputy G.W.J. de Faye:

No.

The Bailiff:

Thank you, Deputy, if you do not mind?

Deputy J.A. Martin:

I just want to know what relevance this is to this debate?

8.4.2 Deputy G.W.J. de Faye:

[Aside]..Now, is this appropriate for either a Committee of Inquiry or Scrutiny? I think we have to begin to realise that Scrutiny is a resource within the States. It costs money to run. We have only just agreed that there will be a new Scrutiny Committee and each one comes with a bill of roughly £188,000. Scrutiny is a resource that States' Members should use wisely. It is a resource that should

scrutinise matters of serious import to the States, but is this a matter of serious import? I say (1) there is no huge public concern in reality, and (2) what is a Committee of Inquiry or a Jersey Scrutiny Panel? What level of light will it cast on an issue that is already being investigated by dozens of authorities throughout the United Kingdom and Europe. We are awash with information and all the information indicates that the health risk is not measurable and not known and may not exist at all. What we do have is a substantial amount of information that tells us that there are more dangerous things in our own homes - like television sets, as the Minister outlined - that make mobile phone use and the location of mobile masts pale into insignificance by comparison when you just measure the levels of radiation. So I say, and urge the House, let us deal with this matter today. It is a waste of Scrutiny time and resource to simply shuffle this under the carpet for a while so it can pop up later on and I urge the House to reject this particular procedural move.

Senator M.E. Vibert:

Sir, can I ask for some clarification, please? I think I understand that if the move by Deputy Duhamel is rejected we carry on with the substantive debate. Could you outline again what happens if Deputy Duhamel's proposal was approved?

The Bailiff:

If Deputy Duhamel's proposal is approved, the debate is suspended until the next meeting. At the next meeting the duty of the Presiding Officer is to ask the Chairmen of the relevant Scrutiny Panels whether they wish to have the propositions referred to the Panels, and the States, I think, then has a choice either to resume the debate - that is the debate on the proposition of Deputy Ryan - or to defer that until another date when the debate must resume. If the States decides to list the debate at a future date then obviously the Chairmen of the Scrutiny Panels will investigate the matter in the meantime.

Senator S. Syvret:

Just to be clear about this. Is it not the case that Scrutiny is autonomous, has a degree of autonomy in any event, and if the Environment Scrutiny Panel wants to carry out an investigation and inquiry into mobile phone masts they are entitled and perfectly at liberty to do so?

The Bailiff:

Well, that seems to me to be the position now, Senator, yes.

Deputy G.P. Southern:

Again, clarification. Is it the case that were the proposition to be referred to the Scrutiny Panel or Panels that they undertake to return with a report within 4 sessions? I think that is the case, is it not?

The Bailiff:

Well, paragraph 4 of Standing Order 79 says: "At the next meeting". This is on the assumption the States agree to suspend the debate: "The Presiding Officer should ask the Chairmen of the Scrutiny Panels whether he or she wishes to have the proposition referred to the Panel and (a) if the Chairman confirms that, the Panel having considered the matter, he or she does not wish to have the proposition referred to the Panel, the States may either resume the debate immediately or decide at which meeting the debate shall be listed to resume or (b) if the Chairman confirms that the Panel having considered the matter, he or she wishes to have the proposition referred to the Panel, the States must decide at which meeting the debate shall be listed to resume. The debate must be listed to resume at a meeting, which is not later than the fourth meeting, disregarding any additional meeting day, following the meeting at which the Chairman confirms the Panel's decision." So, if the States decide to go with Deputy Duhamel now, then the matter will be adjourned until the next meeting and then I have to ask each of the Chairmen of the relevant Scrutiny Panels whether they wish to have the matter referred to them. If they do, the States then lists Deputy Ryan's proposition

for debate at some future meeting, not more than 4 ahead. If the Scrutiny Panels do not wish to have the matter referred to them, then clearly the debate on Deputy Ryan's proposition continues. That is the procedural position.

Deputy P.J.D. Ryan:

May I seek some clarification from the Minister for Planning and Environment, Sir, which I forgot to mention a couple of minutes ago when I spoke, if you will allow me to?

The Bailiff:

Is that relevant to Deputy Duhamel's proposition?

Deputy P.J.D. Ryan:

I think it is, Sir, yes, because I think it may affect the way Members vote. and the question to the Minister will be, is he prepared to maintain the *status quo* or the current *status quo*, in other words, where he has suspended decisions is he prepared to extend that *status quo* while a Scrutiny review possibly is undertaken and a report produced?

Senator F.E. Cohen:

I had anticipated that and I am afraid I have not got the answer. I think that if it was a matter of a couple of weeks - a few weeks - then it would be possible to defer any decision-making but allow the applications to progress to the point of decision-making. What I am concerned about is straying into the area where I am deemed not to be determining applications within a reasonable time. So I think if it is a matter of a few weeks, yes, an accommodation can be reached that would prevent formal decisions being made but I think if it is longer than that I would need to seek advice from the Law Officers' Department.

Deputy C.F. Labey of Grouville:

Could I likewise seek clarification from the Minister of Economic Development, in that during the same period of time, however long it takes for the Scrutiny Panel to come back with their findings, that he will give a direction to the J.C.R.A. (Jersey Competition Regulatory Authority) not to issue any more licences to these telephone companies, because I believe there is a fourth in the wings?

8.4.3 Senator P.F.C. Ozouf:

Sometimes this Assembly seems to get into a real tangle. I am standing here now wondering what we are discussing. I think that I am right in saying that we are discussing whether or not we should ask Scrutiny whether or not to have a Committee of Inquiry, not to whether or not there is a general issue. The matter before the Assembly - the key question in debating - is not whether or not Scrutiny thinks there should be an investigation into telephone masts and telecommunications matters because of Senator Syvret's intervention agreed by the Chairman of the Privileges and Procedures Committee. Let us be clear. Scrutiny can invoke their own investigations into any matters and I was not aware - and I enjoy, I hope, reasonable communication on the plans and concerns and agendas of the Economic Affairs Scrutiny Panel, not obviously the others - but I was not aware that they were, until now, interested in this matter and I think it is absolutely clear that the question before the Assembly is whether or not we should be asking the Scrutiny Panel whether or not there should be a Committee of Inquiry. Now, the powers of a Committee of Inquiry are, unless I am wrong, the same as the powers of Scrutiny. We have given the Scrutiny Panels significant powers, those equivalent to a Committee of Inquiry. So, this procedural move, I have to say, is confusing and frankly I see no case to ask a Scrutiny Panel whether or not there should be a Committee of Inquiry. What the key question is - and that is really the core of the debate - do we have enough information in order to invoke some sort of review? Not this procedural issue. I think we should absolutely vote against the procedural device that Deputy Duhamel has put forward in suggesting that we should have a review on whether or not we should have a review. Let us get

back to the main debate about whether or not there should be a Committee of Inquiry because the Committee of Inquiry could be, if we went on to agree, populated with members of all of those Scrutiny Panels, subject to a proposition before the Assembly, and we can deal with it that way, but for goodness sake let us get back to the main debate as to whether or not we think there should be a review in this matter. Let us not confuse the matter and go into the long grass. On the specific issue that the Deputy of Grouville raised - it has been asked, so I must, I think, answer it, Sir - and that is... and I hoped the Deputy has read the - I thought - very helpful letter by the J.C.R.A. and again there appears to be in this whole matter a number of complete misunderstandings and inaccuracies which have been put around the place. There has not been a fourth Telco operator approved by the J.C.R.A.

Deputy of Grouville:

I know there has not. I did not say that: I said there was one in the wings and could we have this assurance that a licence would not be given to the fourth while all this is going on.

Senator P.F.C. Ozouf:

I think that I can say to the Assembly with some degree of knowledge that I would imagine that the J.C.R.A. ... I do not think that I have the powers to do so. Deputy Ryan, who is the mover of this proposition, is in a very curious situation because in fact he - and I wish to remind the Assembly - had responsibility for telecommunications matters under the Economic Development Committee's previous responsibilities and if anybody would have been giving directions... I inherited the situation. Mobile phone licences were issued in January and if there was concern about this issue then that would have been an issue which the previous Committee, delegated to Deputy Ryan, would have taken. Now, it appears that he has either done a 180-degree turn or vault, or a backward somersault or something. But certainly, here is the individual that had responsibility for telecommunications matters, who had the ability to invite the Economic Development Committee to give directions, which are narrowly on social and environmental matters, and he did not do so. I have not had an explanation as to why he has not done it... and I am not going to give way. The fact is that I do not believe that I do have the powers to instruct the J.C.R.A. not to give a further licence but that does not necessarily matter because it is going to be ultimately a matter for the Planning and Environment Department and the Planning and Environment Minister whether or not he is persuaded to allow more masts. He has given this Assembly an excellent address. I think he has given a comprehensive understanding of this issue and, for goodness sake, let us get back to the core issue as to whether or not we want to have an inquiry or not, and not whether or not we should ask the Scrutiny Panel whether they think we should have an inquiry and then go around in complete circles. Let us get on with the issue and decide whether or not to have a Committee of Inquiry or not and I urge Members to reject what is effectively a procedural delaying device, which I do not think is appropriate on this occasion.

Deputy P.J.D. Ryan:

May I make just a point of correction to the last speaker, Sir? It is covered in the report that in fact it was the Industries Committee that issued the instructions and the directions to the JCRA on delegation, not the previous EDC (Economic Development Committee), of which he was a member.

Senator P.F.C. Ozouf:

I simply need to correct that. It is the former Industries Committee that set up the J.C.R.A. It is over the previous Committee's watch that mobile telephony licences were effectively dealt with, and it is under his watch that mobile phone licenses with the J.C.R.A., not the previous Industries Committee. Let us be absolutely clear.

Senator F.H. Walker:

Could I just ask for a point of clarification, please? Is Senator Ozouf's interpretation correct, that the effect of Deputy Duhamel's proposal would be for Scrutiny to decide whether or not a Committee of Inquiry goes ahead or would it be... well, that is what I understood Senator Ozouf to say.

The Bailiff:

I do not think that is what Senator Ozouf said. I think Senator Ozouf was quite correct, that the effect of Deputy Duhamel's proposition is to ask the States to agree that Scrutiny Panels or one Scrutiny Panel should investigate the question of whether or not there should be a Committee of Inquiry and advise the States, which then has to decide whether or not there should be a Committee of Inquiry on the proposition of Deputy Ryan. Deputy Ryan's proposition does not go away if the States adopt the proposition of Deputy Duhamel.

Deputy P.V.F. Le Claire:

I am less certain about what I was going to say, I am afraid, Sir.

The Bailiff:

Well, you can sit down and think about it. [Laughter]

Deputy P.V.F. Le Claire:

Probably I would just take the opportunity to say I will give this one a miss, I think.

8.4.4 Senator M.E. Vibert:

I find this procedural intervention of the Chairman of the Scrutiny Chairmen Committee totally unhelpful. This proposition of Deputy Ryan's has been lodged for 3 weeks. If Scrutiny wished to look at it they could have commented. They could have let us know within those 3 weeks. To suddenly bob up while we are trying to have a debate on the substantive issue and to introduce what appears to be a delaying tactic is not doing Scrutiny any favours at all in trying to set it up to what it should be. We would have to ask ourselves: "What will be achieved by asking what appears to be 3 Scrutiny Panels to consider whether they wish to scrutinise this proposition or not?" If Scrutiny wish to look at the mobile phone issue, any one of the Panels are entitled to do so and they can do that. I believe this is a delaying tactic. I do not believe that it will prove anything. They will have to come back at the next States sitting, say whether they wish to scrutinise or not. I do not think that... all it will do is put off the real issue of whether there is a need for Jersey to investigate the health risks and environmental impact from mobile phone antennae and whether such an inquiry would achieve anything. Well, my view is that we should make a decision today. My answer to Deputy Duhamel is, no; it is pointless to refer it to see whether Scrutiny want to look at it or not, as Scrutiny can look at it if they wish. My answer - and I may speak in the debate or return to it - would be that it would be pointless to have a Committee of Inquiry because both Scrutiny and the Committee of Inquiry in this case will be incapable of achieving anything worthwhile, and just be further delay.

8.4.5 Senator J.L. Perchard:

The request by the President of the Chairmen's Panel to refer the proposition before us to Scrutiny is devious and it is regrettable. I believe the...

The Bailiff:

Senator, I am sorry but devious is not a word which you are...

Senator J.L. Perchard:

Mischievous, Sir, I do apologise.

The Bailiff:

Mischievous is all right.

Senator J.L. Perchard:

Mischievous and regrettable. I believe the Deputy is using a tool - which in fairness is available to him - for a use for which it was unintended. We have a perfectly reasonable proposition in front of us from Deputy Ryan that requires the States to make a decision. The proposal by the President of the Chairmen's Committee to defer making that decision is nothing but an unnecessary and diverting, delaying tactic. We have here the whole States Assembly, all of us, the opportunity to support or otherwise a Committee of Inquiry. Why should we advocate that responsibility to a few of my colleagues on Scrutiny?

8.4.6 Deputy J.A. Martin:

Now you have explained the exact position we are in and you agree with Senator Ozouf, I will not be supporting this proposition either. What I am concerned about - and I am quoting from the J.C.R.A. - and that is what the Deputy of Grouville is concerned about. This is a quote from the transcript of J.C.R.A. and it says: "I think I mentioned that there is no fourth operator at the moment, so we are talking about 3 operators in fixed and 3 operators in mobiles. There is a limit as to how much crystal ball gazing you can do. You have to look at the business case that is put to you and recognise that companies do not make the decision lightly to enter into new markets and make investments of this kind, so if we are presented [that is the J.C.R.A.] with a credible business plan and successful track record of competition elsewhere, we do not think it is appropriate for us to stand in the way of companies who want to come." Now there are directions from - it is now the Economic Minister - to do with social and environment policies but another quote from the J.C.R.A. says: "As far as I know, or certainly since I have been with the J.C.R.A., we have not received any directions on social policy but it is conceivable, for example, that this could happen." They go on to give a hypothetical view, Sir, on pensioners' lines. I think it is wide enough that the J.C.R.A. could be directed and I think that is where other people might not be persuaded now, after the Senator's speech, to support Deputy Duhamel because it is a delaying tactic but it is a delaying tactic without any certainty that no more masts or operators will be entering into the market. I would just say, Sir, at the moment, even if the proposition goes ahead, I very much doubt if I would support that, but that is where I stand on this proposal.

Senator P.F.C. Ozouf:

Would the Deputy give way before she finishes?

Deputy J.A. Martin:

I have finished, Sir, I think, if you would just let me sit down. [Laughter] As I do understand "give way" I will let you. Thank you.

Senator P.F.C. Ozouf:

Had she finished or was she going to...

The Bailiff:

I think the Deputy is very generously giving way to you before she sits down.

Senator P.F.C. Ozouf:

I thank the Deputy most warmly. I just want to say, Sir, that what I probably should have said is that in the issue of this fourth spectrum being allocated there is no... there has been, as I understand it, no contact with the company for some time in relation to an application. We would effectively be dealing with a number of months away and the company had their spectrum allocated a while ago.

There is no evidence that there is any appetite for them to take it up - and I am happy to consider giving directions for the avoidance of doubt - but there is no business plan, there is no application, there is no work. There is nothing going ahead, so therefore it is highly unlikely, in the foreseeable future, that...

Deputy J.A. Martin:

Sorry, Sir, would the Senator give way to me now? He has just said he would consider giving directions. In his previous speech he said he did not think he had the powers to give direction. Which is the right statement, Sir, please?

Senator P.F.C. Ozouf:

I am happy to enter into discussion with the J.C.R.A. My own interpretation of the powers is that I think that directions simply on environmental and social matters are not sufficiently robust to give directions. I can give them guidance but I can assure the Assembly that the fourth mobile phone operator is unlikely to happen for the foreseeable time and I will keep the Assembly and the Economic Affairs Scrutiny Panel apprised of exactly whether or not that changes. I do not think we need to be concerned about a fourth operator at this moment in time.

Deputy J.A. Martin:

I had finished my speech, thank you, Sir. Thank you for the clarification. It is very clear as mud.

8.4.7 Deputy R.G. Le Hérissier:

I would like to address the narrow issue because I was present at the Chair's Committee and was not in agreement with the notion. I changed my mind having heard the arguments. I do not think it is, Sir, as Senator Perchard said, some potentially underhanded move. I think it was a genuine move motivated by the fact that people are going to say: "Look, you are Scrutiny, it is your job to keep up to speed with all these emerging issues and really you should deal with it." I thought that was wrong, Sir, and I argued that in the Committee to no real effect. What I would be interested in hearing from the Members, Sir, because I thought partly it was wrong to tie the hands of a new group who would lead it, because Health obviously baulked large in this particular matter, and what I would like to hear, Sir, from a purely pragmatic point of view, are the views of the 3 Chairs who have been identified as to whether it should proceed. I think Scrutiny is absolutely up to the eyeballs with all sorts of reviews, has enormous pressures. There are department business plans going to land on their desk and I would much prefer the clean way of a Committee. So, I would like to hear, Sir, from the Panel Chairs in this regard.

Deputy J.A.N. Le Fondre of St. Lawrence:

It is really a point of clarification initially, I would say. Would it be reasonable to assume that in reporting on the proposition by Deputy Ryan, that Scrutiny will have to look at the issues behind that proposition in arriving at their decision, namely health, environment, *et cetera*? In other words, effectively one will get a review on the issues rather than just a view as to whether there should be a public inquiry on the issues. That was seeking a point of clarification from either yourself or from the chairman of the...

The Bailiff:

If you want it from the Chair, Deputy Duhamel will clearly deal with the matter when he replies. It seems to me that the Scrutiny Panels will obviously have to give some consideration as to whether or not there should be a Committee of Inquiry, and the extent to which they delve into the issues would be a matter for the Scrutiny Panels.

8.4.8 Deputy C.J. Scott Warren:

Well, I think there have been many opportunities in this House to be confused from States' Members and I say today is probably one of the best of these. I have been wavering because personally I do think that - despite the excellent speech given by the Minister of Planning - the public would welcome some form of inquiry, be it a Committee of Inquiry or a Scrutiny Panel inquiry. It seems a bit of a double process by going down the route that we are debating now of going to the Scrutiny Panel first because ultimately that would possibly be the aim if this proposition is successful. So, I think I would prefer to get to the main proposition where we can go ahead now, so I will not support the suggestion that we send this to Deputy Duhamel first.

8.4.9 Deputy G.P. Southern:

I hope I shall bring some clarity to the possibilities in front of us now in my speech. If I fail to, it will not be for lack of trying. We are asked to decide whether to refer to a Scrutiny Panel, or a Sub-Panel of Scrutiny, the decision to establish a Committee of Inquiry into the health risks associated with the emissions of the mobile network antennae and dishes. A large task, which has by and large not necessarily been completed as a result of many, many such inquiries into the health risks, the results of which are somewhat mixed and may still be regarded as open. So, inevitably, a Commission of Inquiry with that breadth and depth of reference is going to take a substantial amount of time. Is it appropriate to refer that to Scrutiny to assess whether that is a valid way forward or is there an alternative is perhaps worth considering because undoubtedly - despite what Deputy de Faye asserts - there is no doubt, I do not think, that this is a matter of intense public concern and matters of public concern are part of what Scrutiny has to and should be looking at. It is part of our remit. So, there is no doubt that on those terms - matters of public concern - it is entirely appropriate to refer this issue to a Scrutiny Panel. The question is, in what sense might a Scrutiny Panel of Sub-Panel provide something useful? In doing so - in considering whether that is appropriate - I think one has to turn to the report of April 2006 from the *Health Protection Public Health Services Report on Mobile Phones and Health*. At the back of that - in the conclusions and the recommendations - the report highlights the critical areas which are far less in scope than what is before us now - the health risk associated for the Committee of Inquiry - but nonetheless relevant to that public concern. I believe it might be appropriate that Scrutiny does take on this smaller field to address the issues of public concern. So, for example - I do not know what the page number is, it talks about annoyance - on the effects of base stations: "Annoyance or discomfort may not be pathological *per se* but if substantiated can affect the physical and mental well-being of a person and the resultant effect should be considered as a potential health hazard." In other words, there may be no direct harmful medical effect on your body but the worry that there might be - the lack of clarity - will cause mental stress and if there is a mast at the bottom of your garden you will or may start to worry about it and without doing your own research as to what the potential harm is, that worry will be with you for some time. That might be addressed. It says, later on, towards the end of the conclusions: "For those base station sites, the J.T. (Jersey Telecom) base station sites have not been subject to any Scrutiny process from a health perspective in comparison to internationally recognised standards, as mentioned above." Again, there is an issue here. Initially when J.T. was States' run it started putting up its own masts and it was not subject to the same conditions from Planning as currently exist. So, they have not been inspected and, in particular, they have not been tested. So, no one has taken measurements as to - it says in here: "What levels of radiation there actually are." We know what the international standards are and we know of previous research which has talked about the levels emitted in other stations, but no one has done the work on our stations to say what levels of radiation...

The Bailiff:

Deputy, can I ask you to come back to the proposition.

Deputy G.P. Southern:

Yes, Sir. I apologise, Sir, if I appear to be straying into the main debate but I will get into the conclusions and those are the things that I think are appropriate, which could be usefully considered by Scrutiny. I am on the debate. Yes, Sir, I shall endeavour to be as quick as I can.

The Bailiff:

I am not asking you to be ask quick as you can, I am asking you to come quickly back to the point.

Deputy G.P. Southern:

I believe I am still on the point. You may not appreciate it yet, Sir. So it goes on to say in the conclusions: "Currently there is little information available to the public and the government about the siting of base stations and their potential effect on the health of residence. This leads to suspicion and mistrust. [A clear issue; it is a smaller one than the wide one but one which needs addressing]. There is also a need to ensure that the current operator, J.T., who has not had any scrutiny of past installations, is also required to show compliance with the guidelines." They come to the recommendations and the recommendations are absolutely germane, much more compact, which are... and absolutely appropriate for Scrutiny to consider whether this type of remit is appropriate and can be done in a shorter timescale: "All base stations are subject to the scrutiny of Planning Implications Process to ensure compliance with internationally agreed standards. That there should be improved consultation by the network operator with the community prior to the selection of a site for a base station. Emissions from base stations must, as a minimum, meet the guidelines for public exposure. However, the State should seek to ensure that network operators voluntarily agree to comply with levels lower than international guidelines. Measurement of actual levels of radiation from base stations must be undertaken following commissioning to show compliance and be a condition of the planning permit. Mobile network operators deliver with the States of Jersey a database of information available to the public on radio base stations, and there is a cross-industry agreement to the sharing of sites and masts or radio base stations wherever possible." Now, it is entirely appropriate that Scrutiny considers that much tighter remit, whether that would suffice to address the public concerns being expressed at the moment and whether they can deliver such a report in an appropriate timescale to satisfy the needs of inquiry. I think that is an entirely appropriate thing to refer to Scrutiny for its consideration and that consideration could be done by the next session, to say yes or no; we have decided that we could absolutely appropriately address this much smaller remit in order to address public concerns and would recommend that as a way forward. Perhaps that might be an outcome. So, this is not a time-wasting exercise, it is an appropriate reference to see if we can - without going to a public inquiry, which will take for ever and may never be conclusive anyway - address the tighter remit of the concerns of the Jersey public at this point in time, now, and whether Scrutiny could deliver that for you.

Deputy C.H. Egré of St. Peter:

Point of clarification, if I may, from the Health Minister. We have been given this document this morning. We have all realised that it is dated 12th April 2006. These are recommendations that have been put forward to him, I assume, and I would ask whether any of those recommendations have been dealt with already?

Senator S. Syvret:

I think this document was produced when this issue was first raised at the Assembly.

The Bailiff:

Senator, I am sorry, I was about to call the Deputy of Grouville.

Senator S. Syvret:

I was just asked a question.

The Bailiff:

I am sorry, you are responding to the...

Senator S. Syvret:

Point of clarification.

The Bailiff:

I do not think the Minister had spoken yet, had he? If the Minister wishes to speak he can do in due course but...

Deputy of St. Peter:

I am trying to get a clarification on reports that have been put in front of us by the Minister, Sir.

Senator S. Syvret:

I can address these issues when I speak.

The Bailiff:

You will deal with it when you speak, yes.

8.4.10 Deputy of Grouville:

I am quite glad that Deputy Ryan has at least had the courage this morning to accept the offer of Scrutiny, to have this issue scrutinised. To my mind it is absolutely the topic that the Scrutiny process should be looking at. We have set up these Scrutiny Panels and they have been allocated appropriate budgets or a budget and it is up to them now to get on and do the job. I would like Deputy Ryan, if he is allowed to speak again in this part of the debate, to highlight exactly how much his Committee of Inquiry is going to cost, because that obviously is an issue for this Assembly, or should be. I welcome Scrutiny's intervention in suggesting that they look at it and I would very much hope that they would come back in a fortnight's time and confirm that each one of them is prepared to do their bit. I take on board what Deputy Southern has said; the terms of reference can be written in such a way that they address the concerns of the people of Jersey, because while none of us are scientists here we have no doubt read many, many reports that have been put in front of us. It is not just whether there is or is not a health risk but to my mind it is the perceived health risk that we should be concerned about, and certainly the people of Jersey are concerned about. We have had the police statistics for the evening economy and how we know that people feel unsafe walking in town. However, the statistics do not stack-up to show that there is a risk. However, the community to my mind needs comfort and seeing a bobby on the beat, just one bobby on the beat can comfort people, and I think this Assembly should be concerned with the way the community feels, and they have concerns. I have heard what Senator Cohen has said. In his opinion there are no health risks and one's T.V. or radio emits far worse but I would suggest that we have a choice as to whether we turn on the electrical equipment. We do not necessarily have a choice as to if we have a phone mast placed in front of our home. So I would like to see this move on. I do not know whether we have to vote on whether it goes to Scrutiny but I would like to see this concluded and Scrutiny get on with the job that they were set up to do.

The Bailiff:

May I remind Members that the purpose of referring the matter to Scrutiny is to scrutinise the proposition. That is to say, whether or not there should be a Committee of Inquiry. It is not scrutinising the underlying issues.

8.4.11 Senator P.F. Routier:

I am going to try and be as focussed as I possibly can on this particular part of the proposition. Before doing that though I think I really should address the issue which Deputy Southern mentioned about the J.T. current base station. Members will recall that I was the President of Jersey Telecom during a time when we were probably establishing the network and I can assure Members that the base stations that have been installed around the Island do meet and are well below the international guidelines which have been followed. I do worry that there have been a couple of comments. Just now the previous speaker talked about the perceived concerns that people have and it is all about perception and people scare-mongering among the community which is causing the worry that there is among the community...

The Bailiff:

Senator, I am sorry to interrupt. I should probably have interrupted the Deputy of Grouville but we are not debating at the moment the substantive matter of Deputy Ryan's proposition.

Senator P.F. Routier:

I do recognise that, Sir, and I do apologise if I did stray a bit further but I was just picking-up on the point which Deputy Southern made which needed addressing because he gave the impression that the J.T. masts were not within international guidelines. I will not be supporting this proposition to refer it to Scrutiny Panel. I believe that it is a time-wasting measure and I will be happy to debate the substantive proposition later.

8.4.12 Senator S. Syvret:

Just briefly on the narrow question that is in front of us at the moment. I have been in the Assembly about 15 years now and I have seen us get ourselves into these kinds of procedural messes on quite a few occasions. I am afraid this is one of those kinds of episodes that does not really cast the Assembly in a particularly good light. It seems to me that if there was legitimate issue here - and there may well be - as to whether we needed to establish a Committee of Inquiry as opposed to having the Scrutiny Panels look at it the time and manner of getting that issue addressed was for perhaps the Chairman himself to put an amendment to Deputy Ryan's proposal, to alter it from a Committee of Inquiry into a reference to the Scrutiny Panels and that would have been a far simpler mechanism than the current debate we are having at the moment. I think the Scrutiny Panels have simply missed the boat in this. That should have been the procedure they adopted as soon as Deputy Ryan's proposition was lodged. They did not do that and I really do not think, frankly, that we are going to serve the issues or the public particularly well by a great deal more of this kind of confused round-the-houses debate. I think we either want a Committee of Inquiry or we do not and I think that is what we ought to focus on. I really do not think there is much point in referring it to Scrutiny now to decide whether they want to scrutinise it or it should be a Committee of Inquiry because, as I said previously, Sir, the Scrutiny Panels can in any event, if they so choose, decide they want to scrutinise the issue. They can do that anyway, so a lot of the time we are putting into this current debate is, frankly, a waste of time.

8.4.13 Senator F.H. Walker:

Senator Syvret made a very similar speech indeed to that that I was going to make, so I will not merely repeat it but can I just ask the question: "What on earth are we doing here?" If there is public concern, real or perceived - and I do not doubt that there is - what the public want from us is a decision. Is there going to be a Committee of Inquiry or not and they want that decision today, now. They do not want us to say: "Let us take it in a few weeks time, whether or not to have a Committee of Inquiry." The public want a decision from us. This is a time-wasting administrative nightmare and we should comprehensively reject it and get on with the main proposition.

8.4.14 Deputy P.V.F. Le Claire:

I am certain about what I am going to say now, after quite some time. I think that what is occurring is not at all helpful for anybody's position, whether it be the concerned individual in the street, or the concerned business that is operating, or the concerned would-be competitor, or the concerned representative in the Assembly today. I think that the only real way of addressing the issues that have been outlined - as to whether or not we should refer this to Scrutiny and whether or not Scrutiny could have a view on these matters - would be if Deputy Ryan would be to withdraw his proposition on the grounds that in withdrawing his proposition Scrutiny would not be considering whether or not the proposition needed to be considered, but Scrutiny would be afforded the opportunity, if he withdrew it, of taking it upon themselves the issues and looking at those issues urgently, rather than having us decide yes or no on a Committee of Inquiry, which in the roundabout terms - given the evidence that we have received yesterday in respect of other matters, including economic issues, which are not involved with this proposition - is an economic factor now. So, I believe there is an issue for Scrutiny to look at these things rapidly and as the J.C.R.A. letter provided to Members by Senator Ozouf yesterday says: "Airtel would be prevented at least for a substantial period from entering the Jersey telecommunications market if a Committee of Inquiry was accepted." So, they will be delayed even more if the Committee of Inquiry has to be considered by the Scrutiny Panels. The Scrutiny Panel Chairman and the Scrutiny Panel members, or some of them, may have a view that there were issues here to be examined but none of those issues can be examined properly if the Committee of Inquiry is the issue and I would put it to Members, Sir, that the Committee of Inquiry is not the issue. The Committee of Inquiry is a proposition on the issues and I believe the best way forward would be for Deputy Ryan to, with permission from the Assembly, withdraw his proposition and allow Scrutiny to come forward, if they so choose to, with the scrutiny of these issues, because otherwise we are going to be here for another 2 hours and at the end of the day - 14 hours - and at the end of the day a Committee of Inquiry will be decided upon and that will not do anybody's best interests any good. We will not address the issues because some of the issues, as I pointed out, are economic and they do not contain those terms of reference within this Committee of Inquiry. So I urge Deputy Ryan to withdraw his proposition and allow Scrutiny, in its own independent right - which he is Chairman of - to look at these issues, including the economic practise.

8.4.15 Deputy G.C.L. Baudains:

Yes, what a mess we are in. If the proposition was one that Scrutiny would evaluate the risk or otherwise instead of a Committee of Inquiry I would support it, but it appears, as far as I can understand the issue, that we are going to have an inquiry into an inquiry into... I really think we need to get a vote as soon as possible, Sir.

8.4.16 Deputy of St. Martin:

I will respond to Deputy de Faye earlier, to say he has not been aware of any concerns about the masts. I do not know where he is because I certainly have, as a Parish Deputy; I have had people on to me about them. In fact, I have got one parishioner - and the Connétable knows full well, - who has a mast just at the end of his garden. It is probably no further from where I am to the flag to my right and these are the concerns people have, and what we should be doing is addressing those concerns. Unfortunately, although there have been these concerns, we have people like Deputy de Faye who feel that there are not any concerns around and I think it should be addressed and what we have waited for... I will sit down.

8.4.17 Deputy G.W.J. de Faye:

What I would like to impress on Members like the Deputy of St. Martin, is that one way of addressing concerns of the parishioners and constituents is to reassure them that the mobile phone mast at the bottom of their garden poses no threat whatsoever. The unfortunate reality is that politicians tend to take on board issues and run the flag up on them and run them around. This

simply encourages people to believe that there is a problem. I really do urge the Deputy of St. Martin that if he was to do fair by his parishioners he should give them total assurances that the mobile phone masts that are near their houses will cost them no ill effect whatsoever.

Deputy of St. Martin:

I am grateful to Deputy de Faye. I wish I was in the position to do so, but I am not. I am a States' Member. I am not in that position to give that assurance. What I have done, I have done a fair bit of research and, indeed, what I was pleased to see was indeed the report by the Health Protection Public Health Services...

The Bailiff:

Deputy...

Deputy of St. Martin:

We are trying to get there, Sir, but I think it is important.

The Bailiff:

We are debating the question of whether this debate should be suspended so that it goes to Scrutiny to report on the proposition. That is the issue before the Assembly at the moment.

Deputy of St. Martin:

We have a system in place now for government to take the lead. We have heard nothing at all from the States' Members until today in response to Deputy Ryan's proposition. What we have now is an opportunity to clarify the situation; get away from the concerns. There is this perception outside, out in the Parishes; indeed throughout the Island. What I would ask Members to do is to support what we are going to have. We have got a proposition before us now to refer this to the Scrutiny Panels for them to come back. I can assure you now that certainly the Health Panel, what is called the fifth panel - the Health, Social Services and the Housing Panel - are coming with a clean sheet. Surely they will be in a position to do that but that would be for them to decide. What I would ask in the meantime is that we do support Deputy Duhamel's proposition.

Deputy P.V.F. Le Claire:

Deputy Ryan looked like he might be willing to move to accept my recommendation, Sir. Is he willing to do so?

The Bailiff:

Well, the Assembly has to decide on Deputy Duhamel's proposition first.

8.4.18 Deputy A.J.H. Maclean of St. Helier:

I will be very brief. I was just going to suggest that we move directly towards a vote on this. It seems to have been going on for some time and I do not know if I can invoke the guillotine on this.

The Bailiff:

I think the Standing Orders now require you to give half an hour's notice of your intention to move...

Deputy A.J.H. Maclean:

In that case, Sir, it is a bit pointless.

8.4.19 Senator W. Kinnard:

I was just going to suggest that I think we are getting deeper and deeper into a quagmire and I do not think that people are getting any clarity. I am going to suggest, Sir, that perhaps it might be a

good idea if we were to break early for lunch, get the various protagonists together so we have some clear direction as to what we are going forward with, because I am not clear that anybody in this room knows which way we ought to be going now, after this very muddled debate and I think quite frankly it is an embarrassing spectacle and I would rather have it off piste.

Deputy C.J. Scott Warren:

Could I ask for some clarification, this is linked with what we are supposed to be voting on now. Would Deputy Ryan be allowed to change the words: “Committee of Inquiry” to: “A Scrutiny Panel”? If this is rejected will it mean he cannot have a Scrutiny Panel if his proposition is successful?

The Bailiff:

No. It is too late to change the proposition.

Deputy G.C.L. Baudains:

May I make a proposition that we move on to the next item, Sir.

The Bailiff:

I have a proposition from Deputy Baudains, I am not clear if it is a serious proposition. Is it a serious proposition? I think I was about to call upon Deputy Duhamel to reply then the Assembly can vote on the matter.

Deputy G.C.L. Baudains:

In that case I withdraw, Sir. It seemed to me we were just going on for ever around and around in circles.

The Bailiff:

I hope not, Deputy, no.

Deputy P.V.F. Le Claire:

On a point of order, Sir. Although you have just ruled that we have to decide upon Deputy Duhamel’s proposition, surely if Deputy Ryan was to indicate that he would be willing to withdraw his proposition, likewise Deputy Duhamel could withdraw his and we could all move forward, Sir.

Deputy P.J.D. Ryan:

Sir, may I seek some clarification from the Chair? It seems to me that I hold the key to maybe drawing this... perhaps, I do not know; but let me ask for clarification. Am I right in thinking that if the Assembly votes in favour of Deputy Duhamel’s proposal to refer this to Scrutiny, that the relevant Scrutiny Chairman would have to decide on, as it stands at the moment, whether or not a Committee of Inquiry was suitable? That is point one. If at that point, as you have already confirmed, the Scrutiny Panels would have to look to some degree into the substantive issues that lie beneath this - and they would presumably make a decision on that basis - am I right in thinking that with the Assembly’s approval therefore, the process at that point would be for me to withdraw my proposition to allow the Scrutiny Panels to continue? Is that the situation?

The Bailiff:

No. This is a new procedure, and Members may be forgiven for being uncertain as to what it means. It is a new procedure which allows a proposition to be interrupted during the debate in order that the Scrutiny Panels may look at the proposition and hopefully enhance the debate on the proposition by giving their views at a later stage. The question for Members is quite simple: should the debate be suspended and should the Scrutiny Panel Chairmen be invited to consider whether

they wish to scrutinise the proposition, or whether or not a Committee of Inquiry should be established.

Senator S. Syvret:

Sir, could I just offer some advice to the Assembly. This has now descended into I think probably the most embarrassing procedural fiasco I have ever witnessed in 15 years and I really do think the best thing to do would just be to move to a vote on this particular proposition without further prevarication. Frankly, it has taken an awful lot to make me move my opinion on this but I am starting to think I might start supporting guillotine. **[Laughter]**

The Bailiff:

Well, I call upon Deputy Duhamel to reply.

8.4.20 Deputy R.C. Duhamel:

When the States in their wisdom, set up Standing Orders, it was with the interest of the public in mind that we should arrive for debates with an ability to debate things with all the information at our fingertips. We have had various - in my view - unhelpful comments that this is a procedural device, that it is devious - which was unparliamentary - or mischievous or whatever, which was to the same effect, but clearly it is not. There were also suggestions, perhaps not voiced but implied, that this was the President of the Chairmen's Committee acting alone. The proposition from Deputy Ryan was lodged in this House on 2nd November. On 13th November, which was the first available opportunity for the Chairmen's Committee to meet... and I remind Members that the Chairmen's Committee is a group of Chairmen of the individual Panels and that we do sit to decide whether or not there are items across the interest of the individual Panels for which they have been set up, and if there are overlaps or if there are any issues that need to be addressed by more than one Panel how they should be best assessed. On the meeting of 13th November, as we heard from Deputy Le Hérissier, we did discuss the issue as to whether or not there was merit in Deputy Ryan's proposition for going ahead with a Committee of Inquiry, or indeed whether or not there were other implications and suggestions, as was suggested and outlined by Deputy Southern, that there were perhaps better ways of dealing with this particular issue, bearing in mind that there is a substantial public interest in it, which may or may not be misplaced, but that is part of the reason for calling for an inquiry, or indeed Scrutiny to address those issues. We took the consensus view that it would be better to invoke Standing Order 79 to suspend the debate and to ask, in particular, the new Panel Chairman - and we were not aware of who it was going to be - whether or not the new Panel should have the opportunity of looking into the health interests or effects, or whatever, of this particular issue. This House has now decided that the new Chair of the Health, Social Security and Housing Panel is Deputy Breckon. In a fortnight's time we are going to populate his new Panel with Members from this House and indeed he has already made a few decisions as to whether or not he thinks it is advisable for some issues that are up for discussion to be referred to his Panel. This is where, Sir, I think this is an issue which has to be addressed. The House must not confuse itself and although we have had comments - notably from Deputy Le Hérissier - that it would be wrong to tie the hands of 3 particular Panels, this House is not doing that. Standing Order 79 states, and I have to repeat it in part, Sir: "That if the House so wishes there is an opportunity for a Panel or Panels to come forward" as indeed you referred to, Sir, in your comments before I stood up; to supply the House with useful, pertinent information in order to achieve one of the reasons that Scrutiny Panels were set up in the very beginning - to try to add value to any decisions that are going to be taken either in this House or independently. It is with that in mind, Sir, that I am doing my duty if you like, and I have asked for the House to consider the suspension of this debate in order to give the opportunity to those 3 Panels who do have an interest, as mentioned by the comments from the Council of Ministers, to determine whether or not they think that there is an opportunity for them to contribute towards the decision that will be taken at a slightly later stage. It

may only be delayed by 2 weeks, it may be delayed by 4 weeks, we do not know as yet. We have to wait, if we go ahead and decide that this is the way we want to act, until the 3 Panel Chairs come back and indicate not only whether they do have an intention to look at the particular issues which their Panels involve, but the terms of reference that they would wish to look at those issues with. I think that Scrutiny is good government, it is hugely useful to government and some of the disparaging remarks such as: “Using Scrutiny to shuffle things under the carpet” or: “Bobbing up and down with procedural delaying tactics”, quite clearly, Sir, those remarks should not be made in the Chamber because we are not proposing anything more than giving the Scrutiny Panels an opportunity in a fortnight’s time to come forward and decide whether or not they think that a Committee of Inquiry, based on the comments from the Council of Ministers, is justified. Whether or not the information or the grounds for rejecting or agreeing with the Committee of Inquiry are sufficient, and whether or not there are items of information that this House really needs to have in its hands before it can adequately discharge the central issue. I make the proposition, Sir, and I ask for the appel.

The Bailiff:

Very well. I ask any Member in the precincts to return to his or her seat if he or she wishes to vote. I remind Members that they are voting on the proposition of Deputy Duhamel that the debate on the proposition of Deputy Ryan be suspended, and that the relevant Scrutiny Panels - and there are 3 of them - consider having the proposition referred to them. I ask the Greffier to open the voting.

POUR: 15

Senator B.E. Shenton
 Connétable of St. Mary
 Connétable of St. Lawrence
 Deputy R.C. Duhamel (S)
 Deputy A. Breckon (S)
 Deputy of St. Martin
 Deputy G.P. Southern (H)
 Deputy S.C. Ferguson (B)
 Deputy of St. Ouen
 Deputy of Grouville
 Deputy P.V.F. Le Claire (H)
 Deputy J.A.N. Le Fondré (L)
 Deputy D.W. Mezbourian (L)
 Deputy S. Pitman (H)
 Deputy I.J. Gorst (C)

CONTRE: 31

Senator S. Syvret
 Senator L. Norman
 Senator F.H. Walker
 Senator W. Kinnard
 Senator P.F. Routier
 Senator M.E. Vibert
 Senator P.F.C. Ozouf
 Senator F.E. Cohen
 Senator J.L. Perchard
 Connétable of St. Ouen
 Connétable of St. Saviour
 Connétable of St. Peter
 Connétable of St. Clement
 Connétable of St. Helier
 Connétable of St. John
 Connétable of St. Brelade
 Connétable of St. Martin
 Deputy J.J. Huet (H)
 Deputy G.C.L. Baudains (C)
 Deputy P.N. Troy (B)
 Deputy C.J. Scott Warren (S)
 Deputy R.G. Le Hérisserie (S)
 Deputy J.B. Fox (H)
 Deputy J.A. Martin (H)
 Deputy of St. Peter
 Deputy J.A. Hilton (H)
 Deputy G.W.J. de Faye (H)
 Deputy of Trinity
 Deputy S.S.P.A. Power (B)
 Deputy A.J.H. Maclean (H)

ABSTAIN: 1

Deputy P.J.D. Ryan (H)

Deputy K.C. Lewis (S)

Senator S. Syvret:

Before proposing the adjournment could I just ask whether Deputy Ryan is still possibly prepared to think about withdrawing this proposition, in the knowledge that the Scrutiny Panels can look at the whole subject if they wish to, in any event?

Deputy P.J.D. Ryan:

Rather than withdraw it, Sir, is it possible to retime this debate to continue at a later date?

The Bailiff:

No. Why?

Deputy P.J.D. Ryan:

Because I am not sure that the Scrutiny Panels are indeed going to take it on. I have no way of knowing that.

The Bailiff:

I think the answer is no.

Senator S. Syvret:

Is it not procedurally the case that if the Deputy has given leave to the Assembly to withdraw his proposition now if action is not taken by the Scrutiny Panels to his satisfaction he would be at liberty to re-lodge and bring it back at a future date?

The Bailiff:

That, of course, is perfectly true but the Deputy is perfectly entitled to seek a decision on his proposition if he wishes to have one.

Senator S. Syvret:

Indeed he is, Sir, nobody is disputing that but the fact is he could withdraw the proposition now, see what Scrutiny do and if he is unsatisfied, bring it back in the future.

The Bailiff:

Senator Syvret is quite right, I am not putting any pressure on you in the slightest. Any Member has the right to have his proposition taken to its proper conclusion and to have a vote upon it but the procedural position is that if you have the leave of the Assembly to withdraw your proposition, it would then be open to the Scrutiny Panels - off their own bats - to consider the matter and to act accordingly and if they did not, you would be at liberty to come back with a further proposition in the New Year. Do you wish to consider it over the adjournment?

Deputy P.J.D. Ryan:

May I, please?

8.4.21 Senator L. Norman:

Sir, at the risk of being accused of using the procedural device, it is quite clear that the proposer of this proposition is unsure as to whether it would be wise to continue with this debate at this stage but he clearly is unwilling to withdraw it for obvious reasons, as this is a matter of some importance to him. I would like to suggest, Sir, that you would allow us, and if it was seconded then I propose that we move on to the next item of business. This would mean that the proposition does not fall, the proposition is still on the table and can be brought back to the States at a time convenient to the

Deputy, when he is clearer in his mind. I would just like to test the feeling of the House before I make that proposition to you, Sir.

The Bailiff:

Before you make the proposition, may I recommend to Members that we now adjourn so that these matters can be considered over the adjournment and if you wish, Senator, to move your proposition in due course you may do so.

8.4.22 Deputy P.N. Troy of St. Brelade:

Could I not ask that the Scrutiny Committees give this some consideration over the lunch hour, Sir **[Laughter]** and perhaps come back to the Assembly with maybe something a little bit more concrete at the beginning of the session.

LUNCHTIME ADJOURNMENT PROPOSED

Senator S. Syvret:

I am happy to propose the adjournment. Yes, I will just leave it at that.

The Bailiff:

Members agree to adjourn until 2.15 p.m.

LUNCHTIME ADJOURNMENT

PUBLIC BUSINESS (continued...)

8. Committee of Inquiry: Mobile Telecommunications (P.144/2006) (continued)

The Bailiff:

Now the debate continues on the proposition of Deputy Ryan and I call Deputy Breckon.

8.5 Deputy A. Breckon:

I rise as Chairman of the Panel that we had the election for yesterday and, as a result of being the only Member, the consultation process is very effective at the moment. **[Laughter]** But just over 24 hours ago I was not the Chairman, and 24 hours before that I did not attend the Chairman's Panel that was held as well. So, I have come to this with probably 2 hands behind my back but as somebody said: "We are where we are." People have talked about the instruments radiating stress, I think I may be able to do some of that myself, Sir, with some of the conversations that have been going on in the corridors but at the moment, Sir, I should say this is part of the advertisement, I am seeking Panel members and perhaps - and I say perhaps - I did make an appeal to Members and perhaps positions on this Panel are starting to look less attractive as I speak. Time will tell. As the ink was drying yesterday, Sir, on the ballot papers, Deputy Ryan was actively seeking me out when the result was announced. He was particularly kind, he did say: "Perhaps we should have a chat" and he even made me a cup of tea, Sir. So, that was all rather nice and I thought: "Hm, this is interesting, it is very nice being the Chairman of a Panel" and they say there is no such thing as a free lunch, and in the case of Scrutiny it is a free cup of tea I would assume. Anyway, also last night, Sir, following the adjournment a number of people did meet and there was a certain bonding, should I say, of Chairman familiarity and perhaps a little arm-wrestling indeed. As a result of that, Sir, I find myself between a rock and a hard place in that if I accept this as being with the House's agreement referred to, this Scrutiny Panel as being the lead, then it is subject to other things and the other things, Sir, would be the agreement of the Panel when it is formed, which will be in 13 day's time. Also, as to terms of reference, because others have indicated that there might be other things that perhaps could come into the equation. The agreement of the Chairmen's Committee, I would think that would be a possibility, bearing in mind the views that have been expressed earlier today,

and also the funding. With that, Sir, if I gave that assurance to the House that I would pursue that along those lines and accept that the Scrutiny Panel take lead responsibility for that, and with that, Sir, if I could ask if Deputy Ryan, with that assurance, would withdraw his proposition and for that, Sir, I would recommend that he indeed did Chair the sub-panel as a reward for his endeavour **[Laughter]** in bringing this to the House. If he would care to respond to that, Sir, I would hope that the House could agree to that and we can move on positively. I am not sure exactly with the planning issues but it then removes some of the time factors that would have been suggested by the reference of Deputy Duhamel. I would not wish to frustrate anybody who was seeking planning permission but there would be some time involved but it does take perhaps some heat off the situation.

The Bailiff:

May I just be clear, your Scrutiny Panel - speaking unanimously at this stage, Deputy - is willing to take on the task in principle of scrutinising this particular issue and you are inviting Deputy Ryan on that basis, to withdraw his proposition?

Deputy A. Breckon:

To the provisos that I made, Sir. Other people have to make decisions to make that happen.

Senator F.E. Cohen:

Sir, could I have clarification on where that would leave me because I am in the very difficult position of having to continue making decisions.

The Bailiff:

The effect of that, it seems to me, is quite clear and that is that there is no moratorium. The effect of that is that the Scrutiny Panel conducts its scrutiny but there is no moratorium and the Minister for Planning and Environment has a legal duty to consider matters in accordance with his legal duty.

Deputy G.W.J. de Faye:

Sir, do you mind if I just raise a point of order in the sense of clarifying where we are? Are we at this stage debating now the substantive motion, or are we debating whether Deputy Ryan is in a position to withdraw his proposition or not?

The Bailiff:

You have pre-empted me, Deputy. I was just looking at Deputy Ryan to ask him whether he was willing to respond to the invitation of Deputy Breckon to seek the leave of the Assembly to withdraw his proposition. Deputy Ryan.

8.5.1 Deputy P.J.D. Ryan:

I am aware - and I am grateful to Deputy Breckon - that it was not necessarily on his agenda to carry out this review, it is early days for him. Sometimes though the public's need overrides that and things take over, as I am sure Members might remember in my own case from earlier on in the year with the amendments to the Sexual Offences Act which I had to take on very quickly. I have also received over the lunch hour some assurances from the Minister along the lines that, as you say, Sir, there is no legal obligation for there to be a moratorium but I have received certain assurances that some commonsense in the short interim period will be applied, let us just leave it there. I think that is enough of an assurance for me and on that basis, Sir, with the leave of the Assembly, I am prepared to withdraw my proposition.

The Bailiff:

Is the Assembly prepared to give its leave to Deputy Ryan to withdraw this proposition?
[Laughter]

8.5.2 Deputy G.W.J. de Faye:

Could I debate that, Sir? I believe that we should decide this issue today one way or the other. It seems to me there is very little difference between deciding to have a Committee of Inquiry or deciding to have Scrutiny of a subject - it is all much of the same thing. What really concerns me is in fact what is going on in Scrutiny. We have had an extraordinary spectacle this morning. I understand that there was a meeting of the Chairmen of Scrutiny Panels on 13th November, there was another meeting of the same personnel this Monday and why on earth - because those meetings included, I can only assume, Deputy Ryan and Deputy Duhamel - why on earth was Deputy Ryan not persuaded to withdraw his motion earlier? And why was it left for the Chairman of the Chairmen's Panel to institute a procedural motion on the day of the debate? I have to ask, what exactly is going on here because this seems to be a very, very extraordinary way of conducting so called Scrutiny and, by goodness, Ministerial government has come in for an awful lot of stick since it began but right now I really firmly believe the spotlight should be turned on what the Scrutiny side is doing. I have to say to the House quite bluntly that I think there is a subtext operating here. I cannot put my finger on what exactly it is all about but I would hazard a guess that this has something to do with Jersey Telecom; the potential for its sell-off and the opportunity to instigate various delaying tactics to that process. Now, I do not ask Members to believe me, I do not suggest that that is the truth.

The Bailiff:

Deputy, I am sorry to interrupt you and I know there are things you wish to get off your chest, but may I remind you that the Assembly is considering at the moment whether Deputy Ryan should be given leave to withdraw his proposition. I want you to consider whether you really wish to open-up a new debate on that issue. It is entirely a matter for Members of course but I already see red lights flashing.

Deputy G.W.J. de Faye:

Forgive me but I think this is part of the issue and I think that the question of withdrawing at this stage appears to be all part of some strange procedure just to postpone matters. I am simply saying to the House there is no need to postpone this issue; either we are going to have a Committee of Inquiry or we are not going to have a Committee of Inquiry. If there is a huge public concern out here it is whether this House is capable of taking sensible decisions and we should be able to take sensible decisions, we should take this decision today.

Deputy J.A. Martin:

I think it is more of a point of clarification on whether I support Deputy Ryan fully in this proposition. You, Sir, directed the Planning Minister that under the Law he would have to carry on his planning duties as the Law states. I fully accept that but there was inference from Deputy Ryan that there has been some cosy chat across the lunch hour that there will be some sort of commonsense, I quote, approach, Sir, as to outstanding applications. Now I think that is even a worse position than we are in now. Whether or not this debate goes ahead, I have not made my mind up which way I will go, but I want to know what this commonsense cosy chat with Deputy Ryan has taken place, and where or does he - and I presume he will have to - proceed with his Ministerial duties under the Law and I would just like this clarified so everyone knows what proposition they are pulling and where the planning permission stands.

Senator P.F.C. Ozouf:

Sir, point of order, just because I am unclear, are you inviting the Assembly to vote on whether or not Deputy Ryan should have leave to withdraw his proposition or are you inviting, I am not exactly sure, could you explain?

The Bailiff:

Yes. Ordinarily speaking Members are only too willing to allow a Member to withdraw [Laughter] a proposition and one does not need to put the matter formally to the vote but technically this is a proposition from Deputy Ryan seeking the leave of the Assembly to withdraw his proposition. So, it will be put to the vote if Members wish.

Senator F.E. Cohen:

Sir, I am in a very difficult, very unclear position. A large number of Islanders are concerned about health issues in relation to masts. I, as you know, believe that they are not justified in those concerns but I do not think my stand on this is going to convince them. The purpose of today's debate was to end up in a position where the House agreed some mechanism by which Islanders would feel that their concerns had a fair and independent hearing, and from all the discussions I have heard we seem to be far from that. I understand that my obligations as Planning Minister are to carry out and to determine applications within a reasonable time period. Within that context, a couple of weeks either way will not make too much difference, and I would like to know from the Chairman of the Scrutiny Panel just how long he thinks he is going to take to complete his work, so that I would be able to determine whether it is possible to delay applications for a few weeks. That would mean that applications would continue to be processed but I would pile them up waiting to determine them but I can only do that if it is just a few weeks. Otherwise I have to determine based on the information I have at the moment and that very clearly is that there is not any risk.

8.5.3 Deputy G.P. Southern:

I too share the reservations of Deputy Martin about ending up in a least clear position possible, and without wanting to pre-empt the words of the Chair of the Social Affairs Committee Panel behind me, I can assure him that any inquiry worth its salt will take more than a few weeks, more than a couple of weeks. To do anything halfway decent which would allay fears takes much longer than that, so I believe I am minded not to give permission to the Member to withdraw his proposition. I think the best clarity is to pursue this to its, if necessary, bitter end and decide it is either a Committee of Inquiry or it is not. That way at least we will have clarity, and the key thing in there is I think, part (b) of this proposition, which says: "To suspend consideration". Key to the whole thing about inquiry, in whatever shape or form, is suspension of the activity that is being inquired into, and we can only get that or not get that by going to the vote. So I would vote against the withdrawal of this proposition. Let us pursue it to the end and let us vote on it and let us be clear where we are going.

8.5.4 Deputy G.C.L. Baudains:

In fact, I am minded to support the previous speaker's position. I am considering the fact that the proliferation of masts is most probably a consequence of competition that we may not have foreseen, and I would like to think that the Scrutiny Panel would look at all the items in the proposition. I do not know that they are going to do that, because I have not seen the terms of reference, but part (b) of course is the request would fall were we to allow this proposition to be withdrawn. The whole episode to me has been completely untidy. I would have preferred that Scrutiny might have come forward earlier though I understand there are reasons why it probably would have found that difficult to do. So, as Deputy Breckon has said, he is between a rock and a hard place, so are other Members in this House as to which is the best way to proceed. I would prefer personally a Scrutiny Panel to look at this but then I see there are substantial disadvantages to not proceeding with the Committee of Inquiry. At the moment I am minded to disallow Deputy Ryan to withdraw it.

The Bailiff

May I just say, from the chair, procedurally where I think the Assembly is at the moment. The Assembly has rejected the proposition of Deputy Duhamel that Scrutiny should be involved in the sense of Standing Order 70 or 72. What has been put to the Assembly at the moment is a proposition from Deputy Ryan that he will withdraw his proposal for the appointment of a Committee of Inquiry, on the basis of the undertaking from the Chairman of the new Scrutiny Panel that, subject to the views of others yet to be appointed, he will conduct an inquiry into the underlying matters which would otherwise be the subject of inquiry by a Committee of Inquiry. Now, if Members agree to allow Deputy Ryan to withdraw his proposition it is absolutely clear that the *status quo* continues. That is to say, the Minister for Planning and Environment is under a legal duty to consider and reach decisions on applications which are pending. Now what is important for Members to understand, I think, is that even if a Committee of Inquiry is established the legal duty of the Minister for Planning and Environment remains exactly the same. The opposition to establish a Committee of Inquiry is one which includes a request to the Minister for Planning, and the Minister can take that request into account but he is still bound by his legal duty, and if Members think that it would be open to the Minister to put all these on one side for 6 months, I am afraid that Members are under a misapprehension.

Deputy A.J.H. Maclean:

Sir, clarification if I may, please. I understood that the Minister issued a moratorium himself in terms of determining some of these applications in the past and I just wondered if he could perhaps clarify whether that could be done again.

8.5.6 Senator F.E. Cohen:

Sir, my moratorium, which I introduced because of public concern, has now expired or is just about to expire. I think we need to know where we are going and I think Sir has made it very clear that I have an obligation to determine applications within a reasonable time scale. Now clearly I can take into account the wishes of the House but I still have my primary obligation. I think that just to issue another moratorium for no purpose would achieve nothing. I would like to hear how long the Chairman of the Scrutiny Panel proposes it would take to complete a study. I find it very difficult to understand quite what is going to be studied, this work has been done internationally by thousands of scientists with budgets of hundred of millions of pounds. I just do not understand what we are going to study. Perhaps we could be enlightened on that.

8.5.7 Senator P.F.C. Ozouf:

Sir, when I got up this morning I occasionally look in my tie cupboard and I try and find a tie that is appropriate [**Laughter**] and I put on this morning my flying saucer tie, Sir. My flying saucer tie because I had looked up on the internet at some of the issues of telephone matters and I thought that it was the same sort of internet quackery that is in relation to flying saucers. But I have sat here through the last couple of hours before lunch and thought: "What would a Martian come down have thought of the way we have behaved this morning?" Because it has been an absolute disgrace and we have made fools of ourselves. Moreover, if I may say, Scrutiny Panels are making fools of themselves too in my opinion. I am sorry if that is strong but I do not agree with everything Deputy de Faye said that they are. Frankly, if a Scrutiny Panel wants to review this then let them review it; and let them go and bring all the people that they want to, to come in here before them, and they are doing that in lots of different areas. We have had one Scrutiny Panel that has not even issued a report, and we have been having a Scrutiny Panel for one year, and they have not issued a report. If they want to carry on and scrutinise and call to evidence and do whatever they want let them get on with it, but the fact is, is that we should - in fact the matter before this Assembly - and what there should have been is proper fact and information. The Planning and Environment Minister gave an excellent address this morning. The Assembly has been benefited by a very comprehensive set of information on which they can and the public should have confidence that the Planning Minister knows what he is doing in the issuing of licences. Frankly, I am going to go forward with the... and

I did not think that it is appropriate that there should be comments from some aspects of the Assembly, Sir. Frankly, Deputy Ryan has asked leave of the Assembly to withdraw his proposition. Scrutiny are now getting on apparently and going to review these matters, well, let them get on with it. Let Deputy Ryan withdraw his proposition; let Scrutiny get on with whatever they are going to do, which is what they have been doing some of them for the last few months without necessarily many results; and let the Planning Minister have good science, good information and good back up in order to make his decision. I will support the withdrawal and let Scrutiny Panel get on with it.

8.5.8 Deputy P.N. Troy:

Sir, I must object to some of what Senator Ozouf said and also to Deputy de Faye. I do not think that Scrutiny have made a total mess of it: they have responded to the fact that Deputy Ryan has brought in a proposition, and they have reacted to the way the debate has unfolded. Every Member is entitled to have his proposition debated and anyone who says otherwise is clearly incorrect. He is entitled to withdraw it but he is withdrawing it, Senator Ozouf, after there has been considerable debate and discussion around the whole issue. I think it is vitally important that Members are allowed to bring forward propositions and have them debated and that Scrutiny is able to react to it. I think the comments that were made earlier about Scrutiny were totally unjustified. If Deputy Ryan withdraws this proposition he is undoubtedly improving the situation. We now have an assurance that Scrutiny will look at the total issue and it will not just be that the issue should be the subject of a public inquiry, it will be of the total issue - all the underlying issues - and I think that is a major change to what we were discussing earlier this morning. I would also like to say that when Scrutiny do look at this, we have a lot of information and everything that is quoted is U.K. statistics, U.K. research. I would like to put forward that all of the equipment in Jersey should be tested so that Jersey Telecom, which has some equipment which may be out of date, which may not be up to standard, should be tested and that should possibly be part of this process because residents in Jersey are concerned that the equipment that is at the bottom of their garden does not meet the U.K. standard, and until the equipment in Jersey is tested, no one knows. So, do not quote U.K. statistics to us without coming back to a full and proper review of the equipment that is out there at present.

8.5.9 Senator F.H. Walker:

Sir, I have to say, I think this is one of the very worst debates I have heard in this House in the whole of the 16 years I have been in the States. What anyone listening will make of our inability to take a decision I just cannot imagine. Hopefully or thankfully there are no television cameras in the Chamber. What anyone listening will make of this debate I just cannot imagine. Sir, if I could just pick up on one point. The last speaker, Deputy Troy, he said: "All masts should be tested." It is there in black and white, it is there in the health report that not only do the new masts have to meet the rigorous health testing procedures but so do all existing masts. It is all there it is all being done. Sir, here we now have an opportunity for Scrutiny to do the job it was appointed to do, and for heaven's sake that is what it always should have been doing. Let us now grasp this opportunity, let us show that we can restore something of what I am sure is our shattered reputation today and take a decision and give Scrutiny the right, as Deputy Troy said, to explore the whole issue. Let us support Deputy Ryan in withdrawing his proposition and let Scrutiny get on to do the job they are there to do. Let them do it we have that opportunity. You have ruled, Sir, it makes no difference to the Planning Minister's legal obligations whether it is a Committee of Inquiry or a Scrutiny Panel. We need to bear that very firmly in mind, take a decision, and get on with the work because the Island demands knowledge; the Island demands a decision. We have this opportunity now to give them that, let us, for goodness sake, stop all this prevaricating, going around in circles, and take a decision.

Deputy P.N. Troy:

For clarification, Sir, there is no evidence that I have seen that says that Jersey Telecom has tested all of this equipment and produced a report. No, the Chief Minister said that in the report that all of

the equipment must meet those standards but as far as I am aware there is nothing that shows that they are meeting those standards.

8.5.10 Connétable T.J. du Feu of St. Peter:

Sir, I was getting very encouraged a few moments ago, [Laughter] I thought at long last a number of Members were coming to their senses but regrettably I just tend to feel a little mood swing or shift in that sort of idea. We have, I believe, a positive way forward. We have 2 people of the standing of Deputy Ryan and Senator Cohen who will, on their admittance, clearly work with commonsense and in the best interests of this House and indeed, more importantly, outside of this House out in the Island. They will do so. We know that from their previous experiences in what they have tackled. Please, can we get on with it and stop wasting time because you are absolutely wasting... all the Members in here are the first to moan about the time that it takes on certain issues and if ever there is any one that is the pot calling the kettle black, my word, that is it. For goodness sake, can we please go to the vote, if it needs a vote on this, Sir, and following your wise counsel earlier on I see that this is the quickest and the most sensible way forward. Leave Deputy Ryan to confer with his Committee and leave that conferring also to include Senator Cohen, which undoubtedly it will, and everybody will be far better served and we will have an answer far quicker than dilly dallying around and wasting everyone's time.

8.5.11 Senator B.E. Shenton:

Sir, I would just like to start by saying that I would be happy to sit on any sub-panel that may be called by Deputy Breckon. I feel that this Chamber, all of us including me, have acted in a disgraceful manner today. We have wasted time and I do not think you can lay the blame just at Scrutiny, I think the Council of Ministers are just as much to blame. They could have easily approached and spoken to Deputy Ryan beforehand and there are Members of the Council of Ministers that treat this whole subject as some great joke. The thought of people getting ill from radio masts was described to me as witchcraft by Senator Ozouf who turned up in his flying saucers tie. May I remind him that he is turning up to a States Assembly not kindergarten. I brought this matter up originally because I was contacted by some very, very concerned people. One pair of parents had children with very low immune systems where a mast was being put right outside their house. This is a serious matter, it is not a laughing matter, and we are wasting time with procedures and fussing around instead of getting to the point. I must say that I have felt that this whole discussion would have benefited from quite - to be honest with you - stronger direction from the Chair. We have been going around in circles all day and it is all right for people to moan and laugh and so on but this House has done itself a disservice today. There are people out there that are worried: it is not a laughing matter. I will help out on Scrutiny if it is needed but I ask Deputy Ryan to withdraw his proposition, put it to the vote and let us get on and do some proper work.

8.5.12 Senator F.E. Cohen:

Point of clarification, Sir, and I do value the advice of the Chair. The position under Deputy Ryan's proposition would be that the States would request that there be a moratorium of 6 months. That means that I have a clear States' direction that the States wishes, should it be approved, that there be a moratorium and I can, as I understand it, take that into account in my determination. If we just proceed with the Scrutiny proposition there is absolutely no direction from the House whatsoever and I have nothing that I can take into account in my determination, which would mean that I would have to immediately determine applications that are piled up ready for determination. Is that correct, Sir?

The Bailiff:

I do not think it is for the Chair to give the Minister for Planning and Environment legal advice on what the Minister's duties are, I think that is a matter on which you really need to seek the advice of the Law Officers at the appropriate time.

8.5.13 Senator M.E. Vibert:

Sir, very briefly, I have listened and my thoughts have swayed one way and the other about allowing Deputy Ryan to withdraw or not to withdraw. We have been on this a long time. I think the clearest direction the States could give would be to finish the debate on the substantive proposition and say one way or the other whether they want an inquiry and a moratorium, or not.

8.5.14 Senator S. Syvret:

Sir, my understanding of the situation is that the *status quo* will prevail in respect of the requirements on the Planning Minister, from a legal point of view. I listened with interest to what Senator Shenton said and it is a strange thing for me to say and rise in defence of the Chair of the Assembly, but I really cannot agree with his claim that what we have seen here - what has unfolded today - was because of a lack of direction from the Chair. What we have seen today is a substantial number of Members - no doubt well intentioned - but I am afraid acting in complete ignorance it would appear of the Standing Orders of this Assembly and the procedures that we should be adopting. This should have been a perfectly simple question but we have managed, I am afraid, to make a complete mess of it. Now, we set up a Scrutiny system to scrutinise issues. The public are concerned about the telephony issue, the relevant Scrutiny Panel should scrutinise it. Yes, we still have the powers to establish Committees of Inquiry under the States of Jersey Law but surely, only in the most extreme and particularly unique and difficult of circumstances. This issue of telephony is a matter for the Health Scrutiny Panel, the Environment Scrutiny Panel and whichever other Scrutiny Panel wants to get involved in it. They could frankly have begun this work months ago, as soon as public concerns began to be expressed about it and the fact that they did not, I am afraid, is a lacuna in their observance of the situation. Scrutiny has to learn that they cannot just be reactionary to whatever tide of public concern happens to be flowing but they have to exhibit some foresight and look into these issues themselves. I think Deputy Ryan has done absolutely the right thing by expressing a willingness to have his proposition withdrawn, and he has asked leave of the Assembly to do that, and I really do think we should just do that now and let the Scrutiny Panels scrutinise the issue on behalf of the public.

8.5.15 Deputy C.J. Scott Warren:

We still seem to be deep in muddy waters. However, I do believe that public concern regarding this matter does need to be addressed. I did see this report and I did a television interview somewhere around April, as Assistant Minister for Health, where I did assure the public, much to the annoyance of the television reporter, that I did not consider there was any justification for their fears. But if the public see this report - which there is a part of it, halfway through under background, second paragraph- they are going to be slightly concerned purely because it says: "The expert group went on to conclude that it is not possible at present to say that exposure to R.F. radiation even at levels below national guidelines is totally without potentially adverse health effects and that the gaps in knowledge are sufficient to justify a precautionary approach." And I think the precautionary approach is, there, the key factor. If all the concerns are totally unjustified and, as I say, that may well be the case, that was certainly what I believed from what I had been told. If that is the case it will not take long for a Committee of Inquiry or the Scrutiny Panel to come to that conclusion. I personally, and I believe Members of this House, would have liked planning consents to have had a short stay of execution while this, if it is going to be the Scrutiny Panel, make this decision but I understand that may not be possible but certainly I do feel that it is worth being looked at the issues if only to reassure because the public are concerned.

The Bailiff:

Deputy Ryan, do you wish to reply to those matters raised in relation to your request to withdraw?

8.5.16 Deputy P.J.D. Ryan:

I do not think I really do, Sir, I think Members have to come to the conclusion as to whether they are happy for me to withdraw this or whether they are so unhappy, and the House is so deeply divided over this, that they really do seek a vote at this stage. Personally, I do not think the House really does. I think there is a considerable amount of work to do in a very short space of time. If I am to Chair that sub-panel, although I have offered my services on reflection it may not be that I am appropriate for that position, that is fine, but I am happy to do it if Deputy Breckon and his Panel feel that they want me to do it and that is as far as I can go, Sir. I have done my best all around. I can do no more.

The Bailiff:

An electronic vote? I ask any Member who wishes to vote to return to the Chamber and the vote is for or against the request of Deputy Ryan to withdraw his proposition. I ask the Greffier to open the voting.

POUR: 36

Senator S. Syvret
 Senator L. Norman
 Senator F.H. Walker
 Senator W. Kinnard
 Senator P.F.C. Ozouf
 Senator B.E. Shenton
 Connétable of St. Ouen
 Connétable of St. Saviour
 Connétable of St. Mary
 Connétable of St. Peter
 Connétable of St. Clement
 Connétable of St. Helier
 Connétable of St. John
 Connétable of St. Brelade
 Connétable of St. Martin
 Deputy R.C. Duhamel (S)
 Deputy A. Breckon (S)
 Deputy of St. Martin
 Deputy P.N. Troy (B)
 Deputy C.J. Scott Warren (S)
 Deputy R.G. Le Hérissier (S)
 Deputy J.B. Fox (H)
 Deputy S.C. Ferguson (B)
 Deputy of St. Ouen
 Deputy P.J.D. Ryan (H)
 Deputy of Grouville
 Deputy of St. Peter
 Deputy J.A. Hilton (H)
 Deputy P.V.F. Le Claire (H)
 Deputy J.A.N. Le Fondré (L)
 Deputy D.W. Mezbourian (L)
 Deputy of Trinity
 Deputy S.S.P.A. Power (B)
 Deputy A.J.H. Maclean (H)
 Deputy K.C. Lewis (S)
 Deputy I.J. Gorst (C)

CONTRE: 9

Senator P.F. Routier
 Senator M.E. Vibert
 Senator F.E. Cohen
 Senator J.L. Perchard
 Deputy J.J. Huet (H)
 Deputy G.C.L. Baudains (C)
 Deputy J.A. Martin (H)
 Deputy G.P. Southern (H)
 Deputy G.W.J. de Faye (H)

ABSTAIN: 0

9. Jersey Overseas Aid Commission: appointment of Non-States Commissioner (P.146/2006)

The Bailiff:

Now we come to the final matter of public business - Projet 146 - Jersey Overseas Aid Commission: appointment of Non-States Commissioner, 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 appoint, in accordance with clause 7(4) of the Constitution of the Jersey Overseas Aid Commission as set out in Schedule One to the Jersey Overseas Aid Commission (Jersey) Law 2005, Mr. Peter Le Seilleur as a non-States Commissioner for a period of 3 years from 29th November 2006.

9.1 Deputy J.J. Huet:

After what has happened this afternoon I will try not to try your patience, and to say that the report is here, and there is a piece on the back as well, and that it obviously gives me great pleasure to propose this gentleman but it also gives me the opportunity to thank Mr. Crapp, who is nearing retirement age, and he is going to retire, but we hope to continue to be able to use his experience in our honorary accounting office. It was to also say thank you to the Commission, Sir. They have been to London over the last week and I have to say - I am not sure if it is a parliamentary term - but they have worked their socks off. And seeing that they had to travel on air miles and that I made them stay in a hotel that was only £35 a night in London... they were wondering where they were going to stay or what it was going to be like, but it was not as bad as they thought. Just to say that, as a team, they were fantastic and to have the experience of the accountant, the banker and the lawyer that we have had meant very much that there was a lot of due diligence and compliance from the banker. The lawyer obviously from the legal side and the accountants from the balance sheet and it made a world of difference to the questions. I do not think we could ever replace that expertise and experience and I would just like to give them my thanks for all the hard work that they did including the Committee Clerk and Kathryn Filipponi. And it was just to tell people that we saw a lot of agencies and though we have £6.3 million next year, and about £5.5 million of that goes in grants: there were applicants for up to £10.5 million. So, it is not the easiest thing in the world because you are going to knock half of those out and only get half of them, but I think they did a really good job and they were all singing from the same song sheet, and this gentleman is hopefully going to join us, as an accountant, will join in the team and it will still be a good team. I thank the House very much and will answer any questions that I can if there are any. Thank you very much, Sir.

The Bailiff:

Thank you, Deputy, is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? I put the proposition. Those Members in favour of adopting it kindly show, those against. The proposition is adopted. I understand, Deputy, that you wish to make a statement.

STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

10. The Minister for Transport and Technical Services regarding industrial action at Jersey Airport

10.1 Deputy A.J.H. Maclean (The Assistant Minister for Transport and Technical Services):

I would like to inform States' Members of the circumstances surrounding industrial action that has occurred at Jersey Airport today. The airport was partly closed this morning between 0500 and 0900 hours due to a strike action by G4S security staff. The early morning departures to the U.K. were cancelled, amalgamated or delayed. However, some inter-Island flights were able to depart and arrivals were largely unaffected. There is a further threat of similar action this Friday and next Monday if agreement is not reached over staff claims for better pay and conditions from their employer, G4S. After intense negotiations yesterday between G4S management, their staff and Unions, it was understood late yesterday afternoon that an agreement had indeed been reached. G4S management had offered an above inflation pay award of 3.1 per cent and the introduction of sick pay. The introduction of sick pay was seen as a major breakthrough in yesterday's negotiations, as the company does not currently offer this benefit in Jersey or indeed anywhere else in their U.K. network. We understand that the Union had recommended to staff that they accept the offer put to them by their employers G4S. However, at a secret ballot held late last night, G4S staff rejected their Union's recommendation. Staff are understood to be claiming a 21 per cent pay award, additional shift allowance and greater sick pay. To give States' Members some background, G4S - formerly Securicor - were awarded a 5-year contract to supply security services at Jersey Airport in 2003, after a competitive tender process. Jersey Airport and the Island community are effectively victims of a dispute between a private company, G4S and their staff, who are members of the Transport and General Workers Union (T.G.W.U.). Jersey Airport staff have been working very hard to minimise the impact of this industrial action on airlines, related groups, and the travelling public. The spirit of co-operation at this difficult time was demonstrated by the recently retired Josie-Ann who returned to her post this morning at the information desk to assist with the vital customer service effort. Jersey Airport will do all that it can in order to help mitigate disruption to all those affected by this dispute. We called an emergency meeting on Monday with the management of G4S to seek an explanation from them as to why this dispute was allowed to escalate, and to seek their views as to how they intended to resolve it. G4S emphasised their desire to continue discussions with staff and expressed surprise that sudden all-out industrial action had been announced last Friday evening. Yesterday's negotiations proved the willingness of G4S management to enter meaningful negotiations with their staff and Unions but there is now, clearly, further discussions required today to hopefully resolve this dispute. I asked G4S to contact Jersey Advisory and Conciliation Service to act as independent mediators. They agreed to this proposal but subsequently the T.G.W.U. felt that it was not appropriate to allow J.A.C.S to mediate. I am hopeful that the T.G.W.U. may see some benefit in J.A.C.S. involvement from this point onwards. I have made it clear to the management of G4S that we expect them to resolve this dispute quickly and fairly. The position that the airport and the wider Island community find themselves in is completely unacceptable. We cannot allow such circumstances to occur again where a private company's dispute with their staff can close the airport. We will be reviewing the terms of the contract between G4S and Jersey Airport, with a view to ensuring that future contractual arrangements are more robust. We will need to give detailed consideration as to whether airport security services could be fulfilled in house in the future. As part of a broader review of airport operations I have already instructed the Airport Director to fully assess this future option. In the meantime, we will continue to apply the strongest possible pressure on the management of G4S to resolve this dispute with their staff. Finally, I have been keeping Ministerial colleagues, including the Chief Minister, fully informed with developments of this dispute, and should matters escalate, I will be asking the Economic Development Minister to convene an emergency meeting of the Council of Ministers.

10.1.1 Deputy G.P. Southern:

Could I ask whether the Assistant Minister feels it is appropriate that we, indirectly, as employers of staff at the airport, should be outsourcing our workers to a company which does not pay sick

pay? Is this an appropriate position to put the States of Jersey in and in what time scale is he going to review this decision because I feel that this is the States of Jersey, indirectly through the airport, as an employer acting with the worst possible motives and as the worst possible type of employer? I would like to ask him that and furthermore to ask him whether the only route forward is via J.A.C.S., which is a voluntary agreement requiring the assent of both sides in a dispute to progress. My understanding was that we used to be able to use Industrial Relations Officers - the 2 most recent of which are still in the House - in order to not quite bang heads together but to help people to solve disputes of this nature and they were very effective.

The Bailiff:

Deputy, this is a very long question. It is not a speech it is a question.

Deputy G.P. Southern:

And the question was, is it the case that we can no longer involve the Industrial Relations Officers?

Deputy A.J.H. Maclean:

The sick pay issue seems to be an industry standard in the UK whereby the 2 primary operators of security services for mainland airport security are G4S and British Airport Authorities. The sick pay issue is across the entire network, as I understand it. Whether that is appropriate or not, it does appear to be an industry standard. I think it is perfectly reasonable to ask the question and I tend to agree that it possibly is not appropriate but it is an industry standard and so that is where that came in. As far as reviewing the situation with regard to G4S, the contract and the possibility of the airport undertaking its own security services, there are in fact 2 and a half years remaining on the existing contract. The review that will be undertaken, which is part of the wider broader review of airport operations as a whole, will be taken in shorter term but any final decisions will not be implemented clearly until the end of the current contract. With regard to J.A.C.S. and whether there are additional opportunities for mediation, I have in fact spoken to Deputy Breckon, who is still a representative of the Industrial Relations Tribunal. I believe that they in fact have a period of time to run and we are in discussions about his possible involvement in assisting with this dispute, which has been very helpful and I thank him for that.

10.1.2 Senator P.F. Routier:

I was really just inquiring about if the Assistant Minister was aware if there was a particular reason that the Transport and General Workers Union did not feel it was appropriate for J.A.C.S. to mediate.

Deputy A.J.H. Maclean:

No, I am not aware of the reason. We just got the message back that they felt it was inappropriate we did not have an explanation from them on that subject.

10.1.3 Deputy J.J. Huet:

It was reverting back to the sick pay again, Sir. I understood that they do not get sick pay but can we be assured that the employer is paying credits for the employees so as they do get something from social security and they do get their pension rights, obviously. Hopefully they are getting something.

Deputy A.J.H. Maclean:

Yes, as I understand it, they are and they would be able to claim sick benefits through the social security system. In fact, the suggestion and award that was made by the employer, G4S, yesterday was a concession to agree sick pay in the future, which obviously has not been accepted at this stage.

10.1.4 Deputy A. Breckon:

Sir, I am aware I am not able to make a statement but I wonder if I could phrase it in such a way that the Assistant Minister would agree with me if I said that my position is as Industrial Disputes Officer - a position I did not think I still held but apparently the new Law has not received Royal Assent - and would he agree that I received a telephone call on Monday morning from the contractors in the U.K., and a bundle of papers shortly after that, and I have spoken also to the Transport and General Workers Union and offered the services of myself, as Industrial Disputes Officer, to intervene should the need arise to try and alleviate the current deadlock. If the Assistant Minister would agree that that is the situation.

Deputy A.J.H. Maclean:

Yes, Sir, I would.

10.1.5 Deputy J.A. Martin:

Just 2 small points. At 26 the Assistant Minister states that: "We will continue to apply the strongest possible pressure on the management of G4S." Could he elaborate on what this pressure is and what that means. At 22 we talk about: "Airport and wider Island community finds themselves in." It may not be true but I have heard it twice on news reports today that Jersey Post - and I quite understand where they were coming from - were unwilling to cross the picket line and the mail was not collected this morning. Can he update us on this situation, please because this is a very wide Island issue.

Deputy A.J.H. Maclean:

Yes, the Deputy is absolutely correct, Sir. The Jersey Post employees were not prepared to cross the picket line and the mail was retained at the airport until the dispute ended. The dispute ended at 0900 this morning so it has resulted in a delay but not a significant delay with regard to post being delivered and other issues of that nature. As far as pressure is concerned, we have a contract with G4S to provide security services at the airport. I have made a comment in the statement about the robustness of that particular contract and there is in fact a penalty clause in there. The penalty clause is, in my opinion inadequate, it allows for fining of up to £500 per day. As I say it is not particularly adequate, that is one area where we can apply some pressure. Obviously G4S have had a relationship with Jersey Airport for a considerable period of time, and I have to say that the service that they have delivered during that time has been exemplary - very good indeed - and they would be keen I am sure to continue that relationship: it is an extremely valuable contract to them. It has 2 and a half years to run and I think from a commercial perspective that is commercial pressure in itself; the willingness to work with us in order to deliver a satisfactory resolution to this most unsatisfactory dispute.

10.1.5 Senator M.E. Vibert:

Briefly, Sir, I wonder if the Deputy knows how many employees we are talking about and if we know the exact result of the ballot. It seems very strange that when you negotiate with a Union official, who recommends it to members and then it is rejected, because it makes it very difficult for his Union negotiations with that Union official.

Deputy A.J.H. Maclean:

Yes, it is a very good point. I understand that this is the first time in more than 20 years that a recommendation by a Union to its members has been overturned at the ballot. So, that in itself is extremely unusual. There are approximately 40 employees involved. I am aware that the vote was 20 to 14.

10.1.6 Deputy P.N. Troy:

I would like to ask the Assistant Minister, given that flights were delayed several hours today, does that mean that the airport could be open to action from the airlines for any losses that they might incur through the delays?

Deputy A.J.H. Maclean:

We do not believe that there would be any actions from airlines. It is again a very good point. However, the message that this sends out is not particularly constructive at a time when we are trying to develop new routes to new destinations and attract new airlines. We do not really want to be sending out a message that we have industrial action at our airport because it is not very good news for airlines who are trying to conduct their business.

10.1.7 Deputy P.V.F. Le Claire:

May I ask in respect of item 4, if the Assistant Minister could inform Members as to what he means by conditions if he is aware of other issues, or is that just solely to do with pay, remuneration and shift pay, *et cetera*. Item 4 reads: "There is a further threat of a similar strike if agreement is not reached over staff claims for better pay and conditions." I just wonder what those conditions might be if he could illuminate on that point. Also to touch upon whether or not it might be possible for consideration to be given for contingency plans in the future for this type of eventuality. When considering whether or not replacement staff in these circumstances might be trained in-house, is consideration going to be given as to whether or not these replacement staff might themselves be Union members, and whether or not a further contingency might be necessary, given the importance of the finance industry and its needs, for the Home Affairs Minister to be asked whether or not police officers need to be brought in, in these exceptional circumstances. Because it certainly is not, in my view, acceptable for the Island to be brought to a standstill because of a private security firm holding the Island to ransom over its problems. I am sorry, it might be causing...

The Bailiff:

This is question time.

Deputy P.V.F. Le Claire:

Well it is meant to be, Sir, but I am getting so much flak from the Ministers as I am putting my question it is proving difficult to make my point, Sir.

Deputy A.J.H. Maclean:

The conditions that I was referring to are primarily shift allowance and sick pay, those are the 2 primary areas of concern - as far as I understand it - on behalf of the employees. As far as replacement staff or the ability to keep the airport open, we have considered a number of options. Unfortunately, it is extremely difficult. We spoke to G4S at an early stage on Monday about the ability that they might have to bring relief staff in from their network in the U.K. Unfortunately, the network is highly unionised and Members will fully appreciate that should they have brought staff over - if staff had been willing to come over, which is highly unlikely - it would have escalated the situation even further. There is nobody within the Island who is able to provide the service of security to the required levels dictated by the Department of Transport. Security personnel need to be fully accredited to be able to provide that service and even the police are not able to do so. The police can be part of the service but they cannot operate the machinery, so I am afraid we would be no further forward. This morning Members will note that a number of flights got off inter-Island and some small flights got off. That was facilitated by management, that G4S brought to the Island, to allow us to minimise, as much as we possibly could, the impact of this particular action. It also allowed us to open the airport a lot more quickly after the 9.00 a.m. deadline because under normal circumstances we probably would not have been able to open up until 11.00 a.m. if we were not able to get crew, for example, through security, and the management of G4S facilitated that which was obviously very useful.

Deputy P.V.F. Le Claire:

My question really was not answered, Sir, perhaps because of the disturbance to my right. I was asking in my second question, was consideration going to be given to looking at providing the police with the necessary training so that if an in-house situation was to reoccur, with unionised replacement staff, the police could step in to operate a basic service for the public, or whether or not we are going to allow ourselves to be held ransom by people...

The Bailiff:

All right, Deputy, that is the question. We are out of time now.

Deputy P.V.F. Le Claire:

I would just like to ask, Sir... the Minister for Home Affairs is in hysterics and I am trying to address a serious issue which concerns her department.

Senator W. Kinnard:

Sir, I can deal with this I think, if I have to. I know you do not want me to.

The Bailiff:

Minister, I am sorry, we are out of time for question time. Deputy Le Claire has put a question which he thinks has not been answered. Minister, would you deal with that please?

Deputy A.J.H. Maclean:

Yes, Sir, I would. During the review that will take place in more detail after this dispute has been resolved, we will be looking not just at the current contract that is in place with G4S to ensure that this sort of situation does not arise again, we will also be looking at consideration such as alternative means of keeping the airport open in an event, hopefully an unlikely event, that this should happen again in the future. We will be considering all options to make sure that we are not put in a similar situation again.

Senator F.H. Walker:

Sir, may I just thank the Assistant Minister for the calm and assured way in which he is dealing with this issue and, in particular, the way he and the airport team are doing their best to minimise the disruptions to the public and to keep us all so very well informed.

The Bailiff:

Thank you, Chief Minister.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Bailiff:

We now come to M - Arrangement of Public Business. Chairman.

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

I would like to propose those arrangements that are outlined on the pink sheet under M with the following amendments. P.132 has an amendment from the Minister for Economic Development: that is the "Draft Income Tax Amendment 26 (Jersey) Law 200-." Projet P.154 will be brought forward: that is "Stabilisation Fund: rescindment" from the end of the list to before P.133. P.152 the Fulfilment Industry Policy, which is at present listed for 16th January will be moved to 30th January. And due to Standing Orders, P.158 which is the "Draft European Communities Accession (Jersey) Regulations 200-" which is lodged by the Chief Minister, which under Standing Orders

should be debated on 16th January, I understand is due to be amended by or request made by the Chief Minister to alter that date.

11.1 Senator F.H. Walker:

Sir, please if I may make that request. This is an urgent matter and I apologise for the short notice in bringing it to the States but the Commission only approved their final position on this late in September, and of course time was then needed to draft the Regulations. What this does is extend the agreement we have with European Union member states to cover Bulgaria and Rumania. It does not of course affect the debate that we may or may not have on different rules which may apply to inward migration but, Sir, it would serve Jersey very badly internationally if we were not signed up to this treaty with every member of the Union, and I would ask the House's indulgence to have this debated in 2 week's time as the membership is due to take effect from 1st January.

Deputy J.B. Fox:

Sir, could I have the 'P' number of that one, please.

The Bailiff:

It is P.158.

11.2 Deputy G.P. Southern:

Sir, if I may just briefly thank the Chief Minister in the absence of the Treasury and Resources Minister, for agreeing to allow my rescindment motion to move ahead of the main motion on the Stabilisation Fund. I thank him for his co-operation, and to say that in putting back my fulfilment proposition I am concerned to get it done as soon as possible but I understand that the Economic Development Minister will not be in the House on that day, which is the reason for the move.

ADJOURNMENT

The Bailiff:

Are Members content with all those arrangements? Very well, Members have approved the arrangements for future meetings. The meeting is now closed and the States will reconvene on 5th December.