

# STATES OF JERSEY

## OFFICIAL REPORT

THURSDAY, 5th JUNE 2008

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

**PUBLIC BUSINESS – resumption**

**1. Esplanade Quarter, St. Helier: Masterplan (P.60/2008) (continued)**

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

Very well, the debate now resumes on paragraph 2 of the proposition of the Council of Ministers relating to the Esplanade Master Quarter. Deputy Baudains?

**1.1 Deputy G.C.L. Baudains of St. Clement:**

Thank you, Sir. What I would like to do this morning is respond to some of the comments made by the Chief Minister yesterday in his opening speech. Because it does seem that we have a difficulty with this proposition in that yesterday we were not allowed to deal with financial issues, it was down to part (2), but of course part (2) is likewise constrained so I am restricting myself to the matters raised in the Minister's opening speech. First of all, he asked where Deputy Baudains' proposed new offices should be built if not on the Waterfront. Well, I am happy to oblige him with that answer, Sir, and I have no hesitation in stating what I have maintained for years, that the... **[Interruption]** I have no hesitation in restating that I believe they should be built in the west of the Island, perhaps near the airport because that would address 2 issues; easier travel for the much-vaunted visiting high-flying businessman, no pun intended, and resolution of our traffic problems, because as long as we build housing in one place and offices in another we create the need to commute. Offices in the west would enable people living in that part of the Island to get employment that did not involve driving into town. So I hope the Planning Minister will take note of that. Another issue the Chief Minister raised yesterday, Sir, was the fact that apparently we had had various checks done on the preferred developer for financial robustness and gearing and that sort of thing and I have to ask, I hope in his summing up the Minister will address whether this was done before or after the subprime crisis, Sir? I would like to ask him why, for instance, we have not been told that the company apparently 18 months ago owed its bankers 345 million euros? Why we have not been told that apart from excellent people such as Andrew Parker-Bowles being a director there were previously directors such as former Sinn Fein vice-presidents arrested for prevention of terrorism, questioned regarding I.R.A. (Irish Republican Army) money laundering and that sort of thing? Why were Members not told that last month the firm that we are about to deal with was actioned in Las Vegas in a billion dollar lawsuit, which may be highly relevant to our proposition, Sir, because the lawsuit alleges breach of contract, a failure to... **[Interruption]** I thought I was speaking.

**Senator F.H. Walker:**

The Deputy is misleading the States. There has been and there is no lawsuit in Las Vegas.

**Deputy G.C.L. Baudains:**

As I was saying, Sir, the lawsuit alleges breach of contract, failure to perform funding obligations and breach of fiduciary duty. Apparently the company defaulted on its funding obligations only last October. I think we should remember, Sir, that in the U.S. (United States) if you are found at fault, you not only pay what you owe but punitive damages as well. So what I would like to suggest, Sir, is that we have a reference back to enable us to get an up-to-date and full analysis of this company. It does not appear to me to be the company that was described by the Chief Minister this morning, Sir. So I would propose such an event because I do not think... it seems to me that either the information we were given is out of date or it is inaccurate.

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

I just need to clarify, Deputy, the precise grounds for the reference back are that simple issue that you wish the States be provided with further information on the company with which W.E.B.(Waterfront Enterprise Board) intends to transact under paragraph (2) of the proposition?

**Deputy G.C.L. Baudains:**

I beg your pardon, Sir?

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

The precise grounds for the reference back are simply on the simple grounds that you think the States require further information about the company - the development company- there are no other grounds?

**Deputy G.C.L. Baudains:**

That is correct, Sir.

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

No other grounds for the reference back?

**Deputy G.C.L. Baudains:**

No other grounds whatsoever, Sir. The fact, relating to what we were told by the Chief Minister yesterday, that apparently checks and balances have been carried out. What I want to be certain of before we enter into any contract with this company is that the facts that we have been given are correct and not as laid out in various publications as I have laid before the States this morning.

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

Is the proposition for a reference back seconded? **[Seconded]** Well, I am prepared to allow the proposition, therefore Deputy Baudains has proposed that the part (2) be referred back so that further information on the preferred developer can be presented to Members.

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

The debate is open on the proposition for a reference back. Deputy Southern?

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

Indeed, yes, the financial and economic implications of the deal we are about to enter into which formed, if you like, an adjacent part of the previous reference back on the paragraph (1) are now coming to light. While it does not form specifically part of this particular reference back from Deputy Baudains, there are further issues that...

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

Well, I think we need to keep to this one at the moment, Deputy. We can always have another one later.

**Deputy G.P. Southern:**

That impinges on why Members may consider that they do not have sufficient information in order to allow them to vote for, at this stage, paragraph (2). For example, in the Corporate Services report on the Waterfront proposals, they refer to but have not concentrated on the economic adviser's report to the Council of Ministers on the economic impact of the proposals for the development of the Waterfront in February 2006. Now I think they, whatever those comments are, should be made available to this House because this is central to what we are about to do. What is the economic and indeed social impact of these proposals? Now, I have been seeking...

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

Deputy, I must stop you going too far down this route. There will be a further debate resuming, there may even be, dare I say it, further grounds for further reference back, but at the moment there is a very narrow issue before the Assembly which is do Members wish further information about the preferred developer? You can come back to these issues. I am not saying you cannot debate them at some stage today. We must not go too far down this route unless it is relevant to...

**Deputy G.P. Southern:**

I know and I wish to tag them on to the reference back because only this morning I was refused access to that documentation. Now that leaves me and my panel in a dilemma. Despite our work, the workload we have at the moment, I am seriously tempted to call in this particular... the second part of this particular document for the economic aspects which is the brief of my panel, not the contractual or the corporate services aspects of this particular deal which is my brief. Now a reference back will give us some time to examine not just the aspects that this reference back is made of, but also other aspects which are of deep concern both to me and my panel, without the necessity to call in and do a 6-week quick review on what is going on. So I am supporting this reference back because I do not believe anybody in this room has sufficient information about the financial and economic aspects of this deal to, with their hand on their heart, safely say they can confidently go ahead at this stage and we do need a little time. This is one way of getting that time and getting further information.

**Senator J.L. Perchard:**

Point of order, if I may on the last speaker. Will the chairman of the Scrutiny Panel that looked into the Waterfront deal with Harcourt confirm that the socio-economic impact assessments were made fully available to the panel?

**Deputy C.H. Egré of St. Peter:**

If it assists the Assembly, yes, they were, Sir, and they were reviewed in the light of the terms of reference of our panel.

**1.1.2 Senator F.H. Walker:**

Can I emphasise... first of all let me say: "Here we go again", any excuse to get a reference back and to delay taking a decision. But the Deputy did mislead the House in his earlier speeches. There is no legal dispute in Las Vegas. Has there been an issue between Harcourt and one of their proposed partners in Las Vegas? Yes. Has there been a legal suit on the back of it? No. Has the partner or the former partner invested any money in the scheme? No. It is purely a Harcourt financial deal and to suggest that there is a legal suit is quite, quite misleading. In terms of due diligence, the ruler has been run over Harcourt so thoroughly on so many occasions and they have come up A1 in every instance. I would refer the House to something I referred to in my speech yesterday, the PricewaterhouseCoopers financial capacity audit which confirmed that Harcourt are low geared, very well placed particularly since the subprime crisis, very well placed because of the capital available to them and their low gearing to undertake this development. Also another report was commissioned by an outfit called Risk Advisory and they did a sort of Dun & Bradstreet check on Harcourt. They checked into the business activities of Harcourt, they checked into the probity of Harcourt and they checked into the individuals who sit on Harcourt's board and their dealings as well. You could not have had a much more thorough review of the company if you tried. Sir, it grieves me that the Deputy should again wait until we are in this debate to raise what may be legitimate questions but which could so easily have been answered had he bothered to approach anyone - me or anyone else - to ask those questions. I see no basis on the facts I have put before the House on this, no basis whatsoever that justify a reference back. All the investigatory work has been undertaken and Harcourt have come out of it in good shape and we have no hesitation at all in recommending that they should continue to be the preferred developer.

**Deputy R.G. Le Hérisier of St. Saviour:**

On a point of clarification, could the Chief Minister reassure the House that the specific allegation made by the Deputy of St. Clements re. a link to terrorist financing, that was indeed investigated and an exoneration was obtained? Was that indeed what happened?



**Senator F.H. Walker:**

Yes, Sir.

**1.1.3 Senator P.F. Routier:**

I would just like to re-emphasise the point the Chief Minister has made about the due diligence which was taken out on the company. I have sat in meetings myself where there has been very high-level discussions about the specific issue that the previous speaker has spoken about and they have been given the all-clear on that. There has been... obviously there were some concerns raised in the early days and that has been confirmed that there are no concerns with regard to the probity of the company. The most recent issues with regard to the financial standing of the company... they are a top company; they have a very low gearing; they are able to provide this development to a very high standard; they are working in so many different jurisdictions currently and we would be really foolish to miss this opportunity of working with this company.

**1.1.4 Senator T.J. Le Main:**

Just to confirm that several weeks ago I was in Ireland and I made inquiries about Harcourt. They are a highly-regarded development company in Ireland and particularly in the Dublin area and have a very high standing.

**1.1.5 Deputy J.J. Huet of St. Helier:**

This is going to be my shortest speech ever, Sir. As a director of W.E.B. could I say in complete agreement with Senator Routier, the word is "ditto".

**1.1.6 Senator J.L. Perchard:**

Also, it is a responsibility that falls upon directors of companies to ensure that those that they do business with are creditable and it was as we were talking seriously with Harcourt that we decided at W.E.B. to undertake a second due diligence of the company and we engaged PricewaterhouseCoopers to do that. As the Chief Minister said, this last year the report from PricewaterhouseCoopers on Harcourt was a glowing one, saying that they are a very lowly geared company, dynamic company and they recommended them as a suitable developer for us to talk to. There were no concerns. So the Deputy's claims which I think he must have researched on the internet last night from somebody's blog, are completely false. The due diligence has been taken out on Harcourt, they are a reputable company and I urge the States to ignore the sleight placed upon them by the Deputy. It is the responsibilities of directors of companies to ensure that those they do business with are creditable and I know that we have, we have at W.E.B. taken these rumours seriously and we have double-checked by engaging PwC to do a due diligence on the company. Sir, I personally am satisfied that they are a very reputable business.

**1.1.7 Deputy R.C. Duhamel of St. Saviour:**

On downloading some articles from the Las Vegas business firms yesterday evening, it is alleged that there are court actions with Harcourt, both in America... and certainly in looking at the commercial High Court action list for Dublin it would appear that Harcourt Developments are in negotiation or discussions or whatever - court cases - as one would expect any development company to be. Whether or not there is anything to be worried about is debatable and I think this is one of the reasons that Deputy Baudains is asking for further information in order again to assure himself and others that the due diligence has been performed and indeed the credentials of the company have been properly looked at and everything is above board.

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

I rise as a member of the Economic Development Scrutiny Panel and speak in a degree of support for the chairman who, I think, is doing as his heart dictates in that the... to the responsibility of the Economic Development Scrutiny Panel to look at these things. However, one has to look at the end

result. Harcourt have been scrutinised twice now, we hear. They have been scrutinised in depth. What are the Economic Development Scrutiny Panel going to do, how are they going to do it? They will have to employ a third company, probably top accountants, to do probably exactly the same thing. So the result will be, I strongly suspect, the same. The costs will be in addition and I feel there is very little to gain. So, regrettably, chairman, I do not think I could support your moves.

**1.1.9 Deputy D.W. Mezbourian of St. Lawrence:**

In my Scrutiny work, the panel has, on a number of occasions, made reference to the fact in our reports that this House is not presented with enough information when propositions are brought forward to make an informed decision. I believe that in this case, those who have brought this forward should have anticipated questions of this kind being raised within this House. In that anticipation they should have put something to the effect that this has been going on, that due diligence has been undertaken on this company and perhaps even appended some of the due diligence that has come back from, in this case, PricewaterhouseCoopers and I think it is naïve of them to bring a proposition of this substance without having done that and without being prepared to answer the questions. I would urge all of those bringing propositions in the future to be aware of this and to acknowledge that this House wants the information and should have it beforehand.

**The Connétable of St. Brelade:**

On a point of clarification, Sir, the court case was filed on 30th April this year.

**1.1.10 Senator F.E. Cohen:**

I am very uncomfortable with some of the comments that are being made. I do not know, as I have said many times, much about the detail of the deal. I have not been involved in the negotiations of the deal or in any of the due diligence, but if I were the developer I am not sure that I would like to be exposed to this sort of debate in public. It may be perfectly appropriate that Members ask questions, but I think if we continue in this vein it would be appropriate to go in camera.

**Deputy G.C.L. Baudains:**

In relation to... if I may assist the Assembly, Sir, the information which we are talking about is in the public domain.

**Senator F.E. Cohen:**

It is the inference that is being put upon information that appears to have been derived from downloading from websites. You can get any rubbish that you want from websites, I do not know whether the material that has been downloaded is accurate or not, but I do know that if I was Harcourt I would not be very happy about this sort of discussion taking place in the public domain and I therefore would propose that if it is to continue we go into camera.

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

Well, it is your prerogative to propose the Assembly sits in camera. Is that proposition seconded? **[Seconded]** Does anyone wish to speak on the proposition that the Assembly should sit in camera to continue this part of the debate?

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

Yes, simply I do not think we should continue this part of the debate in camera because I want to speak on the reference back, I will have one or 2 words about use of parliamentary privilege and its appropriate use. But I think that is about as far as we have gone. The damaging statements have already been made, so I really see no point in pulling the shutters down at this stage.

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

We will put the matter to the vote. Those Members in favour of the proposition of Senator Cohen kindly show? Those against? Assembly will continue in public Assembly. Deputy de Faye?

**Deputy G.W.J. de Faye:**

Really to continue on what I have just referred to. Parliamentary privilege is a very important feature of democracy and partly because of that we really should treat it with some respect. I am concerned that what I understand to be essentially a fabrication that has absolutely no foundation in fact whatsoever is now being propagated as some sort of reason why we should refer this matter back. It is my understanding that in fact there is no lawsuit. There is a bit of whiff and puffery going on on the internet, but that is as far as it goes and Members perhaps ought to consider what they say in this Chamber and whether they would be prepared to repeat it in the Royal Square. That is a point, I think, worth bearing in mind in this instance. But whether or not there is indeed a lawsuit going on in another jurisdiction has, quite frankly, absolutely no relevance to this proposition. This proposition is about the contract that relates to the proceedings that will follow on from the Masterplan and I think most Members who have a bit of worldly-wise knowledge will immediately appreciate that as soon as you are a company or organisation of a certain stature, it is almost inevitable that you may well be finding yourself handling some form of legal proceedings somewhere in your international operations while your other operations are proceeding entirely smoothly in the remaining jurisdictions. So, whatever indeed is going on... and my understanding is that there is absolutely nothing going on, as has been alleged. As I say, Sir, it is of absolutely no relevance to the proposition before this House and indeed the contracts, as I understand it, are being effectively guaranteed and insured by various very substantial financial organisations and banks who certainly would not have stuck their necks out in that way if there was any form of blemish in respect of the company with which we are dealing. I think that once again we have a number, a small cadre of Members, fighting a Dunkirk-type action to divert us from the appropriate course. A completely unnecessary reference back. We should not waste too much time on this. We should simply vote this out and get on and approve what is going to be an excellent development for the Island that will take us into a sure future.

**1.1.12 Connétable D.J. Murphy of Grouville:**

Anybody who has done business, or is doing business in the U.S.A. must be prepared for litigation and especially in the construction/property business. It is a way of life to sue for a billion dollars when in fact you may have no claim at all, or a very small claim, in order to get a small settlement. This is normal. After all, what do you expect from a country which has about a million lawyers? I can only remember quite recently we had a situation in Jersey with the cavern in Snow Hill where I think the agreed figure was something like £8 million and the bill sent in at the end was £32 million. Now, I do not remember us settling for £32 million. I remember litigation going on and I remember a settlement being reached. These things - million dollar, billion dollar suits - are just a complete waste of time. They are not real life. You are talking about an American way of business, not a way of life. Thank you, Sir.

**Senator J.L. Perchard:**

A point of order, Sir. I made a point of order before. It is brief, Sir. I have asked the executive at W.E.B. to produce for Members a copy of the most updated due diligence report prepared for the board of W.E.B. on Harcourt and this report is dated October last year. It not only summarises the circumstances of the company at that date, it summarises their circumstances historically and their ability to cope with future pressures on the business. So, that report will be made available to Members shortly. They are busy doing that now and there was also a professional risk advisory group engaged by the Board of the Waterfront Enterprise to research the conduct and financial circumstances around the individual directors and their other businesses. That again will be made available to Members. Sir, this is a diversion. It is no surprise that Deputy Baudains has brought

this because he was against the proposition yesterday and this is another desperate attempt to bring down the motion. I urge Members to ignore it, study the reports that have been made available to W.E.B., to our lawyers. This has not been taken lightly by the Board of W.E.B. and I reassure Members that copies of the due diligence and a copy of the report from the risk advisory group will be made available to Members very shortly.

**Deputy G.P. Southern:**

May I question the representative for W.E.B. while he is on his feet? Is he prepared to release the Economic Adviser's report to the Council of Ministers on the economic impact of the proposals to the development of the Waterfront of February 2006?

**Senator J.L. Perchard:**

It was released to Corporate Services Scrutiny Panel, Sir.

**Senator F.H. Walker:**

I am in a little bit of a dilemma. I have spoken, but there are 2 pieces of information which I think the House should have in the interests of a full decision, which I should have...

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

Do you wish to clarify your previous speech? **[Laughter]**

**Senator F.H. Walker:**

Well, Sir, I thought it was crystal, but, no, there is an additional piece of information but it is information which I think the House is entitled to have because it would be wrong to take a decision on anything other than full information. What I should disclose is that there is a court case involving Harcourt in Dublin at this time. It is a dispute but it is being vigorously defended by Harcourt in the courts and I would liken it in many ways to some of the court cases that the States finds itself in, in the Royal Court in Jersey. I would emphasise that no decision has been reached and Harcourt are vigorously defending the action, but I think it is only fair that the House should be advised of that so they can take a full decision. If I may just add, Sir, when I was in Belfast and Dublin recently, on States business, I did ask senior politicians their view of Harcourt and the unanimous response I got in both cities was a very good report indeed.

**1.1.13 Deputy I.J. Gorst of St. Clement:**

I am reassured to hear that in the first speech by the Chief Minister, if I may put it like that, the developer has had due diligence undertaken upon it by Dun & Bradstreet and by PwC (PricewaterhouseCoopers) as well and that gives me great comfort. I think it is a matter maybe, Sir, of Members either accepting those professional organisations or perhaps what they read in the media. I must say, however, that I am rather surprised with Members attitudes this morning. We now seem to be concerned about unpleasant odours around the preferred developer. Unfortunately I believe that it is the nature of international developers, and even some local developers, that they will have upset people and they will have created enemies. It is the nature of development. It is my view, Sir, that when Members decided yesterday that they wanted this Masterplan they were - and they knew they were - supporting a single developer for the whole of this site. I was against that yesterday, Sir. I still believe that we made the wrong decision, but I certainly will not be supporting this reference back because it is the single developer and Members knew it was this developer. It is exactly what they voted for yesterday, Sir.

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

I call on Deputy Baudains to reply.

**1.1.14 Deputy G.C.L. Baudains:**

I would disagree with the previous speaker, Sir, that what we agreed yesterday was that we would accept the Masterplan and various other issues but I do not see anything under 1(a), (b), (c), (d), or (e) that we would be signing contracts with this particular firm. Just a couple of issues I would like to raise, Sir, because it does seem to me that some of the Members who have spoken have not addressed the issue but attacked me instead which tends to show their argument is somewhat weak. Deputy de Faye, for a start, Sir, again disappoints me. He suggests that I am abusing parliamentary privilege. I would ask him to withdraw that scurrilous allegation, Sir. I at least do my homework. Possibly he does not. But what is the situation? On the one hand we have information given to us yesterday by the Chief Minister telling us what a wonderful firm it is we are dealing with. Well, it may well be a wonderful firm. The point is, without the further information we do not know and certainly the information I am receiving at the moment suggests otherwise than what the Chief Minister has told us, and it does not come from some blog, as he has suggested. I have done my own research. Sir, I am not asking to throw out this developer or not to go ahead with the partnership. I am merely asking that we get up-to-date information. Senator Perchard, Sir, tells us that we are about to receive some latest information. Apparently the report is of October last year. I would suggest to him, Sir, that that is a complete waste of time because the events I am talking about have happened since then. Senator Perchard again is one of these people who suggest that I have an ulterior motive here; because I did not vote for the proposition yesterday I am merely trying to delay and frustrate and otherwise derail the process. I find such suggestions completely scurrilous and unacceptable because they are not only scurrilous they are totally untrue. Until I had this information I was going to support part (2). So, we can all learn something. It is a pity that the Senator does not do likewise. He really should do his homework, Sir. I am trying to do my job and my job is to ensure that the public of Jersey gets the best deal, that we do not enter into something which all falls apart later on. That is my duty and it is a pity some other Members do not take it as seriously. Sir, we were told that due diligence was carried out by PwC. In my opening speech I asked when that was done. We have not been told, except from Senator Perchard saying that W.E.B. have a report that was done in October. Well, I am afraid this is a very good reason why we should have a reference back because October is too old. These events, as I have said, happened since then. It does seem to me that that alone is a very good reason to...

**Deputy I.J. Gorst:**

Perhaps my colleague would give way. I am not sure if he is going to be prepared to. I appreciate what the Deputy is saying regarding the age of the particular piece of due diligence but I am afraid, if I understand him in his opening speech correctly, he was concerned about the credit crisis, the credit crunch and financial institutions. I believe that was already well underway and known and in the public domain in October of last year. It might have worsened since. It might worsen further, Sir, but it was known at that point.

**Deputy G.C.L. Baudains:**

I agree entirely, Sir. Of course the credit crunch was known at that time but of course the effects are only just starting to pan-out. The effects that translate across the Atlantic to Britain and further afield are only now beginning to have effect. It is not the beginning that matters, it is the peak that matters. I have to say, Sir, that some of the issues here that I have been relating to, if translated into our plan for the Waterfront, could be extremely relevant. We learn that the company defaulted on its funding obligations in October 2007. Is that before or after this due diligence? It seemed to be about the same time. The law suit is as I read it out earlier, Sir. It is quite specific and for the Chief Minister in his speech to suggest that it really did not matter I think is stretching credibility. Should such an event have the same effect on us it would be quite important because it is a matter of financial working. Not only is this company alleged to have defaulted on its funding obligations - and I pointed out to Deputy de Faye that I am quite happy to say things elsewhere and that I am not abusing parliamentary privilege. All this information is in the public domain, so I should imagine that if these allegations are found subsequently to be in any way inaccurate Harcourt is going to be

rather busy suing hundreds of thousands of people. Do we not owe it to the public to at least check that our information is correct? That is all I am asking for with this reference back. It is not a delaying tactic. It is not a derailing tactic. I need the information that the firm that we are dealing with is as robust as the Chief Minister outlined yesterday. That is all I want to know. If it is, that is fine, let us go ahead. If it is not, we need to re-think. To make such a monumental decision for Jersey; it may be a small enterprise for this particular firm with its worldwide activities but the Waterfront plan is a major construction for Jersey. We cannot afford to get it wrong. We cannot afford to be working with a developer who part of the way through the development pulls out and leaves us not only with a partly finished exercise, but also with the liabilities that go with it. We cannot afford that. This Island cannot afford that. We have a duty to make sure that everything is in order. I cannot see a reference back would take terribly long for that information to be found and then once we have that information we can move ahead. I maintain my proposition.

**Senator F.H. Walker:**

I am sorry, but I do have to re-emphasise the factual nature of the position in Las Vegas. No legal motion has been filed in Las Vegas involving Harcourt in this development and I think the Deputy is again at severe risk of misleading the House.

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

The Deputy has made the statements he will stand by them.

**Deputy G.C.L. Baudains:**

Could I just say, Sir, that if that is the case then he can prove that in the work done in the reference back because the Chief Minister is misinformed.

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

The appel has been called for. Members are in their designated seats. The Greffier will open the voting which is for or against the reference back.

<b>POUR: 6</b>		<b>CONTRE: 36</b>		<b>ABSTAIN: 1</b>
Connétable of St. Peter		Senator F.H. Walker		Deputy R.C. Duhamel (S)
Deputy G.C.L. Baudains (C)		Senator W. Kinnard		
Deputy P.N. Troy (B)		Senator P.F. Routier		
Deputy R.G. Le Hérisssier (S)		Senator M.E. Vibert		
Deputy G.P. Southern (H)		Senator P.F.C. Ozouf		
Deputy S. Pitman (H)		Senator T.J. Le Main		
		Senator B.E. Shenton		
		Senator F.E. Cohen		
		Senator J.L. Perchard		
		Connétable of St. Ouen		
		Connétable of St. Mary		
		Connétable of St. Clement		
		Connétable of Trinity		
		Connétable of St. Lawrence		
		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Deputy A. Breckon (S)		
		Deputy J.J. Huet (H)		
		Deputy of St. Martin		
		Deputy J.B. Fox (H)		
		Deputy S.C. Ferguson (B)		

	Deputy of St. Ouen		
	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 A.J.D. Maclean (H)		
	Deputy K.C. Lewis (S)		
	Deputy of St. John		
	Deputy I.J. Gorst (C)		
	Deputy of St. Mary		

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

Very well. The debate therefore resumes on paragraph (2) of the proposition. Deputy Ferguson.

**1.2 Deputy S.C. Ferguson of St. Brelade:**

As I have said earlier in this debate Members want reassurance that the taxpayers are getting a fair deal and Members must remember that the essence of a good deal is that both sides benefit. Looking at the proposition, on page 9, paragraph 4.2 it states that a summary of the financial and other terms is attached at appendix 4. Frankly, I would have preferred more numbers and less verbiage. There would have been more reassurance. The Minister for Treasury and Resources, who is unfortunately not in the House, is dealing with the terms of the acquisition and paragraph (2)(b) states that the Minister for Treasury and Resources will agree the terms of the lease. Can we be reassured that as well as the Attorney General, Jersey Property Holdings will review the terms of the lease? While I am sure W.E.B. are more than capable when dealing with leases it is always useful to have a second pair of eyes review it, particularly by a department where there is considerable expertise in large property deals. The heads of agreement. It appears that the heads of agreement have already been signed. It says somewhere that they have been signed, Sir.

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

I think we were told yesterday they were ready for signature. They are not signed.

**Senator F.H. Walker:**

For clarity, the heads of terms have been signed. The development agreement has not.

**Deputy S.C. Ferguson:**

There is therefore, if I can think about this, a letter outlining the terms of the agreement, which has been exchanged. Is there any sort of proviso on that saying that it is subject to contract or subject to anything else? I can have the assurance of the Chief Minister on that?

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

When he sums up.

**Deputy S.C. Ferguson:**

Because I understand that under Jersey law there are legal implications when you exchange a letter with agreeing terms of an agreement in principle, unless you mark it: "subject to", or "with reservations".

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

I think the Chief Minister will address this in his summing up, Deputy. We cannot have a personal question time.

**Deputy S.C. Ferguson:**

What a pity, Sir. I also note that in the Scrutiny Report ... perhaps the Solicitor General would care to comment on that at some stage, Sir.

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

Binding nature of the head of terms agreement.

**Mr. Timothy John Le Cocq Q.C., H.M. Solicitor General:**

I think the only comment I can make at this point, not having seen any heads of terms or any particular letters of agreement, is that the legal effect of such a document depends entirely upon the terms in which it is written and the caveats placed upon it in the circumstances in which it is created, and unless I can see it and have a chance to consider it I do not think I could properly advise the Assembly further.

**Deputy S.C. Ferguson:**

In the Scrutiny Report the recommendations by the adviser are: "Subject to my comments in previous paragraphs and also subject to the bank guarantees this [which are the rearrangements attached to the tunnel] would seem to be an acceptable financial structure." He goes on to say: "I would have expected that the cost of the public works be capped in relation to the financial arrangements insofar as if their cost falls below the capped figure the monetary payments rise, but if they exceed the figure that is the developer's risk. In order to incentivise the developer on cost I would expect such an arrangement to work on a sharing basis." He has other recommendations. That there will be a development agreement with the usual protections in the lease and development agreement. There will be a parent company guarantee. I would like the Chief Minister to confirm that these recommendations have been followed in full and perhaps in his summing up he would give us an outline of the terms in the... well, if it is not the heads of agreement, in principle heads of agreement. He may wish to do this in camera but I think perhaps this is the information that the House would like to know.

**1.3 Deputy G.P. Southern:**

I rise to my feet after the reference back, which rather caught me by surprise, but to state to the House that I will be proposing that the debate be suspended so that my panel can have this part referred to it for the following grounds, and that is not an abuse. We have heard time and time again about various financial and legal queries that have not been answered. The facts are that yet again this Council of Ministers is behaving in a way that committees used to, Presidents used to, which is bringing propositions to the House (a) in principle, and then without the detail, and we have agreed the principle and therefore we have to go through with the detail, come what may. It is the old way of doing things. Under Ministerial government we were told that that was to finish. However, what we have seen today is a debate on exactly those same principles. Members are sitting around here. Are all of us confident that we know what we are about to commit to? Can each of us put our hands on our heart and say to our constituents: "We knew what we were doing. We had the information, the financial, the economic impact, the legal terms"? No, we cannot. I do not believe a single Member can do that. Perhaps the Chief Minister can, as he is presenting this. Perhaps the Chief Minister can do, as they always used to: "I know what I am doing. Trust me. I am a politician. Trust me to lead you in the dark." But we are in the dark. We do need some clarity. We do not have sufficient information. In a relatively short period of time, and we have Article 79 which allows us to suspend a debate so that a Scrutiny Panel can examine particular issues and report in brief... in a short time turn around and report back, saying that it is satisfied, or that it has these problems, or has these worries still, or that it is all clear; it is satisfied that we can safely go ahead with a particular course of action. Now, in our case, and I know we do not have complete unanimity at this stage with my panel, and that is nothing to be worried about. **[Laughter]** I accept the reservations expressed by the Constable previously. I am not joking,



Senator Le Main. If I may be allowed to continue with my speech, Sir, without interruption from the Minister for Housing I would be very grateful. Thank you. Sir, is that parliamentary behaviour to call a Member who is on his feet a big gob? Sir, is it parliamentary behaviour to call a Member who is on his feet a big gob? The Minister for Housing just did so.

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

Well, it certainly would not be. I did not hear any of those words myself.

**Deputy G.P. Southern:**

I heard it clearly, Sir. In which case I shall return the compliment. I shall call him a sweetheart.

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

Could we get on with the speeches?

**Deputy G.P. Southern:**

I would if I could. The particular reservations I have, and it is very specific and it need not take a long time, we can get this back to the Members in short order, I am sure. It is in the report of the Corporate Services Panel which says that they did have a chance to see the Economic Adviser's report to the Council of Ministers on the economic impact of the proposals for the development of the Waterfront in February of 2006. That economic impact is key to the whole thing and yet while the Corporate Services Sub-Panel did have access to that it was not part of their remit. It was not part of their terms of reference to examine that. Now, I believe that economic impact should be known to Members - aspects of it - and the economic impact is vital to making this decision in confidence to go ahead. Just to explain. The Chief Minister has described the review of the Corporate Services Panel as a full and comprehensive review. It is far from that. I believe I quoted you correctly, Sir, early on in your speech. Just to put the context on it there is a letter here that I have from the Corporate Services Panel to Senator Walker and I have permission to quote from it: "The President of J.C.C. (Jersey Chamber of Commerce) forwarded to me a copy of a letter he received from you dated 19th February 2008 [this is to the Chief Minister]. In your letter you state that terms of the deal have been subject to investigation and verification by the Corporate Services Corporate Affairs Scrutiny Panel. You also state that an independent risk assessment has already been undertaken through the Corporate Services Panel and other expert advisers." Now, the chairman of that sub-panel says the following: "I believe it is important for future debate on this subject to make clear that the sub-panel carried out a preliminary investigation into one aspect of the proposed development, namely the commerciality of the proposed heads of terms agreed between W.E.B. and Harcourt." After a brief examination of the process the sub-panel adviser reported that he was satisfied: "I am anxious that our preliminary review should not be represented as a full investigation for the entire Waterfront development." So, what we have is an examination of a very small part of the heads of agreement and that is all. It was not part of their remit to look in any depth whatsoever at the economic impact of the deal. I believe that economic impact is central, crucial, essential to going ahead with the deal, so therefore I wish to ask the House to suspend debate so that my panel can examine that report and the economic impact thereof in order that we can return to the House in short time in order that we may go ahead with this confident that we know what we are doing. That is the terms of the suspension and that is what I wish to do.

**Senator F.H. Walker:**

Could I first ask a question? I probably missed it. Is the Deputy suggesting that this should be referred to his Scrutiny Panel?

**Deputy G.P. Southern:**

Indeed, Sir. It is the economic impact and it is the Economic Affairs Scrutiny Panel.

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

Deputy, this is a slightly unusual situation. I do not think we have been in this situation before since the Standing Orders came into force in 2005 because we did effectively have a proposition under Standing Order 79 yesterday from Deputy Duhamel, but that proposition was indeed to suspend the debate so that the Corporate Services Scrutiny Panel could consider whether the proposition should be referred to that panel. You are now making a separate proposition, I understand, that the debate should be suspended so that the Economic Affairs Scrutiny Panel could consider whether it should be referred on the economic grounds.

**Deputy G.P. Southern:**

If I may, Economic Affairs obviously is a wide-ranging brief.

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

I think in those circumstances it is a separate proposition that can be correctly put if it is seconded. Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition of Deputy Southern?

**1.3.1 Senator M.E. Vibert:**

I have not spoken so far on any of it because I felt that so much of it was prevarication from those people who just do want to block this at any effect. Deputy Southern wants us to believe that this is a genuine belief that he wants his panel to look at certain aspects of it in the public interest. Perhaps I would be more inclined to believe that if Deputy Southern had not supported every other attempt to block this Masterplan going through. I am afraid I do not believe him and, Sir, I wonder what is next. Is he going to go out and set off a fire alarm so we have to suspend the States so we cannot get on with it?

**1.3.2 Deputy G.W.J. de Faye:**

There are a number of very genuine Members who work hard on Scrutiny and many of the Members of Scrutiny must be shaking their heads this morning because I have rarely seen so much damage done to the concept of Scrutiny as I have witnessed in the last 5 minutes. **[Approbation]** The one great fear was that Scrutiny members would start to use their powers as a parliamentary tool to disrupt proper proceedings in this Assembly, and I think we are witnessing one such event now, but I do not hold out great prospects because I have every expectation that the reputation of Scrutiny will be buried even deeper in around 3 weeks' time. But even on those sole grounds I would suggest to Members that we should simply vote this suggestion down. In my view it is not the proper way to conduct Scrutiny and a clear message should be sent now.

**1.3.3 Deputy A. Breckon of St. Saviour:**

I will be brief. The reference is in regard to economic impact and I have not seen anything, maybe I have missed it, about the effects they would have on existing business and trade. I mentioned this yesterday. If we are talking about such developments, what would the effect be on the town, traders in the town in retail, in catering and other areas? I do not think anybody has taken that into consideration. It is a bit like, put your finger up in the air and see which way the wind is blowing. What would be the effect on them? I said yesterday, if I had signed a 21-year lease at Colomberie for a restaurant I would be wanting to get rid of it. So, who has considered those people? I do not know if anybody has. If there has been a report from the Economic Adviser somebody must have taken some of this into consideration and I have not seen it personally. Also, what would the effect of that be? Do not forget some of these people have spent a lifetime in this business and I think we owe them that. Show them some respect. Even people within 100 yards of this House, whose business could be ruined by what we may do down there. They cannot all move down there. It is known that people will not walk distances, even that distance. We have talked about the separation and I think it is worth another look and I think to treat it any other way is disrespectful to many people who have spent a lifetime with some of their business in some of the industries - the hospitality industry - that we all enjoy.

#### **1.3.4 Deputy J.A.N. Le Fondré of St. Lawrence:**

As I expressed my views yesterday, I would ordinarily have a lot of sympathy for what Deputy Breckon has just said and what has been said by the chairman of the Economic Affairs Scrutiny Panel. However, Sir, if my understanding of the present position is correct then what we are debating today is a land swap. We are essentially looking at authorising the States to acquire some land from W.E.B. and then exchange a complete parcel of land back to W.E.B. It is inferred that gives the go-ahead to the deal but the legal responsibility that we are dealing with, as I understand it, is between the States of Jersey and W.E.B. on a land swap. It is the directors of W.E.B., and obviously there are 3 directors here today, who have a statutory responsibility to act in the interests of the company and who have to do the appropriate levels of due diligence on the contracts between W.E.B. and the developer and that, in my view, includes due diligence obviously as to the probity of the developer, as to the financial viability of the developer, it includes assessing the risks of any downside of the transaction as well as upsides and that whole remit. That is their statutory responsibility while they are acting in the interests of the company and on our behalf as shareholders in that company. On that basis though, in my view - and I concur precisely with the views of Deputy Gorst - that was the debate we had yesterday. The House simply voted on that and that was the decision arrived at. Today we are dealing with a land swap and therefore it is not appropriate to try and... we are over-complicating things, in my view. I would, as an aside, say that I can see nothing to stop Scrutiny doing an economic impact analysis, as it were, of the transaction because the Minister has already said that feedback can be put into the public inquiry. On that basis, Sir, I will not be supporting any reference backs or any referrals to Scrutiny and I will be supporting the actual proposition.

#### **1.3.5 Senator F.H. Walker:**

I will be very brief, but I do think some further points need to be emphasised here. This has been scrutinised by the Scrutiny Panel already and we have heard from the chairman of the sub-panel. The problem here is - and I agree with Deputy de Faye - that Deputy Southern is doing more to damage the reputation of Scrutiny than any Minister or anyone else has done since we set it up. **[Approbation]** The problem is he is so intrinsically opposed to this development that he wants to have a go at it. He is basically saying: "I do not like the answer the Scrutiny Panel came up with so I want it to come to my panel so I can work my own opposition into it and I can spin everything as far as I possibly can." That is not what Scrutiny is there to do. This is an abuse of process and if that is how he feels the Deputy should have got his panel to do this assessment many weeks ago. Why did he not? He has completely failed to do his job and what he is trying to do now is just paper over the cracks and put up a pretence that this will be a legitimate, independent, evidence-based Scrutiny Report. That is what we have already had and if it goes to his panel with his views we most certainly will not get that from him. This is just a charade to try and find, to concoct some form of opposition yet again. But I can say to the House, Sir, the Economic Adviser's report to which the Deputy refers did go to the Scrutiny Sub-Panel and, as far as Ministers are concerned, that was its proper place to go. I accept what Deputy Mezbourian said about information coming to the House but we did a thorough job in terms of releasing every piece of information that Scrutiny asked for, which was confirmed by the chairman yesterday. Every piece of information they asked for they received. No problem. No problem whatsoever. I accept there is a balance between how much information goes to Scrutiny and how much comes to the House, and perhaps we are still learning in that respect, but we were completely full and free with the information, nothing to hide, did not seek to hide anything at all. The economic report is overwhelmingly positive, overwhelmingly positive. I am tempted to let the Deputy have it for his Scrutiny Panel because I defy even him to come up with a negative based on this report, but he probably would because he is inventive enough and he can spin well enough to do it. But basically, Sir, this request for suspension represents the Deputy failing to do his job and at the eleventh hour seeking to delay the debate to support his intrinsic opposition of it and we should have nothing to do with these shoddy tactics whatsoever.

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

I rise once again to repeat my words earlier on and just to add a few others. One is that I feel that there is little to be gained from drawing this into Scrutiny except additional cost. My attention is drawn to the fact that the Corporate Services Scrutiny Panel in their report indicated that they were aware, and I read from the report: “The panel was aware that there were highly significant social, economic and environmental issues relating to planning, traffic and waste disposal, however these issues were clearly outside its remit and it was agreed that it would be appropriate for these matters to be examined by other panels.” Now, Sir, the Economic Development Scrutiny Panel has had the opportunity, decided not to examine this at a much earlier stage, and quite frankly we have heard the evidence in depth from the Chamber of Commerce regarding retail in the town. We have had a plethora of information. We do not need any more. If we cannot make our minds up on the information provided so far I feel, Sir, as States Members we are sadly lacking. Let us get on with it. We need to move this thing on. We have had all the information and I feel that really some Members are avoiding making a decision. Let us move on.

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

I call on Deputy Southern to reply.

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

Senator Vibert does not believe me; that is his choice. I do not know what I can do to convince him that I am dedicated to the purpose of Scrutiny and I believe it is a serious concern. Deputy de Faye accuses me of doing so much damage and disrupting the process of the House but I remind him that one of the prime concerns of Scrutiny is to engender informed debate, and I put it to the House again that we are not fully informed on the economic impact of what we are about to do and I do not believe any single Member can, in all honesty, say that he or she knows what they are doing today if they vote this through. Deputy Breckon pointed out once more again to the impact on traders in town but I take that further, and I mentioned it yesterday, the impact of such a spend on inflation because we are supposed to be keeping down our spend in order to restrain inflation. The impact on the building industry. This is a massive project over the next 10 years with building projects going out all around it. What impact has that on the economy? We need to know. Deputy Breckon asked us to show some respect for the people out there. I do not believe, if we go ahead today, we are showing them that respect. Deputy Le Fondré seemed to confuse the issue and talked about the role of the directors of W.E.B. to look after W.E.B.’s interests and therefore implied the interests of the Island on a wider basis. I remind him that the people who are here to look after the interests of the Island on the wide base is us - is this Government - not the directors of W.E.B., but this Government and each and every one of us and I believe if we go ahead today again we will not necessarily be looking after their wider interests. Senator Walker, and I do take it as a genuine compliment to get a compliment from Senator Walker, that in some way I am a respected spin master and he used the word twice. Well, *chapeau*, Senator Walker, that is coming from one who knows. He then referred to a legitimate report that we already have. Now, which “we” was he referring to? I know which “we” accurately he was referring to. He was referring to the Council of Ministers because there is a report from the Economic Adviser, report to the Council of Ministers on the economic impact of the proposals for the development of the Waterfront, dated February 2006. The “we” is the Council of Ministers. This House - this Chamber - takes decisions like this and we, this Chamber, do not have that report. It has the assurance from Senator Walker that the report was overwhelmingly positive and I go back to what I said before about pre-Ministerial government. It was a case of: “We know what we are doing. Trust us” and that is exactly what we are getting. This House should see, or should satisfy itself and satisfy itself through the Economic Affairs Scrutiny Panel, that that is correct and that there are no glitches in the system. I believe that this is an entirely appropriate way to proceed and while I am here I will mention the Constable of St. Brelade. We have to agree to differ. I apologise to him for the late notice. It only came to my notice yesterday in a real sense that there was a document that I believe we should - and I agree we

should - already have looked at. We have not, but there is this mechanism which enables us to do that in short shrift to get the thing back on track, should we so decide, or to at least examine it and come to the House and say: "This is what it says" so the House is fully informed and that is all I wish to do. I maintain this proposition and call for the Appel.

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

Members are in their designated seats. The Greffier will open the voting for or against the proposition of Deputy Southern.

<b>POUR: 4</b>		<b>CONTRE: 39</b>		<b>ABSTAIN: 0</b>
Deputy A. Breckon (S)		Senator F.H. Walker		
Deputy G.C.L. Baudains (C)		Senator W. Kinnard		
Deputy G.P. Southern (H)		Senator P.F. Routier		
Deputy S. Pitman (H)		Senator M.E. Vibert		
		Senator T.J. Le Main		
		Senator B.E. Shenton		
		Senator F.E. Cohen		
		Senator J.L. Perchard		
		Connétable of St. Ouen		
		Connétable of St. Mary		
		Connétable of St. Peter		
		Connétable of St. Clement		
		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of St. Lawrence		
		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Connétable of St. Saviour		
		Deputy R.C. Duhamel (S)		
		Deputy J.J. Huet (H)		
		Deputy of St. Martin		
		Deputy P.N. Troy (B)		
		Deputy R.G. Le Hérisier (S)		
		Deputy J.B. Fox (H)		
		Deputy S.C. Ferguson (B)		
		Deputy of St. Ouen		
		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 J.A.N. Le Fondré (L)		
		Deputy D.W. Mezbourian (L)		
		Deputy of Trinity		
		Deputy A.J.D. Maclean (H)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		

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

Very well. The debate resumes on paragraph (2). Senator Perchard.

**1.4 Senator J.L. Perchard:**

As the Deputy was standing there making his proposition I could imagine him in bed last night. In fact, I can imagine him [**Members: Oh!**] and Deputy Baudains, both in their own beds white-knuckled, biting their pillows, thinking: "How can I derail the process tomorrow?" They must have stayed awake all night. Shame that they did because it has failed miserably. Sir, I remind Members that about 2½ years ago it was they who kindly appointed me as one of the 3 States directors of the Waterfront Enterprise Board. In that capacity, Sir, I have been involved in much of the legwork designed to deliver the Esplanade Quarter Masterplan efficiently and in the public interest. In order that the States be provided with a financial certainty to support this proposition W.E.B., on 19th July, entered into the heads of terms agreement with Harcourt and as Deputy Ferguson raised the heads of terms and what it commits us to, I would, if you would permit, Sir, explain to the House. So, it was in July 2007 that W.E.B. signed the heads of terms with Harcourt Developments Limited. These heads of terms provided that a development agreement would be entered into by 30th June 2008. If the development agreement was not entered by 30th June 2008 the heads of terms fall away, unless of course they are chosen to be extended by Harcourt and W.E.B. together. The heads of terms and development agreement have been drafted and reviewed by W.E.B.'s own lawyers in some detail. We have a draft agreement that means nothing of course, Sir, without the approval of this House for the necessary transfers of land to enable the development. The principle terms of the agreement were outlined by the Chief Minister yesterday, so I will not repeat them. However, yesterday, during the debate, Deputy Duhamel and other Members raised some concerns regarding a few points of detail within the draft agreement which I noted. Firstly - it was flagged-up regularly during the debate - the responsibility for the tunnel maintenance and the road maintenance. The cost for the operation and maintenance of the Waterfront tunnel have been estimated at approximately £500,000 per annum. These costs will be met by the public. Although the specific detail and design of the tunnel has not been undertaken - that is to say the type of panelling, the lights, and the trim *et cetera* - Technical advisers employed by T.T.S. (Transport and Technical Services) - that is Capita - compared to operating and maintenance costs for our tunnel with 2 other tunnels that they have been advising on. That is Medway and Limerick tunnels. For the above 2 examples, standardised rates were obtained and Jersey costs apply for electricity and maintenance. These costs can be broken down as follows; electricity, as Deputy de Faye said yesterday, will be required particularly on bright days, will cost approximately £180,000 per year. Operating and maintenance costs comprising of monthly night cleaning of the tunnel, maintenance of lights and illuminated signage, maintenance of fire suppression systems, maintenance of ventilation and gas monitoring systems, maintenance of surface water and drainage systems, maintenance of C.C.T.V. (Closed-Circuit Television) equipment and the cost of 24-hour surveillance of the C.C.T.V. tunnel operation will cost about £250,000. Annual cost for replacement equipment, which will not be expected to be incurred in the first few years at least, will be £70,000. That makes a total of £500,000 which, as I say, most of that cost will not be incurred in the early years. The estimate can be seen as a high level at this stage, but as I say, Sir, it is unlikely to be necessary to spend that money in the first years. The Deputy also asked about the maintenance and cost of maintaining public spaces. In the agreement that has been signed to date the costs of maintaining the public squares and public spaces throughout the Esplanade Quarter, which includes the Winter Garden, will be at the expense of the developer who is expected, in order to pay for this maintenance and cleaning, *et cetera*, to levy a service and maintenance charge on all occupiers of the development. There will be no cost to the public purse to maintain the public spaces, including the Winter Garden, and that is the small walkways between the public spaces. A query was raised regarding any necessary junction and road improvements by the Deputy. It is agreed that the developer is to pay for all junction improvements required as part of the traffic management proposals. This includes all costs, both on and off site, of the Esplanade Quarter. This also includes work and new sophisticated computer traffic management systems from Georgetown to West Park.

**Deputy I.J. Gorst:**

Perhaps the Senator could slightly give way to offer some clarification to those comments. He has just confirmed to us that the developer will be responsible for ancillary road works. He has said lighting and traffic controls from Georgetown to West Park. I think I, along with other Members, would like a categorical assurance that it will not just be the traffic management lighting system but it will be the physical road works, anything that needs to be undertaken, I suppose, regardless of the geographical location as a result of this development. Will that be met by the developer?

**Senator J.L. Perchard:**

The heads of terms agreement says that all junction and road improvements that are required to facilitate the development will be met by the developer. Yes. The Deputy also asked about the disruption caused by the works and the impact of that disruption. When evaluating the options for temporary works, consideration was given to maintaining traffic flows in as normal as possible fashion from east to west to minimise the cross-queuing particularly, Sir, at peak commuter times. The proposed solution is to maintain the traffic on the existing roads while the majority of the new tunnel is constructed and as much of the above ground work as can be done on the infrastructure. So, we will keep the existing roads operational for as long as possible. At the point where it is no longer possible to do that temporary traffic work, schemes will be introduced using a combination of above ground and new tunnel routes to maintain 2 lanes of traffic, both east and west, at all times. This period of crossover is expected to take about 9 months. When specific junction improvements are being undertaken the contractor will be required to work to T.T.S. highway specification which will require works at critical points to be undertaken outside peak commuter hours. It is confidently predicted that any disruption to traffic flows can be managed satisfactorily. The Deputy and others also asked about car parking spaces. W.E.B., on behalf of the public, currently owns the esplanade car park site which T.T.S. operates on a temporary basis. T.T.S. provided the capital cost of the car park and it was agreed that T.T.S. would retain the receipts from those parking spaces until such time as the esplanade site was developed. T.T.S. have factored-in this position into their operating budget and it comes as no surprise to them and they are quite satisfied with the outcome and the relationship with W.E.B. on this. W.E.B. has negotiated the buy-back from the developers of 520 public car park spaces. These spaces will cost the developer at least £25,000 per space to build. W.E.B. will buy them back at £15,385 per space. This means that the public, through W.E.B., retains ownership and control of 520 underground spaces on the new development and of course will benefit from the operating revenues generated thereafter. The public will also benefit from any uplifts that may be generated by future increases in parking charges. W.E.B. will meet the cost of maintaining the 520 spaces and operating their car parking area. Our experience of operating the Waterfront car park, which is a similar underground structure, indicates that we will make a significant profit for the public. As a result of the development works there will be a requirement for some temporary car parking provision. There are currently 520 spaces on the Esplanade surface car park. The developer, as part of the agreement, will provide 320 temporary spaces. It is thought, and T.T.S. advise us, that there are 200 spaces available at Pier Road. The exact location for these temporary car parking spaces has not been agreed but we are looking seriously at 2 options and that is a temporary facility on the harbour, or my favourite option is a temporary surface car parking on the lower park where the slatted drive-on material can be put down and it will save cars venturing into the development area. But we are still working on the detail of that but the developer has agreed to provide, as his cost, 320 temporary spaces.

**Deputy R.G. Le Hérisier:**

Can I ask on a point of clarification? I did raise it yesterday with the Chief Minister. The ownership of the roads. Some Parishes - Deputy Hill and I know only too well - are embroiled in these never-ending debates about ownership of roads. Are there any of these W.E.B.-owned roads, if there is such a thing, that are going to move to T.T.S. and/or the Parishes? If so, under what arrangements?

**Senator J.L. Perchard:**

That is a very interesting question but it is a complete diversion from my text and I may be addressing it later on. Incidentally, the charges levied by the developer for the temporary car parking spaces will be the equivalent of public rates. A point was raised about legal ownership of different areas within the development. The ownership issues are really very simple. On practical completion of the tunnel, the tunnel will revert to public ownership as will all of the above-ground public road network. The network of pedestrian streets and public open spaces throughout the scheme will remain in the ownership of the development company for the duration of their 150 year lease. As mentioned previously, they will be responsible for the upkeep and maintenance of the squares and the pedestrian streets. The Winter Garden will also remain in the ownership of the developer but will have public access and will be maintained at the developer's cost. Several Members also asked about the waste management plan. It is clear from the comments already made in the States yesterday by the Minister for Planning and Environment that he will be seeking higher recycling target rates from the excavations on the Esplanade Quarter, the ground excavation. The developer will be incentivised also to achieve this through recycling either on its own site or selling recycled material directly off it or, if it is unable to operate in this manner, it will receive the T.T.S. standard tipping rate of £3.60 per tonne for recyclable material or for material that is not deemed as recyclable, the developer will be charged the full rate of £11.50 per tonne. For asbestos products and ash, there are health and safety protocols in place for the safe excavation, handling, transportation and disposal of these toxic products. T.T.S. will charge the contractor the standard rate applicable for each individual material which covers the specialist storage disposal and cost of dealing with that toxic material. The liability for the tunnel post-construction is another issue...

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

Will you give way to Deputy Duhamel?

**Deputy R.C. Duhamel:**

On a point of order, I thought that negotiations had taken place over last evening with the Waterfront Enterprise Board and others in order to bring to this House the cost schedule that we have been asking for. It does appear to me that as useful as some of the information given to the House has been, it is not in a form that would be readily assimilated by Members, and is it in the form that we asked for?

**Senator J.L. Perchard:**

There is no cost to W.E.B. (Waterfront Enterprise Board) or the States of Jersey for the disposal of this waste. In fact, there will be income for the States of Jersey for the charge levied on infill. There is no cost to the States for that. The developer bears the cost. Liability for the tunnel post-construction was raised yesterday; and who is liable? Under the development agreement, the developer will construct the tunnel to approved Highways Agency Standards. Throughout the construction period, the States technical adviser - Capita - will be on site to inspect all works associated with any part of the structure that is to be handed back to T.T.S. These technical advisers, working on behalf of the States, will be paid by the developer. Failure to adhere to the required standards by the developer will be seen as a breach of their development agreement for which the ultimate remedy is available to W.E.B. in that W.E.B. could impose its step-in rights. Under the T.T.S. Highways Agreement that is appended to the main development agreement, the developer has to follow an approval process before designs are accepted by the T.T.S. advisers. What this means is that this agreement places the design responsibility on the developer and holds the developer liable for defects under the 12 month defects liability and for a period 3 years after the development is completed for latent defects in design, and that is 3 years not only after the tunnel is completed, that is 3 years after the whole development is completed.

**Deputy I.J. Gorst:**



Perhaps the Senator would give way again? Sorry, I am being a nuisance this morning. Earlier, in an answer to a request for clarification, the Senator said that all ancillary road works would be covered by the developer. I wanted to ask him at that point but left it and now he has said that defects will be covered by the developer for, I think, it was between 12 months and 3 years. Can he confirm that any unforeseen traffic requirements or road works, which will probably only be highlighted once the development is completed - which we could be talking 15 years down the road from today - can he confirm that they will be met as well? Do they fall within this 12 months to 3 years window for defects?

**Senator J.L. Perchard:**

The unforeseen are exactly that, I am afraid. We are talking about defects 3 years after the whole development is completed. There is a latent defects clause and any defects in the build, including the tunnel and buildings, will be liable to be corrected by the developer. On completion of construction and having followed the approvals process, the developer will be issued with a completion certificate which, effectively, hands the road to T.T.S. I have spoken in a bit of detail here but these were points raised by Deputy Duhamel and others yesterday and I did feel that it was important to respond formally to them. Finally, I say to Members that there is a detailed draft development agreement in place. Our lawyers have drafted it. Our professionals have trawled through it before it has been revisited by our lawyers. I am satisfied that the agreement does exactly what it says on the tin and what Members think it says. I hope Members feel confident that they are able to whole-heartedly support the proposition and to transfer the land necessary to public ownership today. I ask that they recognise, finally, that the Waterfront development programme as a whole has turned a corner and that with this exciting development proposal and Masterplan, and the exciting Castle Quay plans, we are on the verge of delivering a magnificent environment in which people can live, work and play.

**Deputy R.G. Le Hérissier:**

Just on a point of clarification, and I do thank the Assistant Minister for his contribution. What happens, heaven forbid and I hate to raise a pessimistic note, if the developer goes bankrupt?

**Senator J.L. Perchard:**

It is not a point of order from my speech. I know the Chief Minister will be, in his summing up, addressing that again because, evidently, the Deputy missed that point earlier in the debate but it is a win-win.

**1.4.1 Senator P.F. Routier:**

Yesterday we saw the sun just breaking over the horizon and we thought we were going to be heading to a bright new day. Today we have had a few clouds but I think what we have before us today is a great opportunity which we should really grasp. There were a number of forward-thinking Members yesterday who supported the Minister for Planning and Environment and his team for the assembled Masterplan which they brought forward to us. So, today is a new dawn for the Waterfront and I think it is something which we can really look forward to. We not only have an internationally respected architectural practice designing the Masterplan...

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

I just must stop the Senator. The States are inquorate.

**Senator P.F. Routier:**

There we are. I am glad the Minister is back because I was just about to kick him... praise him. **[Laughter]** Yes, we not only have an internationally respected architectural practice designing the Masterplan, we also have attracted a developer with a proven track record and who has the experience and financial backing to deliver the scheme. We also have the financial guarantees, and picking up on the point which Deputy Le Hérissier asked about - which the Chief Minister will no

doubt reiterate again - if there is any problem with the developer and financial backing there are banks in the background who will guarantee the money and the project can still go ahead even if the existing developer has any problems. We have those guarantees in place and the scheme will be completed and the States will be protected. Of course, there are times in one's life we are called upon to make big decisions and in some cases make decisions when perhaps not every tiny little bit of information is known. Of course, when a decision like this, for instance, has so many facets to it the elements of the deal will even be moving as we talk and you will never, ever get to a situation where you have a static position. But you have to be confident that the deal which is brought together is an appropriate mechanism to achieve what is best in the long run. This is one of those decisions and the States, through W.E.B., have the ability to benefit from the moving market conditions through overage payments which are built into the deal. It just cannot have escaped Members' notice that there has been very recent experience of the confidence the Island has in the Waterfront, the confidence that they have shown in making pre-sales, buying pre-purchases on the Castle Quay off the plan. The Island is so confident in the Waterfront that they are prepared to put their own money into it and move forward in that way. This should give Members the confidence and comfort that what we are doing with our own Island investment - our own reclaimed land - that we can achieve a good return for ourselves. I do like the Deputy of St. Owen but I was concerned that he was looking at this proposal from the wrong end of the telescope yesterday. He asked a question: "What are the costs of doing this development?" Well, I would respectfully suggest that he might want to turn his telescope around and look at it from the other end because he might get a different perspective. What he could be asking is: "What would be the cost of not doing this development?" I really worry that if we want to retain our place in the world of finance centres and we do not proceed with this development then we will signal our intention to the world that we do not want to enable our existing finance companies to succeed. I cannot even begin to calculate the cost of not going ahead with this development. We know that there are already locally-based companies who have plans to progress into these modern offices. This development is more than just about buildings. It is a signal to the world that we are progressive, we are forward thinking, and we want to keep doing business with the world. Members are aware that I am one of the States directors of W.E.B. and I did not contribute to the earlier debate on the Masterplan itself other than to vote for it. I did that because the Minister took great pleasure in saying the previous plans were a disaster. Well, I was actually a fan of the towers and I do... a look from the Minister of surprise there. But, as others have said before me, good architecture, like art, is in the eye of the beholder. In saying that, I think what we are progressing with now is wonderful and I thank the Minister for his ability to raise the bar of the quality of architecture and this has, obviously, enabled W.E.B. to achieve a greater financial return to the Island and, I must admit, the masterstroke of hiding the road is marvellous. I was grateful to the Deputy of St. Peter for highlighting the documents, including the Economic Impact Study which has been called for again by Scrutiny which the Scrutiny members and their adviser had access to. These are, obviously the same papers that our board have considered and have enabled us to bring forward this deal through the Council of Ministers. As a board, we believe we have a good deal and the Island can have a reassurance that the Scrutiny process has found that our processes, the board's processes, were appropriate including the competitive selection process for the developer which I took part in, and I can assure Members that the selection process was tough and very thorough. My fellow director has covered some of the comments I was going make about the maintenance of the public areas. I think he has covered those exceptionally well so I will not go over those again. I said earlier about a new dawn and I believe a new dawn has broken over the Waterfront and an opportunity is staring us straight in the face and we should grasp it with both hands. If Members want our Island to prosper; if Members want good employment opportunities for our community; if Members want good architecture; if Members want a good return on our investment of our land; if Members want new homes to be built in town and not in green fields, then there is only one option and that is to support this proposition. I urge Members to grasp this opportunity and support the proposition.

### **1.4.2 The Very Reverend R.F. Key, B.A., The Dean of Jersey:**

I am delighted that somebody championed the towers but if the Minister would like to know of a good optician I would be happy to point him in the direction of one. When my wife and I came to take up the position of Dean of Jersey 2½ years ago, I remember very well as the Condor Express swept into the great vista of St. Ouen's Bay and you look at it and think: "Wow. At least we have started with an extremely good, divinely-provided canvas." As the ship gets a bit closer and you then spy St. Helier's Hermitage and the glories of Elizabeth Castle added to down the generations and you think: "Well, the historic environment is pretty good, as well." You then cannot help notice the La Collette chimney and think: "Well, everything has its down sides as well as its up sides." But the great thing you are looking forward to is looking at the human environment. What were the people like and what are we doing in each generation to add value to their lives? I have deliberately chosen to speak in the "value for money" part of this debate rather than the "Do I like the buildings?" debate partly because I hope we have some buildings that I do not like, but they are not bland and are iconic and I am sure we will get those. But, it seems to me we need to define "value" in more than simply financial terms. The first time I opened my mouth in this Chamber, apart from the prayers, was to ask the 2 candidates then standing for Chief Minister what they wanted to do in terms of building community other than economic stability and growth. It seems to me, therefore, that we have to ask ourselves: "What does this proposal do to add value to the lives of Islanders and particularly those in St. Helier?" The Deanery is very close to Convent Court - to bed-sit land - and I think of those single mums pushing their pushchairs and the older folks in retirement and the question I ask is: "What does the Waterfront development do for them?" As a result of following this very closely, I am convinced that potentially it does quite a lot for them, particularly because of the increased public space, the Winter Gardens, and so on but also because - and I pay tribute to them - the Constable of St. Helier and the Minister for Planning and Environment have gone in for some extremely constructive dialogue politics that seem to me to deliver cash to put in precisely to those areas of St. Helier where the poor need our help. It is not enough simply to say in old right-wing terms: "If we increase wealth, there is a trickle-down effect." That may be true but it is not enough. It seems to me in this proposal, we go beyond that and we are saying: "Intentionally, with the wealth that is created there will be investment that will benefit the poor." That is certainly my understanding of what is ahead of us. If that is true, then as States Members, we have to ask ourselves: "Are we making the best opportunity of the unique occasion that falls to our generation to add value to the St. Helier we inherit?" That will be not simply, do the numbers stack up? I bow entirely to those who can add up in a way that I cannot. But will we do that joined-up work that means that the nursery-to-tertiary education that Senator Vibert rightly and constantly reminds us of, means that the children who grow up in the poorer bit of St. Helier will have the opportunity one day to take the high-paid jobs in the Waterfront Esplanade Quarter because if we are not doing that, we are selling the generation short. But if we do that, then it seems to me that we can take a unique opportunity so that those in the future will look back and think: "We are glad they took that decision." If I may use a parallel, at the moment we are halfway through the restoration of the town church. We now look at turning to the inside and I am excited and terrified. Excited by the opportunity. Terrified that in 100 years time a visitor to the church will go in and see a little plaque which says: "This church was restored in 2008, Connétable of St. Helier, Simon Crowcroft. Dean Robert Key," and they will either think: "Goodness me, what were they doing?" Or: "Did they not grasp they opportunity?" It seems to me that what we have to do is to make sure that we define value in much more than financial terms and assure all those who are in St. Helier that what the Waterfront will do is not simply make money for business but add value across the board, educationally, environmentally, in leisure pursuits, to their lives because that, it seems to me, is the task of government. **[Approbation]**

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

When Senator Routier was speaking, he spoke of the new dawn that this scheme is going to provide and he is quite good at coming up with these phrases. I remember during one of the debates on

G.S.T. (Goods and Services Tax) he said his immortal words: "We spend the public's taxes wisely." I say that because the Senator also said that we needed to be forward thinking. I think I want to speak up in favour of those Members in the Senator's books who are, presumably, backward-thinking; Members who have questioned the details of this scheme. And far from turning the telescope, whether it is the right end or the wrong end of telescope in this scheme, some Members have turned their microscopes on the scheme. As I said in my speech on... I forget which part of the debate it was. It was one of the reference backs, I think. We need to be careful, I think, as an Assembly in our fear that we do not take decisions that we take wrong ones and the monument of the Fort Regent swimming pool is up there as a reminder to me that when we put in the leisure pool, we sold the public short in terms of a swimming facility and we did not examine that scheme with our microscopes. We probably did use the wrong end of the telescope and that is why that particular deal went through. That particular deal, of course, commended in the same high-flown, verging on sales talk, terms of the Chief Minister when he outlined part (2) of the proposition and I think it is a particular pity and I hope that the people who I thought were sleighted by his words will take comfort from this. It was a particular pity that the Chief Minister objected so strongly to the group of estate agents and other professionals who have written to States Members and have certainly been in a dialogue with me for the last few months. He suggested, and to prolonged stamping from I think only one Minister, the Minister for Planning and Environment, that these individuals had spent their time and done their research out of sour grapes and they were going to lose money if this development went to a single developer. That is entirely wrong. These agents stand to gain massively if this scheme goes through because of the effect of companies relocating to the Esplanade Quarter. These companies will do very good business, thank you very much, as they facilitate that process. They will probably also be handling the property that is vacated by companies that move to the Esplanade Quarter. So, to say they were acting out of self-interest I think was wrong and I hope the Chief Minister will take an opportunity when he sums up to apologise to those parties. We are lucky that we have professionals in Jersey who are willing to give up their time, whether it is those on the land side as I have alluded to or, indeed, the Chamber of Commerce, many of whose members have put in a lot of time to investigating the potential retail damage of this scheme; and that, of course, is one reason why the Minister has reduced the retail in it. I think there have been some other very important uses of the microscope during this debate and I am certainly pleased that they have been had because, as I said in my speech on part (1), this is a balancing act. We have clear disbenefits coming out of this scheme and we have clear benefits and Members have to balance up the benefits and disbenefits. So, for me, it is not quite a new dawn because that dawn is going to have an awful lot of problems associated with it and I am sure there will be people who are stuck in their cars, there will be people in hotel accommodation thinking: "What is going on outside?" They may remember the phrase: "A new dawn in Jersey," and they may give an ironic smile. The fact is, we have benefits here and we have disbenefits and I have been impressed by the ability of the Minister and, indeed, the developers and the architects and so on to try to reduce the disbenefits and mitigate the impacts. I am sure, I am confident, they are going to do all they can to continue that process and to continue that dialogue so that we do get a good scheme and one which we will be proud of when it is built. But let us not denigrate those who challenge points of detail. For example, it has really only become clear in the last few days that we are not really getting this road for free. Certainly, the revenue cost of the road is going to be met by the public. Senator Perchard said that quite clearly a few moments ago. Now, it has been suggested earlier in the debate that this money could be found by investing some of the proceeds of the scheme but that is money that is not, therefore, going to come to the public. So, the road is going to cost the public because of its construction, a half million pounds a year to run. That is a fair revenue budget and I do not think we should try and hide that fact from us. Other issues have arisen as well to do with the operation of the scheme once it is completed. If, as Senator Perchard says, it is planned to keep some of the roads in private ownership, I would be interested to know how they are going to be policed because, clearly, we do not really want to see a new, private police force operating and for this to become some kind of private enclave. I hope that

there will be dialogue with certainly the Parish of St. Helier but also the States of Jersey as to how this new Quarter can be integrated into St. Helier. We do not want this being, as I say, some kind of enclave with private guards running it. Equally, it was interesting to hear there were plans to put a car park on Lower Park. I do hope somebody will come and talk to me and the Parish Assembly about that before they go too far down that road. Equally, very little attention has been paid to the fact that this new road, if one looks at the diagram in the booklet accompanying the Masterplan projet, does appear to slice off the top part of the pier from which the ducks make their journey to Elizabeth Castle. It certainly takes out quite a lot of the cycle path on the Esplanade and, of course, it goes right through Les Jardins de la Mer with those pleasant fountains, the tree growth, the substantial granite walls and so on. Now, I raised this point with the Minister and, typically for the Minister, he explained to me: “Yes, Les Jardins de la Mer is going to be cut in half” and that is why he wants to replace the water features that are there now in the first of the squares in the new scheme. That, I think, is typical of how disbenefits are going to be outweighed, one hopes, by benefits. But let us not forget that that piece of civil engineering is a very big project and I think Members who have raised these concerns have been absolutely right to do so and I commend them for the work that they have put in. As I said in the report accompanying my amendments, I think it is important... I have tended to feel that this plan is going to go through and, therefore, I felt it important that we do ensure that the proceeds of the scheme, as the Dean alluded to in his speech before me, are used by and large to benefit some of those who will suffer some of the consequences of so much activity moving southwards to this new Quarter. It is particularly important, given the support that the plan has had from the Chamber of Commerce, that local businesses in St. Helier are assured that the lion’s share of the proceeds of this scheme will be used to make sure that St. Helier and the St. Helier in which they operate their businesses in, has the kind of quality that attracts the people into it. Perhaps one point I will conclude with which has not been really stressed in the debate so far but I think is important and is one which finally convinced me that this scheme was, on balance, one that I could support. If the Esplanade Quarter is successful, it will generate enormous footfall into St. Helier. People are not going to spend their days, if they live there or work there, in the Quarter. They are, of course, going to flow back into St. Helier and they are going to spend money there. They are going to use the restaurants there. They are going to socialise there and I think the fact is St. Helier does need more activity in the evenings and I see St. Helier as benefiting, on balance, from this scheme when it is completed. But with those reservations, those concerns, I do give it my support.

#### **1.4.4 Deputy C.F. Labey of Grouville:**

My concerns are not with the chosen developer, my concerns are with W.E.B. and given we, on behalf of the public, are about to lease this piece of public-owned land to W.E.B. for 150 years at a nominal rent, I wish to put my concerns on record. Drawing from my own recent experience, it has come to my attention that some of the decisions that are being made by W.E.B., some of the board members have no knowledge of. I appreciate when a company such as this is running on a daily basis there are daily decisions that have to be made but I do not believe there is enough control and communication where W.E.B. is concerned. I do not get the impression that board members, let alone the public when they are meant to be consulted, get to hear of some important decisions that are being made on behalf of the public. We have just heard one of the W.E.B. members mention that the road... sorry, it was Connétable Crowcroft, who mentioned that the road was going to cost half a million to maintain. The similar figure to which Jersey Heritage Trust - a quango - was getting dragged over the coals for on Tuesday. Yet I was alarmed to be told yesterday that, unlike Jersey Heritage Trust who are quite willing to give their reports to the Comptroller and Auditor General, the Comptroller and Auditor General has no jurisdiction over this wholly-owned company by the States looking after millions on our behalf. So, I would suggest that that be the first item on the Public Accounts Committee agenda.

#### **Deputy S.C. Ferguson:**

Point of clarification. The Auditor General does have certain powers to investigate the accounts. He does not have the full powers that he does for a States-funded body but the Public Accounts Committee is already taking steps to remedy that.

#### **The Deputy of Grouville:**

I shall look forward to that becoming a reality. What I really just wanted to put on the record, and I was glad that the Chief Minister reminded us of this yesterday, was that W.E.B. is a wholly public owned company, they are looking after public land on behalf of the people of Jersey and I think the board and officers would do well to remember that.

#### **1.4.5 Senator F.E. Cohen:**

I would just like to offer my support for the present W.E.B. I think we have seen a huge sea change in W.E.B. I think the political representatives on the board have done a fabulous job. I think they have had a very difficult job to do. I think it was very hard to accept that a new chap came along in the form of the Minister for Planning and Environment and told them that everything that they had done in the past, or been told in the past, was wrong and they had to completely rethink. It took a huge leap of faith for them and I am grateful to them for taking that leap of faith because I think together we will deliver a much better scheme for the Island. But the great sea change has come with the appointment of the new Chief Executive, Stephen Izatt, who is enthusiastic, who is committed and who is already delivering for Jersey and if you look at the Weighbridge Square... whereas you may have wanted to do it yourselves in a slightly different way, it is one of the first examples we have seen recently of really high quality work in a public area and that is down to the Waterfront Enterprise Board. So, I think we have seen a huge change and I think that the board is capable of delivering a first-class scheme and they have my full support.

#### **1.4.6 Deputy J.B. Fox of St. Helier:**

We have heard a considerable amount of caution, criticism, a certain amount of sitting on the fence just in case it might go one way or the other and affect my election or someone else's election, *et cetera*, but the truth of the matter is that this the only proposition or propositions that have come before the States in many years that have joined-up thinking because it goes across so many different plinths of our daily way of life which affect not only us but our children and our grandchildren. We have heard examples about the necessity of not just thinking of the finance sector and the wealth that that generates and the new buildings that they will occupy. But, rightly, we have heard about, for example, the swimming pool and how it came down but we have done nothing about the old pool on the top which mars our sky line. But it is quite right. We wanted a swimming pool that had entertainment value for our young people and it had all the flumes and all the other things. But what we did not do is find the money to be able to upgrade the other areas such as Fort Regent and such as other areas of St. Helier. We also had plans that came in piecemeal to do this bit of the Waterfront or the adjoining areas but not to do anything in a joined-up approach where you had clear viewing vistas going down so that the people that live and work in St. Helier could still see and smell the air of the sea as opposed to those poor souls in Grève d'Azette who have now lost all sight or smell when they live in their houses behind the huge great big developments that were put on the Waterfront there. So, this is a way forward but, as I said in my speech yesterday, there will be challenges and we all have to make sure that we in the States, Chamber of Commerce, I.O.D. (Institute of Directors) and all the rest of the people that live and work in St. Helier, to make sure that we utilise this one opportunity to bring everything together to make sure that we have the quality of life that will be passed on to our children and grandchildren throughout the community. It is a wonderful opportunity and today we are going through what sometimes is a very painful process to make sure we have dotted the i's and crossed the t's but we have only one opportunity. If we lose it on this occasion, it will not come back and I do not think that we are ever going to get another opportunity like that especially as the changing world and the costs that are starting to realistically hit us from whether it is for borrowing money or for transport

or for food or everything else. Let us make the most of it. Grab it while it is being offered to us and then make sure that we use that money wisely to be able to make this Island as nice and a better place than what it has been for many people up to now.

#### **1.4.7 Senator T.J. Le Main:**

Yes, I just only want to say a couple of words. I would like to say that I concur completely with Deputy Fox and, particularly, Senator Routier. Here we have in a small community a most wonderful opportunity where people are willing to invest in a government in an Island of total stability and success. We must be one of the luckiest places in the world where we have so many people, so much inward investment and people wanting to invest in our Island. So, it shows the success of the Island in the way that people want to do this and, as I say, the success of this Island is down to the ability of this Parliament, or this Government, and to the kind of business that we are now world-renowned in having probity and honesty and being able to trade all over the world. I think this is a wonderful opportunity. It is an opportunity that places, I am sure, like Guernsey and many other places in the world would cut their right hand off for just to be able to get that kind of investment. I welcome this very, very much and, like the Constable of St. Helier, I look very, very forward to a future for St. Helier, the regeneration of St. Helier which will come out of all this and I totally agree with the Connétable in as much as people will flow from this new Quarter back into St. Helier, into the quaint streets once they are regenerated and I have a lot of optimism and I welcome - welcome - this and urge Members to support it wholeheartedly.

#### **1.4.8 Deputy J.G. Reed of St. Ouen:**

I am not going to repeat my concerns over the financial implications because I believe I did cover that in my earlier speech. The only thing I would ask the Chief Minister in his summing up to answer the following questions; why is it being proposed that W.E.B., rather than Transport and Technical Services, will benefit from the income derived from the new public underground spaces? Secondly, does the guaranteed figure of £50 million to be paid over 8 years reflect the cost of the lease relating to those underground spaces? Thirdly, the reasoning, or an explanation behind the proposal for W.E.B. rather than the States as a whole to receive payments of the capital receipts generated from this development.

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

I call on the Chief Minister to reply.

#### **1.4.9 Senator F.H. Walker:**

We have certainly had, if nothing else, a very thorough debate. We are here, now, effectively 2 days at the end of a debate into a single topic and I think that is exactly as it should be. This is a very major proposal, a very major plan for Jersey and I think it is absolutely right that Members have spent so much time asking questions, making points and ensuring they have the information they require. Of course, yesterday we approved the Masterplan. Today, as I said in my introductory speech to part (2), we are recommending, proposing, discussing and, I hope, approving the means of delivery of that Masterplan for if we do not approve part (2), then we have no means of delivering the plan we ourselves enthusiastically signed up to just yesterday afternoon. I am very grateful to the Deputy of St. Peter. I believe he has been clear and concise throughout the debate in making it abundantly clear to Members what his Scrutiny Sub-panel have done and what they have not done but also in making it clear, and very helpfully, I have to say, that they received all the information that they requested, that their adviser had access to all the information he requested and, on the back of that, that they were able to come up with a positive report and their adviser was satisfied that due regard has been given to value for money for the public and that is, essentially, what lies behind this part of the proposition. Deputy Duhamel's points have been comprehensively answered by Senator Perchard already so I will not dwell on them. The Constable of St. John asked a question about what would happen in the figure for the sunken road, the tunnel

if you like, came in lower? Well, if it does come in lower... but it has been valued twice by 2 completely separate, independent valuers. It has been valued twice at circa £45 million. If it comes in lower, it will be to the benefit of the developer but if it costs more then it is a penalty on the developer. The developer will have to fund any additional costs over £45 million and we are guaranteed that we have delivery of a tunnel. So, it is a plus and a minus. If the developer can do really well through their own efforts and achieve savings, I think it is only right that they should benefit from them. If they cannot and it costs more, there is no burden on the public whatsoever. The developer has to bear the cost and, as I say, that seems to me to be right. I am grateful to Deputy Le Claire for his enthusiastic support. He emphasised the point there is nobody else coming along, and he is right. We turn this down, there is no other deal in prospect. So, we have this wonderful vision of the Waterfront and absolutely no chance of making it happen at all. Deputy Baudains made an attempt to take us back to the drawing board which Members had little support for. Deputy Ferguson emphasised that the important point here is that, is the public getting a fair deal? She is absolutely right. Absolutely right. She asked about the heads of terms and the status of them. The heads of terms are, basically, an agreement in principle to sign the detailed development agreement and that is where things sit at the moment and I think she, too, asked a question about the costs of the tunnel. But, again, these questions could have been answered a very long time ago. They did not have to be held back to today's debate. Deputy Southern did not get too far with his wrecking tactics, either. Senator Perchard, I am grateful to him as I have already said, and he answered Deputy Duhamel's questions in detail and also answered Deputy Le Hérissier questions about the responsibility for funding of the roads. Deputy Le Hérissier then went on to ask what would happen if the developer went bankrupt and I am astonished that he asked that question because I thought it was abundantly clear... it must be your eyes as well as your ears, Deputy **[Laughter]** because it is very clear... or could it be what lies behind them **[Laughter]** because they are very clearly laid out in the Masterplan as well. Senator Routier said we have to have confidence in the Waterfront and he is absolutely right. He also asked the crucial question. Members have asked: "What is the cost of doing this deal?" We have had comprehensive information on that. Senator Routier posed the alternative, crucial question: "What is the cost of not doing it?" What is the cost to Jersey's position as a finance centre when we send out a clear message that we are not interested in providing the up-to-speed, up-to-the-minute, acceptable, modern practice, modern, best established offices that our competitors are. The cost for that, we cannot evaluate that, obviously. He also emphasised the point that it is not only Scrutiny that have received all the background reports but it is also the board of W.E.B. which contains a mix of experts and, I do not mean in any way to denigrate them, States Members. I am sure there is a difference but the States Members are there, of course, to protect the public interest and the board of W.E.B. have had all the reports in the same way that Scrutiny have. He said: "What we have to do now [and he is so right] is grasp the opportunity. One of the most meaningful speeches was that of the Dean where he emphasised value to the people of Jersey but not monetary value, social value and the support for the poorer people of the Island, particularly those in St. Helier. We have defined value in more than monetary terms. There are real social gains here in terms of the open spaces, the Winter Garden and other amenities. I thought his speech was particularly effective and particularly meaningful. The Constable of St. Helier made what I would describe as an AC/DC speech. It ended up in favour but had a number of digs along the way but the Constable of St. Helier has been an excellent example to other Members of what they could have done over the last so many weeks and months because he has dug into it. He has investigated it. He started at some point in being opposed to it. He has brought in amendments. Absolutely the right thing. Incidentally, he has created improvements to the scheme along the way. So, he has done a very good job. I am a bit worried about praising him so highly because it will come back to bite me but he has done a very good job as Constable of St. Helier and as a States Member in asking the right questions at the right time, receiving the answers, creating improvements and, ultimately, I am pleased to say, being satisfied with the scheme. I would mention one of the negatives he put forward though, and that is of the swimming pool. The swimming pool has been held up as a



failure against W.E.B. or against whoever. But look at the alternative. What was the alternative? It was to keep the Fort Regent pool going. That was costing half a million pounds a year to run. There would have been millions of pounds necessary to spend on its renovation. Millions of pounds. What the current pool is costing us, which is no great ideal, I will accept that, but it is £375,000 a year. So, financially, it is a much, much better deal than keeping the old pool going at the Fort and it should not be held up as a failure. It is not the greatest example of best practice but it is considerably better than the alternative. The Deputy of Grouville who made the excellent speech yesterday about the merits of the Waterfront plan said - and fair enough - this morning that she has concerns about W.E.B. Let me say, we would not be here were it not for the expertise and the energy of W.E.B. The board, the Chief Executive and their team have done a superb job in negotiating a cracking deal for Jersey and we should not in any way... not that I am in any way criticising the Heritage Trust, but we should not in any way compare W.E.B. with the Heritage Trust. W.E.B. is a fully publicly-owned body, fully accountable to this House. There is a difference. Senator Cohen made some complimentary remarks about W.E.B. as well. I would like to make now, although it is not strictly relevant to part (2), some very complimentary remarks about Senator Cohen because it is through his doggedness, his stubbornness, his vision of what is and what is not good architectural practice, what is and what is not good planning practice that we have created under his leadership this quite superb scheme not just for St. Helier but for everyone in Jersey and I warmly congratulate him on that. **[Approbation]** I apologise to Deputy Fox. I had had to leave the House for natural reasons during his speech but he was making a lot of sense when I left **[Laughter]** and I assume... similarly, Senator Le Main emphasised the opportunity we have here and the fact that this type of development, this ability to create this quality in Jersey on our Waterfront will be the envy and is the envy of many other places. The Deputy of St. Ouen is pursuing his theme of there being a huge difference between money going to W.E.B. and money going to Transport and Technical Services, basically, and I still maintain he has simply not understood the status of W.E.B.. W.E.B. is a publicly-owned body. If the States wanted to close W.E.B. down and take all its cash into direct States coffers we could do that tomorrow. That is the matter for the shareholder. Absolutely not a problem. It has been constructed, the parking arrangements have been put together, totally in agreement between Transport and Technical Services and W.E.B. to the public advantage. We gain more profit from the way this has been constructed, the way the deal has been constructed, than we would have done had we left it all with Transport and Technical Services or changed the ownership of the car park already in W.E.B.'s possession by agreement of this House. I am grateful to everyone who spoke and it has, I think, been a very good... Deputy St. Ouen wants to speak?

**The Deputy of St. Ouen:**

I did ask 3 specific questions, 2 of which have not been answered and one of the questions was, does the guaranteed figure of £50 million reflect the cost or a reduction because of the cost of the car parking lease to W.E.B. of £8 million. The second was I asked for reasoning behind the proposal for W.E.B. rather than the States receiving a payments because I understand that they are 2 separate bodies, but I still do not understand why the States cannot benefit from those capital receipts or be paid those capital receipts rather than W.E.B..

**Senator F.H. Walker:**

The States does benefit from those capital receipts. That is the point the Deputy makes. He says he does not understand and he is absolutely right. The fact is that we can claim back the money from W.E.B., we being the States, any time we like and the cost of parking, the benefits of parking, the profit from parking, the arrangement from parking, are all part of the negotiated deal. It is all one big negotiation which has been agreed, and absolutely as it should be. So, has it been taken into account, your specific question? Yes, it has. Is it reflected in the value of the deal overall? Yes, it is. It is all part of the negotiated deal. So, I was going to say before the Deputy of St. Ouen wanted to re-ask the question, this has been, I think, a very good debate. I am very grateful to everyone

who has spoken. I have not admired the tactics of one or 2 but I am, nevertheless, very grateful to everyone who has spoken. It has been a full, open and detailed debate, exactly as it should be. Can I re-emphasise that this House has approved by overwhelming majority the Masterplan as proposed by the Minister for Planning and Environment. It would be purely illogical, having conjured up the dream, approved the dream of what the Waterfront can be, to now deny the States, deny W.E.B., deny the Island, most importantly, the means of delivering that scheme. It would remain probably for ever an impossible dream and we would have achieved nothing at all. All the work that has gone into creating the Masterplan, all the negotiating that has gone into the deal would be worthless. We would have achieved nothing. So, it makes no logic whatsoever, having approved the deal, because no severe flaws have been identified in part (2) in the financial package, no severe flaws at all. There have been genuine questions, exactly as there should be. They have been answered. There is absolutely no reason that I can see or that I have heard why Members, having approved the first part of the proposition, should not approve the second. It just does not make sense. So, I make the proposition.

**Deputy G.P. Southern:**

If I may, a point of clarification. I believe the Minister has just mentioned the financial package and I believe that yesterday he said he was quite prepared to fully discuss and reveal the full financial package if necessary in camera and while he is still on his feet and still can, as part of his summing up is he prepared to reveal the full schedule of finances that he is confident contains no defects that I believe this House should have access to before they vote on this process?

**Senator F.H. Walker:**

It is surely too late. I have summed up and sat down. The Deputy had every opportunity to ask that earlier in the debate. In my view it is now too late.

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

It is a matter for you, Chief Minister. If you do not wish to do that, that is your prerogative. The appel has been called for. The vote is for or against paragraph (2) of the proposition. The Greffier will open the voting.

<b>POUR: 37</b>		<b>CONTRE: 5</b>		<b>ABSTAIN: 1</b>
Senator F.H. Walker		Deputy A. Breckon (S)		Deputy R.C. Duhamel (S)
Senator W. Kinnard		Deputy G.C.L. Baudains (C)		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator M.E. Vibert		Deputy of St. Ouen		
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Peter				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Lawrence				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy J.J. Huet (H)				

Deputy of St. Martin				
Deputy P.N. Troy (B)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy S.C. Ferguson (B)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy of Trinity				
Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

**[Approbation]**

**2. Draft Non-Profit Organizations (Jersey) Law 200- (P.63/2008)**

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

The Assembly comes now to the Draft Non-Profit Organizations (Jersey) Law. I will ask the Greffier to read the citation.

**The Deputy Greffier of the States:**

Draft Non-Profit Organizations (Jersey) Law. A Law to provide for the registration and monitoring of non-profit organisations. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

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

Sorry, Sir, could I ask that Senator Ozouf act as rapporteur for this one?

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

I realise Members are going to be pretty tired after an exhausting 2 and a bit days delay but I would ask Members for their attention and diligence in relation to this debate which is obviously an extremely important one. Sir, I want to start by saying that the Council of Ministers recognises the excellent work done by a number of N.P.O.s (Non-Profit Organisations). Jersey has a proud history as a generous charity-giving Island; perhaps the most important gift of time. Many Islanders give of their time and energy to many organisations and charities. The not-for-profit charity sector makes a significant contribution to Island life and outside the Island around the world it is perhaps no exaggeration to say the work of N.P.O.s improves the lives of millions. In proposing this law, we signal nothing that should undermine or be taken as a signal to undermine the valuable work of N.P.O.s. However, in the wake of 9/11 and other terrorism atrocities such as the London and Madrid bombings, the international community has joined forces and had to set new standards to

deal with the risk that N.P.O.s face. The one that relates to this law was issued by the F.A.T.F. (Financial Action Task Force) at the end of 2006. The F.A.T.F. has issued, in fact, 9 measures of which the one that we are dealing with today - number 8 - sets out the measures which jurisdictions should take to address the concerns that N.P.O.s might be used as a vehicle for terrorist financing. As with all standards they require interpretation and enactment. While we have had limited time to draft the law in Jersey ahead of the I.M.F. (International Monetary Fund) visit, which I will refer to in a moment or so, the advantage is that we can take advantage of other countries' experiences in the law. The Anti-Monetary Laundering and Counteracting the Financing of Terrorism Strategy Group which is chaired by the Chief Executive of the States including Law Officers, members of the Chief Minister's Department, my own department, the Joint Financial Crimes Unit and the F.S.C. (Financial Services Commission) has played an essential role in drafting the law that is before Members. They not only have had to have regard to special recommendation number 8 but also how that special recommendation number 8 has been introduced by other jurisdictions. The most important research indicates that the Island would be assessed as non-compliant by the I.M.F. in the visit later on this year if we did not have such legislation before us. It is perhaps a sad day that the scourge and threat of terrorism that it is necessary to protect people and N.P.O.s, who have, in the main great standing, that we should have to put in legislation but there is a risk and we, as a co-operative jurisdiction, must put in legislation to protect ourselves against that. This law I want to say very clearly to Members has been drafted on the basis of to the greatest extent possible minimising the impact on N.P.O.s. The fact remains that sadly N.P.O.s are, as I say, vulnerable to abuse. The reason is cash and money. N.P.O.s require money to operate and in some cases have access to significant funds. Globally sometimes when donor organisations are concerned, N.P.O.s are giving money to areas or near areas that are exposed to terrorism activity. That is the real difficulty. There is, Sir, a high level of trust that N.P.O.s enjoy. The reality also is that N.P.O.s, because of historical support for charities, operate with very little oversight. This has led to the international community having to put in standards. I think all Members in this Assembly would agree that Jersey is a top drawer small nation state. It is essential that as this Assembly we take reasonable steps to ensure any abuse does not happen in Jersey. I think that all Members in this Assembly, Sir, would be surprised if N.P.O.s in Jersey were involved in terrorist financing. I think we all probably think that that is not the case. The difficulty for us is that we need to be able to prove that. It is the proof that is frankly non-negotiable or the proof to be able to show that this is not being carried out. To assess that and to prove that, risk assessment is required. To do that, you have to assess and almost look at the whole of the sector. At present we do not have any way to collect information on N.P.O.s. We do not have a Charities Commission. There is an association of Jersey Charities but there is no States department that has a list of all N.P.O.s. This is at the heart of the arguments included in the law that we require very few exemptions certainly in the initial phase in order to make that risk assessment. We need to understand the whole of the sector. We are unlike other jurisdictions that do have already an idea of N.P.O.s. Sir, I am aware that there have been some calls to prejudge the risk assessment with further exemptions. We are going to debate those exemptions and that is probably going to take a large part of the debate. What I will say at this stage is the advice that we have received is that exemptions would not be acceptable by the I.M.F. visit. It is suggested that a £5,000 limit would not be regarded as sufficient. There is a significant risk I need to tell Members that if that is the case then Jersey would be marked down in the I.M.F. visit. In essence, if we carve out a huge number of N.P.O.s, we run the risk of not being able to demonstrate that we have understood the entire N.P.O. sector and the consequences will follow from that. The law provides for effectively the 4 areas for special recommendation number 8. I am sure Members have read the report so I will not go through that. I just want to say to Members why there is an urgency in dealing with that, and just to address this issue of the I.M.F. visit in October. We will be assessed in October by F.A.T.F. standards and it is essential that we receive a good assessment. It is essential for the economy. It is essential for the financial services industry. I think it would be unconscionable for this Assembly to take any decision which would jeopardise that good rating. I am not going to go into any detail of the provisions of the law. We

will go through that by the articles. I am afraid there are going to be a number of debates in relation to the specific articles. Suffice to say that the law proposes that all or at least nearly all N.P.O.s are registered with the F.S.C. so that the risk assessment can be carried out. I want to say that as far as the F.S.C. is concerned, the Commission's role will be much more limited than it is in financial services. Its function will be to assess whether or not an N.P.O. is assisting or being used for terrorism. That is significantly different from the power that it exercises over the financial sector. Their assessment, their approach, will be desk based. There will be, for example, no powers for the Commission to enter premises and use... I am quite sure that it will use its powers sparingly and reactively. There will be 2 categories of N.P.O.s, however, I would expect that the vast majority of N.P.O.s would be in the lower risk category. Of course I am sure that all Members of the Assembly regret any regulatory burden that we are putting on N.P.O.s particularly, as I have said, N.P.O.s that are giving up of their free time to work for charitable causes. I must stress though that the requirements in the lower risk category - the vast majority of N.P.O.s - will, I think as Members will have seen, not be very onerous. It will be simply a matter of providing the Commission with very basic information at the time of registration and to keep basic records. As Members will know there has been a considerable amount of consultation on this report. I would like to publicly thank all those that have taken part in the consultation. There were over 50 groups and individuals that responded. There was a very well attended public meeting with a good, vigorous debate. I can say to Members that that consultation has resulted in a number of changes being made. I will not go through all of the changes that have been made. I am sure that Members will recall the issues such as the initial proposal to make a charge, the issue that there was no exemption whatsoever, there were issues concerning charities. There are 15 I think important concessions that have been given. I hope that that demonstrates that the Chief Minister's Department and the advisers have listened to the greatest extent possible. I just want to very briefly, Sir, mention the issue of the Charities Commission. Members will recall that Deputy Gorst on 13th March 2008 persuaded the States to undertake a feasibility for a Jersey Charities Commission. It would be wrong to prejudge the Charities Commission. Suffice to say that there is broad agreement that...

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

I am sorry, Senator, the States are not quorate at the moment.

**Deputy J.J. Huet:**

Can we call for the appel, Sir, please?

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

I am afraid we cannot, Deputy, when we are inquorate. Very well, you may continue.

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

It would be, as I say, wrong to prejudge the Charities Commission. I think it is important though that Members do understand during this debate that the creation of a Charities Commission and this particular law is quite different. In some respects the law that is before Members is necessarily less limited but in other areas more limited. It is more limited because it directs solely towards the issue of terrorism. It is not intended to provide general supervision to the sector which of course a Charities Commission would do. In other ways it is more extensive because the N.P.O. law and the definition of an N.P.O. requires that it does not only cover charities. The F.A.T.F. decision includes not only charitable purposes but also other organisations that are involved in religious, cultural, social and education or fraternal purposes. A Charities Commission would not only

oversee charities but would of itself not be completely compliant with special recommendation number 8. There was consideration of incorporating a Charities Commission in parallel to this work but frankly because of the huge work that is involved with setting up a Charities Commission we simply would have not done that in time in order for the I.M.F. visit. Taking all factors into consideration the significant amount of time for the Charities Commission would not mean that it is possible to put that in place. However, that does not mean to say that the establishment of a Charities Commission and that an overall risk assessment of the N.P.O. sector will not mean in time that we can ease the regulatory burden that is set out in this law. Sir, in summary, for all of the reasons this draft is important for the States to give approval to, I would ask today. It is fundamentally unfortunately about terrorist financing and it is designed in order to give the Island the best possible hope for a good assessment in the I.M.F. visit. If we do not approve it today I need to say to Members that there are going to be considerable problems that arise. I say that with the knowledge that Members never like to know in fact that they are faced with something that is really in some regards non negotiable. There is an issue of getting Privy Council approval, hence, the reason for the debate today. Sir, I will do one final thing and just end on a light-hearted note. That is to say that there has not been some sort of Americanisation of Jersey legislation drafting in Jersey. A number of people have asked me why the letter Z appears in the organisation title, I am advised by the Greffe and by the law draftsmen that in fact Z is the original version of spelling of organisation. Even though it is used in the American version it is older than the American version and that that is the law drafting approach to do. If any Member was going to ask me of the reason why there was a Z in that, I thought that I would head that off at the pass. Sir, I make the preamble.

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

The principles are proposed and seconded? [**Seconded**] Does any Member wish to speak?

#### **2.1.1 Deputy R.G. Le Hérissier:**

From the rapporteur's words one would have thought that we were looking at a very gentle law, nothing to be worried about, but shotgun to head: "You really have to pass it." This has been the whole approach, Sir. Just very briefly summarising the history, it has been quite frankly at the start although it has improved I have to say... of course any slight slip of positivism will be quoted in evidence against me, but from the start it has been an unmitigated disaster. There may be all the huffing and puffing as usual from the other side. It has been an unmitigated disaster. It has been an example, Sir, of not understanding the environment in which the group was going to operate. It was an example of a heavy-handed law. It is an example - and we shall discuss that no doubt in terms of some of the amendments - of trying to apply immensely wide-ranging provisions upon people whose whole *modus operandi* is very straightforward; who operate very much on the basis of trust and who are quite frankly frightened of government agencies and will do anything to try and deal with the kind of fear and apprehension that they experience in dealing with those agencies. But do you think we then frame the law to deal with that background? No, we frame the law which brought the heavy hand of a body rightly or wrongly is known as a very, very hard-nosed regulatory body. We put in criminal provisions. We put in the possibility of little ladies running the St. Clement's W.I. (Women's Institute) or whoever being marched off to all kinds of criminal trials because they failed to put in forms. It was an utter unmitigated disaster. Luckily some reason has prevailed but the unfortunate thing is we are going to hold - as we do so often - one of these strange Alice in Wonderland debates where I will be saying one thing, the rapporteur will be saying another and we will both be doing it from different worlds. He is quite right in saying, Sir, that there is a terrorist issue but that means of course risk assessment is the way forward, not embracing everybody and applying a heavy hand to everybody. He conveniently forgot, Sir, to say that there is other legislation in place. I hope he will address this issue because it may bring us some comfort. There is other legislation in place to deal with money laundering and other sources of terrorist

financing to deal with some of this issue and one does not need this law *per se* to do it. He mentioned, Sir, that powers will be used sparingly. The point is, Sir, if these powers are written down they are written down and if there is someone who wants to behave in a heavy-handed and indiscriminate and insensitive fashion it is quite possible to do so. We will discuss those issues in more depth obviously when we look at the amendment. He quite rightly, Sir, mentioned that there are 2 categories. I would like a lot more details on that because the category at risk - and I can well see the reason why - is largely going to be the groups who send money overseas. There is no doubt that there is an issue there because we do not necessarily know the strength and the probity and so forth of the receiving groups; indeed whether the receiving group has a proper structure and so forth. Clearly we feel that there should be an issue. There is another issue and the rapporteur alluded to it, Sir, is that this is a hybrid proposal. It is really trying to imbed a Charities Commission within the Jersey Financial Services Commission. That is really what is trying to be done in some respects. I think you will find among the charities, because quite rightly as the rapporteur said, Sir, they have to be answerable or accountable to their public, they are prepared and should be prepared to give basic information about their financing and so forth. But to give it, Sir, to the Jersey Financial Services Commission with all the heavy-handed, despite the soft focus that the rapporteur has tried to apply to this situation, to give it to a body like that is really tempting providence quite frankly. I would like to add, Sir, that most of the charities do support the notion of a Charities Commission. Indeed, Sir, a paper has been recently prepared building on papers of history by the Law Commission on that very subject. Of course they were asking for action and a lot of people are asking for action and for some reason the 2 actions have become totally messed up in terms of timetabling because quite clearly as the rapporteur has said or implied, a Charities Commission should have preceded specific attention to terrorism. Just to sum up, Sir, it is a law which in its current draft is still... and I do acknowledge the compromising that has gone on and I do acknowledge the softening but it started off entirely on the wrong foot. It hit people who had absolutely no involvement of the kind that was being implied. It hit them with a heavy hammer. There were all sorts of provisions built in that should never have been built in quite frankly. It got very much off on the wrong foot. I will be trying, Sir, through a series of amendments to mitigate some of these wide ranging powers which should not even at this stage be in the law.

### **2.1.2 Deputy P.N. Troy of St. Brelade:**

What I wanted to say, Sir, was that this draft law is absolute tosh. It is heavy-handed nonsense. Does the Minister really believe that men such as Osama bin Laden will be queuing-up to register their N.P.O.s down at our Financial Services offices? Terrorists do not register with anyone. They have underground, secret networks for accepting donations through means which do not involve monitoring. Their cash and guns are untraceable. As a means of preventing terrorism, this law is totally flawed. **[Interruption]** This law is totally flawed as a means of preventing terrorism. It is absolute nonsense.

### **2.1.3 Deputy I.J. Gorst:**

Yes, Sir, I am sorry. **[Laughter]** I thank the last speaker for giving way. Obviously I do not want to put myself forward as an expert on terrorist financing considering my other life, but I am afraid that it certainly is not the case that terrorists just have guns hidden under their beds and that they do not use legitimate channels of financing because quite clearly all the evidence shows that they do, Sir. I am afraid that the last speaker was... I am not sure whether he was intending to mislead the House but he certainly did. I just wanted to say a few brief words at this point, Sir. I am sorry at the tone of the 2 previous speakers in regard to this particular legislation. The first speaker seemed unfortunately to be more concerned about the past than the present and the current law that we have in front of us. I am prepared to agree that this issue did indeed get off on the wrong foot but rather than an unmitigated disaster as the Deputy indicated, I believe that it has been a reasonable model

of Government listening. This law, as the rapporteur stated and has said, has seen many changes. Those changes have been requested by the charitable sector, by one of the previous speakers and his committee and by individual Members. I, myself, have had many meetings with the officers concerned and I know that others have as well. I would like to thank the departments and the officers for listening to concerns and thank them that what we have before us today is quite different from how it was originally phrased and put forward. One of my other concerns, Sir, I must say was that the J.F.S.C. was the body being nominated to carry out this particular work. My concern around that was because their current processes are quite different and the approach that they need to take for the financial services sector is one which does not necessarily fit in my mind as well as it might do with the charitable sector. Having said that, Sir, I am satisfied that we will now, I hope... when the feasibility study is produced I am satisfied that in the fullness of time we will at long last have a Jersey Charities Commission suitable and fit for purpose and suitable and sized for Jersey. Sir, I will be supporting the principles of this legislation.

#### **2.1.4 Senator M.E. Vibert:**

I would like to echo in some way the previous speaker and accept that when this was first put forward the law was not right. But I believe that we have had vindication and I do not believe in the other side, like Deputy Le Hérisser referred to. I think it is a question of people have worked together to get it right to benefit the Island as a whole. I now believe it is right and the revised work proposed is entirely reasonable. Listening to Deputy Le Hérisser one would have thought that it still required complex and a great burden placed on N.P.O.s. Nothing could be further from the truth. The only information required for the vast majority of N.P.O.s will be one side of A4 information required that all N.P.O.s you would expect to have at hand as part of the normal good governance procedures. Nothing - nothing - apart from that. Far less onerous than opening a bank account. Less onerous than applying for a States loan, for example, for a sports club. Very much less onerous than all those N.P.O.s that work with children and have to go through vetting procedures. Yes, it is an extra thing for N.P.O.s to do but on the other hand it should be regarded as a reassurance for N.P.O.s as well. They should embrace it because it will be guarding against N.P.O.s of any sort being brought into disrepute by misuse. I am not like Deputy Troy, as well versed as he appears to be in the ways of terrorism [**Laughter**], but there are many itemised cases of funds being made over to terrorists and terrorist organisations through N.P.O.s over the years in many countries. We are being asked as an Island - for the benefit of the Island as a whole - to take notice of what is regarded as reasonable international requirements. We are part of a greater world. We are part of a world that should be proud to take our part in ensuring that we take what steps we can to ensure there is not an abuse and that we try to do whatever we can to ensure that funds do not go towards terrorism. I do not believe that what we are being asked to approve today unamended apart from the amendments we accept is overbearing. I think those still saying it is protest too much. We should adopt this as a reasonable and balanced way of dealing with the issue.

#### **2.1.5 Deputy J.B. Fox:**

As one person who previously spent many years working in anti-terrorist fields [**Laughter**], I can assure you that they will come up with every trick in the book to try and find a way through. But having said that we also have to live in this realistic world of trying to find what is a reasonable and effective way of preventing terrorism but at the same time looking at the least heavy-handed way that these things can be implemented. Laws basically are there to safeguard the society and the community that we live in. Unfortunately sometimes the people that implement the laws become very bureaucratic. Even this week I have had things I have been dealing with that means we are having to go through bureaucratic nonsense to get a very simple end result of a signature on a document, which is unbelievable. I much prefer to have a Jersey Charities Commission running it. I see there is a possibility that that could be something that could be run in the future and then these



proposals could be transferred to them. There is a question I suppose really that one would like to ask is, yes, I can see the importance of us passing the I.M.F. visit in Jersey later on this year and the inspection that that entails. But we are a credible Island I hope in the eyes of the I.M.F. If for one little small area that we wanted to consider something further in bringing in a Jersey Commission would it be at the end of the line to say that we could delay it and still come out increasingly in a credible fashion? I would like the rapporteur, the Minister, to just cover that point because I do not think it is as black and white as that. I think there is a grey area there that could be considered. I would like to hear his views on that. There is a need for this legislation but I am also very aware of the amount of charitable organisations and trusts that I have belonged to that if you make it too onerous people will walk away and this Island will not have the excellent charitable status that it has for both raising money for its local needs but also for its international and overseas needs. So the balance is very, very important.

#### **2.1.6 Deputy G.C.L. Baudains:**

I endorse the comments made earlier on by Deputy Troy, Sir, because there is ample evidence in the U.K. and elsewhere that criminals do not register their guns; only the law abiding do that. I see no reason why financial dealings should be any different. This law, Sir, is not a sledgehammer to crack a nut. It is more like a huge demolition ball trying to crack an egg. Over the top does not even begin to describe it. I was looking earlier, Sir - I know we have not reached it yet - at part 1, Interpretation. I mean if you have an over-zealous administration of this law it could even include parents. I mean they will be caught by this. After all they have raised funds for educational, social or fraternal purposes all for the intention of benefiting a section of the public otherwise known as their children. Some will even send money overseas if their children are outside the Island. **[Laughter]** Sir, in my view seriously - this is a serious matter - any law should be judged not only by the good that it will achieve but by the potential for damage that it has, especially if it is administered over-zealously. I am not at all certain that I can support this.

#### **2.1.7 Connétable K.P. Vibert of St. Ouen:**

I would just like to try and point out to the Assembly that following the statement which the Chief Minister made on Tuesday I think it was - it was so long ago - I have been given the chair of the group that is looking at the report which the Chief Minister will give to the House regarding the establishment of a Charities Commission. I think for the avoidance of any doubt I would like to point out that whatever is decided today, the decision today will not affect in any way the working of that group. The work of that group will continue and if it is felt that a Charities Commission is the best way forward that recommendation will continue to be made to the Chief Minister. I sense from some of the speakers that there is some unease about giving the F.S.C. the control which this law does. I would just like to point out to the Assembly that if the recommendation of the group is that a Charities Commission be set up there is nothing to stop this Assembly deciding to move that control from F.S.C. to a new Charities Commission. I think I would just like to point that out to try and ease the fear of Members. This I think needs to be brought in today to ensure that we receive the right report at the end of the year but it does not mean that it is the end of the line. Certainly Deputy Gorst's proposition is now receiving serious consideration and will in due course come back to the House.

#### **2.1.8 Connétable G.W. Fisher of St. Lawrence:**

Unlike Deputy Fox I have more than one former life. He might have more than one former life as well but he only talks about a former life. **[Laughter]** I have at least 2 former lives; one was in the finance industry and at the same time I had a life as chairman of the Association of Jersey Charities for a number of years. I can look at this from both ways. From the charities' point of view - and I

am still involved with one or 2 charities - it is nothing but a damn nuisance. Somebody would not really relish the idea of this sort of law being brought forward. From the finance industry point of view I can see that if the reputation of the Island is being judged by the I.M.F., and internationally one is expected to have these sorts of controls in place, then I think the finance industry is very important to this Island and one must take that into account as well. On taking that in the balance I think we have to live with it. I do not like these sorts of laws. I do not like this sort of regulation. In fact when I retired I was quite pleased to leave regulation of that sort behind. But, nevertheless, I do acknowledge that it is necessary. We live in a world these days that is riddled with fear. I call it the "fear factor". I dislike going through security at airports and being messed around with and having my personal position being invaded by people inspecting this, that and the other when I have nothing to hide. **[Laughter]** Careful, Deputy Le Hérissier; just be careful. But we do not like these sorts of invasions of our privacy. Charitable organisations have enough to do in just carrying out their charitable duties and their charitable aims. They do not want this sort of extra messing around by security of whatever nature it may be. The same is true... we talk about non-profit organisations. There are a number of non-profit organisations in every Parish in this Island that are going to have to register under this law. The law itself I think is going to be pretty well ineffective but we need to be seen to be having this law in place. I am caught, and maybe we are all caught, in this position of (a) not really wanting it, having some sympathy with Deputy Troy, Deputy Le Hérissier and various others who have spoken but seeing that overall; and (b) we have to look at the overall position- the good of the Island as a whole - I think we do not have any choice. We have to have a law that is going to be seen to be as effective as possible but without too much inconvenience and so on. I think we have reached that position where with this law it is not going to involve nearly as much as perhaps some people fear that it will involve. I certainly accept that amendments have been made to it. It is now fit for purpose I think. It is necessary unfortunately. I do not favour having these sorts of laws in place but I see the need for it. Therefore, I will be voting for it.

### **2.1.9 Deputy S. Power of St. Brelade:**

Like the previous speaker, Sir, I have a number of questions that perhaps the rapporteur could address in a summing up. The first one is when you look at the interpretation on page 15, 1(1), I wonder why the words "political" or "sporting" are not included or perhaps he might explain that.

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

We will get to the articles, Deputy, for detailed questions.

### **Deputy S. Power:**

Sorry, then if I go back to the report on page 4 on the third paragraph down it refers to a legal entity or organisation that primarily engages in raising or dispersing funds for purposes such as charitable, religious, cultural, educational, social and fraternity and for carrying out of other types of good works. Can the rapporteur specifically refer to why sporting and/or political are left out because in my view political parties are also non-profit? That is my first question. My second question is related to paragraph 2 in page 15 which I will leave now, Sir, because we will get on to the articles later on. My third question is relating to how long it takes to get a permit under the schedule that is listed at the back because all of us are aware of temporary hardship cases, temporary periods of time for charities, bereavement cases whereby a fund is raised at very short notice and may not last beyond 30 or 45 or 60 days. I would like to know where the flexibility is in that. So the key part of this is how long it would take J.F.S.C. to turn around the application because I think it is relevant. I think those were my main queries. Yes, Sir, that is it.

### **2.1.10 The Connétable of Grouville:**

Once again we are being hit with a faceless set of initials looming up over the horizon and suddenly threatening us. It is a bit like the film *Jaws* where you are swimming quite comfortably in the low water and suddenly this snapping creature appears at your heels so you immediately have to react to it and to make very, very quick decisions and decisions that one might not like in fact to make. I have to say that I am quite... the Minister came here this morning virtually saying to us it is going to be your fault if are turned down by the I.M.F. when they come or the F.A.T.F. or the E.U. (European Union) or whoever. I do not know. Any set of initials will do these days. It is not our fault. We are sitting here. We have discussed this. The fault lies with the Minister for Economic Development and the Council of Ministers generally that this was not brought to our notice some time ago. Two Scrutiny Committees recommended over a year ago that a Charities Commission be brought in immediately. One of those Scrutiny Committees was in fact the Overseas Aid Committee. Why that was not done, I just do not know. It was ignored until the shark arrived biting at our heels again. Quite frankly I am absolutely fed up with this happening, with people coming out of the blue suddenly threatening us and we have to jump to their orders straightaway. I do not think it is fair. The other thing I have to say about this, which I am sure we will discuss anyway, is the amount being proposed, £1,000 as opposed to £5,000. It is complete nonsense. Any self respecting terrorist is walking around with £5,000 in his back pocket anyway. What on earth are we doing? Sir, I feel so strongly about this. I do not wish to embarrass the Island by voting against this but I cannot vote for it so I shall be abstaining.

### **2.1.11 Deputy A.D. Lewis of St. John:**

This does feel a little bit like *déjà vu* in that we had a similar circumstance recently with the Aviation Law whereby it felt thrust upon us and Members do not like that. It does feel like that to some Members. I understand what the Constable of Grouville is saying. But there is a fact here that we do have an obligation in order to secure things like our finance industry by having good compliance. I see the Constable shaking his head but I think he would agree that we do have to be seen as a well-regulated jurisdiction. This is a part of that jigsaw puzzle and it is a piece that we should have. But I do agree with the Constable in the way that it has been done. I think we can get better at this. It should not happen like this. We should be more prepared. We should see these buses coming before they roll us over. Hopefully this is not going to roll us over. I do hope that Members do vote for it and it does go through because it is important. But maybe in future we can see the buses coming before they arrive. I was at the recent meeting at the Town Hall - the first one that was there - and it was quite an eye opener to me. I knew that a lot of charity went on in Jersey. It was quite inspiring how many people were there from all sorts of different charities and how upset they were. These are really nice people that do a huge amount of work for charity in Jersey. The debate was heated but it was very polite and it was very constructive. These people do a huge amount of work for charity in Jersey. I was disappointed that they feel that they were treated badly as a result of the way this was brought forward. I think we should be more mindful of that in the future and do it better. But out of that came some good suggestions. The Minister and the Chief Minister and others have put all these things together and come up with some revisions which I think are very appropriate. I am hoping that today Members will acknowledge that and move this forward because it is important that we do get on and do it. Even Deputy Le Hérisier agrees that there is a need for this legislation but there are Members such as him that have concerns about the way it has been put together and how it even stands today. But I am satisfied that the people have been listened to - those hundreds if not thousands of people involved in charity in Jersey have been listened to - and we have found a way forward that I hope is acceptable to them and to Members today. There is, however, one item that has been brought up and I do have a question for the Minister about and that is the *de minimis* level. The money laundering level is about £10,000. In the Isle of Man I believe it is higher. I would like to know from the Minister today as to why it is

set at £1,000. I do not think that has been explained well enough. There are other places that do it at £5,000; £5,000 was called for. What is the arbitrary figure? What is the best figure? I do not have that answer. I do not think it has been clearly explained enough in what we have seen so far. That is a burning issue I know with Members and with a number of charities. There are a lot of small charities in Jersey that are concerned by that and would rather not come within this law. Maybe there is a way of doing that. But if the Minister can explain exactly why that cannot happen, I would welcome that. But I would urge Members to support this because it is important for our own reputation, our own finance industry and reputation as a charitable, giving society because what a number of charities have said to me is that they want to comply with this type of law to a certain extent because then donors to that charity know that the money they are receiving is going to the right place, it is going to be used properly. A number of charities, particularly big charities, do acknowledge that and they do want the donors that they receive from to know that that money is going to be used wisely and correctly and go to the right places. So do not think that all the charities are against this. Far from it. They just want it to be fair and easy to administer and put into place. I think we have gone a long way to satisfying a lot of those needs. Whether we have gone far enough remains to be seen. We will find out today. But I do hope that we have and I do hope that Members think that we have because the timing of this is important, albeit I think in future we can do this better.

**Senator F.H. Walker:**

I would like to propose the adjournment but before doing so can I just refer the House to the fact that I am lodging today or in fact the Minister for Treasury and Resources is lodging today - and I speak on his behalf - P.95 which is the Draft Howard Davis Farm (Abrogation of Covenant) (Jersey) Law. This is all about enabling the Jersey Dairy to move to the Howard Davis Farm. Sir, it has been brought a day later than planned because intensive negotiations have been going on with Property Holdings, with the Howard Davis family and of course with the dairy. But I would ask and very hope because there is a real urgency here for the future of the dairy industry that this could be debated at the sitting of 15th July. I think that will require Members' consent under Standing Orders because it will not strictly speaking meet the 6-week lodging period. But I very much hope given the importance to the dairy industry which I think is supported by everyone that it will be possible to debate it at that sitting. Sir, I propose the adjournment.

**LUNCHEON ADJOURNMENT PROPOSED**

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

Chief Minister, we can perhaps address that issue under M later today. I would say from the Chair that it is quite likely the sitting on the 15th will go on more than one day but Thursday will be within 6 weeks anyway.

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

I would very often not disagree with the Chief Minister but it is 12.50 p.m. We have 8 debates on individual articles. Would it be perhaps appropriate to deal with the wrapping-up of the preamble before lunch? No? We are going to be here a long time, Sir.

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

Very well, the adjournment is proposed. The Assembly will adjourn until 2.15 p.m.

## **LUNCHEON ADJOURNMENT**

### **COMMUNICATIONS BY THE PRESIDING OFFICER**

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

The time is 2.15 p.m. as agreed by the Assembly. The Assembly is not yet quorate. Therefore, as required by Standing Orders I will ask the usher to summon Members to the Assembly please. Standing Order 56(2) enables the Presiding Officer if he has allowed such time as he considers reasonable for elected Members to return believes the States remain inquorate - and I do believe the States remain inquorate - enables me to ask the Greffier to call the roll. I shall ask the Greffier to call the roll. The Assembly having counted is now quorate but this is the second time this has happened to me in the Chair. I hope it is nothing personal [**Laughter**] but on a more serious point I would remind Members of the provisions of Standing Order 56(3) which is the next stage in the process that if the States had been inquorate at the conclusion of roll call, the Presiding Officer has no discretion but to close the meeting. That would have meant that the meeting would have been closed, the business would have fallen away and the States would have reconvened in 2 weeks' time. Perhaps Members will bear that in mind when thinking of... I do not speak to those present. I speak to those who are not present who hopefully are hearing this that Members should return hopefully on time. The debate, therefore, continues on the principles of the N.P.O. law.

#### **Deputy R.G. Le Hérissier:**

Sorry, before we get into the debate there was a serious allegation made against a Member this morning - namely Deputy Baudains of St. Clement - that he was essentially lying in regard to a court action covering the proposed construction company. The House has moved on from that debate with that allegation not apologised for by the perpetrator. In other words, the Chief Minister made that allegation. It has not been withdrawn and it hangs over the Deputy. How do you suggest we proceed on it?

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

What I would say from the Chair, Deputy, is if there had been an accusation that the Deputy had lied, I would have immediately pulled the Chief Minister up. My understanding from that exchange was there was a difference of opinion on a factual basis. I am not sure until someone can produce a particular bit of paper it is easy to resolve it. As often happens in the Assembly, one Member says black is black and one Member says black is white. Certainly to my understanding there was no accusation the Deputy had deliberately lied or misled the Assembly.

#### **Deputy R.G. Le Hérissier:**

It is a clear inference.

#### **Deputy G.C.L. Baudains:**

I am not going to prolong proceedings but that was the clear inference. I have not received an apology from the Chief Minister. He is not here to give one so I will be lodging a proposition of censure.

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

Very well.

## **PUBLIC BUSINESS (continued)**

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

The debate now resumes on the principles of the law.

#### **2.1.12 The Dean of Jersey:**

A number of Members have asked whether I was going to make a contribution to this debate. I wanted, I think just gently, in an after lunch spirit to tell a small parable which may help. Let us imagine if we may that we are in England and we are running a primary school and we know that the Ofsted inspectors are coming. This is a great excuse to be able to get a lot of really good things that we want to do. We want to buy more computers and we persuade the governors to part with the cash. We want the parents to get out and buy the new uniform. We persuade them all to sign up for that. In fact we do all sorts of things that are for the good of the school that we have been wanting to do for a long time. The only difficulty is that we know that this year the Ofsted inspectors have decreed that every school railing in the county will be painted red. We quite like blue but, nevertheless, if it will give us a good mark, we will paint the railings red as long as we can do all the other good stuff we want to do in the knowledge that we can go to the colour we really want at a later date. Forgive me for putting it like that but I am not among those who believe charities do not need regulating. I think the regulation of charities including churches is for the benefit of charities and churches. The question is proper regulation and how we do it. What we should not be doing is to do anything that gives people a disincentive to give or a disincentive to serve. Those are the 2 things. When the original stuff came forward - and I do not think we should spend a lot of time looking at the original things because mercifully we have moved on - the fact that there was a charge originally was a huge disincentive. I have no idea who came up with that bright idea but I am delighted that the Council of Ministers - I think at my suggestion and others - soon kicked that one into touch. The disincentive to serve, this is about the amount of hours people spend so often these are emotional reactions. We all know it is more complicated to open a charity bank account. I sit on innumerable charities and trusts and every time a trustee changes you have to have another motion and another bank mandate. We all trot off to NatWest with our passports and the whole 9 yards. Is it a pain? Yes. Is it necessary? Yes, it is because it is part of good governance in a responsible society. Do we like the introduction of new things? I find as I get older I like the introduction of new things less. I have no doubt that when we first introduced driving tests everybody who had been driving happily for years or thought they were said: "Why do we now need a test? I have been driving safely for 20 years." Do we have to have something? Yes, we do. Is the present thing on offer the best we can do? Probably not. It appears to me to have something in it - a bit of the railings need to be painted red - which for me means it is the Finance Commission guys who are going to do this. I do not believe they are particularly charity experts. It is not their thing. It is not why they were appointed. But it seems to be what have we got on the stocks that can do this in time for the inspection in October? I do not blame Ministers for that because if I have an external gun to my head from someone I would be saying: "How can I make this happen?" We all want the wealth for the Island from the finance industry. How can we make this happen? What will we have to do to get the railings painted the correct colour? I think if I may make a suggestion which I am sure is where the rapporteur is going, the vast majority of folks, including those in the charities, think that a Charity Commission is the right way forward. If

you want my daft parable, that is the buying of the computers and the uniform and all the good things. It is just that we cannot get a Charity Commission up and running by October and I would be wanting to hear from Ministers that their firm belief is that what is before us today, with or without the amendments, is a kind of stop-gap: “We know we have to do this. We want you to do this.” There are lots of good things in here for charities, but the end game is a really tailored, Jersey-friendly Charity Commission that will make sure not only that the regulation is in place, but that those 2 things I outlined - incentive to give and incentive to serve - is made easier because when somebody approaches me for money, I have to say I do want to ask; can I trust the person to whom I am giving it? What is their track record? How are they validated? I would be much more inclined to give to something that I know is regulated by a properly formed Jersey Charity Commission than simply something about which I know very little. It seems to me that the charities of Jersey and the churches, and all the rest of the organisations, have nothing to fear from a properly regulated Charity Commission. I think I am approaching this debate seeing that we have to do something because we do need the Ofsted inspectors to approve us. I would want to hear from those in Government that what they are wanting to do is to facilitate in every way as the Connétable of St. Ouen has very strongly hinted in his speech before lunch, and that a Charity Commission is where we are going to get to. I think if we do that not only will we get the immediate benefits of a really good inspection, but we will get the longer term benefits of a charity environment in Jersey that can build on our historic generosity with even greater confidence for succeeding generations.

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

I call upon the Minster to reply.

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

In the debate before lunch I was, I think, described by one Member as a shark and another suggested that this issue had been an unmitigated disaster. Well, I have a confession...

**The Connétable of Grouville:**

A point of correction. I did not describe him as a shark. Somebody else may have done, but I did not. [Laughter]

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

I will say to Members in mitigation that I am, in fact, the stand-in Minister in relation to this issue. I have, I will say to Ministers, come to the issue fairly late in the day. Some Members will be aware that this issue was originally going to be a Home Affairs issue. I was persuaded ...

**Senator W. Kinnard:**

On a point of order, I was asked whether I would take it on and I said I was not prepared to because I did not necessarily feel this was the right thing at the right time.

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

I mean to say that in the spirit of the fact that the Economic Development Department with responsibility for the J.F.S.C. after the initial consultation decided that would be the appropriate body and we were supposed to be the body that was designed to be perhaps more understanding, or at least there has been considerable evolution of the draft since that original draft, which has had so

many changes. I have to say that I am sure the Minister for Home Affairs and all the Council of Ministers Members would fully accept that there have been lessons learned on this issue. To the Member who asked exactly why we had not had this issue before, I will just remind - I think it was the Constable of Grouville - that this was a requirement which originally was published at the end of 2006. Therefore, there had been a requirement through 2007 to work out how this was going to be interpreted. We can draw from the experience of other places in our interpretation of this requirement. I really do appreciate that Members do not like to have that threat of a red railing requirement or a gun to the head. I do appreciate, and I think the Council of Ministers appreciates, that situation, but in reassurance to Members I would say that this is a standard which all countries - small territories and large - are adopting in their domestic legislation. We are not doing anything which is out of the ordinary in any sense of the word. Perhaps the issue, and this is where I will completely want to be at one with the Dean on, is the difficulty we have is that as we do not have a Charities Commission, for better or for worse, we do not have any idea, we do not have any registration, of N.P.O.s in Jersey. We do not have the full picture and, therefore, we cannot demonstrate to the world that there has been a risk assessment taken on that. That is the issue. I completely agree with the fact that the J.F.S.C. and that this law should be regarded as an interim step on the way to a Charities Commission, but I will also say one thing, and that is those people who believe that a Charities Commission will be less burdensome than this particular piece of legislation are, I am afraid, in for some learning about the requirements of a Charities Commission and all of the due diligence and the fit-for-purposes and the listings in the public registries of all charities. There are some burdensome administrative consequences of that. I am not saying that this is the best option; I will say that it does have some elements that are less burdensome than a Charities Commission. But it is right and proper that this Assembly consider that Charities Commission and put that Charities Commission to replace this provision as soon as possible. The issue that Deputy Fox raised about the realistic issue of whether or not we would be marked down, I am afraid that, as the Dean explained in relation to the red railing, that is the case. If we did not have this piece of legislation, such is the importance that the F.A.T.F. and the international community has attributed to the risk of terrorism financing, if we did not have a provision on our statute book for this matter then we would be marked down. We would be put into the class of jurisdictions that I will not name, but Members know what kind of jurisdictions that we are talking about. We simply would not wish to do that and for that reason I say to Deputy Fox, I am afraid that if we wish to get out of that class we simply must have this legislation on our statute book. I will not respond to all of the questions because I think that a number of the questions that were raised are going to be raised in the individual articles and that is probably the better time. I would answer the question of the Deputy of St. John when he raised the issue of the £10,000 A.M.L (Anti-Money Laundering) limit. That is, I need to say to the Deputy of St. John, an issue that really relates to the Proceeds of Crimes Law. There are a number of activities that you have to register for. There is, after registration, a *de minimis* limit. That is completely different from the issues of not-for-profit and turn over of charities. There are, for example, certain circumstances where if one was to go into the post office to change £5,000 into euros that one would not have to engage in certain controls such as giving a passport and other procedures. There is a lighter touch approach taken to certain matters which are required of registration. That does not mean to say that the person on the other side of the counter, who believes that there is something suspicious in that activity, does not have a requirement in order to issue a notice that there is a suspicious transaction. So I think, with respect, the Deputy of St. John is right to take the simple comparison of the £10,000 versus the £1,000, but we are dealing with 2 completely separate issues. Deputy Power asked about the definition. That is going to be dealt with in a second, but I will say in relation to the definition it is exactly the definition that is lifted from the F.A.T.F. special recommendation 8 and we did not want to expand the definition to any further extent. I think he mentioned particularly sports clubs - of course, they will be covered under some cultural and other arrangement, but we have taken that definition to do everything we can and not to do anything that we are not required to do. He also raised the short term issue of not for profit organisations that are



set up for short term purposes. The situation is, and we will deal, again, with this in the articles, that there is a transitional period; there is a grace period following the law of approximately 3 months where organisations that would set up are required to deposit their particulars with the commission. After the law and after that grace period, and indeed any new organisations that are set up immediately after the law is enforced do not have that grace period. They must register as soon as possible, but I have held some discussions with representatives of the Commission over lunch time and again they have explained very clearly that they will seek to turn around those applications as soon as possible. It is envisaged that these will take one or 2 days. In the event of significant N.P.O.s then there may be some further questions, but I will also remind Members of the remarks I made in my opening speech, that significant N.P.O.s are going to be the very minimum amount. There is not likely to be many of them. I think that answered all the questions that Members raised in the preamble and so I move the appel on the preamble.

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

Very well, the appel is called for on the principles for the draft law. The Greffier will open the voting.

<b>POUR: 37</b>		<b>CONTRE: 5</b>		<b>ABSTAIN: 1</b>
Senator F.H. Walker		Deputy A. Breckon (S)		Deputy R.C. Duhamel (S)
Senator W. Kinnard		Deputy G.C.L. Baudains (C)		
Senator P.F. Routier		Deputy G.P. Southern (H)		
Senator M.E. Vibert		Deputy of St. Ouen		
Senator P.F.C. Ozouf		Deputy S. Pitman (H)		
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Connétable of St. Ouen				
Connétable of St. Mary				
Connétable of St. Peter				
Connétable of St. Clement				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Lawrence				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Deputy J.J. Huet (H)				
Deputy of St. Martin				
Deputy P.N. Troy (B)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy S.C. Ferguson (B)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy G.W.J. de Faye (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy of Trinity				

Deputy of St. John				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

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

I understand the Corporate Services Panel Chairman has already considered this matter briefly. Do you wish to speak on the matter?

**Deputy P.J.D. Ryan of St. Helier (Chairman, Corporate Services Scrutiny Panel):**

No, thank you, Sir, but while I speak I should explain to Members that I was conflicted from the main debate during the last 2 days. I hope Members will appreciate that.

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

I understand that. Senator Ozouf?

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

The first thing that I probably need to do is just to indicate there are a number of amendments and I am sure Members will have sympathy with me in the fact that we are probably going to have to take this in approximately 9 parts. There is no alternative to that. What I will do is indicate to Members as soon as I can about whether or not the amendments are accepted, but can I first of all seek leave of the Assembly just to get the agreement that I will propose the proposition or the articles as amended by the Council of Ministers when we get to that point?

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

Are Members content for the amendments of the Council which relate largely to the level of fines should be incorporated as proposed? Very well, so you propose Article 1.

**The Deputy of St. Ouen:**

Sorry to interrupt. Because we have had the roll call and other Members have since arrived, do they need to be declared?

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

No, it is simply a roll call to ascertain whether the States are quorate or not. Thank you for raising the point. Do you propose Article 1?

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

Article 1, the definition of N.P.O.

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

Is the article seconded? **[Seconded]** Does anyone wish to speak on Article 1?

**2.2.1 Deputy G.C.L. Baudains:**

Just the concern that I raised this morning. I am concerned on the interpretation. It is very wide. It does seem to me, and I hope the Minister can persuade me otherwise, that if somebody really wanted to go into detail practically everyone in the Island could be caught by this. As I said this morning, and I was not joking, it does appear to me that even parents would be caught by this because they are sending money overseas to children at university. They are engaged in religious or cultural education or social exercises. This could, depending on how it is administered, turn out to be something other than what we are hoping it might be.

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

I call on the Minister to reply.

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

I really hope that we are not going to go on to any sort of red herrings this afternoon in relation to this. It is easy. I think it is quite simple and it is quite clear that individuals are not covered in relation to this issue. The definition is a standard definition, as I have explained. It comes from the F.A.T.F. definition. It is designed to cover charitable organisations and other related organisations. The terms are absolutely clear and families, I confirm, are not part of it. If the Solicitor General wishes to add anything in relation to the interpretation of it then he can do so, but I cannot say anything else apart from what the words clearly mean.

**Deputy G.C.L. Baudains:**

If I might press for clarification, Sir. We have heard time and again this Assembly guarantee, and I hope the Minister does not take this wrong. I am not suggesting that he is other than saying what he intends, but we know from previous experience that what is important is what is written not what is said. We are signing-up to what is written and the way I read this the interpretation does not encompass what I said. I do not see anywhere in here that it says families are excluded or anything like that. It is nice to have those guarantees, but the law does not say that. Could the Minister clarify that?

**Deputy P.N. Troy:**

Before the Solicitor General does come in can I just add another point? If you set up a trust for the education of your children that would be covered under Part 2 and that would become a non-profit organisation, if you set up a trust to cover all your school fees and education fees for children.

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

Are you able to assist, Mr. Solicitor?

**The Solicitor General:**

I will assist as far as I am able. If one looks at the definition under Article 1, one firstly looks to the definition of what a non-profit organisation is and key to that definition is a benefit to the public or a section of the public. If it is a benefit to the public or a section of the public that does not mean a private benefit to individual members of a family. So to address the Deputy's concerns, I think the definition is quite clear in my view on that. If one turns to look at the definition of the word "organisation" in the following paragraph, that refers to a body of persons. The ordinary dictionary definition of a body of persons is a group, normally when viewed on a collective basis. So, equally, I am satisfied that would not include parents. On the question of a private trust, again we move to

the public benefit point and if it is not for the benefit of members of the public or a section of the public at large, it would not fall within the definition of a non-profit organisation.

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

I put Article 1. Those Members in favour of adopting it, kindly show. The article is adopted. Do you propose Article 2, Minister?

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

Article 2 deals with the interpretation clause and also the exemptions. The first exemption applies to N.P.O.s which raise no more than £1,000 a year. What has already been explained is that initially there were no exemptions in the draft law. However, the draft law has been amended and an exemption created and I hope that will be taken by Members as a clear indication that the drafters and the Council of Ministers were listening. I want to be clear to Members in explaining the difficult issue of exemptions. The special resolution of the F.A.T.F. does not include any exemption at all. The reasons why, however, we have been persuaded to include an exemption is that we have effectively learnt from the practice of the U.K. when they were assessed by the I.M.F. Since the U.K. has been ratified with a largely compliant rating from the F.A.T.F. We believe that is one good reason, and the only good reason that we have found, in order to impose a minimum restriction. I will just repeat the fact that the special resolution itself does not envisage any exemptions at all. Logic suggests that any higher exemption limit than the £1,000 could, therefore, get a negative reaction from the I.M.F. The other issue that we have is that we have not carried out that overall audit; we have not carried out that whole scoping of N.P.O.s like other jurisdictions with a Charities Commission. We do not have any other evidence of any other jurisdiction that has received a compliant figure with an exemption and that is the principal argument that we are forwarding in relation to the exemption limit that is proposed in Article 2(2). As I said, the U.K. has already been through the initial risk assessment and the U.K. can justify that £1,000. I think that I would say to the Assembly that we are potentially stretching the definition or the interpretation of special resolution. We have not carried out that overall audit and there is a risk - I say that it is a small risk - that it could be argued that we have not carried an overall scoping of the whole N.P.O. sector. However, we believe that doing the scoping within the limit of £1,000 is justifiable. The other issue that I think is important to know is that if a greater limit over and above the £1,000 was considered we will effectively carve-out a very significant number of N.P.O.s therefore we will not know exactly what the broad range on N.P.O.s, which is, I am afraid, a bit of chicken and egg. We need to have this first of all overall assessment of the N.P.O. sector with this £1,000 limit and then possibly in the future we are able to change that. Article 2 does give the States, by Regulations, the possibility even before a Charities Commission after this initial audit has been carried out of the requirement of all N.P.O.s to register to adjust that limit. Sir, I think I will leave my remarks on Article 2 there and move on to the amendment.

**2.3.1 Deputy F.J. Hill of St. Martin:**

Could I just ask the rapporteur before we start the debate because I think it would help: the Minister talks about the £1,000 exemption; could I ask when that £1,000 came in because if that £1,000 exemption was, say, 10 years ago, the value of that £1,000 obviously is a lot lower now than what it would have been. So how recent is that figure? If he is in a position to say so now, I think it would help because it may have some bearing on whether if, say, it is 10 years old, where the value would be much less. Thank you.

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

Are you able to assist at all?

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

Yes, it is immediately within the very recent past within the U.K. That is the figure that is in force in the U.K. It is absolutely recent. That is the figure, and that is the reason why we are persuaded to do so.

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

Is Article 2 seconded? [**Seconded**]. Now, there is an amendment to Article 2 in the name of Deputy Le Hérisssier. I will ask the Greffier to read the amendment.

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

On page 16, Article 2, in paragraph 1, for the amount £1,000, substitute the amount £5,000.

### **2.4 Deputy R.G. Le Hérisssier:**

I should say, before I start on this very brief overview of the issue, that there is a difference between registering in order to expose oneself to the full force of the law and of the powers invested in the J.F.S.C. and registering as a purely administrative device so that your details are on record, which is what I would hope will happen with the Charities Commission. Our view is, Sir, that this is over the top. It is contrary to the spirit of the F.A.T.F. paper set out in S.R.8 which says: "Government oversight should be flexible, effective and proportional to the risk of abuse and should not be applied to locally-based associations or organisations whose primary function is to redistribute resources among members and who may not necessarily require enhanced government oversight." That is members-only organisations, admittedly. I should add, Sir, without getting into massive detail - and this is what is missing in a sense from this debate even though Senator Ozouf keeps alluding to all this authoritative advice he has received - that the whole of the F.A.T.F. approach is risk-based. It is risk-based, and, yes, you can argue, as did the Minister in his original paper, that the London bombers only needed, I think, a few hundred. If you argue that, Sir, of course, by logic, you have to include everybody, but if you assess the Jersey situation, if you assess the likelihood of money going to terrorist organisations, if you identify people as a special group, which has almost been done, and rightly, I think, those who send money overseas for shall we say greater scrutiny, once you have dealt with it, Sir, why then do you have to put all the rest into a detailed oversight by the J.F.S.C? Our view is that is what you are doing. We have no problem in sending registration details to the Charity Commission as proposed by the eminently reasonable Deputy of St. Clement. We have no problem with that whatsoever, Sir, at a later stage, but if the rapporteur wishes to abide by the spirit of the F.A.T.F. recommendations, which has make it risk-based, do not go over the top, be proportional, it is not scientific how we have arrived at £5,000. It is not scientific how he has arrived at £1,000. We just think it is much more reasonable in the circumstances. Thank you, Sir.

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

Is the amendment seconded? [**Seconded**].

### **2.4.1 Deputy S.C. Ferguson:**

Yes, I must say I am a little confused about this less than £1,000. I do not know which version of the law the Minister may have been reading because according to something that I have just

extracted from the Charities Commissioners, the *de minimis* is less than £5,000 income. As far as exemptions go, the U.K. expects to bring all charities under some sort of supervisory net, as far as I can read it, and the essential thing is that if you want the official cachet, the sort of gold-leaf qualification of - it is a bit of a mouthful, this - a charitable incorporated organisation, then you must register with the Commission regardless of your income. So I think in the short term, Sir, I really do not see any reason why we should not be looking at a *de minimis* of £5,000 because there are a lot of, you know, the St. Mary's pétanque club. With respect to the Connétable, I do not suppose their income is more than the few hundreds, unless they are absolute demons for pétanque in St. Mary. The proportionality and the light touch - the risk base - I think that Deputy Le Hérissier's bringing to this, I think is quite right, and I will support this amendment.

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

I was interested to hear what the Minister was saying earlier on about the fact that it will be possible later on to review the *de minimis* level. I think Members should be mindful of that, but if it can be reviewed then, can it not be reviewed from the point of view of starting with a higher figure, because I am also interested in the comments that are in the Council of Ministers' comments which say that the high limit would be very hard to defend and should be rejected. How hard is it to defend? I will be interested to know. If it is really going to upset the I.M.F. then should we be doing that, but if it was a point of negotiation, in other words, rather than starting at the lower figure and then going up later, could we not start at the higher figure and then go down? I just wondered if the Minister will have the opportunity to answer that later, but I know we are on the amendment, but it might be a way forward that Members would prefer and possibly accept so we do not rock the boat too much and get on and actually pass this Bill, Sir. Thank you.

#### **Deputy I.J. Gorst:**

I do wish to make...

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

Senator Ozouf will speak on the amendment. He is entitled to speak on the amendment.

#### **Deputy I.J. Gorst:**

Yes, Sir, I want to speak on the amendment.

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

Senator Ozouf is also entitled to speak on Deputy Le Hérissier's amendment.

#### **Deputy I.J. Gorst:**

I thought he was replying to... oh, I see. He is not summing up.

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

Unfortunately, Sir, I have only one chance at this, so I had better make a good job of it. I do not want to be particularly difficult with Deputy Le Hérissier, but I do notice that in the preamble debate, he voted against the whole law. I just express surprise at that because I think, in his overall set of amendments, he did accept the principles of the law. So I would urge Members to bear in mind that I am effectively trying to argue against an amendment put forward by an individual who

wished to strike the whole law down. It gives me no pleasure to have to say to Members why we need to have, in the early course of the setting up of the arrangements for N.P.O.s according to the special resolution, a harder approach in relation to £1,000 instead of £5,000. I just would repeat I do not know where Deputy Ferguson gets her figures, but the information that I have is that the U.K. limit - if she would like to pass it round to me so that I can review it - as far as the information that I have, advice from the J.F.S.C., from the Law Officers, from all other organisations is that the U.K., in terms of their assessment of the F.A.T.F., requires there to have been a figure of £1,000 when they got the I.M.F. figure. I mean, I just do not know where to take a piece of information that is just put across. All the information from the Law Officers, from the J.F.S.C., from the Chief Minister's Department, indicates that when the U.K. in the recent past dealt with their I.M.F. rating, they had a £1,000 exemption limit. I need to say that I fully expect that after the initial audit of the N.P.O. sector, when you have a full understanding of it, in agreement with the Deputy of St. John, it may be possible to raise that limit up, but how can you carry out an assessment of an overall list of organisations if you only have a proportion of them? That is at the heart of the issue. You need to have a full scoping of the sector in order to be able to then do a risk assessment - to be focused - and the Members that have said that there is a requirement to be risk orientated, that is absolutely right, but you can only be risk orientated when you have an overall understanding of the sector, and in terms of monetary value, this is a sensitive issue because there have been some incidents of terrorists financing which have been at quite small levels. The London bombings is something that is often repeated. The amount of money involved has been really quite small and I think that if we send out... and based upon the advice - and I have looked at this completely *de novo* after the original drafts were done - effectively, if we put forward a piece of legislation which carves out a significant number of N.P.Os., then how can we carry out that risk assessment of them? That is the issue, and I would say to Deputy Le Hérisier, in his summing up, does he have any single evidence from any other jurisdiction which has taken an approach which does not mean that they have a full understanding of their N.P.O. sector? I do not think that one exists, or certainly one that we would wish to follow exists, and certainly not a jurisdiction which has had a largely compliant rating. So I say to Members that the £1,000 is absolutely required as the initial figure. I have not mentioned the fact that the Corporate Services Panel has reviewed this legislation and has supported the Council of Ministers' stance of the £1,000. I think also with the spirit that they think that it is going to be possible to raise after a period of time, that is the situation. I have a note in relation to the issue of the £5,000. The £5,000 is the current limit in the Charities Commission, but the figure that was put in the United Kingdom, the figure was £1,000 in order to assess the entire sector, which is exactly what we are supposed to be doing here. So I fully expect that we will be able to lift that figure, just as the U.K. has done, after having carried out the full risk assessment. I ask Members to listen to Deputy Le Hérisier very carefully if he can give any examples of a jurisdiction that has made a full assessment of it with such a high limit. I urge Members to vote against the amendment.

**Deputy I.J. Gorst:**

Perhaps the Minister will give way if I could ask for a point of clarification. I think this is probably an area which Members are finding most difficult to understand where the risk reward/balance lies from ensuring that we capture all necessary charities to be able to analyse the risk that they might cause in this particular sector. I take some comfort from the fact that the Minister believes that we should start at this low level and then we can review that fact. I wonder if he is prepared today to give us commitment to say that either his department or some department will review that within 12 months once the initial risk analysis has taken place.

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

I am happy to give that undertaking. That is an absolutely reasonable thing. I think that Deputy Gorst, as an accountant, understands audits and understands risk assessment. That is absolutely something, and I give that undertaking.

#### **2.4.4 Deputy G.W.J. de Faye:**

Regretfully, I am afraid, this is the one area in this particular proposition where I part company with my fellow colleagues on the Council of Ministers. To get one factual item out of the way early on, the information gleaned from the Attorney General was that the London bombing was based on funding of £7,000 but clearly, even with a *de minimis* level of £1,000, you only need 10 people with £700 each to come under the wire. I think if Members understand that, they may have a clearer idea of perhaps how useful all this is going to be in terms of combating terrorism. The reason we are debating this afternoon is due to the existence of the Financial Action Task Force which is a task force on money laundering established by a G7 summit in Paris in 1989. That task force concentrated on the issue of money laundering, hence the linkage with the I.M.F. and the International Monetary Fund visit coming to Jersey in due course. It was only in 2001 that the F.A.T.F. then started looking towards the issue of terrorist financing. The membership countries have grown and now the list starts with Argentina and ends with the United States, and Jersey obviously will find itself linked via the United Kingdom. It is obviously important that as a jurisdiction we recognise the issues of international money laundering and international terrorism. Regrettably, the very existence of international terrorism has tended to push the free, liberal, western democracies into more authoritarian positions, particularly in some aspects of the bureaucracy. This is precisely where we are looking at this legislation now, but to reiterate what Deputy Le Hérisier said, it is a question of risk and balance. I feel that we are once again perhaps wanting to take a Rolls-Royce approach in respect of showing off how well Jersey is doing in international financial circles, and I wonder whether we really need to do that in this case when the reality is, in fact, an imposition. I think the Connétable of St. Lawrence described it as a bit of messing around for some local charities, but nevertheless I do not agree that simply because you are only being asked to fill in a short form that may only take you 10 or 15 minutes, that it is okay. It is not okay. To say it is okay is missing the point. It is just the same as we were discussing only a matter of hours ago. It is the same as receiving a threatening letter from the Television Licensing Authority even though you do not have a television. It is maybe not a big deal, but it is an imposition, and that is the point. The point that then follows is who we will be imposing upon. The fight against international terrorism is of course an important one, but how far should it extend into the depth of our local community, particularly in terms of regulation? I have no doubt that at the G7 summit level, at the very high echelons of the Financial Action Task Force, some very bright intern doubtless came up one day with this excellent idea that one way of tracking moneys was by getting every organisation that handles money to register. Was that the thin end of the wedge of the tracking? I do not know because I do not know where this is going to go. What I am concerned about, and I have seen at least some movement in the right direction, is that we started off with no *de minimis* at all and we have at least gone from £1 to £1,000. I think that Deputy Le Hérisier, this figure of £5,000 I have to say is nearer the mark. Why do I say that? There is a question mark at this moment in time about the position of the U.K.'s Charities Commission, whether their *de minimis* is £1,000 or £10,000. I do not think it really matters which it is. The fact is that there are levels of compliance which will be awarded. Clearly, if we have no *de minimis* at all, we could qualify as being fully compliant. The United Kingdom, because it has a Charities Commission, has been awarded the status of largely compliant. That, I think, is quite interesting because a Charities Commission is not nearly as extensive in its breadth as what we are proposing to adopt today. A non-profit-making organisation - an N.P.O. - includes charities but it also includes an awful lot of organisations that are not charities. They may, for example, be sports clubs. They may be, in the example that I have used on occasions previously, the St. Mary's Battle of Flowers Association. There are numerous clubs, societies, throughout the Island who are not



charities but are nevertheless caught by the very large breadth of the N.P.O. description. That is why I believe that Deputy Le Hérisier has this one right. We will be offering up to the F.A.T.F. a far wider breadth of registration than is captured by a Charities Commission. What the United Kingdom is offering through a Charities Commission is a narrower field of view for F.A.T.F. to operate from. I think under those circumstances possibly a *de minimis* of £1,000 may be correct. I think once you widen your ambit, in fact you should perhaps raise the wire a little higher in order to achieve, as Deputy Le Hérisier indicated it, indeed within the very remit of the F.A.T.F. itself a level of balance and a bit of understanding of the risk. I think therein lies the point: to what extent should we really be making impositions on our local clubs and societies for what is, in the broader sense, frankly, at this level, a solution in the fight against terrorism that has, I think, a very significant question mark over it in terms of its relevance and likelihood of achieving anything tangible. If we want to look at any tracking of money, it certainly should not be money that is simply going round and round within the Island. It is moneys that are raised here and sent elsewhere, and it needs to be, in my view, significant amounts of money. My understanding of money laundering declarations is that they kick in at around £10,000. So even if we said a figure of £5,000 is the one to have, we are coming in at... I understand Deputy Gorst is much more of an expert in this area than I, and I may have had that wrong.

**Deputy I.J. Gorst:**

It would be nice to think that these things were quite as simple as they used to be some 5 or 10 years ago. There are now obligations on professions practising in this particular area where it is to do with their experience and what they might expect or what they might have considered to have expected when they are dealing with a particular client, an amount, a sequence of amounts, and events surrounding amounts. So it would be nice to think that these things were fairly straightforward, but in actual fact, Sir, they are not quite as straightforward as the Deputy might have the Chamber believe.

**Deputy G.W.J. de Faye:**

Could I just reply to the Deputy before I reply to the Senator, and I will give way to the Senator in a moment? I would just like to say I am very grateful to the Deputy for his very clear explanation of that, and I am now very happy to give way to the Senator.

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

I remind the Deputy that I explained the issue of the anti-money-laundering limit of £10,000 and explained very clearly to, I thought, the Deputy of St. John that it had absolutely nothing to do with the issue of the £1,000 or the £5,000. The £10,000 anti-money-laundering issue which requires a lighter touch in relation to certain circumstances of regulated activities, and it cannot be compared at all. It is apples and pears in relation to the 2 issues. There is no exemption for any suspicious transaction for any illegal activity under any figure, and to tell the Assembly that the £10,000 can be linked is absolutely erroneous, as the majority of his speeches, I am afraid. **[Members: Oh!]**

**Deputy G.W.J. de Faye:**

I am very grateful to the Senator for explaining to me in a much clearer way the situation when compared to the way Deputy Gorst attempted it **[Laughter]**, but I would say to the Senator that I did preface all those remarks by saying he did refer to money laundering, and I do apologise to the Senator and any Members of the House who feel I was deliberately attempting to conflate the 2 issues in order to somehow beguile Members into my line of thinking. The situation is, I think, fairly clear before us. There are levels of compliance that can be achieved according to how your

legislation comes out. One of the key aspects of the legislation is the *de minimis* level. It is obvious to us that the United Kingdom is not fully compliant but has been allowed a largely compliant status because of its U.K. Charities Commission. We are offering a far wider breadth of investigation, and I think on those grounds we should insist on a higher *de minimis* level. That may mean that we are not fully compliant. It may mean we get an award of “largely compliant”. It may mean we get awarded a distinction with the list of people who are partially compliant, but we certainly are compliant so we will not end up on apparently the no-no list of countries that are considered to be non-compliant. So I think that it can be overstated as to just how compliant we need to be on this matter, and I think that Deputy Le Hérissier’s amendment of £5,000 is a figure that seems to me to be pretty much in the right area. If that means that we are only largely compliant or partially compliant, so be it, but nevertheless we are compliant.

#### **2.4.5 The Deputy of St. Martin:**

I would like to remind the rapporteur that I voted pour because I believed I was supporting the principle of the law. I could have voted no or contre because I opposed the lot, but I think it is right that we have to have a law. What we have to do is have a law which I think is fair and reasonable, and when voting pour, I was not necessarily voting for the detail. Now we are into the detail and that is the way we will part company because, along the line, there are some of the details which some of us are not going to agree with. I think that is all part of a good debate. One thing I am a little bit concerned about, it seems as if we are going to have to base our benchmark or the par for the course is what one set of bombers did around London 2 or 3 years ago. It does seem unfair, really, that we in Jersey should then be looked upon as if round the corner there is some potential bomber that if they did not have a £1,000 they are going to be okay because they do not have to become part of a non-profit organisation. So, you know, I do not think we ought to be too worried about that, but one thing again, we said: “Where is the evidence of the risk in Jersey?” Again we are looking at Jersey. We are not looking at some enclave in Stockwell, Brixton or Hackney or any other part of London where there may be an enclave of potential bombers. I think we are much more close-knit and I think we are a little bit more aware that maybe if Deputy Le Hérissier thinks he is going to build-up some stock of bombs, he can do so. He needs up to £5,000 before he is going to be stopped and questioned about it. On that, I would rather us be in the £5,000 and then be told that we cannot have our £5,000 and then be told exactly the reasons why we cannot, rather than starting at £1,000 and then asking to go up because what I believe is, once we have set ourselves at £1,000, it might be very hard to get that raised to £5,000. So I would far rather start from the top and then get reasons for us to work down rather than the other way around. So with that, I will be supporting Deputy Le Hérissier.

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

I started off looking at this with a similar idea to Deputy Le Hérissier; that perhaps we could go to £5,000 as a *de minimis* because when I first got involved in some discussions on this, and I cannot remember exactly where or when, the *de minimis* proposed at that time was £500. I really did not think that £500 was neither here nor there. So I said: “What do they do in the U.K.?” Well, as we know, the figure has recently been raised to £5,000 but they do have a Charities Commission which we do not have at the moment. I believe that that was seen by the I.M.F. as a plus factor and therefore the idea of £1,000 limit was acceptable. Now, I am not aware of all the facts, but that is my understanding. Somebody who has looked at it, of course, is the Corporate Services Scrutiny Panel. On page 3 of their report, they say: “The question of an appropriate *de minimis* limit has been much discussed. It is noted that the *de minimis* limit for registration in the United Kingdom has recently been raised to £5,000. If this same limit were applied to Jersey, it would carve out a number of small N.P.O.s from the administrative requirements of registration. The panel has no evidence, however, on the numbers of N.P.O.s that would be involved at this level.” They then go

on to say that Guernsey has got the provision for a *de minimis* but has not said what it is going to be. They have not set it in the law. Then they talk about discussions they had with the Director of International Finance, but the conclusion they came to, and this is in bold on 16: “The panel supports the concept of a *de minimis* and believes that a level of higher than £1,000 should be an aspiration in due course, once a risk assessment procedure was fully established in the Island.” In other words, they are saying that we should look at £1,000 but not now; we should look at it in the future. The Minister has given an undertaking to review it over the next year, and I think it would be unwise to just leap in with both feet and keep our fingers crossed and hope we will get a good report because the thing is, the reports, as I understand, are made every 5 years. So, in other words, we could get a black mark that would be in place for 5 years. Now, it is only one, I know, of a number of issues that the I.M.F. will look at, but do we really want to take that risk? Is the difference between £1,000 and £5,000 so vital in terms of trying to make things easier? I think, as I say, the *de minimis* has been raised already from £500 to £1,000. The Attorney General, as I understand it, has been involved in discussions, and he believes that we would take a serious risk if we went over the £1,000 of not getting a proper mark, if you like, when the I.M.F. do their review. So I think it would be unwise to go above the £1,000 at this stage. When we have a Charities Commission in place - if and when we do - then maybe that will be a different thing altogether, but I think it is unwise from the advice we have been given to go beyond £1,000 at this stage. So I cannot support it.

#### **2.4.7 Deputy J.A.N. Le Fondré:**

Two speakers from St. Lawrence in one go almost. Let us face it, Sir. This law is neither liked nor welcome, to be honest, but it is that old saying, Sir, of how do we get to somewhere when I would not start from here in the first place. In other words, we do need to have it. Let us face it as well: it is going to face probably everyone in this Chamber by being members of some club or association or other. I would say, Sir, that I was minded when we started the debate on the amendment to support Deputy Le Hérisier on this amendment. I am likely to be supporting him on one or 2 of the others. The Minister is absolutely right. If you want to know your population, you have to start at a low level and then you can assess the risk and then you can consider whether you can raise the *de minimis* limit at a later date. Given the fact that he has given commitment for a review in 12 months’ time, I think that is the correct way to approach it. I would therefore ask Members to reject the amendment on the expectation of a review in 12 months’ time. I do not think in reality we have that much choice. I believe I know, but could the Deputies clarify for the record, who the members of the group are? I know who has been involved in the group they have been looking at the law. It might be helpful if we can know who the group is, and I presume the amendments are the views of the group as a whole and presumably have had some legal input when they have been drafted. Thank you, Sir.

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

The saying is that a week is a long time in politics. Well, we have experienced here today that a day is a long time in politics. This morning, people were doubting the judgment of the Council of Ministers because there was a risk involved. Yet here this afternoon, we are saying that we are prepared to take a risk. As has been pointed out, the risk is quite high. If we get the wrong grading at the end of this year, it could be very detrimental to the future of the Island, certainly for the next 5 years. Now, are we prepared to take that risk just for the sake of £1,000 or £5,000? I think that this particular amendment is the crux of the whole proposition. The other amendments are not so vital. This one is vital. I think we need to learn from the way that the U.K. did it because the U.K. went in with their £1,000 and then the Commission decided that having got the grading, they could then up the figure. I think that we need to do exactly the same thing. We need to go with the

£1,000 that is proposed today and, as and when the group has come forward with the proposition for a Charities Commission, that will be the time to look at the £5,000 figure.

#### **2.4.9 Senator M.E. Vibert:**

In a very similar way, I think it has to be accepted and I think everybody accepts that our major industry, the finance industry, is part of an international community and we have responsibilities because of that. Now, we might not like it, but part of those responsibilities is trying to get compliance with various international agreements and standards. This is one of them. As it is said, it is not about wishing or making but the Financial Action Task Force is going to visit and is going to judge our finance industry, whether we like it or not. That judgment will have a very, very serious effect on our finance industry, either for the good or the not so good. As we know, our finance industry is a major contributor towards our economy. So what we are talking about here is something that could affect our economy in quite a substantial way. Is it worth taking the risk of getting a bad and not good rating from something that could affect our economy quite severely on the basis of no evidence whatsoever produced that this risk is worth taking? It is very, very clear. It is comments and so on that the Council of Ministers is already suggesting that we do take a risk, that we do have a *de minimis* level of £1,000. I have heard nothing from those in favour of the raising it to £5,000 based on anything rather than a gut feeling. Deputy de Faye's well-reasoned argument for why it should be £5,000 in the light of the International Monetary Fund back for a visit is... the figure seems to me to be pretty much in the right area. Well, that is all right then, as long as, of course, the I.M.F. agrees with the Deputy that it is pretty much in the right area. All the advice we have had, the professional advice, is that £1,000 is as far as we can go and as far as it is right to take a sensible risk. We have taken advice. I think we need to be very careful. The Deputy of St. Martin suggested we start it off at the higher figure and then, if we are told it is too high, we can change it. I do not think it happens like that, Deputy. We would get a ruling. We would get a judgment against our finance industry, possibly of even non-compliance, and then it would take time to change it and to get them back to review it, and that would not be good for the finance industry. Why not be sensible? Why take that big risk; go in at the £1,000 level? We believe we can get a largely compliant rating with that, and then the rapporteur has said and has given an undertaking within 12 months we can review it and if we can change it, we will do so. I think it would be foolhardy in the extreme for what is - and nobody has argued it is not - what is not an onerous burden at all. It is 4 or 5 lines on a piece of paper for what is we do not know how many N.P.O.s would be exempted by raising it from £1,000 to £5,000. So we do not know the scale of the issue. Why take that risk? Why take the risk with some of the success of the finance industry? The finance industry, which is one of the major contributors because of their success, to N.P.O.s, charities and sporting bodies *et cetera*. I think we should not take that risk with our economy. We should play as safe as we can in this instance and with an undertaking that it will be reviewed as soon as possible. I believe it would be foolhardy to do anything else.

#### **2.4.10 Deputy J.B. Fox:**

I must say I am getting completely confused around here because the question I had asked previously was why not compliance and whether there could be a stay of finalisation in order that we could bring together a desirability with Jersey Charities Commission? The answer was no, according to the Minister, but then, in the next breath, it says: "But the U.K. have been largely compliant and that does not seem to affect their status" but if we had a "largely compliant", would that affect our status? If so, then do we talk about the U.K. with *de minimis* levels of £1,000, somewhere else being at £5,000 and dropping down to £1,000? We are sending mixed messages out here. Could I ask for some clarification...

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

Would the Assistant Minister like to give way?

**Deputy J.B. Fox:**

Yes.

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

Could I just explain the issue is, in education, there are O-level passes which is a pass as A to C, and D is a fail. Effectively: “largely compliant”, it is a C. It is a pass, okay? So it is above the limit that is acceptable, and effectively what we are talking about is a pass and fail, and we do not want to fail. We want to be above the pass and we want a reasonable pass. “Largely compliant” is what I would describe as a sort of C+.

**Deputy J.B. Fox:**

Can I finish very briefly? I am inclined to go along with £1,000 as opposed to the £5,000, providing that I can get an understanding that one can go up as easy as one can go down, but I would also be seeking that we do not end up by discussing the Jersey Charities Commission part for an endless time, that the whole question of 12 months brings the whole thing together and that we can come back all at once instead of things coming back in piecemeal: “Oh, we have done this bit. We have not done that bit.” There is one thing that infuriates me more is this piecemeal method that seems to come into it, and I cannot understand for the life of me why, that if we have been talking about this since 2006, we do not have more information here today that would allow us to be largely compliant and be able to be in with it but at the same time give some reassurance to all those small but dedicated band of people that provide so much charitable wealth for both our local people and for people abroad. Thank you, Sir.

**2.4.11 Deputy A. Breckon:**

I think it is bit ironic, the debate over £1,000 or £5,000 and why risk it or perhaps why not. I think Deputy Le Hérissier used the word “reasonable” when he started proposing this amendment, and I think that is really where we should be, but there seems to be a pretty big grey area here and it is we do not know at all how many organisations there are out there. There could be things associated with Cubs and Brownies that raise a few pounds by car boots and jumble sales. I mean, we talked about red tape and getting rid of some of it. How far down do we need to drill down and how much do we need to have? I think it is ironic when it says the money raised in the preceding 12 months. Well, I have been involved with a few organisations over the years and you think: “Well, hang on, if this takes us over the limit, then forget this. We will not do this fundraiser now because we are all going to have to fill these forms in. We are going to have compliance issues.” The message I got from people is some people who volunteer and give their time - and we cannot put a price on that, really, and there are many of them - would just say: “Well, forget this. I do not want to fill your forms in. I do not want to get involved.” I think many people have forgotten that, and we know about the finance industry and all the benefits, but we must, from the other side, recognise the benefit that many people give to this community by their own efforts, and they do not get paid for it. Many of those people, from the messages I have had, are going to walk away and say: “You can have your compliance. You can have your red tape. Well, you can keep it.” They did not actually say “keep it.” They used another word which was not quite as polite. The thing with that is we do not really know what is out there, and if we draw a line somewhere, then we will find out. If we draw it too low, I feel that we will put that disincentive there to many people who will give their time to help others in the community that we do not perhaps even know of. Do we really want to flush these people out as if they are some sort of criminals raising funds for whatever purposes?

That is not what they are, and in the main, people do not want publicity by some of the issues. They do it freely and willingly and they do not want your forms, they do not want your red tape. They will just go and spend a few Saturday mornings and do whatever it is and raise the funds and help whoever, but it does really concern me, Sir, that we are having to go to this *n*th degree to satisfy somebody when I think what is reasonable is perhaps far higher than this anyway, and there will be a criminal element wherever it is, and, you know, things like this will not stop that. I think it is a message too far for me. Having said that, Sir, £5,000 is the better option but, I mean, I am not sure about the necessity for the whole thing anyway to comply with something or other. I think it is red tape gone mad.

#### **2.4.12 Deputy P.J.D. Ryan:**

Well, Corporate Services has, in 3 separate reports in the past, recommended the formation of a Charities Commission: in 2 G.S.T. reports and one legal aid report. Then we had Deputy Gorst's proposition on the inquiry for a Charities Commission. Still nothing was done by the Council of Ministers, even after the States passed that resolution. Then this morning we had Deputy Le Hérissier's speech. I listened to it on the radio because I was not here, unfortunately; but I listened to it on the radio and the unmitigated disaster this throws up. I know Deputy Le Hérissier likes to repeat when he is trying to emphasise a point, and I do know that he likes to repeat when he wants to emphasise a point. **[Laughter]** I do know he likes to repeat, but I did hear at least 6 unmitigated disasters in a very strong and evocative way that the Deputy tends to speak. Was he going over the top? Well, who knows, but I would just like to make the point, Sir, that we can all, as States Members, be cross about this. You know, this has come to us at a very late stage. The Council of Ministers must have known about this many, many months if not years ago that this kind of law was going to be needed, and yet here we are, right on the very brink. So we can all be very cross about this and we can all stamp our feet and we can all huff and puff, but we do need to make a decision. When you make a decision, as we did when we looked at this, you have to take into account the risk to reward ratio. High risk, low reward, and that is what moving this *de minimis* would be. Relatively high risk for relatively low reward. As I say, we could vote Deputy Le Hérissier's amendment in this morning and all feel better about it, but it does not really matter whether we feel better about it because what matters is what will happen afterwards. It is the I.M.F. It does not even matter whether we think it is reasonable or not, and in this respect I refer to Deputy Breckon's speech that he just made. It does not really matter what we think is a reasonable *de minimis*. What matters is what the I.M.F. think is a reasonable *de minimis*. So we could vote it in, but what would happen if we take that high-risk route and we get it wrong? Who will suffer? It will be the finance industry and, by extension, it will be the people and the public of Jersey that will suffer. I put it to Members: is it worth it? This is a high-risk, relatively low-reward scenario, and that is why Corporate Services felt unbalanced. Having looked at all of the information from other jurisdictions and from all around the world, it simply is not worth taking the risk. We need to get the Charities Commission in, in the future. The Minister has already said he is going to review that *de minimis* within a short period of time. That is the way forward, Sir, and I am afraid I cannot support the Deputy's amendment. Thank you.

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

Just briefly, it has been a practice in St. Brelade over many years to support the clubs, societies and groups which operate within the Parish, and it is normal practice when we give these donations for us to have sight of the accounts. We support all manner of organisations in order to support the community, but I would not consider supporting these organisations if there were not a reasonable set of accounts presented. I see really no difficulty in those organisations being able to fill in this very simple form, and I will not be supporting the amendment.

#### **2.4.14 Deputy P.N. Troy:**

There were 2 terrorists who came to Jersey, Mustafa Bomb and his sister Mewanta Bomb, and they said: “We are going to go and blow up the States of Jersey.” Mustafa Bomb said to Mewanta Bomb: “I need to raise some money for some more bombs.” He said: “There is a new law.” He said: “I can only raise £999, and you, Mewanta, can only raise £999. So, between the pair of us, we have got £1,998 for some bombs.” She said: “Well, I do not think that is enough” and he said: “Well, what we will do is we will ring up your cousin, Megetta.” So they rang Megetta Bomb up and, between the 3 of them then, they could now get £2,997 for some bombs. Mustafa said: “I do not think that is enough.” He said: “We are going to need more money but we will have to register.” So Megetta said: “Well, look, why do we not just go and blow up the whole 53 of them before they even know we have to register?” These people are not going to register. This sort of law is not going to catch any terrorists who are going to be coming along thinking of blowing up this government. If we pass Deputy Le Hérisier’s amendment, they can go out and raise £15,000 between the 3 of them without registering, but I really find this quite amusing that across the whole of Europe, there are people who believe that they are going to stop terrorists with this sort of junk. The people in here and the people across Europe, politicians everywhere, I really think they must be so stupid to think that this is going to do an absolute thing. I am voting against everything on this totally.

#### **2.4.15 Deputy I.J. Gorst:**

I am pleased to follow that last speaker and I would like to disassociate myself and I hope that most other Members would like to disassociate themselves from the inference in that speech which, if the speaker had wished to make a point on the debate, I feel that he could have made it in a much more respectful way, and I certainly want to disassociate myself from it. I just want to pick up one small point, and again it was an inference from Deputy Breckon about red tape and bureaucracy with this particular proposition. I was not quite sure how it fitted into the *de minimis* level, but perhaps it does. The law has been changed considerably to reduce red tape and bureaucracy. The J.F.S.C. themselves have said that they will have a contact telephone line for any charities who are finding it difficult to complete. I understand that they are looking at availability of being able to complete the forms online. They will have people there who are able to help if charities find it particularly difficult, and I am pretty sure that most Members within this Chamber who are connected with charities, whether they sit on the boards of charities or they are approached by parishioners who are involved with charities, would be only too willing to help those charities to complete what is a relatively simple form, Sir. Thank you.

#### **2.4.16 Senator J.L. Perchard:**

Just briefly, could the proposer of the amendment, when summing up, name the specific charities, clubs, associations that will be affected by his amendment? Perhaps he could name one of them, Sir.

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

I call on Deputy Le Hérisier to reply.

#### **2.4.17 Deputy R.G. Le Hérisier:**

I understand, in reference to Senator Perchard, the Grouville Battle of Flowers Association might well be such a body. Sir, I wonder if we could get...

**Senator J.L. Perchard:**

No, Sir, that is not correct. On a point of order, the Grouville Battle of Flowers Association will turn over in excess of £18,000.

**Deputy R.G. Le Hérissier:**

Okay, thank you. Then the answer is I certainly cannot answer in detail because I do not have a list at the moment. I do not have a list. The point I would like to make, Sir, is there are some major misconceptions going around. We are not talking about people not voting for this because of not wishing to fill out a form as the Constable of St. Brelade has said. What we are talking about is the people waiting in the wings with all sorts of consequences for those who forget to hand in their form. Once those consequences get unravelled, as they will this afternoon, I think he will also get a better appreciation of the fact. As he quite rightly says, we are not just after people who are too lazy or unwilling or whatever to fill out a form. It goes much beyond that. The other issue, Sir, is Senator Ozouf said he cannot... and this is classic. I mean, we have had it all running through the W.E.B debate and it has now come up again. You vote against it, you are somehow a different animal and you deserve to be marginalised, *et cetera*. The point is I supported the intent of the legislation, but I felt the balance and the oppressiveness contained within the proposed legislation was wrong and it has not been amended to the degree we wish. It certainly has been amended, and I acknowledge that. It has not been amended and again that will come out in the debate on subsequent amendments. We have heard this view, and Senator Vibert was the exponent of the view. We must do it or the finance industry and western civilisation will collapse. This is an argument that gets run in this Assembly week after week, and it has been run again. The point is, Sir, there could have been a totally different approach taken to this. The States could well have said: "We will set up a risk-based approach in terms of number 8 of the F.A.T.F. recommendations where they do go for a risk-based approach", as I briefly mentioned earlier, where you concentrate on the bodies that are not small and the bodies that are not there just to serve members, in other words, running a social club, for example, for the members or something like that. You could have done that. Also, Sir, in line with F.A.T.F. recommendations, you could have set up an outreach programme which they are very keen on. That is a voluntary programme. That is basically a public relations programme warning societies that there may be dissident elements or whatever, or: "Be careful what happens to your money." That is very much a key point. There was a range of approaches they could have taken rather than a simplistic formulaic hit-them-heavy kind of law. Furthermore, Sir, the U.K. Charities Commission, which has been cited as a good example, has been a U.K. Home Office consultation document which brings to a head the kind of abuse that should be monitored. For example, the bodies they are focusing their attention on - to give you an example from this report - those closely aligned to particular religious or cultural movements; those who frequently move funds or other resources to areas of conflict or unrest around the world; those who pass funds to other organisations based overseas rather than deliver services directly *et cetera*. Those are organisations that are easily identified.

**The Connétable of St. Ouen:**

If the Deputy would just kindly sit down a second or so, can I ask, Sir, in a place like Jersey where we start with a clean sheet of paper, how does the Deputy identify these bodies?

**Deputy R.G. Le Hérissier:**

You identify them, Sir, not by setting up an overzealous and an excessively burdened bureaucratic organisation. You first of all start with a level of £5,000. You set in your control mechanisms and you say that the collection of basic data will hopefully be carried out at a later stage or at an



imminent stage by a Charities Commission. Despite the unfortunate way in which it was phrased, there are ways in which this information could be presented as to be entirely innocent and not to give any clues as to its provenance, as to the motives, *et cetera*. I think we have gone over the top, and this allows us to bring in a gradual approach in parallel with the other kinds of approaches which could have been stressed, but, no, somebody somewhere in the Chief Minister's Office, and this is so often the case, has seen a blueprint of some kind or someone has come back, and we know this happens, from a conference and said: "Jump" and the Chief Minister said: "No, I will jump twice as high." This is precisely what has happened and I wonder time after time how the subtlety and the nuances get lost and we end up with these formulaic mechanical overzealous approaches and the fear of God is implanted in us by people like Senator Vibert. Sir, just a few further minor points. I do thank everybody for their contributions. I thank Deputy de Faye for the classic libertarian approach which means they will not be strange inspectors from the charities or drainage authorities visiting us. Deputy Hill, I thought, made a good point: why be overcautious, although the Constable of St. Lawrence thought: "Yes, we must be." Deputy Le Fondré asked who is on the panel. It is a gentleman called Chris Pallot who I understand is an accountant with Moore Stephens; Advocate Lakeman; a lady called Helen Davis from a trust company; myself; and the General Manager of the animal shelter, Stephen Coleman. That is the group. I think, Sir, we have had a range of views. I think this is over the top. We could easily have put a submission and can put a submission forward to the I.M.F. in the spirit of that F.A.T.F. set of recommendations and philosophy which has not been taken to heart but has been taken in a totally literal fashion, and I think, Sir, we can make a very, very adequate presentation. This is over the top. We will get the information when hopefully we get a Charities Commission in place. This is not about people being too lazy to fill out a simple form. This is about the consequences that are built into the law.

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

Yes, the appel is called for. Members return to their designated seats. The vote is for or against the first amendment of Deputy Le Hérisssier, and the Greffier will open the voting.

<b>POUR: 15</b>	<b>CONTRE: 26</b>	<b>ABSTAIN: 1</b>
Connétable of St. Mary	Senator W. Kinnard	Connétable of Grouville
Connétable of St. Peter	Senator P.F. Routier	
Connétable of St. Clement	Senator M.E. Vibert	
Deputy R.C. Duhamel (S)	Senator P.F.C. Ozouf	
Deputy A. Breckon (S)	Senator B.E. Shenton	
Deputy of St. Martin	Senator J.L. Perchard	
Deputy G.C.L. Baudains (C)	Connétable of St. Ouen	
Deputy R.G. Le Hérisssier (S)	Connétable of St. Helier	
Deputy G.P. Southern (H)	Connétable of Trinity	
Deputy S.C. Ferguson (B)	Connétable of St. Lawrence	
Deputy of Grouville	Connétable of St. Brelade	
Deputy of St. Peter	Connétable of St. Martin	
Deputy G.W.J. de Faye (H)	Connétable of St. Saviour	
Deputy D.W. Mezbourian (L)	Deputy J.J. Huet (H)	
Deputy K.C. Lewis (S)	Deputy J.B. Fox (H)	
	Deputy of St. Ouen	
	Deputy P.J.D. Ryan (H)	
	Deputy J.A. Hilton (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy S. Pitman (H)	
	Deputy A.J.D. Maclean (H)	
	Deputy of St. John	

		Deputy I.J. Gorst (C)		
		Deputy of St. Mary		

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

Thank you. The debate resumes on Article 2 in its original form. Does any Member wish to speak on Article 2? Do you wish to reply?

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

I was not going to respond to Deputy Le Hérissier, but I will just say one thing in his remarks against the exemption. I am grateful for States Members for their balanced decision. He gave the impression that outreach was an option, for example, and I just will use this because it is an important issue that Members may want to reflect on in the remainder of the debate. I have the F.A.T.F. I have the...

**Deputy R.G. Le Hérissier:**

I did not say that, Sir. I did not say that.

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

I am not giving way, Sir. I am not giving way, Sir. I am not giving way. The F.A.T.F. special recommendation number 8, I have before me, and it says an outreach is not an “either”; it is an “and”. There are 4 elements which are required which says first of all outreach for the sector and supervision and monitoring and effective investigation and effective mechanisms for international cooperation, and he gave the impression in his earlier speech that it was either/or. I am not going to say anything more about that. I am not going to say anything more about that, but it is important that the Assembly is alert to the actual statement. I will try and inform the Assembly on the actual situation, and I know that, as Deputy Ryan said, Deputy Le Hérissier likes to repeat stuff and repeat stuff and likes to repeat stuff again, and he uses a loud voice in order to do so; I might obviously put those facts. I put Article 2.

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

Well, I put Article 2. Those Members in favour of adopting Article 2, kindly show. Those against? Article 2 is adopted. Do you propose Article 3, Minister?

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

I propose Article 3. The issue that I would just wish to draw to Members’ attention is that there is a further exemption which is by extension in the interpretation: organisations which raise sums solely for the benefit of their members will effectively be exempted because of the definition of an N.P.O. by Article 3. That is part of the test for being an N.P.O. that an organisation raises or disburses funds. Article 3 makes it clear that in the word “raised” or “disbursed”, they are to be interpreted so as to include membership fees applied for the benefit of members. I move Article 3.

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

Is Article 3 seconded? **[Seconded]**. Now, there is an amendment to Article 3 in the name of Deputy Le Hérissier. I will ask the Greffier to read that amendment.

**The Deputy Greffier of the States:**

On page 16, Article 3 in paragraph 1(a) of the definition “financial statement”, (a) delete the word “detailed”, (b) for the words “with any necessary explanations”, substitute the words “with such explanation as may be reasonably necessary.”

**2.7 Deputy R.G. Le Hérissier:**

There has been agreement on Article 3, so there is very little for me to say, Sir, except this remarkable statement of the Minister that because people speak in a loud voice and repeat things, that somehow they are verging on dishonest. How he links those things together, I just do not know.

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

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

**2.7.1 The Deputy of St. Martin:**

At the beginning of the law, it says this has been checked for compatibility with human rights, and I cannot see how it can be checked that closely because really what is being added now clearly makes it much more human-right compliant. I do not know how it was missed out in the first place, but the question I would like to ask is that the appeal is going to go to a Commission which has not been set up yet, so I would like to know how this appeal is going to go to something, some body called the Commission, if it does not exist. Maybe we could get an honest answer from somebody. Thank you.

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

I think the Commission referred to is the Financial Services Commission, Deputy. The amendment has been accepted by the Council. Do you wish to reply, Deputy? Put the amendment to the vote.

**2.7.2 Deputy R.G. Le Hérissier:**

As you said, Sir, it is by the Financial Services Commission. The whole idea of the amendment was, while it is not perfect, to be quite honest, but it was accepted, that people who feel aggrieved are not faced with a first stop, so to speak, of going to the Royal Court. Hopefully this will deal with issues before we get to that level. Thank you.

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

I put the amendment. Those Members in favour of adopting it, kindly show. Against? The amendment is adopted. Does anyone wish to speak on Article 3 as amended? If not, I put Article 3 as amended. Those Members in favour of adopting it, kindly show. And against? Article 3 as amended is adopted. How do you wish to proceed with the...

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

If I may take Articles 4 to 8, there are 2 amendments in relation to Article 8, one of which is accepted, one of which I will suggest that it is a matter for the States to decide in their wisdom.

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

Are you able to take 4 to 7 first?

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

Articles 4 to 7. In order to carry out risk assessment for the entire sector, Article 4 requires, as we have discussed, N.P.O.s established or Ministers to register. As part of the outreach programme that Deputy Le Hérisier mentioned, the Commission will take steps to ensure that all N.P.O.s are aware of the obligations to register. The application form is included in the schedule to the law, and as the Constable of St. Brelade has usefully reminded Members It may be useful for Members to look at that registration form, and I am sure Members will agree that those 8 basic pieces of information that are required are not onerous. Also the provision has been made for a group application. Article 5(5) ensures that registration can take place electronically to ensure that this is carried in the most efficient way possible. Once registration is received by the Commission under Article 6, it will be either accept the application or seek additional information or reject the application. However, it may only request additional information if it is necessary and reasonable to do so. I move Articles 4 to 7, Sir.

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

Are they seconded? **[Seconded]**. Does any Member wish to speak on any of Articles 4 to 7? I put the Articles. Those Members in favour of adopting, kindly show. Against? Articles 4 to 7 are adopted. Do you propose Article 8, Minister? Minister, do you propose Article 8?

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

Under Article 8, the Commission may reject an application if it is of the opinion that the N.P.O. poses a terrorist risk or an organisation is not in fact an N.P.O. It must send the application, notice setting out the reasons for the decision and there is a right of appeal. I move Article 8.

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

Is Article 8 seconded? **[Seconded]** Now, there are 2 amendments to Article 8. Do you wish to take the amendments together, Deputy, or do they relate to separate issues? Separately. We will therefore take amendment number 3 firstly. I will ask the Greffier to read amendment number 3.

**The Deputy Greffier of the States:**

On page 19, Article 8, for paragraphs 3 and 4, substitute the following paragraphs: (3) the notice must (a) give the reason for the refusal and (b) set out the applicant's rights under paragraphs 4 and 5, (4) the applicant may within 28 days of receiving the notice request in writing that the Commission reconsider its refusal of the application, (5) the Commission shall, within the period of 56 days following receipt of request under paragraph 4 reconsider its decision and shall either (a) confirm the refusal and send notice of the confirmation to the applicant, giving the reasons for the confirmation of the original decision, or (b) register the applicant; (6) a person aggrieved by the Commission's refusal of an application may, whether or not the person has requested the Commission to reconsider the refusal, appeal to the Royal Court.

## **2.10 Deputy R.G. Le Hérissier:**

There is little to say. Deputy Hill hopefully will be proud of us again. It was simply to strengthen the appeal rights of an aggrieved charity.

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

Is the amendment seconded? [**Seconded**] Does any Member wish to speak on the amendment? I put the amendment. Those Members in favour of adopting it, kindly show. Those against? The amendment number 3 is adopted. I ask the Greffier to read amendment number 4 to the same Article.

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

Page 19, Article 8, after paragraph (6), un-renumbered, insert the following paragraph: "On the appeal the court may further order that all or any of the costs of the appeal shall be paid out of public funds."

## **2.11 Deputy R.G. Le Hérissier:**

Thank you, Sir. The Council of Ministers have said this could lead to unmeritorious or perhaps frivolous vexatious appeals. Our view is, Sir, that there may well be cases where a person may be found or a group may be found technically guilty and, for some reason, they have found themselves in a court. We certainly do not expect unmeritorious appeals to be rewarded, so to speak, but there may well be cases where it is not simply that the costs should be awarded to somebody who has been exonerated, so to speak. There may well be other cases and it leaves this open but I am sure, Sir, it will operate according to the good sense of the court. We are not putting an open door to this. Thank you.

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

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

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

The reason why the Council of Ministers opposes this amendment is that I need to inform Members that the court already has rules in relation to costs. If an N.P.O. (non-profit making organisation) successfully appeals a decision by the Commission, the court will normally order that the N.P.O. costs should be paid by the Commission. If an N.P.O. wrongly appeals a decision of the Commission and loses, there could be an argument that the N.P.O. could, under certain circumstances, should pay the costs themselves. The Council does not believe that it would be right for public funds to be used almost in an automatic sense, to encourage inappropriate appeals. The court already has a discretion. The court is allowed to have that discretion or is permitted by this Assembly under legislation to have that discretion and there should be no reasons why one should believe that the court is going to be unreasonable. I think that the arguments that are forwarded by Deputy Le Hérissier, while perhaps well intentioned, are perhaps over-played. The ability exists for the court to allocate costs and I am sure that the court will do so and I would argue that there should be *status quo* in relation to the existing provisions and the court will be sympathetic to applicants who find themselves in a particular technical breach or something like.

#### **2.11.2 Deputy J.A.N. Le Fondré:**

Thank you, Sir. I am going to support this amendment. The whole point of this legislation; we said it is about trying to have the lightest touch possible on the non-profit making organisation. At the end of the day, Sir, this, to me, extends the ability of the court to pay out costs of an appeal. It is very much “may” not “must”, therefore there is still an element of risk but it just gives that extra protection to anyone bringing the appeal. Bearing in mind, Sir, that the appeal is to a Royal Court and that means there is a likelihood, I am not too sure what happens on appeals and the equivalence of modified approaches and what have you, but there is a likelihood, if not, that you will be looking at advocate costs and that would be enough to frighten anyone away. So, I think this is a sensible amendment. I do not think it will lead to entirely frivolous motions. There is still an element of risk but it reduces that risk sufficiently, Sir.

### **2.11.3 Deputy A. Breckon:**

Thank you, Sir. I think Senator Ozouf, to some extent here, has argued himself because what the amendment says is on the appeal the court may further order that all or any of the costs of the appeal should be paid out of public funds so the court can use the discretion that Senator Ozouf referred to. So, I think it has been nit-picking, really, that the amendment has not been accepted and I would ask if the Minister could reconsider that.

### **2.11.4 The Deputy of St. Martin:**

Yes, Sir, I am about to support what Deputy Le Fondré had to say because, really again, we should be looking at a light touch. We said earlier, what we do not want to do is put people out who may find themselves in a spot of bother and then find out that, at the end of the day they are going to have huge costs as well if they take their case to appeal and I can almost see when this was put in, thinking of Advocate Lakeman’s mind, as a lawyer, having the practical experience and thinking this better have something within the law because, remember, Deputy Baudains this morning saying something, it is all very well saying: “Yes, this is what we mean” but unless it is in the law then it is not worth anything. So, what I am asking Members to do is support this with what we have got. It is in the law, it will be there, it cannot be argued off as: “Well, the States meant it, but it was not in the law”, so I would ask Members to give it their support.

### **The Deputy of St. Ouen:**

Can I maybe seek the assistance of the Solicitor General here? Is there a Court of Appeal rule or regulation or whatever which dictates how appeal costs are granted?

### **The Solicitor General:**

These would not be strictly Court of Appeal costs. Any appeal would be to the Royal Court, so the court at first instance. The jurisdiction of that court is governed by the Civil Proceedings (Jersey) Law, which provides that it is fully within the discretion of the court and has full power to determine by whom and to what extent costs are to be paid. The court in recent judgments has determined that that extends to the ability to order non-parties to pay the costs. So, in an appeal between a charity and the Commission, the court could, in theory - I do not think I can go further as to say that is a likely order that the court could make but the power certainly exists, expressly within statute that it can make it.

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

I call upon Deputy Le Hérissier to reply.

**2.11.5 Deputy R.G. Le Hérisier:**

Thank you, Sir. I thank the Members - Deputies Breckon, Le Fondré and Hill - and the Solicitor General for their contribution. My view, Sir, this is very important. What we have tried to do with the amendments in general is to put in checks and balances so that voluntary organisations do not feel totally intimidated and overwhelmed and feel they are operating in a one-sided system. I am afraid the Senator may shake his head but, rightly or wrongly, that is the culture they feel into which they are entering and I think it is only right that there be proper checks and balances and I think this is very mild. I cannot for the life of me, Sir, think that any charity would wish to go this far unless there were an absolutely issue because of the financial consequences, which would essentially lead to the demise of the charity in many cases. So, I think it is an essential little defence. It does not amount to much and I therefore argue for it to be retained. Thank you.

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

The appel, Deputy, or standing vote? The appel is called for. The vote is therefore for or against the amendment number 4 and the Greffier will open the voting.

<b>POUR: 15</b>	<b>CONTRE: 26</b>	<b>ABSTAIN: 1</b>
Connétable of St. Mary	Senator W. Kinnard	Connétable of Grouville
Connétable of St. Peter	Senator P.F. Routier	
Connétable of St. Clement	Senator M.E. Vibert	
Deputy R.C. Duhamel (S)	Senator P.F.C. Ozouf	
Deputy A. Breckon (S)	Senator B.E. Shenton	
Deputy of St. Martin	Senator J.L. Perchard	
Deputy G.C.L. Baudains (C)	Connétable of St. Ouen	
Deputy R.G. Le Hérisier (S)	Connétable of St. Helier	
Deputy G.P. Southern (H)	Connétable of Trinity	
Deputy S.C. Ferguson (B)	Connétable of St. Lawrence	
Deputy of Grouville	Connétable of St. Brelade	
Deputy of St. Peter	Connétable of St. Martin	
Deputy G.W.J. de Faye (H)	Connétable of St. Saviour	
Deputy D.W. Mezbourian (L)	Deputy J.J. Huet (H)	
Deputy K.C. Lewis (S)	Deputy J.B. Fox (H)	
	Deputy of St. Ouen	
	Deputy P.J.D. Ryan (H)	
	Deputy J.A. Hilton (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy S. Pitman (H)	
	Deputy A.J.D. Maclean (H)	
	Deputy of St. John	
	Deputy I.J. Gorst (C)	
	Deputy of St. Mary	

**Deputy S.C. Ferguson:**

Sorry, Sir, my button ... I had not voted.

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

How was the Deputy's vote recorded, Greffier? It is recorded as contre, Deputy. Well, Members must take care. Members are aware the buttons are vulnerable to papers. I do not think that we can

rewrite history, unfortunately, Deputy. Luckily in this case, it is not a material change, I am afraid. Very well, Article 8, as amended is open for debate. Does any Member wish to speak on Article 8 as amended? Not? I put the amendment. Those Members in favour of adopting it, kindly show. Against? Article 8 is amended as adopted.

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

If I may take Articles 9 to 13, to strike it out?

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

Members wish to speak against Article 13 in isolation. Perhaps you could propose Articles 9 to 12?

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

Okay, Sir, once an N.P.O. is registered, it is obliged to, by Article 9, to give the Commission notice of any change in the information on its registration form. However, it will be allowed a period of 3 months to give the Commission this notice. Considerable safeguards have been put in place that Commission will give N.P.O.s 2 written notices drawing its attention to these provisions and will allow it an additional period of at least 3 months to respond before passing the matter to the Attorney General. In respect of Article 10, these provisions relate to the information that can be retained and provided by certain N.P.O.s in certain circumstances. Articles 10 and 12 apply only to N.P.O.s or classes of N.P.O.s to be prescribed by the Economic Development Minister. These will be significant N.P.O.s which the Minister, upon advice, considers on the basis of Special Resolution 8, to pose a higher than normal risk of being used for terrorist financing. As previously mentioned, it is the intention to prescribe these significant N.P.O.s, these individual N.P.O.s on an individual basis and this will form part of schedule one of the draft N.P.O. laws, which Members have seen. Article 10 requires significant N.P.O.s to prepare and provide the Commission with regular financial statements. Article 11 provides that all N.P.O.s must keep and retain financial records, just like any reputable organisation. Article 12 requires significant N.P.O.s to provide certain other prescribed information by the Commission. I move Articles 9 to 12.

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

Articles 9 to 12 are proposed and seconded. **[Seconded]** Does anyone wish to speak on any of Articles 9 to 12?

**2.12.1 Deputy I.J. Gorst:**

Yes, Sir, just very briefly to say that I particularly welcome these articles. I was contacted by certain charities with which I am connected when the law was initially lodged and they, surprisingly, were of the view that they would like to be charged for this piece of legislation and that they are more than welcome. It gives them comfort and it gives their donors comfort that they are involved in organisations which transact with overseas jurisdictions. Therefore I welcome this and they welcome it because it will provide comfort to their donors and it will prove to the wider world that they are acting responsibly. Thank you, Sir.

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

Do you wish to reply, Minister?

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



No, Sir.

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

I put Articles 9 to 12. Those Members in favour of adopting, kindly show. Against? Those Articles are adopted. Do you propose Article 13, Minister?

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

Yes, please, Sir. Article 13 requires an N.P.O. to provide certain information to a member of the public, if requested to do so. It has been suggested by some, and the amendment obviously seeks to strike this out, the whole article out, that this is not required. However, the relevant international standard on Special Resolution 9 is absolutely clear that some information concerning N.P.O.s should be available to the general public, in particular in the case of significant N.P.O.s. I wish to emphasise to Members that it is very limited information that is required. It must be right, surely, that the members of the public are entitled to know that some information about an N.P.O. carrying out activity in Jersey and its purpose and structure. It is considered correct that this information should come from the N.P.O. itself and, at present, there is no Charities Commission in Jersey, there is no intention that the F.S.C. should be taking the place of the Charities Commission and it should be the N.P.O. to provide that information. Sir, I will say, in proposing articles, when there are issues which are really up to the Assembly to decide, in their wisdom, such as the previous matter that we have had in relation to costs, that is not a deal-breaker, it is not a die-in-the-ditch issue. Article 13 is a requirement of Special Resolution number 8, in relation to significant N.P.O.s. There is no way around it and I move Article 13.

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

Is the article seconded? [**Seconded**] You did refer to an amendment, Senator. It is not strictly true. There is no amendment but I understand some Members wish to speak to propose this article. Deputy Le Hérissier?

**2.13.1 Deputy R.G. Le Hérissier:**

Thank you, Sir. I was going to speak but I would like to state I will withdraw my objections and will support the Article. [**Approbation**]

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

Does any other Member wish to speak on Article 13? I put the article. Those Members in favour of adopting it, kindly show. Against? Article 13 is adopted.

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

Articles 14 to 16, under Article 14, the Commission will keep a register of N.P.O.s. It will inform members of the public, upon application, whether or not a name given appears on the register and, if so, provide the registration number and contact details for the organisation. I want to stress that it is not the intention to ask the Commission to give out more detailed information; it is up to the individual wishing to know more of what the N.P.O.s purpose is, is to approach the N.P.O., as the previous article. As mentioned previously, Article 15 and Article 16 provide safeguards for the Commission to remind N.P.O.s that there are obligations under the law, before any reference to the Attorney General. However, if the Commission believes that there is a terrorist threat, the Commission must inform the Attorney General immediately. I move Articles 14 to 16.

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

The Articles are proposed and seconded. **[Seconded]** Does any Member wish to speak on Articles 14 to 16? I put the articles. Those Members in favour of adopting, kindly show. Those against? The articles are adopted. Article 17, Minister?

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

Article 17, it relates to the obligation of the Commission in respect of terrorism and in particular the Commission must inform the Attorney General. I think I made a reference to that in the earlier remark. It is the requirement that the Commission must inform the Attorney General in relation to where it believes that there is a terrorist threat. I move Article 17.

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

Is Article 17 seconded? **[Seconded]** Now there is an amendment to Article 17. I ask the Greffier to read that amendment.

**The Deputy Greffier of the States:**

Page 23, Article 17. In paragraph (2)(a) at the end of sub-paragraph (a) add the word “and”, (b) at the end of sub-paragraph (b), delete the word “and” and (c) delete sub-paragraph (c).

**2.16 Deputy R.G. Le Hérissier:**

Thank you, Sir. We are coming to them now. This is one of these instances where the Commission has taken to itself remarkably wide powers that may otherwise monitor the activities of each N.P.O. I would ask Members to consider that that is easily embraced within the revised (a) and (b). It is embraced within other legislation covering matters like money laundering and so forth. What this does, Sir, it gives the Commission the right to embark on fishing trips and to embark upon a search for evidence in areas as yet undefined. Again, Sir, this is the sort of issue that has frightened the voluntary organisations. It is totally over the top. It is inherited from another different way to structuring laws where the regulator is given almost omniscient powers and has no place whatsoever in the regulation of N.P.O.s who have more than satisfactory powers, both in this Article and in other sources of legislation. Thank you, Sir.

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

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

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

Thank you, Sir. I am grateful that the Deputy, last time that I raised the flag in relation to a die-in-the-ditch issue, will listen very carefully to what I am saying because I genuinely do think I understand the concern but I think the concern is the interpretation. I think generally there has been a misunderstanding here. Article 17 gives the Commission the obligation to help determine if an N.P.O. is being used to assist terrorism. The result of the amendment, if adopted, would be that the Commission would not have the power to monitor N.P.O.s on an ongoing basis. The Commission needs to have the power to consider, on a reactive basis, the activities of an N.P.O. after registration in order to prevent the assistance of terrorism. For example, there could be concerns about the activity of a particular N.P.O. which were serious but not sufficiently serious to warrant police or

Law Officers' Department investigation. If the amendment is to be adopted, the Commission will have no mechanism for reviewing these activities. I would ask Members to look very carefully at the construction of the Article. Deputy Le Hérissier, understandably, perhaps says in his remarks in terms of Article 17(2)(c) that the Commission may otherwise monitor the activities of each N.P.O. The crucial thing is that they can only do so in accordance with the very limited capture that is set out in the earlier part of the paragraph. I need to say to the Deputy that this is not an open-ended fishing expedition opportunity; it is simply the fact that the Commission needs this power in order to carry out its obligations in respect of what it is trying to do. It is not an open-ended issue if the article construction must be taken together and, if one removes the Article 2(c), one has effectively wrecked the whole purpose of it in terms of the ongoing investigation and I would respectfully suggest that Deputy Le Hérissier reconsiders his proposal amendment, potentially on the basis that the advice that I am giving to the Assembly, that it means that it is ineffective and wrecks it, that he may consider withdrawing this particular amendment. I do understand the concern that he has but he is wrong on this occasion.

**2.16.2 Deputy D.W. Mezbourian:**

Thank you, Sir. I would like to say that I had, I think, similar concerns to Deputy Le Hérissier when I read P.63 and I am grateful to Senator Ozouf for his clarification on this article. Thank you.

**2.16.3 The Deputy of St. Martin:**

Again, we were looking at this, how heavy a touch do we really want for this particular piece of law. While I accept the fact that there may well be some large organisations which may well be causing concern, but really, is that the role of the Commission? Would it not be better going to the anti-terrorism, within the concept of the anti-terrorism law itself? So it is dealt with at that stage rather than being seen, again, by the Commission maybe over-using its powers that we would be giving if we gave it this. That is my concern about this particular piece of legislation. I have not discussed it with Deputy Le Hérissier but, upon reading it, I just wondered again, was it really a little heavy and unnecessary for this particular piece of law, with this particular Commission? Thank you, Sir.

**2.16.4 Senator M.E. Vibert:**

Very briefly, Sir and I think and I hope people realise what the rapporteur said; it is not that wide. But I think what is very important to note is that, as we have said before, it is a balance and it is a question of protecting our finance industry's reputation and the danger is it may seem small but with approving this amendment and withdrawing this power for ongoing monitoring, could mean that the compliance rating we wish would not be forthcoming and that would be very dangerous. Again, it is not a risk worth taking, Sir.

**2.16.5 Deputy I.J. Gorst:**

Just briefly as well, I seem to be popping-up frequently today; too frequently, you probably think so. I think this is a power that would sit very comfortably with a proposed Charities Commission because a Charities Commission's role will involve monitoring the charities that are registered with it and, with that monitoring will come help and advice and understanding of best practice and alleviation of problems, being proactive. So, it is, I think, it fits fairly comfortably in what we might be considering when we debate the Charities Commission in the future. Thank you.

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

Deputy Le Hérisssier to reply.

**2.16.6 Deputy R.G. Le Hérisssier:**

Thank you, Sir. I find it very surprising that the Financial Services Commission is being set up as some kind of anti-terrorism unit because that is the effect. My view is, Sir, and a lot does hinge upon the meaning of the word “otherwise” and perhaps the Solicitor General may be minded to help us in that regard but “otherwise” suggests to me, Sir, that it is not a logical consequence of (a) and (b); it is a separate activity. It is a separate discrete activity; not a logical consequence. The other point I would make, Sir, is that 3 is more than sufficient because 3 requires the Commission where it has, in its view, well-founded suspicions to inform the Attorney General and I presume the Attorney General, were he or she to be in possession of the right information, would then instigate a police inquiry. I cannot, Sir, for the life of me - and again this is all part of the checks and balances, as the Deputy of St. Martin mentioned - I cannot for the life of me see why the Commission, who are seeking to have a minimalist role in this and have always almost apologised for their role, even though we are criticising them as a heavy-handed organisation, why they should wish to be the monitors of potential terrorist or actual or latent terrorist activity. It just does not make sense. I think this is really going to frighten the non-government bodies. There are well, well established routes which, once they have received the relevant information from the Commission - they are the professionals, Sir - the police and other units. They can go ahead and deal with that information in the appropriate way. It seems totally inappropriate. Thank you.

**The Solicitor General:**

Sorry, I thought I was asked for a little bit of help, if at all possible? Article 17(2) begins with the word “accordingly” and therefore it seems to me that everything that appears after that word must be linked to it and flow from it. Under 17(2), as presently drafted, without the amendment, there are 3 different actions which are binding on the Commission. The first is when there is an application for registration. The second is when there is a receipt of a financial statement from the N.P.O. Now, if one is left with those 2 alone, then there does not appear, to me, any obvious mechanism whereby, at any other occasion, the Commission has the ability to refer anything back to the Attorney General because it is only on the registration or the filing of the financial statement that information will come to the attention of the Commission. I think (c), because it is governed by the word “accordingly” at paragraph (2), it must flow that it is for the purposes of the Commission to be able to determine if an N.P.O. is assisting or being used to assist terrorism and I think it is entirely governed by that. Otherwise, it is simply “otherwise” after (a) and (b). It is just an addition to (a) and (b) but it certainly is an additional function to (a) and (b).

**Deputy R.G. Le Hérisssier:**

I wonder if I could ask the Solicitor General a question? Would he not, or would he accept, Sir, that under (3), (3) does imply that the Commission does indeed have the power to evaluate whether an N.P.O. is involved in terrorism and, having that power, can refer it to the Attorney General?

**The Solicitor General:**

Yes, I do entirely accept that paragraph (3) of 17 suggests that the Commission is charged with making an evaluation. What I would go on to say, however, it is not clear how a Commission can make a valuation if it is not simply by registration or the filing of a financial certificate or by some other monitoring process. It appears to me that the evaluation has to come from somewhere, based on some information and that information is either the information provided under (a) and (b) or (a) and (b) and (c). I hope that that helps.

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

Yes, thank you. The appel, Deputy or a standing vote? The appel is called for. The Greffier will open the voting for and against the amendments to Article 17.

<b>POUR: 9</b>		<b>CONTRE: 21</b>		<b>ABSTAIN: 0</b>
Connétable of St. Mary		Senator P.F. Routier		
Deputy A. Breckon (S)		Senator M.E. Vibert		
Deputy of St. Martin		Senator P.F.C. Ozouf		
Deputy G.C.L. Baudains (C)		Senator B.E. Shenton		
Deputy R.G. Le Hérisssier (S)		Senator J.L. Perchard		
Deputy J.A. Hilton (H)		Connétable of St. Ouen		
Deputy S.S.P.A. Power (B)		Connétable of St. Clement		
Deputy S. Pitman (H)		Connétable of St. Helier		
Deputy K.C. Lewis (S)		Connétable of St. Lawrence		
		Connétable of St. Saviour		
		Deputy J.J. Huet (H)		
		Deputy J.B. Fox (H)		
		Deputy S.C. Ferguson (B)		
		Deputy P.J.D. Ryan (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy D.W. Mezbourian (L)		
		Deputy of Trinity		
		Deputy A.J.D. Maclean (H)		
		Deputy of St. John		
		Deputy I.J. Gorst (C)		
		Deputy of St. Mary		

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

Do you propose 18, Minister?

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

Article 18 ensures the N.P.O.s might provide original documentation to the Commission, have access rights to their own documentation. This might, for example, if they do not have another copy. Under this article the Commission must provide copies to any person who is lawfully entitled to the documents, if such documents are reasonably required. The requirement to reasonableness is inserted to prevent N.P.O.s from, for example, asking for numerous copies and asking the Commission to produce unlimited copies. I would argue that it is not an unreasonable provision but we will go on to discuss the amendment.

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

Is Article 18 seconded? [**Seconded**] There is an amendment in the name of Deputy Le Hérisssier. I ask the Greffier to read that amendment.

**The Deputy Greffier of the States:**

Page 24, Article 18, for paragraph (5), substitute the following paragraph: (5) The Commission may refuse to provide a copy, only if it has reason to suspect or believe that the copy is required for a purpose that is unlawful.

## **2.18 Deputy R.G. Le Hérisier:**

Thank you, Sir. This, again, is intended to circumscribe the power of the Commission. The notion that there are people running around and people in the voluntary organisations who are going to be knocking on the door of the Commission every day asking for vast numbers of copies is quite fallacious. Again, Sir, there is this constant view coming through in the legislation which I am trying to fight, that the Commission is taking what I would call a top-down view in that be suspicious of people first and then take a more altruistic view at a later point and I think that is totally wrong. This is a totally unreasonable provision, as originally written and I think, again, Sir, it is not for the Commission to assess who is reasonable or who is not unreasonable and the notion that there are hundreds of people on there going to knock on its door is not credible.

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

Is the amendment seconded? [**Seconded**] Does anyone wish to speak on the amendment? Senator Ozouf.

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

This is not a die-in-the-ditch but it is just whether or not the Council of Ministers is being reasonable or unreasonable or Deputy Le Hérisier is being unreasonable. Is it reasonable to allow a complete automated, automatic request of any N.P.O without any limitation whatsoever? As currently drafted, I am not saying it is going to happen, but if the event of original documentation being provided by the N.P.O. with numerous members it is, for example, possible under Deputy Le Hérisier's amendment to allow... to require the Commission to produce 500 copies of 500 bits of information. It is automatic and I would simply suggest that, on this occasion and on this debate, I would suggest that it is the original construction of this which is more reasonable, and I think that Deputy Le Hérisier is trying to over-play fear factors here and I think he is, while this is not a die-in-the-ditch issue, I think there is an issue of reasonableness and I think that the reasonableness is the original draft.

#### **2.18.2 The Deputy of St. Martin:**

Quite clearly I will oppose that. If one looks at it, what we are looking at, the Commission may refuse to provide a copy only if it has reason to suspect or believe the copies required for that purpose are unlawful only. So, you know, I think it is quite reasonable for an organisation to request it and, if indeed the Commission feel there is no justification, they will tell them so. So, I do not see a problem with it.

#### **2.18.3 Senator M.E. Vibert:**

I have never heard such muddled thinking. It is quite clear, if we adopt the amendment, that their refusal can only be based on if it is unlawful - breaking a law. If it is vexatious, if it is frivolous, it would have to be allowed with Deputy Le Hérisier's amendment. The original wording is much fairer all round.

#### **2.18.4 Deputy J.A.N. Le Fondré:**

I am afraid I am going to support the amendment, Sir. At the end of the day it is down to individuals rights if they want to be able to get the information or not. That is where I am coming from, hence I am going to support. Fine, if it is frivolous, well, that is life. That is the nature of this law. But I do not think, realistically, it will be and I think what you are doing is giving

certainly to people that they have got the ability to go along to the information and, unless it is blatantly obvious that they are going to be acting in an unlawful way, they have got the right to receive it. So, therefore, I am going to support the amendment, Sir.

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

I call upon Deputy Le Hérissier to reply.

**2.18.5 Deputy R.G. Le Hérissier:**

Thank you, Sir. As Senator Ozouf said, I do not think this is a tie-breaker, so to speak and I do accept what Deputy Le Fondré and the Deputy of St. Martin have said. I think you have to rely on the reasonableness of N.P.O.s. They will be so busy filling out forms, albeit simple forms, or waiting for their summons to the Royal Court when they do not fill out their form and then seeing their appeal procedures, that the notion that they will be knocking on the door of the J.F.S.C. for copies of everything about everything is just preposterous. Thank you.

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

I put the amendment. The appel is called for. I ask Members to return to their seats. The vote is for or against the amendment to Article 18. The Greffier will open the voting.

<b>POUR: 14</b>		<b>CONTRE: 19</b>		<b>ABSTAIN: 1</b>
Connétable of St. Peter		Senator P.F. Routier		Connétable of Grouville
Connétable of St. Lawrence		Senator M.E. Vibert		
Deputy A. Breckon (S)		Senator P.F.C. Ozouf		
Deputy of St. Martin		Senator B.E. Shenton		
Deputy G.C.L. Baudains (C)		Senator J.L. Perchard		
Deputy R.G. Le Hérissier (S)		Connétable of St. Ouen		
Deputy J.A. Hilton (H)		Connétable of St. Mary		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Clement		
Deputy D.W. Mezbourian (L)		Connétable of St. Helier		
Deputy S.S.P.A. Power (B)		Connétable of Trinity		
Deputy S. Pitman (H)		Connétable of St. Brelade		
Deputy K.C. Lewis (S)		Connétable of St. Saviour		
Deputy I.J. Gorst (C)		Deputy J.J. Huet (H)		
Deputy of St. Mary		Deputy J.B. Fox (H)		
		Deputy S.C. Ferguson (B)		

		Deputy P.J.D. Ryan (H)		
		Deputy of Trinity		
		Deputy A.J.D. Maclean (H)		
		Deputy of St. John		

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

Article 18 is adopted. Do you propose Article 19, Minister?

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

Article 19 allows the Commission to share information received in its course of carrying out its functions under the law. This information may be shared with the Minister for Economic Development, the Attorney General or with overseas bodies involved with the regulation of N.P.O.s. The Minister may require such information in order to administer the law. The Attorney General may require such information under his responsibilities under the general customary laws as *partie publique* for charities. Overseas bodies with similar functions such as the Charities Commission in England and Wales also must be able to receive information about N.P.O.s. Such information sharing is clearly one of those vital issues that is not an “and”; it is a “must” in the Special Recommendation number 8. Article 19(5) is intended to ensure that the Commission can use the information collected to demonstrate compliance with international standards. If this article was more limited then the Commission would not be able to share information and demonstrate that Jersey complies with the F.A.T.F. standards and the I.M.F. assessments. I am afraid it is as simple as that. I move Article 19.

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

Is Article 19 seconded? **[Seconded]** There is an amendment to Article 19, I ask the Greffier to read the amendment.

**The Deputy Greffier of the States:**

Page 24, Article 19. In paragraph (3), for the words: “The Commission may in particular do so, if it is satisfied that the information is required”, substitute the words: “However, the Commission must not supply information unless it is satisfied that the information is required.”

**2.20 Deputy R.G. Le Hérissier:**

Thank you, Sir. This is yet another example where we have sought to narrow the wording. In fact I am quite frankly slightly confused about the wording **[Laughter]** and it is another deliberate case of ambiguity. Of that there is no doubt and I do commend the Minister on his innovation and creativity in that respect. Again, Sir, it is to ensure that there is not a fishing trip. It is to ensure that the information is given for a specific and clear set of purposes. Thank you.

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



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

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

I am pleased that Deputy Le Hérissier says that he is not clear, or he thinks that there is ambiguity because I think if he realised the effect of his amendment, he would not be proposing it. Certainly if he was in the spirit of the law. The amendment must be rejected. The amendment proposes further limiting the circumstances in which the Commission may pass on information that it collects under the law. However, both the Minister, in order to administer the law and the Attorney General, under the responsibility of customary law, must be able to receive information about N.P.O.s. For example, the Commission needs the power to pass information to the Minister, in order for the Minister to designate certain N.P.O.s, for example, of being significant. Another example is the Minister needs information in order to deregister an N.P.O. Frankly, if you cannot pass information, in order to pass orders, you render the law completely unachievable and effectively, I as Minister cannot communicate, cannot get information from the Commission in order to carry out my order duty powers. It is, I am afraid, as simple as that. There is no ambiguity; if you cannot pass information, you cannot make order-making powers. If the Assembly passes this, then I will not be able to make orders in relation to significant N.P.O.s. We will not be able to have information passed to the Attorney General to carry out his duties. It is as simple as that. I am afraid, Deputy Le Hérissier, I would urge him to withdraw the amendment.

**The Deputy of St. Martin:**

Can I seek clarification with the Solicitor General because I think, really, what we have got here is the rapporteur making this very simplistic when I do not think it really is. So, could I seek clarification from it? Is it as simple as the rapporteur is making it out to be?

**The Solicitor General:**

My understanding of this article is that it provides a gateway for the flow of information and that, without an adequate gateway for the flow of information that information cannot properly flow. The Commission obtains information pursuant to the statute and it has to be able to flow in a particular direction. It is a separate entity. Therefore there must be a gateway that it can flow, both to the Minister and to the Attorney General. That is my understanding of the purpose of the way that the statute is drafted and I am not sure that I can assist further, unless there are specific questions you would like me to address.

**The Deputy of St. Martin:**

Sir, I wonder if the Solicitor General, could he confirm whether or not the revised wording does indeed keep the gateway open?

**The Solicitor General:**

In my opinion it probably does not keep the gateway open. It does not keep the gateway open because there is a restriction on the Commission that is supplying information, unless it is satisfied the information is required. That may, I suppose, arguably... well, it has to be satisfied that it is required to institute criminal proceedings in respect to proceedings arising under the law or to investigate a suspected offence. Those would be the limits that the Commission would have to be satisfied that it was necessary for. It would not cover this flow of information to enable the Minister to carry out his functions, nor would it cover the flow of information to the Attorney

General in his capacity as a *partie publique* for charitable interests. It does seem to me that the amendment would restrict, to categories (a), (b) and (c), any of the information that might flow.

**Deputy R.G. Le Hérissier:**

Just carrying on, if I may, with the Solicitor General? Would the Solicitor General concede that it is irrespective of whether it is necessary or not necessary to have a gateway, it is quite legitimate that a body governs the flow of information that emanates from that body, if it so wishes?

**The Solicitor General:**

I was about to say I am not sure that I can comment on a legitimate expectation and I am equally not sure that it is a strictly legal point, Sir.

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

Does any other Member wish to speak on the amendment? I call on Deputy Le Hérissier to reply.

**2.20.2 Deputy R.G. Le Hérissier:**

Thank you Sir. I do maintain the position. It has been a constant position in our amendment that the powers embodied within this law should be defined clearly. They should be as narrow as they can be, quite honestly and that the approach that is taken traditionally in financial services regulation needs to be tempered considerably and I am afraid, Sir, despite the Minister trying to suggest that his whole job will be jeopardised in terms of this law, which I think is an exaggeration. I think it is a very important point and I would like to go to the appel. Thank you.

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

A point of clarification; I think on some issues we cannot be mislead. The Solicitor General has said there is no way of passing information to the Minister, where the Deputy in his summing up said that there was. Now, it is a point of order but there is a factual English interpretation of this, which the Deputy is attempting to effectively say the States is a different version. He is laughing. I think this is a very serious issue.

**Deputy R.G. Le Hérissier:**

I am laughing because I do not like words being put into my mouth. I wonder, Sir if the Solicitor General might wish to remind us of his answer. I thought the problem was, with my amendment, that we were restricting the information to those 3 categories. He may wish to comment further on that.

**The Solicitor General:**

I am not sure, Sir, that I usefully can add to what I said before. What I had believed I said on the earlier occasion is that the words in the amendment seem to me to place a stricture and... excuse me, yes, the words in the amendment are an amendment to the governing words of sub-paragraph 3 of Article 19, which means that the Commission, if the amendment were adopted, would only be able to pass information, if satisfied that the conditions in sub-paragraphs (a), (b) and (c) were met. If that is the case, then that does seem to be that it is not able to pass information for purposes other than (a), (b) and (c), which means that it could not pass purposes generally for the exercise of

judgments under the law or to the Attorney General for purposes other than offences or criminal proceedings.

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

Very well. The appel is called for on this amendment. When Members are in their designated seats the Greffier will open the voting.

<b>POUR: 9</b>		<b>CONTRE: 26</b>		<b>ABSTAIN: 1</b>
Connétable of St. Mary		Senator P.F. Routier		Connétable of Grouville
Deputy R.C. Duhamel (S)		Senator M.E. Vibert		
Deputy A. Breckon (S)		Senator P.F.C. Ozouf		
Deputy of St. Martin		Senator B.E. Shenton		
Deputy G.C.L. Baudains (C)		Senator J.L. Perchard		
Deputy R.G. Le Hérisier (S)		Connétable of St. Ouen		
Deputy G.P. Southern (H)		Connétable of St. Clement		
Deputy D.W. Mezbourian (L)		Connétable of St. Helier		
Deputy S. Pitman (H)		Connétable of Trinity		
		Connétable of St. Lawrence		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. Saviour		
		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 J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy A.J.D. Maclean (H)		
		Deputy K.C. Lewis (S)		
		Deputy of St. John		
		Deputy I.J. Gorst (C)		
		Deputy of St. Mary		

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

Article 19 is adopted. Minister, how do you wish to proceed?

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

I was minded for 20 to 33, Sir, until we get to the next amendment, if I may?

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

The next amendment of the Deputy is Article 40.

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

Yes, 40, thank you, Sir, for that advice. I would like to push it for 20 to 39 then.

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

Very well. As agreed at the beginning, Members will be aware that this means that Articles 24, 25, 27, 28, 29, 30 and 31 are as amended by the Council of Minister's own amendments. So, you propose Articles 20 to 39 as amended?

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

Yes, Sir. I will answer any questions that Members may have.

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

Articles 20 to 39 seconded? [**Seconded**] Does any Member wish to speak on any of Articles 20 to 39?

**2.21.1 Deputy P.J.D. Ryan:**

Just a small question to the Minister. I am taking the opportunity to rise and speak now because I would like him to just consider this in the context of any other amendments that he is speaking to and I would like to ask him to what level of risk he believes, were the amendments to be accepted or voted in, to what level of risk this would be with regard to the I.M.F., *et cetera*? I think it is a clear question. I would just like him to refer to that when he is dealing with it. Thank you, Sir.

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

I am not entirely sure if it relates to Articles 20 to 39, Deputy?

**Deputy P.J.D. Ryan:**

No, indeed it does not, Sir. I did say that I was speaking in the generality. That was all.

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

Do you wish to reply, Minister?

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

It is a wider point. I will try and confine my remarks to the particular risks that may have associated with any amendments in relation to those articles. I think I have been very clear where there is a significant risk of a non-compliance issue with the I.M.F. I have said that there is a red flag and I have explained that to Members and so I think that, in other areas, Members in their wisdom have made appropriate decisions, in my view.

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

I put Articles 20 to 39. Those Members in favour of adopting, kindly show. Those against? Those articles are adopted. Do you propose Article 40, Minister?

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

I propose Article 40.

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

Is that seconded? [**Seconded**] There is an amendment to Article 40. I ask the Greffier to read the amendment.

**The Deputy Greffier of the States:**

Page 30, Article 40: In the substitute to paragraph (5), for the words beginning: “To provide information”, to the end of the paragraph, substitute the words: “To provide such information to the Commission in respect of those regulated N.P.O.s as may be necessary to enable the Commission to discharge its functions under the Non-Profit Organizations (Jersey) Law 200-.”

**2.23 Deputy R.G. Le Hérissier:**

Thank you, Sir. Another one of these instances where it has been necessary to propose that the wording be tightened-up. It could well be construed when one says: “To provide information”, what information? Any information? Where are the limits? We are now saying, simply in terms of the law that that information be provided. Eminently commonsensical, thank you.

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

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

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

Thank you, Sir. I have to say that it is a little difficult when, effectively, this amendment is trying to put an additional safeguard, which is a reasonable safeguard. What we are dealing with here is an amendment to Article 8 of the Financial Services Law. There will be some examples of N.P.O.s that will have professional services that will be run professionally by trust companies, *et cetera*, and what this allows the Commission to do is enable to regulate those in order to deal with those service providers for N.P.O.s in an appropriate way in order just to discharge its functions and, effectively, if the Deputy is saying that there should be a lighter touch in respect of services providers for N.P.O.s, then I simply just do not understand why he is saying that. This is a safeguard and I would imagine that this is not one of his amendments which he can cast in the light of saving a small organisation or a regulatory burden. This is in respect of regulated entities, regulated financial services entities providing professional services to N.P.O.s. I just do not understand why he is proposing it.

**2.23.2 The Deputy of St. Martin:**

Yes, Sir, again, we keep coming back to Big Brother and the difficulty we have, and I fully accept what the rapporteur is saying, the gap between the ordinary club that goes out and tries to raise some money to make something worthwhile within the community is getting caught up with the great big organisations and this is the concern we have that, you know, it is almost like the old sledge hammer to crack a nut again. This is what I am concerned about; this particular piece of whole legislation. I said I voted for it because I agreed in principle but there is some of the detail I do not agree with and I do not agree with the detail then. Again, I support what Deputy Le Hérissier is looking for.

**2.23.3 Senator M.E. Vibert:**

I rise again because I thought Senator Ozouf made it very clear what this applied to. This applies to the Commission’s powers in relation to regulated N.P.O.s, i.e. those with a director or trustee who is subjected to the Commission’s ordinary regulatory powers. The amendment would restrict the

information the Commission can gather about these N.P.O.s; what is necessary to discharge the Commission's power and the N.P.O. law. What happens if they come across something else that comes under their other powers? It could cause all sorts of problems and it is totally and utterly unnecessary. This is about regulated N.P.O.s, not small charities, not somebody's Battle of Flowers Association. This is for those who already come under the Commission's regulatory powers.

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

I call on Deputy Le Hérisier to reply.

**2.23.4 Deputy R.G. Le Hérisier:**

Thank you, Sir, in a way what Senator Vibert has said sums up the chasm between myself, my diminishing group of supporters [Laughter] and that fine body of men whom we face. What I would say, Sir, is this idea that it is all a mixture, it is all a mélange and: "Well, they have got other powers elsewhere so why bother to put a restriction?" You know: "They can come in and if they see something else ...", I thought, Sir, the whole purpose of law, and this is much against my better judgment, I am increasingly starting to agree with the Deputy of St. Martin. I thought the whole purpose was that we define these things strictly. "We did not make assumptions about"; well, they are in there for other purposes of regulation, so you do not have to define it too clearly. This has gone on and on and on. Well, they happen to be there for another purpose but if they pick up information for this purpose, all well and good. That, Sir, is the slippery road. That is the slippery road that is the kind of thinking that has, quite frankly, undermined a lot of British terrorism legislation, to dramatise it slightly. That is the slippery road that has frightened the charities, even though this is technically regulated bodies. That has frightened the charities as to the kind of regulation that is going to occur. It has been mishandled from the beginning and it is quite clear, Sir, that that stone age thinking has not, even after this debate, been dislodged. I move the amendment and ask for the appel. Thank you.

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

Very well, the appel is called for on the eighth amendment. The Greffier will open the voting.

<b>POUR: 10</b>	<b>CONTRE: 24</b>	<b>ABSTAIN: 1</b>
Senator B.E. Shenton	Senator F.H. Walker	Connétable of Grouville
Connétable of St. Mary	Senator P.F. Routier	
Connétable of St. Peter	Senator M.E. Vibert	
Deputy R.C. Duhamel (S)	Senator P.F.C. Ozouf	
Deputy A. Breckon (S)	Senator J.L. Perchard	
Deputy of St. Martin	Connétable of St. Ouen	
Deputy G.C.L. Baudains (C)	Connétable of St. Clement	
Deputy R.G. Le Hérisier (S)	Connétable of St. Helier	
Deputy D.W. Mezbourian (L)	Connétable of Trinity	
Deputy S. Pitman (H)	Connétable of St. Lawrence	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of St. Saviour	
	Deputy J.J. Huet (H)	
	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 J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy I.J. Gorst (C)		
		Deputy of St. Mary		

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

The Article is adopted. Do you propose Articles 41 to 44 on the schedule, Minister?

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

I do, Sir.

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

There was an amendment but that amendment, Deputy, was consequential when the first one falls away so Articles 41 to 44 on the schedule are open for debate. Does any Member wish to speak?

**2.24.1 Senator P.F. Routier:**

Very briefly to congratulate the Senator on having a very, very simple form for charities to fill in.

**2.24.2 Deputy J.J. Huet:**

I do not know if this is quite where I should say it but I have been very impressed by the Minister, to know that he is so intent on carrying out the International Monetary Fund's requests and I really praise him for that and I am really looking forward to them coming to visit us. I am going to say that he is obviously so eager to be fully compliant with their wishes and I think that is fantastic news because I now know that I will be able to look to him to come forward to this House because the I.M.F. are in full agreement that overseas aid should have 0.7 per cent of our G.D.P. (Gross Domestic Product), and I am so pleased [**Approbation**] that he wishes them to have all our compliancy and our wishes go with what they require and I really look forward and I am sure he will be able to confirm this to us. Thank you very much, Sir.

**2.24.3 The Deputy of St. Martin:**

Yes, Sir, I would like to compliment Senator Ozouf and indeed Deputy Le Hérissier because I think it is quite a complex piece of legislation. It has been held, I think in the right spirit and there will be differences. I think it has been well argued and I think, in many ways, it should add a bit of power to the elbow of the Minister, when he does meet the all powerful to ask whether he can quickly raise the sum of £1,000 to £5,000 sooner rather than later. I think it has been a good debate and compliments indeed both to Senator Ozouf and to Deputy Le Hérissier.

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

I call on the Minister to reply.

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

I am grateful for Deputy Huet's remarks in relation to supporting the I.M.F. visit. We certainly can look forward to the I.M.F. and this Assembly should be rightfully proud of being able to deal with... This is not the only issue in relation to the whole I.M.F. visit that we have dealt with but we have dealt with it, and I thank Members for their forbearance. I thank them for their understanding in relation to this issue. In relation to the 0.7 per cent, Deputy Huet will remember, I think, that together with the then Mr. Freddie Cohen, I organised Live 8 and was a supporter of the international figure of 0.7 per cent. I believe that the wealth of the Island should be shared with those less fortunate than us and I am at one with the Deputy on that. In relation to some final summing up remarks, there have been suggestions that this issue has been mishandled. I wish to disassociate myself with comments that relate to Deputy Le Hérissier's last comments that this is somehow related to the U.K. Government's position on the handling of terrorism, *et cetera*. That is significantly wide of the mark. We did not want to do this but we had to do this but I do think that there is some good that has come out of it. There has been a constructive consultation and I will give an undertaking to all N.P.O.s in the Island that we are, this afternoon, sending a message out of support. We will do everything we possibly can in order to assist N.P.O.s in the requirements that are now set out for this law. They should not be in any way diverted from the good works that they do and for all of the huge amounts of voluntary work that is carried out in this Island. There is a requirement which has been highlighted. Deputy Ryan of the Corporate Affairs Scrutiny Panel was absolutely right to say that this should be regarded as a step in the right direction of the Charities Commission. Deputy Gorst is of that opinion and I very much hope that this Assembly will be able to consider, in the very earliest possible course, the conclusions of their Charities Commission work, that we may ultimately replace this particular piece of legislation with the Charities Commission. I thank Members for their understanding. I thank N.P.O.s for their work and move the final article, Sir.

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

I put Articles 41 to 44 on the schedule. Those Members in favour of adopting, kindly show. Those against? The Articles are adopted. Do you move the Bill in Third Reading, Minister?

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

Yes, please.

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

**[Seconded]** Does any Member wish to speak, Third Reading? I put the Bill in Third Reading. Those Members in favour of adopting it, kindly show. Those against? The Bill is adopted in Third Reading. Just before the Assembly comes to the next item of business or considers the way ahead, those Members who were in the Assembly shortly after lunch will be aware that Deputy Le Hérissier raised with me an issue about a matter about what had been said by the Chief Minister this morning, relating to some comments from Deputy Baudains. At that time it was clearly difficult for me, without full knowledge of the factual basis to make a ruling on that, Deputy, but I have asked the Chief Minister to look into the matter this afternoon. I understand he wishes to address the Assembly briefly on the issue. Chief Minister?

**STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY**

**3. Statement by the Chief Minister in relation to legal action concerning the proposed developer of the Esplanade Quarter, St. Helier.**

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



Thank you, Sir. Yes, I am grateful for that and for this opportunity because I do, with great regret, have to inform Members that I did, inadvertently mislead them during the debate on the Waterfront Masterplan. I said during that debate that no lawsuit had been filed against Harcourt's Nevada subsidiary in Nevada. I regret to say I was misinformed and therefore I, in turn, misinformed the States. A civil lawsuit - there is not any reference to illegality here - a civil lawsuit was filed on 20th May and forwarded to Harcourt on 22nd May and I have those dates and references to it confirmed in a letter I received this afternoon from Mr. R. Langdon, who is listed as a director of Harcourt Developments. My information, which was current at the time it was given to me, was therefore out of date and I do apologise sincerely to Members, particularly Deputy Baudains because I vigorously resisted his suggestion that such a lawsuit had been filed. I was wrong and I do sincerely apologise. I have satisfied myself - I have done little else since leaving the House at lunch time - I have satisfied myself this afternoon that this failure was down to very poor communications and there has been no intention to deliberately mislead me or in turn mislead the House. I think it is important to note, Sir, that the suit is against the Harcourt Nevada subsidiary and the local company is not involved. Again, I have a statement released this afternoon, which has gone to the media, which confirms that position. Sir, it is of little relevance to the development we approved this morning and to the plan we approved this morning because, as I said during the debate, W.E.B. and therefore the public of Jersey are completely covered by guarantees from a bank of our choosing or an insurance bond of our choosing so there is no question of any underperformance or malperformance by Harcourt, jeopardising the public because the development agreement will not be signed unless those guarantees are fully in place.

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

Thank you, Chief Minister.

**Senator M.E. Vibert:**

I just wanted to raise the point that it is now coming up to 5 p.m. We have got the Draft Public Elections Amendment (Jersey) Law, which, with the best will in the world, I do not think we are going to complete by 5.30 p.m. and I wondered whether we could be informed perhaps by the President of P.P.C. (Privileges and Procedures Committee) what arrangements might be thought fit because, unless we approve this, as I understand it, it is unlikely to be in place for the elections coming up.

**Deputy G.W.J. de Faye (The Minister for Transport and Technical Services):**

Just if I could give the President of the P.P.C. a moment of thinking time, I do want to just make a brief piece of housekeeping announcement. Members will be aware that there are some large folders in the Members common room which is the Transport and Technical Services briefing papers on the Energy from Waste plant. They are there available to collect. Could I just make one salient point? Some Members have not ticked the box to say that they have collected them. I just warn those Members that if they fail to tick the box, I will send them another folder. So you may wish to guard against that.

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

Chairman, do you have any suggestion on the way forward?

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

Can I say, Sir, that one always hopes that the debate will be short and sharp but, in case it is not, I would ask that the Assembly consider sitting tomorrow, when we adjourn at 5.30 p.m. because I know that there are Members in the House who have commitments in the evening?

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

Do you wish to formally make that proposal at this stage, Chairman? So that the way forward is clear?

**The Connétable of St. Clement:**

I do, Sir.

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

Is that seconded? **[Seconded]** Do Members agree the Assembly should sit tomorrow, if necessary, if the business cannot be concluded this evening?

**Deputy G.P. Southern:**

If I may? The custom and practice, I believe, is that if we cannot finish the business on a Thursday evening, the following Tuesday is set aside as the normal routine.

**Deputy G.W.J. de Faye:**

I would support Deputy Southern on that matter. It is generally understood that if we did not make it all the way to... if we did go to Thursday, we would then go to the subsequent Tuesday. I have some meetings arranged for tomorrow. It is my normal Ministerial function meeting with my department and I could be... this will leave me embarrassed if I have got to be in 2 places at once.

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

We are spending too much time debating this. The Deputy of St. Mary?

**Deputy J. Gallichan of St. Mary:**

I was just going to say that we could almost have finished.

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

I think, firstly, I must put the amendment put forward by Deputy Southern that the Assembly sits next Tuesday, if necessary. Those Members in favour of sitting next Tuesday, kindly show. Members in favour of sitting next Tuesday instead of tomorrow? Those against? The amendment is adopted and the Assembly will accordingly not sit tomorrow but sit next Tuesday if necessary.

**The Connétable of St. Clement:**

Can I propose therefore, because this will split the debate unnecessarily, that we adjourn now, until next Tuesday? **[Approbation]**

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

I wonder if Members would wish to take the matter of the P.E.C.R.S. (Public Employees Contributory Retirement Scheme) Chairman, if Members do ...? The Deputy of St. Mary is opposing it.

**The Deputy of St. Mary:**

Yes, Sir, I am just staggered, Sir because this is something that we really need to get in place before the next elections. It will be already cutting it close to see whether we can have Privy Council assent, Sir. I just do not see why we cannot get it done before 5.30 p.m., Sir. I really do not.

**4. Public Employees Contributory Retirement Scheme: Committee of Management – appointment of Chairman (P.69/2008)**

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

Well, the Chairman has made the proposal that he believes the Assembly should adjourn after, perhaps having completed P.69. Those Members in favour of adjourning after dealing with P.69 kindly show. Those against? The Assembly will proceed in that manner. I will ask the Greffier to read the proposition relating to the P.E.C.R.S. Chairman.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to approve, in accordance with Regulation 36 of the Public Employees Contributory Retirement Scheme General (Jersey) Regulations 1989, the appointment of Mr. Ronald Amy, O.B.E. as Chairman of the Committee of Management for a period of 3 years, commencing 1st July 2008.

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

The Chief Minister is proposing this item.

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

I ask that Deputy Gorst act as Rapporteur, please?

**4.1 Deputy I.J. Gorst (Assistant Minister, Treasury and Resources Department - rapporteur):**

Thank you, Sir. Just before I propose this, I would just like to make it clear to Members that I am myself a member of the Committee of Management of P.E.C.R.S. It gives me great pleasure, Sir, to propose the reappointment of Mr. Ron Amy as Chairman of the Committee of Management for a further 3 years. He has done what I believe is sterling work and the Assembly, the Island, and the members past and present employees, members of this particular scheme, I think, owe him a debt of gratitude. His experience is outstanding and he brings many, many abilities to that particular committee which have not least recently been realised by the Comptroller and Auditor General in his recent reports on the pension scheme so I maintain the proposition, Sir. Thank you.

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

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.

**Senator M.E. Vibert:**

Can I just clarify something before we adjourn, as I think we are due to now? On the agenda was the school milk funding. I understood earlier that it might be withdrawn. I would just like to clarify whether, as we are now meeting next Tuesday, the school milk funding is going to be on the agenda or not?

**Deputy G.P. Southern:**

I have just indicated to the Chairman at P.P.C. that I would wish to retain school milk funding on the agenda, if we are to meet next Tuesday.

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

Very well, so the Assembly will adjourn until next Tuesday to consider the Public Elections Law, the school milk matter and the arrangement of future business for coming meetings and accordingly this Assembly stands adjourned until Tuesday, 10th June 2008 at 9.30 a.m.

**ADJOURNMENT**