

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 13th MAY 2009

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

**PUBLIC BUSINESS – RESUMPTION**

**1. Draft Housing (General Provisions) (Amendment No. 26) (Jersey) Regulations 200-(P.45/2009)**

**The Deputy Bailiff:**

We return then to the debate on the Draft Housing (General Provisions) (Amendment No. 26) (Jersey) Regulations. The Assembly was debating the principles.

**Male Speaker:**

Sir, before we start may I raise the défaut on Senator Cohen?

**The Deputy Bailiff:**

Does the Assembly agree to raise the défaut on Senator Cohen? The défaut is raised.

**1.1 Deputy M. Tadier of St. Brelade:**

First of all I would like to join in the commendation our Deputy Bailiff yesterday gave to do with Liberation Day. I thought that it all went off very well. In particular, I thought the Bailiff gave a very good speech. The reason I allude to this is relevant to what I am going to say. I was pleased to note the inclusivity of the Bailiff's speech and I think that was also sincere and something that was very apt to say on our national holiday, 9th May. I will quote ... I do not know if it is a direct quote but it is certainly what appears in the *J.E.P. (Jersey Evening Post)*: "Islanders from all nations and creeds who contribute to Jersey have a right to think of themselves as Jersey people." I think these are words with which we would all agree. A cynic might add the following sentence: "But they do not have the right to buy or rent property and they will be marginalised to inferior jobs if they have been here less than 5 years." I know that in one sense we are discussing a very specific proposition here to reduce housing from 12 years to 11 years but I think it is also important that we put this into the whole context of the housing policy. One of the reasons I stood for election in the States is because in the years preceding my election I used to follow States business very attentively or certainly as attentively as I could do, either up in the gallery or at home with the very good service provided by the BBC. I would get frustrated and perhaps shout at my radio. A lot of the reason I would do that is because of what I would class as propaganda being spoken and I would get very frustrated that there was nobody there - or very few people in the House - to counter this very obvious propaganda. So I would like to start with the 1(1)(k)s. This is an area which conveniently politically people like to polarise. You are either in favour of 1(1)(k)s coming to the Island and, therefore, you are a loyal Jersey man or Jersey woman or you are not and you are an enemy of Jersey because of course we know that 1(1)(k)s contribute to Jersey not only financially but also socially. I am not going to comment on whether that is true or not. No doubt they do bring with them wealth that does go into the Island economy. That is not to be debated. They also bring skills no doubt - social skills - and other benefits to society. But the implication in this very statement is to say that other people do not do that. Now there is an old lady who lives across the road from me. In relative terms she is older, I do not mean that in any way to be disparaging. I know that up until recently she has been doing some very good work, giving up her free time to work in one of the many charity shops. This is obviously a common theme. You will get lots of the older generation, who strangely enough do not happen to be 1(1)(k)s, contributing to our society. I believe that there are also probably (j) category that contribute to our society. There are people of local (a) to (h) qualifications who contribute in other ways other than simply by contributing in tax terms. There are also people who maybe are unqualified who work in our restaurants, in our hotels, who do sterling work but for some reason because they are not 1(1)(k)s they do not get eulogised in the same way. I am concerned about this sycophancy that we have towards 1(1)(k)s. So let us put the facts on the table. I once talked about inequality in Jersey. Now equality and inequality are things that are bandied around easily because they are just words but the

deeper concepts are a lot more difficult to deal with. In all societies there are inbuilt inequalities. We may have ideals that we aspire to but of course we do not have any utopian societies in the world. There are some more perfect than others but I do not think that there are any that we would call perfect. However, the difference with Jersey is that we do not have inbuilt inequalities so much as the fact that we have built our society on inequality. Let me give a few examples. We have a system whereby we have a 20 per cent tax rate. We have heard that this has worked very well for a long time. I am not completely convinced but we have said we have a 20 per cent maximum pay so if you earn £80,000 - £100,000 a year, you will be paying pretty much on 20 per cent as your effective rate or certainly towards that. But we have a system whereby also we have housing qualifications that, for some strange reason, you have to be here a certain amount of time. That has fluctuated historically as we have seen in the literature from 20 years at some point and we are looking to go back down to 10.

**The Deputy Bailiff:**

Deputy, I am sorry but this is not a debate on whether to have housing restrictions. It is a simply a move on one year so I think you must bring this back ...

**Deputy M. Tadier:**

Okay, I will bring this back to the context. The reason I do apparently stray is that I would like to get reassurances from the Minister for Housing and I am by no means putting the blame in his lap. I realise that he has inherited a whole system which is full of contradictions. But why would we want to reduce it to 11 years? Why not 10? Why not 5? Why has this arbitrary figure been decided upon? What is the ultimate plan? I am worried that there are inconsistencies in the fact that people have to be here 2 years to vote, so they are considered Jersey people for voting rights after 2 years. For residential in a sense, which is a misnomer I believe, to be able to work here you have to be here for 5 years. Is that residential period going to be increased to 10 years because there is no parity there? There are all sorts of human rights implications about not being able to buy or rent property in Jersey when we as a society are saying: "We want you to come to Jersey. We want you to do work for us. We want you to contribute but you are not allowed to buy housing." I have heard mixed reports. Someone has told me it is going to go up to 10 years for residential so that there will be parity there. Other people have told me that this is going to be scrapped completely. Before I can vote today to reduce this one way or the other I would like to know what the overall plan is, if there is a plan for housing in general. Seeing as I have been precluded I think from using most of my speech because it has not been deemed relevant, I think I will simply leave it there because I have lost the flow of my speech. It was largely analysing the whole of the problems. But I seriously think that we need to have answers about where this housing policy ... I feel that I am being asked to reduce this on weak evidence. While I fully agree that there are people now on the waiting lists, there are also people who have been here for 9 years and 8 years. I feel in a very difficult position about simply reducing it to 11 years. I think the other point I was going to make and it has returned to my memory is about the whole government interference within the housing market. We seem to have in Jersey this strange marriage of a centralised Soviet style control of everything - and I am quoting Deputy Le Hérissier, just so I do not get told off for plagiarising - with rabid free market capitalism. Now which is it? Are we trying to control everything or are we free marketeers? I know this is a difficult thing to control in an Island but I think we really need to have an open and honest debate because I do not want people to be discriminated against. Like the Bailiff said, if people come to Jersey they are considered Jersey people. It is all well and good to say these kinds of things but if you do not have the same rights ... if Mr. X and Mr. Y have different rights ... and let me make the point that a local person may contribute in other ways than fiscally. So the old lady, the 40 year-old who works in a charity shop, the musician who gives up his free time to play at the zoo, in old people's homes, wherever, who does not make any money off that, does he or she then have the right to say: "I am contributing to society in other ways, therefore, can I reduce my tax rate? I will give you £10,000 flat tax and I

can earn what I want.” So why are we having these double-standards? I think this is an underlying issue that we need to address once and for all in Jersey. We have one rule for another. I would also ask the Treasury and Resources Department, and I did not get the chance yesterday ... I will submit a question to find out what the effective rate is for 1(1)(k)s to find out what they are paying in effective rates so we can compare that to what other people are paying. I will leave it there. As of yet I am not decided as to how I will vote on this so I need reassurances as to where this is going as I do believe other Members also need reassurances of. I will leave it there and hopefully that will prompt some discussion.

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

This is a proposition I can support. We are moving in the right direction and I, too, would like to see the years come down so that we can get to equal opportunities for our residents as we can. We have so many people that will be essential, not only now but in the future, to the wellbeing of our Island. It is very essential that we also take positive steps to look after them as well as they are looking after us. On the question of the 1(1)(k)s, we do need the checks and balances. I have seen what the other side of the coin could be and believe you me you do not want them here in this Island. On the other hand you do not want to lose the good ones either. If it is more productive elsewhere they can move just like that. But if they are doing not just of the value of the income tax that is being given to this Island by their mere presence here but all the other social and economic reasons that these people put into the Island ... I have met many of them over the years that I know are giving considerable amounts of money and support to either individuals in this Island or collectively for the support of this Island. They are very proud to be here but we must recognise again that there are boundaries that if we do not get it right, they could move very easily. So it is a balance of checks and balances. I support this.

### **1.3 Deputy J.M. Maçon of St. Saviour:**

I did not realise I put my light on, Sir, but never mind.

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

You did yesterday.

#### **Deputy J.M. Maçon:**

Okay, fair enough. [Laughter]

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

But if I may so, Deputy, it is not obligatory for any Member to speak. [Laughter]

#### **Deputy J.M. Maçon:**

I have got a few things to say. The Minister yesterday talked about the notion of social justice. He talked about to some extent the bad quality of unqualified housing. By passing this proposition we will not change that. By passing this proposition tenants will not improve their properties. In fact we will not have better regulations and upgrading and making these properties better. So although we may be able to remove some people from this bad housing, we will not solve the problem. I really would like an undertaking from the Minister for Housing that something will be done about this because I think we all agree people deserve better housing, qualified or unqualified, but I do appreciate that social justice does cost money. But this is something very important which does need to be taken forward. To clarify Deputy Tadier, I think we can all agree that Jersey is a desirable place to live. The reason why we have housing qualifications is one of our population controls. If we did not have it, that would greatly affect our population and that is why we have it. I do have a problem with the second part of this proposition; not because I have anything against 1(1)(k)s and not because I have anything against the Minister but I do have great concern because in a sense we are giving more power into fewer hands. That is a grave concern to me and I ask Members to consider these points.

#### **1.4 Deputy T.A. Vallois of St. Saviour:**

I very much agree with what Deputy Maçon has just stated in regards to the justice grounds. We do have social injustice in the Island; not just within housing. I would just like to quote an email which was correspondence between myself and Senator Le Main. He mentioned: "Even if our States Members decide to reduce by one year on social justice reasons for those unqualified people wholly employed in Jersey, all paying taxes, many with Jersey born children, the majority paying taxes, living in hugely overpriced and unsuitable accommodation where the children can not bring or entertain their friends at home, we all know that the vast majority of those who will qualify will never, ever be able to afford to buy a home." This was in regards to there was a worry out there that by reducing the qualification would mean pushing up house prices. I just have a few questions that possibly Senator Le Main could answer for me. The social injustice grounds will still apply to those that have been here 1 year, 2 years, 3 years up to 11 years. How are we addressing this? When will this be addressed? With regards to the tenancy laws, when will they be coming to this House because, if anything, that needs to be addressed first? I agree that we have social injustice and we need to reduce it down. Just to clarify Deputy Tadier's point, the migration policy P.25/2005 was stated to bring down the housing qualifications to 10 years over a period of time. I would just like to reiterate that there are bigger areas that need to be addressed first. I would possibly like to hear from the Chairman of the Migration Advisory Group as to when the migration law will be coming through as well. Addressing that area because these will be in relation to the tenancy laws as well. Until these issues are addressed I just do not believe that we are getting any social justice at all. We will slightly ... there are a minimal amount of people that will come in. But another question I would like the Senator to answer for me is with regards to the current economic downturn, does his Housing Department have sufficient capacity to take in a possible influx of newly qualified people on the housing list because even the (a) to (h) rentals in the private sector are becoming severely overpriced?

#### **1.5 Deputy T.M. Pitman of St. Helier:**

I would just like to pay tribute to youth. It just shows that wisdom can be accompanied by the young, the youngish sometimes and the old. I really do not need to repeat too much because I think Deputy Maçon and Deputy Vallois have put those issues really incisively. I really want to echo also Deputy Le Hérissier's concerns. The Minister for Housing is of course not just the Minister for States housing, he has got to be fighting the good fight for all our residents. We certainly should not have people living in some of the squalor that I have seen in the election campaign. I hope we would all echo that sentiment and support the Minister for Housing as much as we can. I am sure I have got every faith in him. This proposition I think is really like a game of football; a game of 2 halves. I certainly support the first because it is the right thing to do. I recognise what Deputy Tadier has said. In some ways it does not make sense 100 per cent. Nevertheless, J.D.A. (Jersey Democratic Alliance) always on policies and issues not personalities so I will be supporting that. The 1(1)(k) issue though, I am afraid I simply cannot support this. Again it is nothing against 1(1)(k)s. It is just the fact that the way I read this, it is far too vague, far too wishy-washy. In my opinion, and with no intended slur on anyone, it is wide open to abuse; to corruption even. We are lucky we have got a Minister for Housing, as he has told us himself I think, who is a very honest politician. But can so much power ... such broad brushstrokes legislation be entrusted with so much power? It is too vague. I stand to be corrected but yesterday I was quite bemused to hear that people have in the past been accepted who do not even fit the economic criteria. Is that correct? Well, how do they justify it? I thought the main element of 1(1)(k) s is they would be contributing a substantial sum to our economy so if you do not have to do that, I think I will move out of the Island, move back and negotiate a nice tax rate. It makes no sense. I really would like the Minister to clarify that in his summing-up. As Deputy Tadier has said in his abruptly ended speech, it is not a case of being anti 1(1)(k)s. It is about ensuring that there is fairness in this Island. Social justice might cost money but it is certainly worth whatever money it costs. On my assessment of the figures given to my question yesterday from the Assistant Minister, the tax rate is

roughly 6.5 per cent. Now that does not seem right to me. It makes no sense. Possibly there is another Member who will clarify that further. But I think there are more questions than answers contained in this and I would urge Members not to support this second part of the proposition and ask the Minister to come back with something a lot more defined and a lot more corruption-proof.

### **1.6 Deputy F.J. Hill of St. Martin:**

For the benefit of those who are in the House since 1995, it is the same record going out. There is another record going to go out next year. It will be the same speech. Maybe not next year, maybe the year after, but we are going to get there to 10 because that seems to be the safe, sensible idea of having equality. It probably bases right back to 1980 when the law was changed where it was decided because to combat the influx it be essential that Jersey men or anyone who had been born in Jersey had to live here for 10 years; then you were a proper Jersey man. That has stayed on ever since. So if you are born here, you still have to qualify. The fact you are born here does not give you the right to live here. That only gives you the right to buy, et cetera, once you have done your 10 years. A lot of people think that that is not right but that is a fact. From that we also introduced a 10 year rule. Then later on it was decided that, no, we are still having too many people coming in so we would make it that no one could qualify unless of course you had a good way of coming in. You were going to be a (j) where we could find all sorts of arrangements for you or we could have this wonderful (k) system, again where we could find all sorts of ways of getting you in if you were the right sort. But of course if you were not the right sort, we could find all sorts of ways of keeping you out and making it totally, I think, very divisive and certainly nowhere could we have equality. As I say we have had this record going on now and we are going to have another one coming on next year because I believe the only way we can do it is reducing it to help those people who ... as indeed Deputy Tadier reminded us of the Bailiff's speech, we all have a part to play here. However, depending on what your background is or who you are or how much money you have got, you are deemed to be much more important and much more, I suppose, acceptable to those people who are deemed not to be quite so acceptable because they have got to do 10, 11, 12 years before they can qualify. Every time I have been here, what I do I squeeze my nose when I vote yes because I know I have got to vote yes. But really we are not going to sort out the problem. No disrespect to the Minister. He has been a Minister for 10 years. Unfortunately, we have not ever had a change and we are not going to have a change. Again, no disrespect to Senator Le Main. He is very sincere but I do not think he has the vision to bring in a proper policy change. We have had this population policy what has been setting for years. Again, no change. I can understand the frustration of newer Members because coming into it but I have been here for 15 years and it is the same record going round and round again. I really do get frustrated. I really feel also what a hypocrisy. Here we are, we are going to reduce the rate by one year for those people who have done their time and in the same proposition we are dealing with 1(1)(k)s. Does it not make you feel you have got to go and squeeze your nose? What are we doing with this? What is in the best interest of the community? I can understand what the Attorney General was saying because quite clearly if you have got to have some form of ... to keep people in or bring people out or whatever you want to do with but really what is the best interest of the community? Is it because they are lovely chaps? They know somebody? They know the Minister very well so that is why they can come in? I would ask Members not to support the second part until we really get it clarified really what it means because to bring this on the back of reducing the qualifying time for those people who have been here, justifiable to reduce it to 11 years. Please do not support part B because it is coming [Interruption] ...

### **The Deputy Bailiff:**

Thank you, Minister. You will have your opportunity to reply in due course.

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

I would hope the Minister will be separating it because if he does not I will be forced to vote against the whole thing which would be a shame because that will be doing no good for those people who I think deserve to be reduced from 12 to 11. So I would ask the Minister to think carefully before he puts it to the vote because he may well lose the whole lot and have to come back and the people who will really suffer are those people who are deserving of having their time reduced from 12 to 11.

**The Deputy Bailiff:**

If I can assist, Deputy, on a Point of Order. Of course these are regulations and, therefore, the individual regulations can be taken separately at the request of any Member.

**The Deputy of St. Martin:**

It will be separate?

**The Deputy Bailiff:**

Yes, because they are separate regulations.

**The Deputy of St. Martin:**

That is fine, Sir. Anyway I have had my say and I would hope that Members will have heard what I have had to say and will vote accordingly.

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

I thought for one quite frightening moment yesterday that this whole thing would go through in quarter of an hour and that the Minister would be done and dusted by 5.30 p.m., I thought. Then I thought again, no, the House usually takes its time making certainly such important decisions as these. I think the theme developing is reflected by the Deputy of St. Martin's phrase, it is a moment to hold the nose, take the plunge and vote for even though you are not sure that it is quite right but you really have to take the plunge. Yet again I think we are making up our minds on the basis - as so often with housing issues in particular - so flue as to be ... it is like knitting with fog. What do the numbers mean? What do we know about the housing market? The answer is next to nothing. We very rarely get any improvement in the statistics that are produced. So we have got some figures there - 2006, 2007, 2008 - of transactions and numbers, out of which filters one little vague statement: "Following pre introductions in the qualifying period in both 2006 and 2007 it is estimated [which way is the wind blowing] only 3 per cent of all purchase consents were subsequently issued to persons who had taken advantage of the one year qualification." So at a running guess perhaps 3 per cent of purchases down to reductions in the period for housing qualifications. Now add to that the 7 to 8 per cent due to the change in (j) category rules which say most (j) category will now be permanent with a right to buy and you have got a 10 per cent factor increase in demand in the house purchase market; 10 per cent increase in demand. We know the laws of supply and demand because we are all arch capitalists. We know how it works. Increase the demand, given a limited supply the price goes up. But we are told later on the latest house price index reflects a slight downturn on turnover, yes, and prices. Oh no, it does not. House prices going up? Not at 20 per cent last year. Not at 13 per cent the year before. Not at 7 per cent the year before. Well, yes, back to normality; a 7 per cent rise year-on-year. March this year to March last year, a 7 per cent rise on which we are going to add just a few more potential purchasers into the mix. So what are we talking about? House price inflation again. We will be stoking it. Despite the recession that is hitting worldwide, the U.K. (United Kingdom) and ourselves, house prices in Jersey remain immune. They keep going up. Back to medieval times when the thing that was of value in Jersey was land. For land read housing. That is what is valuable in Jersey and it will ever be thus because we are an Island and we can only build so many flipping houses. But we are then told - and look at it: "This is particularly true in the present economic climate where it is reasonable to conclude that the already limited propensity to purchase of new qualifiers will be lower than it has in the past." They are all poorer. What it means, do not worry about it, do not

worry about this impact because people will not be able to afford to buy anyway so it does not matter. We can do what we like. It matters not one jot. So on that basis, we are asked to reduce the housing qualification period from 12 years to 11 years. Now I, like many other Members, know of heartbreaking stories and tales about people living in high cost, lousy accommodation, cramped accommodation because they cannot afford accommodation in Jersey and they desperately need their qualifications. I, like many others, have taken many a (g) case - a hardship case - to Housing and had it granted. I said many; I, like many. Excuse me, just recomposing myself. (g) cases are new to the Minister for Housing. Well, that is news. He will get his chance to answer later. Many cases, yes. The most recent one I met and it is exactly on this issue. They have been granted 11 years. They have not quite got 12 years. The 2 kids are sleeping on bunk beds in the corridor on the way out to the front door in a one bedroom flat; dining and cooking and the kids sleeping effectively in the same area. They desperately want to move. So, yes, I have to hold my nose. Even given the paucity of information and understanding we have of this issue, I have to hold my nose and vote for this because I have to think of that particular family and they will get their qualifications and they will be applying for States accommodation because they cannot afford other. They cannot afford the private market so they will be at the Minister's door, knocking on his door saying: "I have got my qualifications. You brought the years down. I have got my qualifications. Please house me properly, adequately, in non damp conditions with enough rooms so that my kids can sleep separately from where we cook and eat and talk." We know those cases. There is another one but I will not go into details of that one. So many - yes, many - cases where people are living in inadequate conditions as the Minister knows full well. So, yes, I will be voting for the first part of this. But then we come to the second part and this is what the frightening moment was last night when I thought it might go through in quarter of an hour. He might get this. So change the regulations on 1(1)(k)s. A very different issue to the (g) cases we have just been talking about. So we will have to ask what is a 1(1)(k) for? It is a tax category. If you pay a certain amount of tax, we will let you live in our Island. You will have to buy a certain quality of house but effectively it is an economic decision. If you contribute X to our tax revenues, we will let you in. We will not let anybody else in unless we have got special cases but you can come in. We are told that we want to change this. We now want to give the Minister consent which can be justified on social or economic grounds or both and as being in the best interest of the community. So all of a sudden from economic grounds pure and simple - and that one is easy to judge - we are on to social grounds. What are those social grounds? We are given no indication whatsoever. Social grounds like ... I do not know. I like rugby players.

**Connétable L. Norman of St. Clement:**

A point of clarification, Sir, if the Deputy will ...

**Deputy G.P. Southern:**

No, I will ... has the Constable made his speech? No. You will get your turn.

**The Connétable of St. Clement:**

It is just that the Deputy is wrong, Sir. The law already says it is social or economic grounds. I was just trying to be helpful, Sir.

**Deputy G.P. Southern:**

I am looking at a change in the regulations. Substitute ...

**The Connétable of St. Clement:**

The law says social or economic currently.

**Deputy G.P. Southern:**

And the regulations now say so it is a change - substitute - of the regulation and we are having a conversation during my speech [**Laughter**] and I have not given way.

**The Deputy Bailiff:**

It takes 2 to converse, Deputy [Laughter].

**Deputy G.P. Southern:**

Even after 7 years I still make the mistake of being drawn. It happened to Deputy Tadier this morning that he got directed and lost his thread by the Chair. How much he reminds me of myself 7 years ago [Members: Oh!]. Let us hope he makes a greater improvement than I did in my 7 years so far and learns not to get drawn into conversation with a Constable or a Minister across the Chamber because that is not the way we conduct business, is it? So here we are. Now what I heard yesterday I think was that we no longer demand a minimum of £200,000 from 1(1)(k)s. It used to be I thought you paid 20 per cent of full rate of tax on your first million of income that you put through Jersey. You pay 1 per cent on your second million should you decide to put it through Jersey and 0.5 per cent on your third or subsequent millions; around £200,000. I think I heard yesterday that the average of recent 1(1)(k)s arriving on the Island is around £100,000. I think I heard that so we have already lowered the drawbridge substantially. Now we want to introduce social grounds. We are told by the Attorney General ...

**The Deputy Bailiff:**

From the Chair, Deputy, I think I must intervene. That is simply not right. As the report says, the existing law is that consent can be granted in 1(1)(k) on social or economic grounds. If you read the report it is (2) that is being added; (2) is the new thing. So we have got to confine ourselves to that.

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

Sir, could I assist the Assembly on this paragraph?

**The Deputy Bailiff:**

Only if the Deputy gives way.

**Deputy G.P. Southern:**

No, I am not giving way. The Minister as he full knows because he has been here a good deal longer than I, he knows he gets a second go and he can correct anything I say when he does.

**The Deputy Bailiff:**

But I think on a point of clarification, Deputy, we need to be clear that the social is not new.

**Deputy G.P. Southern:**

I accept that direction, Sir. "As being in the best interest of the community" is the new bit.

**The Deputy Bailiff:**

Yes.

**Deputy G.P. Southern:**

Thank you, Sir. So let us focus on that then. What is in the best interest of the community? We are told that of course this is perfectly normal. We must be able to keep out people who happen to have gained their wealth by nefarious means. We could not possibly let them in. We can say, no, not in the best interest of the community to let you in. You are a wrong one. You might be rich but you are a wrong one. We will not have you. It makes us look cheap and nasty. I mean if Bernie Madoff who made off with quite a packet, came and knocked on our door, would we have him? If some notorious tax evader and avoider perhaps named Green came and knocked on our door, would we let him in, in the best interest of our community? Would we say even are we in a bidding war? We are in a bidding war on Zero/Ten with the Isle of Man so why not join a bidding war on 1(1)(k)s? It was mentioned yesterday about the regulations elsewhere. It was mentioned again

today. The old classic: but if we do not let them in, they will go somewhere else with their money. Yes, of course the old argument. Will we be in a bidding war? Would it be in the best interest for the community - and this is the change - to let somebody in who is only offering say £70,000 in tax money but what I will do is ... for example, if it were J.K. Rowling: "I will pay you £70,000 and I will sponsor a book festival." That will be in the best interest of the Island. We can have a good book festival. We get lots of people in and establish our name as a place of culture. That sounds like a good deal to me. Is that the grounds we want? Let us have a downward bidding spiral: "I will offer you £50,000 but I will sponsor this. I will sponsor all your arts for a year." Great. As my wife always says, you only need sponsorship because people are not paying their taxes properly. "I will offer you £50,000 and £50,000 sponsorship for something else. How about that? Good deal? Like it? It will be in the best interest of the Island." Is it? That is the sort of power we are giving to the Minister for Housing by this change in regulation. In his estimate is it in the best interest of the Island to have this person in? I hesitate to go there but I will go there, is it open to interpretation as possibly corrupt? Is there a deal going on that this person over here guaranteed their £100,000, they chipped into the pot; this person got in on only £70,000 or £50,000. What sort of deal did he do? No, it was just decided it was in the best interest of the Island. Is that transparent? Is that clear? Is it open to potential corruption? Not in the case of this Minister who is a man of total probity or any future Minister who will be equally measured on the same scale. Of course not. But could it be seen to be? The important thing is, are we in a potential downward spiral where people will come in as 1(1)(k)s paying less and less tax. That potential is there. Therefore, I and I urge other Members to vote against this change in the regulation.

### **1.8 Deputy P.V.F. Le Claire of St. Helier:**

The reduction by one year is a no-brainer. The items highlighted by Deputy Vallois and others in relation to the issues of inclusivity, as highlighted by Deputy Tadier and Deputy Southern, are issues that we need to address as a government and are issues that need to be investigated and brought forward. We have developed a new system of Ministerial government and we have got scrutiny panels. I have always considered that the scrutiny panel in charge of Housing, Social Security and Health has too wide a responsibility. Although there is synergy in some of the things that they look into, there is just far too much work for them to do. I am not absolutely certain about the (k) issue because it does call into question how it is going to be interpreted, under what circumstances and where is the policy that the Minister refers to in relation to this? As other Members have pointed out, I do not think it is going to change anything not approving it and I do not think it is going to change anything approving it. But if there are reservations that Members have, perhaps it could be called into scrutiny and they could sit down and do perhaps what they should have done and get the Minister into discuss and look for the evidence in relation to this. I do not know if that happened and I do not know if the Scrutiny Panel would be minded to do that. Unfortunately, the chairman of that panel is not in the Assembly today and I do not know who is on that panel apart from Senator Breckon.

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

Deputy, if the principles are passed I shall be as usual asking the Chairman whether he wishes to have it referred to his panel.

#### **Deputy P.V.F. Le Claire:**

Migration and population is looked after by Corporate Services I am told. So there is obviously an opportunity for people to call it in if they are concerned at that stage and the Bailiff will then give everybody an opportunity to do that. There is a whole slate of issues that have been identified this morning. One of them has not been identified and that is the census; the absence of the census, the absence of information and what impact it will have. I am quite convinced that for once the economy does need a little bit of heat underneath it. There is evidence that the housing market is

stalled or stalling in some categories. People are in chains waiting to buy houses and waiting for their houses to be bought. That is not a good position for any of us to be in even if we do not own houses. I do not own a house but it is not a good thing to be happening in the community because it does have an effect on the economy. The economy does not do well, we cannot take tax. If we cannot take tax, we cannot spend it on social improvements and social benefits. There seems to be this ludicrous idealism that you are either communist or you are capitalist. The rationale is if you make money, you can spend money on social services. So making money is good or you cannot have social services. Things that need to be looked at in the future would include the new opportunities in relation to assisted purchase schemes, buy to let, rent control which occurs in Guernsey. The rent and the accommodation in Jersey for the main part is inadequate; appalling in some circumstances. We speak of social justice. Ten years ago I came to the Assembly and was voted in after a few months as a Senator on the back of a campaign that ran predominantly on work permits. Then some spurious argument that they were illegal and against Human Rights was given - which was incorrectly given - and that was put out to pasture and has not seen the light of day since. The migration policy is coming forwards we are told. Well, I sat in the 9th floor of Cyril Le Marquand House with Senator Le Main about 7 years ago, we were talking about identity cards and we asked when could it be brought in, to one of the civil servants, and ex Senator Pierre Horsfall pressed the civil servant for the answer when I did not get it and she said it could be introduced within 2 weeks. That is 7 years ago. I have made this remark with the Greffier in looking at past minutes recently in the States is that it just goes around and around and around and around and around. If you look at the minutes of the States 10 years ago on any given committee of that time, you will see exactly the same issues. Exactly the same issues were being talked about and shifted from department to department. One of them was air quality. I laughed at the air quality one being bandied backwards and forwards between the Health Committee and the Environment Committee. Then you go to taxis and that has been bandied backwards and forwards from Home Affairs to other bits and pieces. Anyway rather than getting lost on the way, what I am trying to say is this. We need to reduce the qualifications down to 10 years. This is the first step towards getting that done and we should approve the 11 years. I would hope very quickly the Minister for Housing comes, with the Council of Ministers, with a set of proposals that maps out the future for all of these issues with a second proposition that reduces them to 10 years. **[Interruption]**

**The Deputy Bailiff:**

Minister, you will have your reply in due course.

**Deputy P.V.F. Le Claire:**

I have lost Senator Le Main. I will try to make this a little bit clearer. I am supporting the reduction as I have always supported the reduction. I am making a population/housing/social issues speech like I always do. But what I am saying this time - having been here 10 years I think I have learned a little; groans from the Constables' benches - is we need proper policies coherently tabled with the final reduction to 10 years that will also address all of the other issues. It is going to be a massive task. I do not think it is beyond the Council of Ministers and I am quite certain that they are capable of doing it. The (k) status ... I am glad Senator Breckon is back in the Chamber. I was saying earlier, for Senator Breckon's benefit, that I think maybe perhaps it might need to be called in and looked at as to what the policy is that the Minister is going to be looking at when he decides whether or not this is in the best interest of the community. I appreciate that it is something we should support and I appreciate the information that Her Majesty's Attorney General gave us yesterday in relation to the added ability to take into account people's backgrounds. I have no problem with that but obviously some Members do. So all I am saying is perhaps there needs to be policy guidelines that are written down for the Minister to refer to rather than just deciding at that point: "Oh, I think it is in the best interest of the community." So maybe Senator Breckon would agree to that. But I think, personally, we need to get the economy moving. This will help in some areas. It will create new home owners. It will move existing home owners that are trying to sell

their properties on into other properties that are waiting for them to move into. It will stimulate the economy at an important time to stimulate the economy. It will improve the economy by improving the do-it-yourself, the B&Q, all the rest of it. They will be going out, they will be shopping, they will be decorating, they will be renovating. All of that helps the economy and all of that helps people and all of that gives people work and work gives people money. When people have money they do not need social services. When they have lots of money they pay taxes. When we have taxes we can help those less fortunate. So we need to support this today.

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

As one of the people who got into politics because I was absolutely horrified when I first came to Jersey and found out my 4 year-old son would never qualify because they had taken him away. I cannot stand here today and say I cannot support this - and I will support this - but do not anybody think just because we are going to reduce the qualifications by another year that we are going to solve a lot of hardship out there. This again is piecemeal. I would just like to quote the second paragraph on page 5 where the Minister says: "Although taken into account, the slight uncertainty of the effect on the housing market in these changing times, the Minister is swayed by the fact that this decision continues achieving equality and fairness as espoused in P.25/2005, a strong theme that is being currently progressed in the development of a migration policy." Well, I was with, I think, Deputy Le Claire, Deputy Southern on the scrutiny of that migration policy. This again is piecemeal. I want to know where is what was promised in that? We were going to have licensed, entitled, regulated people. We were going to have a robust population register set up before we increased the population. We did not have a census because we were promised this. We are talking 2005. We are midway through 2009 and we have nothing and we are getting nothing. They are stalling. They have a problem with the immigration policy because they cannot find out who lives in the back rooms of the houses in many of the urban parishes. They cannot find them. They have had this problem for 2 years since I was on the second sub-panel looking at migration and they have not come up with an answer. It is very hard. Now I would like to mention something Deputy Vallois said and a couple of other people have alluded to. Now we have the Minister for Housing telling us only 3 per cent of people took up purchasing once they were granted their qualifications. If the Minister for Housing had ever taken an invitation up to come to a town hall meeting, even as many as 4 or 5 years ago when qualifications were going down from 15 to 14, people were sitting there telling the likes of us: "Well, it is great they have reduced our qualifications but we cannot find anywhere to live and the criteria of Housing will not let us on." That is another thing. The Minister for Housing only a few weeks ago on the radio said we must get a criteria across housing trusts because housing trusts are telling me and everyone else they have now closed their lists. They cannot house any more people. They could house 1,000 in the bracket of between £30,000 a year and £45,000, possibly £50,000. It might sound a lot of money but when you have got 3 or 4 children, when you have been paying £200 or £300 a week for 2 rooms, you have not been able to save a deposit but you are also paying tax because of none of it is claimable against tax, this is a lot of money. The one thing that really sticks in my claw, for months and months and months now we have had this all-singing, all-dancing, bell-ringing, supposedly Professor Whitehead look into the need of housing in Jersey and where is it? I do not know. The Minister says we are in some economic crisis and he has had to delay it. Well, if we are in some economic crisis, is this the right time to introduce a reduction in housing; when, as somebody has already mentioned, I can see people losing their houses? I can see people knocking on his door for social rented housing, housing trust; while, at the same time, he is avidly pushing his sell-off of 800 homes of social rented housing without replacing any. So I am in a total dilemma. I mean we never, even we sat together, voted the same way but I am surprised at Deputy Fox because he thinks this is a good idea but he never votes piecemeal. If you can get any more piecemeal than this, well, you know. Trust me ... I do respect Deputy Le Claire but if he thinks that the people that are reducing their qualifications from 12 years to 11 in 7 days' time, if we pass this today, when the regulation comes into force, are going to be rushing down, buying their houses, giving money to

B&Q and the rest of the builders on the Island, he is still not talking to the same people I am. They cannot afford it. The housing prices are being, I would say, kept ... they are the same but, to me, there are people I know have been trying ... and through breakup of marriages, they have been trying to sell their house for 18 months, 2 years. It is stagnant out there. They will not sell for any less than what they need to buy and the buyer will not sell for any less than they need to buy and then the next chain and the next chain and the next chain. One day very soon, this is not going to do it, something is going to hit the fan and house prices will fall. I do not want to see that in Jersey but this is not the answer. As I say to the Minister, where is this report that we must have? I mean, one minute he is telling us that people are only waiting a few months for 3-bedroom houses, then he is telling people that the criteria has been moved; you only can get on the list if you earn around £30,000 to £35,000 and you have got 2 children, 3 children. Well, a lot of these people are paying £300 a week - a week - for a couple of rooms, as I have just said. So to the Minister for Treasury and Resources, who has not spoken, I want to know where this migration policy of licences are, entitlement which ... licence would be a (j) to (k), entitlement would be (a) to (h) and regulated would be anything. Another thing, if we are talking about equality, if anyone remembers P.25/2005 as clearly as I do, as housing qualifications were going down, the right to work was going to go up every year. So housing qualifications meant 10 years and working local, because it was going to protect people (local jobs for local people), was going to go up. Has anybody ever brought a proposition? Has it gone up to 6 years in the last couple ... No. Is it going up? No, it is not because it is totally against human rights and we know it is not going to go up. But when it espouses and when it suits the Ministers, that is what they tell us they are going to do. Well, I am sorry, as I said, my conscience, like it might and it will probably ... you know, a lot of us will be able to go home today and say: "We can sleep a bit better because we reduced housing qualifications by one year." In actual fact, it really, really will not make a lot of difference to a lot of people out there and that really, really worries me. As for Part 2, I got a shock yesterday and I knew there must have been some sort of change in the (k) category when it was from 16 to 17 people in 2004-05 to 120-something and the Deputy, who was answering the questions for the Minister for Treasury and Resources, said: "It is 100,000 and that is 20 per cent of their earnings." I have been told that that is not right. So that then begs the question: "Do we need the people here?" Obviously, you know ... or will we be using the new part which says ... let me get the wording right because I would not like to quote it wrong "as being the best interests of the community" which, kindly the Attorney General said to us, was to protect us against robbers. But I think this is ... how do you define law? It is an opinion and it could be also used the other way. So I am definitely out on that one and I will not be voting for Part 2 of the proposition. Thank you.

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

I, first of all, would just like to make a few comments about the second regulation in relation to (k)s and I think it is really important that Members do understand that this amendment is designed to give strengthened, improved safeguards to the Minister, as I think he tried to explain yesterday. There have also been some comments about the fact that Ministers simply take decisions, initiate decisions and the word "corruption" was used or "potential corruption" was used in relation to decision-making. I would just remind Members that Ministers have to act in accordance with the Ministerial Code of Conduct. It means that Ministers must act upon advice. They cannot initiate decisions themselves. The Minister for Housing simply cannot sit in his front room and decide to issue a (k) without having gone through proper process. There must be proper process, having taken advice from officials and the statutory consultees and the consultees that he is required to make in relation to (k)s. That is an important safeguard. While there is, of course, the ultimate decision-making by a Minister, let there be no doubt that Ministers must act in an appropriate way which is set out in the Ministerial Code. I do not know where Deputy Southern has been in the last 4 years in relation to (k)s because he seems to have forgotten the fact that, I cannot remember whether it was 3 or 4 years ago, the Assembly considered for the first time in the Budget the

arrangements for (k)s. Now, there is no longer a discretion. One of those statutory consultees in relation to issuing of (k)s is the Comptroller of Income Tax and the Comptroller of Income Tax, in respect of any new (k), must be satisfied that the individual can meet the minimum tax contribution that is set out in the finance law. That is that all (k)s who are given consideration for admission to purchase a property in Jersey must meet the minimum of £100,000 in terms of capped contribution. In addition to that, the finance law sets out the arrangements of the taxation of the other worldwide income which they must pay, albeit obviously individuals will arrange their affairs probably in a manner which is organised that they will pay that minimum contribution. But there are cases ... I do not know, rightly so, the individual tax affairs of individuals but there are obviously some that pay significantly more than that. It is difficult, I would say, to answer the question of what the effective tax rate is for effectively somebody that has business interests around the world and organises their affairs in perfectly legitimate ways. But I want to assure Members that, as far as all new (k)s since that discretion was taken away, since there was no longer an option simply to negotiate an individual tax contribution, there is rigour, there are proper arrangements in place that are applied consistently and properly. I also just want to say very quickly that I regret the comments that the Deputy of St. Martin made when he is making decisions and holding his nose. I think that is an inappropriate thing, if I may say; a message to go out from this Assembly in the case that we somehow do not welcome, we do not value, the contribution of all Islanders and particularly (k)s. The Assistant Minister for Treasury and Resources set out yesterday the tax contribution that is paid to the Exchequer in Jersey from (k)s that have recently, under the new arrangements, have been put in. It is millions of pounds. It is millions of pounds that other Islanders, all of us, do not have to pay and (k)s contribute to improving our commercial environment, investment in businesses, et cetera. This is not a differential. This is not anything that they are any different. I recognise their contribution among many others in Jersey. I will also say, finally on this point, that the Assistant Minister and I are signalling a review of the (k) policy, both in terms of its current arrangements and the arrangements that have been put in the past. I will not go into any more detail. Suffice it to say that a review is underway and something that I think many Members have called for, for a long time. But we must act appropriately and we must act upon advice in relation to any review. In relation to the decision, I urge Members to look very carefully at the wording of that second regulation. We are being asked to put an additional safeguard in place that the Minister for Housing, upon advice, can rely upon. I would ask Members to recall the fact that we have had incidents of (k)s that perhaps with the benefit of hindsight, perhaps now with the new strengthened checks that are made on individuals that might not have been made, might not have been given admission. Members will recall that there is a very high-profile (k) that has been subject to court proceedings in the United Kingdom and perhaps it would have been the case that if checks would have been carried out that would simply not be simply on economic grounds that one would have been able to do. This ability gives the Minister for Housing an additional protection, to protect the interests of Jersey. It says "as being in the best interests of the community." That is carefully crafted language which gives the Minister the ability to make decisions that are not only on that minimum economic test and on the issue of social grounds, they are very rarely given. It would be wrong to cite the individual cases. They are very rarely given and clearly there must be a persuadable case of a significant social contribution in art or culture made to the Island. That is not a new provision. It is an existing provision. That Regulation 2 is to assist both of those to protect the Island's interests. There is one thing that is absolutely clear in any States debate on population or immigration, is that all Members want social justice. Members want to give all Islanders ... whether they have been here as long-term residents or whether they have been short-term residents, there is a requirement and a desire, I sense, among Members to give equal treatment to people. I think that if you are an Island resident you should have the right to a front door key. I think that you should have the right to some security of tenure. I think that you should have, after a period of time, the reasonable aspiration to set down permanent roots in Jersey. At the same time, we have a difficult issue of dealing with the fact that this is a desirable Island and we have obligations in terms of needing to ... I have the U.K. stamp in my passport and I have

rights of establishment in the United Kingdom. So do E.U. (European Union) citizens in Jersey. The whole of this make-up of which this decision today is part of, the complicated arrangements that we have in place, must adhere to that requirement; that we have access and we allow access of E.U. citizens into our Island. We have built up a complicated system of housing and job controls that is not easy, that is a tightrope of dealing and having the trade-offs between our obligations and the rights of individuals and the need to make the economy work. This bringing into ... is a further step of a single unified qualification period of 10 years. It is a complex system and Deputy Vallois, Deputy Hilton and Deputy Le Claire have been right to point out about the importance of the migration policy and a huge amount has been done. This is just one step in improving the whole area. Maybe Senator Routier, who chairs the Migration Advisory Group, will comment about what else is being done in parallel to this issue because huge progress has been made. Members want, clearly perhaps, a harmonised system. Some Members would be the first to criticize if one would give all new arrivals effectively the right to access the normal housing qualified market in Jersey. There is extreme sensitivity in the amount of (j)s that are issued. If Members want to give all people access to the same housing market, the corollary of that, the only way of achieving that, is to give everybody (j)s and giving everybody that right to eventually have access to the qualified market. This is very difficult. There is a balance of considerations that must be given. I absolutely think that we should be moving to a unified system but at the same time we have work to do in terms of raising minimum standards for non-qualified accommodation. We need to put more supply into the market for all types of accommodation, qualified and unqualified, and I want to hope that we have ultimately a single market for all residents of the Island but it is difficult. No doubt some Members ... and I will finally just say something about the House Price Index which is linked today. Members need to be able to make the decision to reduce the qualification period to 11 years in the context of whether or not they think it is going to further aggravate the situation of house prices. We have seen the House Price Index published this morning. I do not think Deputy Southern has read the figures correct. It does show that figures have certainly reduced from their dizzy, frankly unsustainable levels, of the second and third quarter last year. There has been a cooling in the housing market and I hope and express the hope that there is a continuing cooling of the housing market over the forthcoming months. Unfortunately the reality is that a successful economy does get capitalised into how high houses prices are and we need to learn some lessons of other places in the way that house prices are affected by improper lending, imprudent lending. The whole subprime mortgage market in the United States and the U.K. is at the heart of the economic problems that the international community have seen and I am afraid to say that Jersey is no different. There is much more work to be done on understanding our housing market, on making changes to it and improving standards. But there will be difficult decisions. In raising minimum standards for non-qualified there will be people that are likely to be put out, literally on the street, because the landlords will not be able to do it. This is a sensitive area which needs strong leadership, strong decision-making from a unified Council of Ministers of which this decision is part of an improvement plan which has already taken 5 years and will probably take another 10 years. There are too many people that slept in accommodation which was not acceptable to any of us in Jersey last night and we need to improve that and we need to make changes. I am with Deputy Martin absolutely in all of the things that she has called for over the years on that. There has been work done. There is more to be done. This is a single step in the right direction.

**Senator S. Syvret:**

Just on a point of clarification, the previous speaker disputed the figures, the percentage in average house price increases, that was mentioned by other Members. Could he, for the avoidance of doubt, just state what the percentage is in increase?

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

I do not have the report in front of me. I think Senator Syvret has a copy. If he gives it to me I will tell the Assembly what the number is. The point that I was making is that Members will see that, as

far as 3-bedroom houses is concerned, they reached ... 2-bedroom houses, I have not got the figures in front of me, they reached higher levels than they are now. House prices have fallen back over the last few months.

**Deputy G.P. Southern:**

That is misleading the House. That is not true. There was a 7 per cent, on average, rise year-on-year. March this year to March last year, a 7 per cent rise, on average.

**Senator S. Syvret:**

That is my understanding.

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

The Deputy and the Senator are attempting to put words into my mouth. I have said, very clearly, that house prices have come off the dizzy height that they saw in the second and third quarter of ...

**Deputy G.P. Southern:**

House price inflation has come off.

**The Deputy Bailiff:**

One moment, Deputy.

**Deputy G.P. Southern:**

Not house prices.

**The Deputy Bailiff:**

Deputy Southern, please stop speaking when I am addressing you. As you said earlier, we do not want to have a conversation with everyone speaking at the same time.

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

I just mentioned the facts in terms of the house price level that have come off the top.

**The Deputy of St. Martin:**

Can I seek clarification from the Senator? He put, again, words into my mouth. When I said I have to squeeze my nose, it was nothing to do about the 1(1)(k)s. I said I was voting against it. What I said was I have to squeeze my nose because I know that what we are voting for does nothing to ease the housing difficulties of other people. Now, possibly we will get that correction made by the Senator.

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

I accept the Deputy's qualifications.

**Deputy P.J. Rondel of St. John:**

Sir, could I put the 30-minute rule into place, please, under Article 84(1) of Standing Orders?

**The Deputy Bailiff:**

You are giving notice that in half an hour you will move for closure?

**The Deputy of St. John:**

Yes, Sir.

**The Deputy Bailiff:**

I had you down to speak next, Deputy, but if you do, you will not be able to move your closure.

**The Deputy of St. John:**

That is quite all right, Sir.

**The Deputy Bailiff:**

So you do not want to speak for the moment.

**Deputy E.J. Noel of St. Lawrence:**

Sir, the point that I wished to raise have already been covered by the Minister for Treasury and Resources, thank you.

**1.11 Deputy D.J.A. Wimberley of St. Mary:**

The point about the Deputy of St. Martin has just been made by the Deputy of St. Martin because I was going to make the same point as a sort of preparatory remark. I do find it sad that we are here approving a measure, by which I mean the first part, the first regulation of reducing the qualifying period from 12 years to 11 years, and some Members have talked about holding their nose or equivalent phrases: "We are voting something that we are not happy with. We want this to happen but we are not happy with the context." That is not very good. It happened yesterday with P.17. We had people voting reluctantly for something and I hope this does not become a habit; that we vote for things that we are not really happy with. As a new Member of this House, I read this proposition and I thought: "No doubt this one has been in front of Members before. This is another of those one-year reductions and how can one possibly vote against that?" The problem is that in voting for this, which I no doubt will, and I say again: "Part 1," what we are doing is maintaining the 2-tier society that we are not happy with and that is the problem. You know, whatever we say, the fact is (and many people have alluded to it) the 2-tier society is there and I will come to what the Minister for Treasury and Resources said about that later on in my speech. I want to pick up a point ... well, no, not pick up a point; it is a new point, about some people are more Jersey than others. I do think that is, in a sense, true. If someone has been here and they can trace themselves back to May Trevis(?) or somebody. I think they have more toe-hold; more say, really, in the Island than perhaps I do, who have only lived here 50-60 years. I do not want to say exactly how many. But, leaving that aside ... and I think it is an important issue in the context of other debates; that some people are and should be regarded as more Jersey than others and I know that it is controversial. So I will just leave it there because I want Members to know that that is a marker that I want to put down. But on rights to housing, we cannot really negotiate. The right to a fair tenancy agreement, which we have not talked about much ... we have been talking about the right to buy; but the right to a fair tenancy agreement, I have come across this in my own personal life recently twice and it is just not on, the way we treat the lodging sector. I have a personal story of somebody who worked here; lives in York, worked here for a number of years and went back to the U.K. unbelieving that we could have the legal structured in place that we do, realising that at any moment she could be on the street. In fact there was an issue, and I forget the exact details, whether it was dog or children ... it was noise, I think it was noise, and the landlord had powers that were just unacceptable. So there are real issues here and she ... finding that she had no rights and if we reduced the qualifying period by one year then the number of people in that situation reduces a tad then that is, no doubt, a good thing. So what is the problem? Why is it that we are voting for something, as we no doubt will, and yet we are not happy? I think the key to this is the issue of population and I am glad that the debate has broadened out into that area and, in particular, the Minister's recent speech. By supporting this proposition, said the Minister for Housing, there will be no increase in population at all. The Minister said that this would have no impact on population directly. Well, that may be true but the problem is that the context of this proposed regulation is an ever-increasing population. Deputy Le Claire referred to this. The fact is it goes round and round and round. The public do not say they want an increase in population, they say the reverse, but it just carries on and it just carries on. We are in a bad place because of the policy of running this Island like a pressure-cooker and I welcome the Minister for Treasury and Resources' commitment to social justice. Interestingly, he also said that he would like to see a single market for all

residents, which is the conclusion that I had come to. It is, of course, right. It is the only justifiable end-point. But how can you have this commitment to social justice and this commitment to a single housing market when you are running the Island like a pressure-cooker? The fact is you cannot. There should be a full debate on population before the strategic plan. I do not suppose there will be but I think some of us will be taking steps to see that that can happen. But I would just point out that ... a full debate will happen, either as part of the strategic plan or before it. But I would just point out that this failure to resolve the population issue, the continued allowing of it to rise against the wishes of the population - which we know is the case from surveys - puts pressure on our countryside and we saw the result of that with the recent zoning on the hoof of vergées after vergées of the countryside to provide more housing and it puts pressure on our town. I asked an oral question to the Minister for Planning and Environment and Members may have noticed that he gave a written reply, with my agreement, and in the written reply refused to answer the question. The question was ... he, having gone on for a page putting in the background, then said: "I cannot," or: "I will not" which is not the same thing: "I will not tell the Deputy and Members how much open useable space there is in St. Helier per head of urban population." But that is the kind of thing that we need to know; just how many people are we going to shovel in and how much space have each of them got. That is the kind of issue that we are ducking and that is the kind of issue that lies alongside this regulation and which makes me very uneasy. As I said, I will be voting for Part 1, but with reluctance. I come now to the 1(1)(k)s and I want to go to the actual text of the regulations on page 7 and firstly subparagraph (i): "on social or economic grounds or both." Now, we have had some comment on this and I just wanted to, in fact, ask the Minister a question because we do not hear much about the social grounds for letting people in or we have not in the past. I am coming to subsection (ii) in a minute but subsection (i): "on social or economic grounds." Now, we have heard ... and most people outside this Chamber, and I think most people inside it, only really consider the economic grounds. The Minister for Treasury and Resources said that now they have tightened up; they even have an exact figure on it, it is 100,000 and it is so much and it is so much and the criterion is quite clear and really tightly drawn. Of course, it is easy to draw tight criteria with economics. You just count the number of pound notes. But it is not so easy with the social grounds, which we are told have existed for years. But I would like the Minister to just mention to the House, make clear to us, how many 1(1)(k)s have been let in, in the past, on these social grounds; because I fear that we are in the position of saying, or pretending almost, that we take into account social issues when we are letting in 1(1)(k)s but in fact it all boils down to the word "economic". So I would like his comments on that in summing-up. The second part which we are talking about is adding "as being in the best interests of the community." Now, the Minister for Treasury and Resources made much of the fact that there will be a review. There will be something which will help the Minister for Treasury and Resources in his decisions on this and I quote from what the Minister for Treasury and Resources has just said. He said: "This clause 'as being in the best interests of the community' will provide improved safeguards to the Minister." But many of us have been pointing out that in fact the Minister has very, very large discretion and the clause is very vague "best interests of the community." But we also know from yesterday from the Assistant Minister for the Treasury and also from the Minister today that there will be a review into what the benefits are of 1(1)(k)s to the economy. There will be a cost benefit analysis. That is what the Assistant Minister yesterday said: "We are going to do a cost benefit analysis of 1(1)(k)s and their contribution. Are there negative effects? Are there positive effects? What are they, how much are they? Can we quantify these? Can we list them? Of course we can. I would like to know what the timescale is on this review and I frankly cannot support this clause until we have these details. We do need to know that 1(1)(k)s represent a net benefit to the Island, in all senses of the word "benefit". There are moral issues here as has been touched on. There are economic issues of ... in my mind, the word that jumps into my mind is inflation, which does not seem to be mentioned much in the context of 1(1)(k)s but 1(1)(k)s by definition increase demand. Now, Deputy Le Claire pointed out that we need a vibrant economy, we need people running around and doing things but there is a limit and you just have to be careful when you are managing demand in a closed economy

whether there are inflationary effects. This just has not been looked at and of course it will be looked at because it is a full cost benefit analysis review. But the point I want to make is until that review is finished and until Members know what the net benefits and costs are of 1(1)(k)s then the Minister has no grounds for letting anybody in under this clause of the best interests of the community. So I would like an assurance from the Minister that this review will be proceeded – of course, he cannot because he is not the responsible Minister. So therefore I am not quite sure where this regulation lies given that something is being done to make it possible but it is not within the Minister's control. Clearly there is a great big gap in this regulation and something should be done before it comes in; namely this review of the benefits and costs of 1(1)(k). So I cannot and will not be supporting the second part but I will be supporting the first regulation with reluctance.

#### **1.12 The Connétable of St. Clement:**

Just briefly. As a former Housing Committee President, albeit a long time ago, I really appreciated the contributions of Deputy Maçon and Deputy Vallois this morning who showed a genuine understanding of the issues and difficulties facing the Minister for Housing. So by contrast it was disappointing that one or 2 Members clearly have not grasped reality and one even asked this morning “what is the end game plan?” Clearly he had not read the report because it is right there, I think, in the second or third paragraph: “As part of the migration policy the States agreed, as a matter of policy, the period should be further reduced as soon as practical to 10 years.” That is the end game.

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

A point of clarification. The Minister for Treasury and Resources has just told us there is a different end point.

#### **The Connétable of St. Clement:**

It is the States who are in control and is the States who made the decision. As a member of the Migration Advisory Group, that is a policy which the Migration Advisory Group have been working to achieve. I can tell Deputy Vallois who asked specifically what has been happening at the States, the Migration Advisory Group has done, I think, almost of its work. I am not going to give away any secrets but I can tell the States that the laws have been drafted. The tenancy law, which helps to protect those who are currently non-qualified, laws to introduce the population register, to introduce the criteria of entitled, registered and licensed have all been done. Reports have been written, the implementation plan is even in hand, but we are Migration Advisory Group not the implementation group, the advisory group, and we advise the Chief Minister. So it is now up to the Chief Minister and the Council of Ministers if they support, if they appreciate, if they accept our advice and to come to the States and ask the States to implement, or not, the Migration Advisory Group's recommendations. I hope they do and I hope they do it soon because it is ready. Now, moving briefly to the situation of the 1(1)(k)s. I do understand the moral dilemma that some Members have regarding 1(1)(k)s, and 1(1)(k) is not a tax category as Deputy Southern suggests but it is very much a part of the housing law and regulations. But voting against this regulation today changes nothing. Adopting it - adopting it - strengthens the hand of the States through the Minister when dealing with applications. It increases the States and the Ministers options. Members should have listened to what the Attorney General had to say yesterday. Currently, as of now, individuals can apply for 1(1)(k) status on social or economic grounds, or clearly obviously a mixture of the 2. Full stop, nothing else. The example that Deputy Southern gave this morning about an author coming in paying less tax but doing more social events, that the Minister could accept now. This is not going to change that. Under the current very vague regulation, economic and social, or social only, the most undesirable, even criminal, former despots, former dictators can be accepted if they can show that they meet the economic criteria. If they do meet the economic criteria and they are refused, they can go to the Royal Court and say: “Look, you have accepted Mr. Jones who is less economically beneficial than I am, how can you refuse me?” Under the current

regulations the court almost certainly will say: “Yes, Jersey, your current rules say that you must accept him. So by adding this extra criteria it does give the Minister some more leeway. It raises the barrier. It makes another hurdle over which individuals like that would have to jump. It would give the opportunity for the Minister to say no to people like that, and on that basis it is an absolute no-brainer and we should have no hesitation about accepting the amendment.

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

The first thing I would like to say to the Assembly is that the majority of States Members in this Chamber were born locally on the Island and that puts you in a fairly privileged position compared to those that were not born on the Island. I came to this Island in 1982 and I did live in the unqualified sector for some years and I saw the good, the bad, and the ugly. I am now in a position whereby having been elected to the Assembly, in my absence last December I was also elected an Assistant Minister for Housing and it puts me in a slightly invidious position but I have had my eyes opened by the work that is involved in the Housing Department. I think I have benefited from the fact that I did chair the Housing Scrutiny Sub-Panel for the best part of 2 years and I saw some of the problems that some legislation within this Assembly has brought to the Housing Department. Some States Members have come in on (j)s. I think it is not inaccurate to say that Deputy Southern was probably a (j) in his life when he was a teacher on the Island. I will refer to the use of the (j)s later on in my speech. So, I stand here today as an Assistant Minister for Housing, I have learnt a lot in the last 4 months, what Housing does, by and large, is by no means perfect but what it does is an essential service to this Island. The Minister for Housing and I have seen many reports in the last reports in the last 3 months to do with this particular regulation. Indeed in the early part of January I did have some reservations about dropping 2 years from 12 to 10. I think to give Senator Le Main due credit, he accepted I had a difference of view with him and we did ask for extra reports on the situation and those reports were produced in January and February. I am happy to say here this morning that I am happy to accept a reduction in one year to 11 years and my main concerns with dropping it 2 years was the fact that the Housing Department or a States Department could be construed as interfering in market forces and I was very worried about that at the time. I do believe that a one year reduction, with the statistics Members have been given in your report, does justify where we are today. I think it was not an option to do nothing and I think a one year reduction now to be reviewed again is the best way to go. I want to deal briefly with the debate on (k). A lot of what I was going to say the Constable of St. Clement has said. The words social and economic grounds are already in the regulation. What we are doing effectively with this is allowing the Minister to have perhaps input which balances the reports of the Comptroller of Income Tax and the Economic Development Department and brings in the social reasons that the Minister for Housing can take into account in assessing a (k). It is an extremely important but tight regulation and I think it is beholden on Members to read what it said. There is no conspiracy theory, there is no attempt to deceive the House, I would disagree with my good colleague, Deputy Le Hérisier, there is no attempt to mass power on the Minister for Housing, it is a simple modification. I heard many comments, and I am not going to refer to them, about what has not been done by the Housing Department in the last 6 months, 12 months, 18 months, 2 years, 3 years, 5 years. In my 4 months in the Housing Department it has been a constant source of amazement to me how little power the Minister for Housing does have. I am not talking about Senator Le Main about the Ministry itself, the corporation soul. In any transaction, for instance, to do with shared equity or the sell off of social rented housing, the decision has to be run by ... under Jersey Public Finance Law it has to be approved by Property Holdings and the Housing Department can not simply sell a house in Clos du Roncier or Grasett Park to its tenant without running it through Property Holdings. That is, for me, a very surprising issue because my ... and I have expressed my problems to the Minister and he has been gracious to take them on board. I find it extremely frustrating at times to work in the Housing Department and to know that there are decisions that we cannot make, that we have to refer to other departments. It is a problem. Other Members have said: “Where is all the work to be done?” “Where is the evidence on new propositions and reports

coming to the Assembly?" Again, I will not quote the Constable of St. Clement, but the residential tenancy law is about to be lodged in the next few days, the migration policy has been signed off, as has the parts to do with the population register and they will be coming to you as separate enactments, separate propositions. Somebody else referred to the fact that *Whitehead Review* has not been completed. The *Whitehead Review* has had to be reviewed in the light of what is happening in the financial sector across Europe, United Kingdom, Ireland and the Channel Islands. I think one of the reasons the Minister for Housing has asked for Professor Whitehead to review some of the policies is that some of the housing policy is going to have to be changed in the next 12 to 18 months, maybe 2 years.

**Deputy G.P. Southern:**

Will the Assistant Minister accept a point of clarification? If I may, the Assistant Minister has just said that the migration policy and the population policy will come separately, they are already lodged and they are on the way. I believe he is incorrect in saying that. There is now a question in the Council of Ministers' minds and the thinking now is that they will come together but later.

**Deputy S. Power:**

It was always scheduled to be in 2 parts. I do not know where that ...

**The Deputy Bailiff:**

Either way, this is way off the point. If you could please return to the debate, whether to extend by one year and whether to make the amendment to the 1(1)(k).

**Deputy S. Power:**

I am sorry I went off pitch but I felt it was important to address some issues that have been said about the Housing Department. The Minister for Housing and the Assistant Ministers do not have the power and authority you think we have. I think this is an important regulation, an important modification, I think the 2 of them are, and I urge, I really urge Members to support this. I was going to deal with previous propositions that the Assembly have approved, that have tied the hands of the Housing Department but as the Chair has said, I may go off pitch again. I was going to refer to the fact that the Housing Department for many, many years did not have access to its own rent but I am not going to go there. That is why we are selling off social rented housing. I am just happy to support the proposition.

**1.14 Deputy D.J. De Sousa of St. Helier:**

I just really want to have a couple of things clarified by the Minister for Housing. If this amendment is adopted and we reduce the qualifying period by one year, how many residents are expected to qualify and how many are you expecting to apply for social housing? Does the Minister have sufficient stock, bearing in mind the numbers that he has already proposed to sell off or is the Minister going to review this number that is being sold off? Thank you.

**1.15 Senator S. Syvret:**

I have found for quite some time that not a States meeting passes without it seeming as some hellish conflation of Kafka, the matrix and Catch-22. We are having another one of those kinds of debates today. The group thinker, the Orwellian double speak, the avoidance of the real issues is just remarkable to behold. Here we are discussing changes to regulations which will, in fact, announce to an increasing demand effect in the housing market, yet we have the figures here on the average price increases for homes in Jersey, which the Minister for Treasury and Resources was unable to recall, but I quote from the States of Jersey Statistics Department: "The average price in quarter one for 2009 was 7 per cent higher than in 2008." So while the Minister for Treasury and Resources is making downwards gestures with his hand, what he is in fact attempting to assert - well it is true - the rate of growth, the rate of inflation in the property market, the speed of the inflation has declined but the fact is we still are confronted with the astronomical figure of 7 per

cent increase over the year in that economic climate that we have had prevailing in the world for the last year or so. It is absolutely extraordinary, and yet here we are debating regulations that will increase access to the Island's housing market and thus increase demand. It frankly beggars belief. Some Members have said they are going to hold their nose and vote in favour of part A of the proposition. Certainly, I would ask them to reconsider that because this entire approach is manifestly flawed. What we are dealing with here when we consider these issues: housing prices, qualifications, redevelopment, social housing, rezoning, 1(1)(k)s, what we are talking of here is the Island's accommodation industry. We have never got a handle on that industry as an entity. We do not know its true size, we do not know what components make it up, we do not know what I suspect is the vast quantity of economic leakage from that industry out of Jersey into substantial investment funds and other ownerships outside. So here we are being asked to just tweak again the failed system and still, to this day, we have no grasp of just what the functioning, what the dynamics are of the accommodation industry in Jersey. Senator Ozouf, when he spoke, used one of his favourite phrases: "supply side". He said that yes we have made mistakes in housing policy and that we do not have sufficient houses for people, we do not have sufficient quality of houses for people; we have failed on the supply side. Well, hold on a minute, the truth is addressing the supply side of the housing equation has been the policy, the de facto policy of the States of Jersey for the last 3 or 4 decades. Whenever we are confronted with these problems, whenever we hit the buffers, the inevitable suggestion is we have got to build more homes, we have got to rezone more countryside, we have got to increase housing density in St. Helier, et cetera, et cetera. Frankly, there has probably been dozens of such debates in this Chamber during the 20 years I have been here. So that is the policy the States has followed. It is a supply side policy. It has been the policy of the States of Jersey for decades. Now, ask ourselves: "Has that policy worked? Do we have a population that is now stable and happily housed across the spectrum or do we, in fact, still have exactly the same problems that we had 20, 30 years ago?" The answer is we still have the same problems. The supply side policy that we are being told that we need to carry on with today has demonstrably failed. It has not worked. It has been an environmental, a social and an economic disaster for Jersey. Sooner or later the public are going to finally lose all patience with this. Those who support one of the regulations at least, in terms of reducing the housing qualifications by one year ... let us be honest about this, those who then get qualified that year earlier and then move out into the ordinary qualified housing market, the spaces they leave behind in the wretched, damp ridden, rotting, scummy bedsits that they are charged extortionate amounts of money for will just be filled up with another wave of migrant labour to be exploited, abused and used. So do not think that your consciences are being salved by reducing the qualification period by one year and you are addressing all this hardship, because you are not. The fact is unless we address the demand side of the housing equation we are never ever going to address these issues. There are some quite extraordinary assertions and sophistry in the accompanying report. For example, on page 4 it says: "Changes in new qualifiers arising from incremental changes in the qualification period have little, if no, impact on prices." Just consider what an extraordinary statement that is. We have the housing figures here, 7 per cent increase over the course of a year. Is it seriously argued that new qualifiers have not contributed a portion of that growth? But even setting that aside, the essential argument that is pedalled here in the report is one that flies in the face of all standard and exacted economics, which is that if you increase demand for a product you increase the price of that product. You increase demand for housing, you increase access to the housing market, you increase demand, you inflate the prices. So, frankly, some of the assertions that are in this report are simply an insult to the intelligence. Mortgages may be at a lower cost now and much harder to get but, let us face it, that does not appear to have had a great deal of impact in Jersey, does it? In fact there are signs of a great increase in people taking out mortgages in, say, the United Kingdom because the rates of interest are so low at present those who are in the position to be able to take advantages of the low rates are beginning to do so. Another assertion in the report is that the Minister is swayed by the fact that his decision continues achieving equity and fairness. I too believe in equity and fairness and I believe that the way our housing regulations, the way our

housing market, the way our accommodation industry works at the moment is indeed unfair and exploitative. But we have to find altogether more cogent and sustainable means of addressing that rather than just incrementally inflating the supply side in order to keep the accommodation industry going. Because, let us face it, that is what these kinds of debates are about. This is about injecting some pressure, some heat, into a depressed accommodation industry market; one which is astronomically overpriced already as it is and is manifestly as unsustainable as the Dutch tulip mania bubble. The report also goes on to make reference to the migration policy and the population policies and so on. Where are these policies? This is, again, rather like the debate we engaged in last year, the deeply mysterious and mystifying land rezoning debates which were rushed through this Assembly, utterly extraordinarily, on a wholly irrational basis outside the scope of the policy formulation, completely without any set criteria, allegations being made of immense demand for this that and the other types of accommodation in this that and the other parishes, zero evidence to back any of it up and yet the majority of this Assembly voted to put that proposition through really, really very mysteriously. I know a lot of people that have taken a lot of detailed interest in that mystery. Very mysteriously the States voted to go ahead with that, notwithstanding the fact that it was putting the cart before the horse and that any such wide-ranging, sweeping decision really should have been taken as a part of the Island Plan review. Here we are being asked to address housing regulations before we have properly addressed the nature of the accommodation industry, before we have properly addressed the nature of population growth in Jersey, before we have convinced enough Members to learn some rudimentary arithmetic and accept the fact that addressing population ageing through inward migration simply does not work on a mathematical basis, as is readily demonstrable. Until we have done those things, to carry on tweaking and fiddling with these regulations as we are doing is absolutely absurd, and it is absurd not only because it is an irrational and incompetent means of making decisions, it is also detrimental to those who do have residential qualifications, those who have earned their qualifications, those who have their qualifications by dint of being born here and being raised here. The more competition that we let through into the qualified sector, still the harder and harder it becomes for qualified local people to be able to afford either rent or purchasing accommodation. Now, I am all in favour of social justice, the migrants ... as I said the industry at present is appalling and we have got to address it, we have got to address things about it. But what about people who are already established in Jersey? Why do we not have regard to the fact that we are increasing demand for the product that they already cannot readily and easily afford? What about the locals? Where do they figure in these kinds of calculations? As far as the 1(1)(k) part of these regulations is concerned, the Minister wants to have the power to grant any consent justified as being in the best interests of the community. Well, on the face of it, that sounds like a sensible proposition as a number of Members have stated, but rather like this phrase that is beloved of the Attorney General “not in the public interest”, for example, in respect of prosecutions, you have to ask yourself, what does it mean? Where is the detailed written definition of this, where is the policy guidance, where does it lay out in detail a set of criteria by which we can perhaps scrutinise the Minister for Housing’s and the Minister for Treasury and Resources’ decisions and say: “Yes, they made those decisions within this criteria, within this policy” or: “No, they did not.” Again, it is a case of cart before the horse. We are being asked to confer an extended power on the Minister here which may or may not be justifiable but we have got no idea what the criteria is going to be, how it is going to work, how it is going to be applied. Not that long ago, a year or so ago, we allowed a man who was regarded as a terrorist in many places of the world, many countries in the world regard that individual as a terrorist, and we let him in here as a 1(1)(k) resident. Now, if that is the kind of criteria that the Minister for Housing is going to use as being in the public interest, well frankly God help us. The 1(1)(k) policy is ethically bankrupt, it enables people to buy their way into the upper echelons of accommodation here. It is one law for the rich and another for the poor. It is intellectually bankrupt in that, again, we have simply no detailed hard factual analysis, a cost benefit analysis as to whether all of these assertions and claims we hear, the huge supposed benefits of 1(1)(k)s in Jersey, do in fact exist so I can easily point to the 7 per cent increase in overall property inflation

last year and point out that lots of 1(1)(k)s when they get here invest their money by buying up great tranches of Jersey property and thus increasing the inflation and the cost of accommodation in Jersey, not only residential accommodation but commercial accommodation too. Their companies and their businesses make those investments here. Now, where has that been factored in? How do we know that the 1(1)(k)s we have let in so far, and those that we plan to carry on letting in, are not in fact going to carry on feeding this demand pull inflation at the upper levels of the property market? Senator Ozouf said the phraseology justified as being in the best interests of the community was, and I quote “very carefully chosen.” He is absolutely right about that. It was very, very, very carefully chosen. It was chosen exactly for its meaninglessness, its nebulosity and the fact that there was no underpinning detailed criteria [**Approbation**] by which we can gauge the accuracy and the worthiness of the applicability of that policy. In both of these regulations we are manifestly being asked to put the cart before the horse in every sense of the word. There are any number of policies that we should debate, scrutinise, discuss and approve before going down this path. I strongly urge Members to reject this policy, both of them, and instead support rational, competent decision-making whereby we have a proper policy framework in which we are operating and also, in the final analysis, to bear in mind that as much as we do need to address the frequently atrocious and abusive conditions that non-qualified people are forced to live in, we also owe a duty of care to local people too. Thousands of which cannot afford accommodation in Jersey readily at present. I urge Members to reject both of these.

**The Deputy of St. John:**

Sir, can we put the proposition to the vote? Thank you.

**The Deputy Bailiff:**

So you are moving for a closure?

**The Deputy of St. John:**

Yes.

**The Deputy Bailiff:**

Seconded? [**Seconded**] Very well, there is no debate on that and I do not consider it an abuse of process so therefore I invite ... do you ask for the appel?

**The Deputy of St. John:**

Yes, please.

**The Deputy Bailiff:**

I invite Members to return to their designated seats and the matter before the Assembly is whether to vote for or against the motion to close this debate.

<b>POUR: 29</b>		<b>CONTRE: 17</b>		<b>ABSTAIN: 1</b>
Senator P.F.C. Ozouf		Senator S. Syvret		Senator A.J.D. Maclean
Senator B.E. Shenton		Senator P.F. Routier		
Senator F.E. Cohen		Senator T.J. Le Main		
Senator J.L. Perchard		Senator A. Breckon		
Senator B.I. Le Marquand		Senator S.C. Ferguson		
Connétable of St. Ouen		Connétable of St. Lawrence		

Connétable of Trinity		Deputy J.A. Martin (H)		
Connétable of Grouville		Deputy G.P. Southern (H)		
Connétable of St. Brelade		Deputy of Grouville		
Connétable of St. John		Deputy P.V.F. Le Claire (H)		
Connétable of St. Saviour		Deputy S. Pitman (H)		
Connétable of St. Peter		Deputy M. Tadier (B)		
Connétable of St. Mary		Deputy of St. Mary		
Deputy R.C. Duhamel (S)		Deputy T.M. Pitman (H)		
Deputy of St. Martin		Deputy M.R. Higgins (H)		
Deputy R.G. Le Hérisier (S)		Deputy D. De Sousa (H)		
Deputy J.B. Fox (H)		Deputy J.M. Maçon (S)		
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. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				

### **The Deputy Bailiff:**

Very well, then I call upon the Minister to reply.

### **1.16 Senator T.J. Le Main (The Minister for Housing):**

I have got some paperwork to go through here now. I know Members have had a full morning and part of yesterday, I have made many notes of many of the questions, certainly one or 2 questions need to be answered this morning, but would Members be happy that I could collate them later and circulate Members with the answers or would you like me to **[Interruption]** No, no, I am just

trying to assist the Assembly in moving forward. Not a problem. If the Members want it that way ...

**The Bailiff:**

I think, Minister, it is a matter for you as to how you reply.

**The Deputy of St. Mary:**

On a point of order, can he do the summing-up after lunch and could we take the statement now so that he has got time to finalise it.

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

No, no.

**The Deputy Bailiff:**

I think when the time comes to reply the time comes to reply.

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

I am going to take my time, by the way. So I am not going to be harassed into making foolish and quick answers. It was Deputy Le Hérissier who started off the debate where he quoted that the current housing laws were unfair. I totally agree with that concept and everyone has commented on the fact that the current housing law is divisive and, in fact, not fair on many of the people that contribute and live and work on this Island. It is something that I have been trying to address with previous committees for a number of years. I can remember that about 10 years ago when I first started doing housing surgeries at Communicare, when we had a Housing Committee, when I was doing housing surgery at Age Concern, we had queues and queues of people. Every time I had at Communicare there were 30, 40 people, unbelievable, who were people mostly unqualified and a lot who were otherwise qualified as well, but generally a good mix of people that were having terrible housing problems with availability, cost and everything. The Housing Committee met on a monthly basis determining ... and Senator Breckon will remember and other Members that sat on the Housing Committee in the past, it was unbelievable, it was paperwork like that of people that were fighting for some justice in getting some kind of recognition to be housed properly, and, again, mostly on hardship grounds. In fact it got so bad that at one stage we changed the monthly meetings to fortnightly meetings and most of our mornings were taken up dealing with people and their cases. But 10 years on when we have our housing surgeries - the Assistant Minister and myself and the previous Assistant Minister - we hardly get anyone that attends now. Normally, good local people that have issues with the housing we supply or otherwise, but generally there is not the issue now because there is some bad accommodation in the private sector, but there is some very good stuff on the market at the moment and a good availability. So we marched on in that area. But, yes, there is still some bad accommodation. The accommodation does not only relate to unqualified, there is some pretty poor accommodation in the regulated sectors of this Island, particularly in some of the back streets of St. Helier. So I would like to say there have been some great strides in that. But the issue is quite clear that it is much easier for people now and the issue that I am going to explain to Members this morning is that the figures I have produced in my report, in our report, clearly show over the last 3, 4, 5 years that by reducing one year has no impact on the homes that we provide - and I look at Deputy De Sousa - and we are well able to provide accommodation over the next year or so for these people that are qualifying one year early. If they do not qualify now they will qualify in 12 months' time. We are well able to meet the supply from the Housing Department for the limited amount of unqualified, or coming up to qualified, that will need social rented accommodation, no question about it. By department are convinced over the period of the last few years there has been a minimal impact on the provision of social rented housing for people that are qualifying one year early. I shall leave the ... I think I will try and go through my notes on the basis of the reduction of regulation ... the first regulation and talk about the 1(1)(k) regulation on the second part. There has been ... I think Deputy Tadier was the one

who said that there has to be a commitment to working and living in Jersey. Can I say again that it is this Assembly that have dictated the policy that eventually housing qualifications will come down to 10 years. I am doing what I am instructed by this Assembly, as a Minister for Housing with my Assistant, to come forward to reduce it as soon as practically possible, to make it fair and equitable. The issue is quite clear that people who come to Jersey ... there will always be the unqualified sector. What we have got to do is we have got to work at making sure that there is improvements which are happening all the time through the Minister for Planning and Environment who is putting more onus now on developers and people that are converting and providing unqualified accommodation, for room sizes, for quality and everything else. There is a lot happening in the marketplace. In fact some of the developers - investors, developers, whatever you want to call them - do get a bit mad sometimes when they see the onus that the Minister for Planning and Environment quite rightly is putting in place to make sure that these very valuable people that come and commit themselves and live and work and bring up their Jersey born children are living in decent accommodation. I did not mention the word "affordable". That is still an issue because there is still a real issue on affordable but generally I welcome very much the input certainly by the previous Assistant Minister for Planning and Environment, Deputy Pryke, and the Minister for Planning and Environment in trying to bring forward policies that will assist these people. It is all very well but even with the migration policy in place once ... if the States approve the migration policy and the issues related to a commitment, we cannot just have an open door on this Island and there has got to be a commitment by people who know the rules when they come - we have got to make sure they know the rules - and live and work. Very often the accommodation, which is fairly poor in Jersey, is quite a lot better than where many people come from. So that does not make a reason why we should in fact be providing poor accommodation. We are a modern democracy, we are modern forward-thinking democracy, and I would expect that we would try and look after these people because they are needed. They are the ones that work in hospitals, they work at Family Nursing, they work in education, they work in all the essential parts of our economy. Deputy Jeune was asking about the proposed new migration policy. Well, it is a controlling mechanism and - I talk to Deputy Jeune through the Chair and I talk to all the others who have been asking about when it is going to come forward - I think it has been well explained by Connétable Norman who sits on the Migration Advisory Group with the Chairman, Senator Routier and myself. As I say, that will be coming forward very soon. I know that a new tenancy law ... I have to sign that off today, the proposals, and that will be lodged on Tuesday this next week. So we are moving forward on that. Then the first time when we get a migration policy if the Assembly approves the general ...

**Deputy T.A. Vallois:**

Can I just ask a point of order with regards to the tenancy law? Is that with regards to qualified tenancy law or the unqualified or are they both rolled into one?

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

No, the tenancy law at the moment can only be dealt with with the qualified sector. We have to come back a second time with the unqualified because the unqualified will give people more rights through the new migration policy. At the moment if somebody is unqualified you cannot give them ... they cannot a lease in their own name or transact in their own name but hopefully as soon as the migration policy is approved then we will have that. That is important. To Deputy Breckon, Deputy Breckon is well qualified in evidence and the work done having been on the previous Housing Committee and, as I say, Deputy Breckon has ...

**The Deputy Bailiff:**

Senator Breckon.

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

I am sorry, I beg your pardon, Senator Breckon has, in conjunction with myself, been of great assistance in assisting people with all sorts of difficulties and what have you. Deputy Maçon spoke about social justice and bad unqualified accommodation and something has to be done. I totally agree. But there is a difficulty at the moment, and has always been a difficulty, is this lodging situation with under 5s in the private sector. Although we never get many complaints about it, there must be some accommodation that is not regulated at the moment. But generally the regulated accommodation in the lodging houses has improved considerably and I would rather hope that, as I say, the standards being promoted by the Minister for Planning and Environment is having a huge part in improving that. Deputy Vallois agreed very much with Deputy Maçon and she worried about house prices on social justice grounds. As I say, there is ... the question the Deputy asked was was there sufficient capacity for States rental and I can give a categoric assurance that on the basis that the same kind of figures come through as they have done in the last 5 years, then we are well able to cope with the demand on the limited amount of States rental that we are expecting. I pass that same message to Deputy De Sousa. Deputy Trevor Pitman was on about the squalor he had seen was absolutely awful and I think that Senator Syvret mentioned about some of these awful bedsits. Well, I would very much welcome, with my Assistant Minister, with Deputy Trevor Pitman to be shown some of this awful squalor because it really ... I have not seen this awful squalor. There is some bad places but not real awful squalor. I would invite Deputy Trevor Pitman to show us around and let us have a look and, if necessary, we will take action somewhere along the line. What I will do if I have missed anyone out, I am going to go through all my notes and I am going to personally write to every Member who has raised any of the issues. Let me just now start on this issue about 1(1)(k)s. This regulation is a regulation that strengthens as highlighted by Constable Norman, the ability of the Minister for Housing to strengthen his arm in turning down an application for a 1(1)(k) they could easily go to the Royal Court and win an appeal. As well explained by Connétable Norman and Senator Ozouf on the regulation of 1(1)(k), it is to assist the Minister for Housing in strengthening the rules. Now, you must realise that the Minister for Housing is the one that issues the housing licence. It is not the policy. The 1(1)(k) policy is not the policy of the Minister for Housing. We have to determine the applicant, we have to determine the applicant's background, the benefits to the Island, over and above what the recommendation is from the Comptroller of Income Tax. I have to say Members that in the last 2 years I have turned down 5 applications on reputational grounds. One of them very seriously caused some headlines in the U.K. (United Kingdom) only recently. But any of these applications that I have turned down could easily have appealed to the Royal Court and we could easily have had a 1(1)(k) person that really did not meet the reputational criteria of the Island, although they would have met the financial criteria. So this regulation is so important that now in an economic and a worldwide reputation that Jersey has in dealing with people that we know are trustworthy, that are good and what have you, we want that regulation to strengthen the arm of the regulation. Failing to ... if you vote against that all you are doing is you are leaving the situation as it is and we could get in an applicant somehow that we have not managed to get information on - background and criminal record and what have you - and not much we can do about it, it goes to the Royal Court and I am afraid we could be in difficulty. So I urge Members very much to support the regulation. Can I just say that since 2005, 1(1)(k)s have purchased residential property approaching £75 million and probably nearer £100 million. Can you imagine the income from the stamp duty? Normally 50 per cent of the purchase price is further spent on renovations. All money spent in the economy in Jersey. In the U.K. the government actively pursue wealthy Russians, Indians and wealthy individuals, and most of the world's leading wealth creators are now living in the U.K. Why? Because they bring their wealth, their expertise, with them to spend in the country. Only yesterday I saw one Member disagreeing by shaking his head on how I was explaining the huge benefits of many generous wealthy people who, once integrated into Jersey, give hundreds of thousands of pounds to local charities. Ask Members in this Assembly, just ask Deputy Green, Deputy Gorst, Senator Routier, ask the Association of Jersey Charities, ask the trustees of The Bridge, trustees of the Childcare Trust, ask the health authorities about the availability of a multi-million pound

helicopter now available for emergency 24 hour cover, for medical and search and rescue; all this at no cost to the taxpayer. Every country in the world encourages and welcomes our wealthy residents. Guernsey even has open market housing. Anyone can buy one of these properties and you do not pay any tax or anything. I urge Members for social justice reasons only to support part 1(1) regulation on reducing housing qualifications. These are people that have come to Jersey, they have got Jersey born children, living, working, unable with their children to enjoy the joys of bringing friends back at home in many cases and not able to bring friends home for an evening meal or tea, and the children are cooped up in places, this will greatly assist many of these good people that are working in all kinds of industries. This Island of Jersey is a modern welcoming democracy, renown all the world over for its business-like approach and for its issues. The 1(1)(k)s, I plead with Members to allow the Minister for Housing to strengthen the arm of the regulations so that we can make sure that those who are invited to live and work in Jersey contribute to the economy for all kinds of reasons, that they are properly vetted and that we are able to take the best. Sir, I ask that we take them in 2 parts.

**The Deputy Bailiff:**

Senator, you cannot do that at the moment because this is the principles of the regulations. That has got to be considered as a whole, then of course you can take the individual regulations separately so Members can vote on that. So the matter before the Assembly is the principles of the Regulations.

<b>POUR: 35</b>		<b>CONTRE: 13</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator S. Syvret		
Senator P.F.C. Ozouf		Senator S.C. Ferguson		
Senator T.J. Le Main		Connétable of St. John		
Senator B.E. Shenton		Deputy of St. Martin		
Senator F.E. Cohen		Deputy R.G. Le Hérisssier (S)		
Senator J.L. Perchard		Deputy G.P. Southern (H)		
Senator A. Breckon		Deputy of Grouville		
Senator B.I. Le Marquand		Deputy S. Pitman (H)		
Connétable of St. Ouen		Deputy M. Tadier (B)		
Connétable of St. Helier		Deputy of St. Mary		
Connétable of Trinity		Deputy T.M. Pitman (H)		
Connétable of Grouville		Deputy D. De Sousa (H)		
Connétable of St. Brelade		Deputy J.M. Maçon (S)		
Connétable of St. Saviour				

Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				

**The Deputy Bailiff:**

Very well, Senator Breckon, you are Chairman of the relevant Scrutiny Panel, do you wish to have this matter reviewed to your panel?

**Senator A. Breckon:**

No, Sir.

**The Deputy Bailiff:**

Very well. So, Minister, do you propose Regulation 1?

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

Yes, Sir.

**The Deputy Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on Regulation 1? Very well, all those in favour of adopting Regulation 1, kindly show?

**Deputy R.G. Le Hérisier:**

Could we have the appel?

**The Deputy Bailiff:**

The appel is called for, yes, in relation to Regulation 1. Regulation 1 being the 12 to 11.

<b>POUR: 44</b>		<b>CONTRE: 5</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Senator S. Syvret		Senator A.J.D. Maclean
Senator P.F.C. Ozouf		Senator S.C. Ferguson		
Senator T.J. Le Main		Connétable of St. John		
Senator B.E. Shenton		Deputy of Grouville		
Senator F.E. Cohen		Deputy J.M. Maçon (S)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				

Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				

**The Deputy Bailiff:**

Do you propose Regulation 2, Minister?

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

I do.

**The Deputy Bailiff:**

Seconded? **[Seconded]** Does any Member wish to speak on Regulation 2? Senator Perchard.

**1.16.1 Senator J.L. Perchard:**

While I would be supporting Regulation 2, I wonder if ... and I do understand the point made by Senator Ozouf when he spoke on the substantive proposition, and that point being that the Minister - the Body Corporate - makes the decision and it is not in a smoke-filled room over a telephone call with somebody. But I wonder if that could be formalise and if the Minister could download the method, the structure and formula and the procedure that this decision is made and who is involved in making these decisions under Regulation 1(1)(k) affording qualifications to an applicant. There would be a proper recognised transparent formula.

**1.16.2 Deputy M. Tadier:**

I just have a point of clarification really. Yesterday - and is because I have been receiving mixed messages and I would like it to be clear in my own mind, and that may apply to other Members also - we were told that the second part had to be changed to give more clarity. We also heard from Constable Norman that currently the system is open to abuse in so far as undesirable types can be let into Jersey, and presumably if they can there is also a smaller possibility that they are in fact. I asked the question to the Attorney General yesterday whether the change meant that at the moment undesirable types are coming into Jersey and I was given the answer no. There seems to be a similar or a mixed message coming from the Minister for Housing himself saying that currently nothing is going to be changed so the actual amendment changes nothing but we are also hearing that at the moment an appeal can go to the Royal Court. So in fact if somebody who has made their money from drug smuggling wanted to they could go to the Royal Court and they could appeal against that. Is that really the case? I have trouble believing that the Royal Court would allow someone who had made their money by openly nefarious means, obviously not the usual nefarious means of making money, to take up residence in Jersey. I think I would like clarification on those points from whoever sees fit to give that kind of clarification.

**1.16.3 The Deputy of St. Mary:**

I thought we might get the clarification first, but hopefully that will come from some quarter. I wanted to pick up on what Senator Perchard said. I think that is a very important point. Again, it is this matter of clarity as to what this regulation means. What the Senator suggested was, of course, what we should have had. We should have had this statement of how this is going to be done, who is involved. I mean I have learnt things about how this process works today but I have not learnt enough. It should have been in what was brought before us. We should have known how this process worked. So for that reason I cannot support these regulations and I suggest other people ask the Minister to bring them back in short order with a proper statement of how it is done.

**1.16.4 Deputy P.V.F. Le Claire:**

I did suggest it might have been helpful if the Scrutiny Panel had called this in at this stage so that they could get that evidence for us and then we could have brought it back at a time when the policy was clearly before us. I would urge them to reconsider taking that because there is some confusion. I can support it but other Members want to see what the policy is going to guide the Minister on. I am going to support it but I still think it should be called in.

**1.16.5 Deputy G.P. Southern:**

Yes, indeed, rather than wait I think perhaps the Minister for Housing should have an attempt to tell us how he is going to operate this particular new regulation because as far as I am concerned the clarification, the extra clarity of "as being in the best interests of community" is meaningless and it does not clarify anything. I point out to Deputy Le Claire that I believe he has got the power to tell the relevant Scrutiny Committee to take this away and bring it back with a decision as to he wants to do with it. So that potential is always there.

**The Deputy Bailiff:**

Does any other Member wish to speak? Senator Ozouf.

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

The Minister, of course, can answer for himself but I thought that having sat on the previous Migration Advisory Group with Senator Le Main as Minister for Housing it might be helpful just to give a perspective. I think the Minister is saying - to answer Deputy Tadier's point - that there have not been any issues at present but the advice that the Migration Advisory Group and the Minister has received is there is potential for an appeal that might not be able ... the Royal Court can only deal with the ability that the Minister has to make decisions which are set out in the statute. At the moment the Minister is not entitled, it could be said, it could be constructed, to have regard to the interests of the Island. That is the additional safeguard, the additional tool that the Assembly is being asked to give the Minister. Just on the issue of how decisions are taken, all decisions - whether they be Regulations of Undertakings or whether they be housing decisions, other Ministerial decisions - are taken in the name and by the Minister unless it is delegated. What happens now with the joined approach in relation to (j)s and (k)s and Regulations of Undertakings is that there is a Migration Advisory Group which is a consultee of the Minister. The Minister for Economic Development, I think it is delegated to the Constable of St. Clement, is the final decision maker but there is a consultative body to act as almost the second and third and sixth pairs of eyes. That is what happens. If it would be helpful for the Migration Advisory Group to set out their procedures and explain the way that they act, that obviously would be useful. All decisions, and in terms of (k)s themselves, there is advice - and I am not involved in that, and rightly so - taken on the background, there is inquiries taken out in terms of the ability for an individual to be able to pay their minimum tax contribution. The Comptroller of Income Tax is one of those people that the Minister consults and the Migration Advisory Group consults in relation to ... none of the information is revealed, the Comptroller basically says whether or not he is satisfied in relation to the individual economic tax contribution. So it would be wrong for Members to get in any sense that there is an individual that is responsible for the decision-making. There is an enormous amount of work that goes into the research, into the background of the individuals. What we are being asked to do is to give the Minister that additional safeguard that he can lawfully, legally, consistently have regard to the interest of the community.

### **The Deputy Bailiff:**

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

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

What I would like to say is well explained by Senator Ozouf. But every case is different. It is like when you look at the granting of hardship, for instance, every case has to be taken on the evidence provided and the merits of its case. It is very difficult sometimes to have a proper, proper formula but it is, as I say, many, many Ministers that have to make these individual decisions on individual people. Although I support exactly what Senator Perchard is saying, I am very happy to set out our current procedures. As Senator Ozouf has said, the review is going to take place really shortly with himself and Deputy Noel on the whole issue of 1(1)(k)s and that will something I am sure will come back to this Assembly. But I plead with Members that even though you might not like the 1(1)(k), by voting against this you are not doing yourselves any favours. All I am saying is you are giving ... the ability of the Minister for Housing in determining an application that could get through on an appeal to the Royal Court when we really were not happy with that application and refused it and it was overturned by the Royal Court. I urge Members whether you like 1(1)(k)s or not, I have to say that I think that the generosity and the welcome and the benefit to the Island is tremendous with the wealthy resident but I would urge Members to assist the Minister for Housing, whoever he or she would be at the time, to be able to determine far better an applicant who is making an application without being challenged in the Royal Court. So I urge Members please to consider that and please to support that. Otherwise you are just going to leave it as it is and you could then end up - Members could end up - complaining bitterly: "Why did this person come in

because it was challenged in the Royal Court, when it had been turned down on reputational grounds?" I urge Members to support that in the best interests.

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

Could I follow on Deputy Tadier's point and ask the Attorney General, is really satisfied with giving ...

**The Deputy Bailiff:**

I am sorry, Deputy, I think you have had your chance.

**Deputy R.G. Le Hérissier:**

I wanted a point of clarification from the Attorney General.

**The Deputy Bailiff:**

Sorry, you are too late. The Minister has replied. Now, if Deputy Tadier wants to make a point?

**Deputy M. Tadier:**

I think on the point I raised earlier, if I could seek clarification from the Attorney General maybe at this point.

**The Deputy Bailiff:**

Can you just clarify your point?

**Deputy M. Tadier:**

The point we wanted to know, and the issue I raised yesterday, was presently are people coming into Jersey who are undesirable types - for want of a better word - but I think ...

**The Deputy Bailiff:**

I think it is a question of fact, not a matter for the Attorney General.

**Deputy M. Tadier:**

I think the point we wanted to clarify is whether the Royal Court at the moment ... because it is basically being implied that the Royal Court do not do a good job, that is the way I am hearing it. The Royal Court are not capable of refusing entry to someone. The question I would want to know is is it first of all legitimate that somebody be denied the right of appeal. So if a 1(1)(k) applicant genuinely thinks that they have a right to set up in Jersey, is it right for them to be denied that?

**The Deputy Bailiff:**

I am sorry, that is a completely new point, that is not the point you raised earlier, Deputy, and so it is too late to raise that now after the debate is over. That is not the point you raised earlier about people had a right of appeal.

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

Could the Attorney General comment on anything that has been raised that might be helpful.

**Mr. W.J. Bailhache Q.C., H.M. Attorney General:**

Only to say, Sir, very briefly, because as you rightly say it is a new point, the amendment to the regulations do not take away the right of appeal to the Royal Court. There is still the right of appeal to the Royal Court by somebody who makes an application under Regulation 1(1)(k) and is refused on the grounds that it is not in the best interests of the community. Such a person can still, if he chooses, appeal that decision to the Royal Court. What the amendment does is it makes it absolutely plain that in taking into account the interests of the community the Minister for Housing is acting lawfully. On the particular facts of a particular case there may be an argument as to

whether the interests of the community go one way or another but that is a matter of fact for the Minister on every case.

**The Deputy Bailiff:**

Very well, the appel is called for.

**Deputy M. Tadier:**

Can I ask for another piece of clarification?

**The Deputy Bailiff:**

I am sorry, Deputy, you are too late. Members, if they want to raise things, must do it during the course of debate not after the debate has finished.

**Deputy M. Tadier:**

I believe the original point I did raise was in relation to the actual terminology and the phrase “in the best interests of Jersey” and I think that was what I was trying to seek clarification on if I recall correctly.

**The Deputy Bailiff:**

Sorry, you asked what is meant by the expression.

**Deputy M. Tadier:**

Yes.

**The Deputy Bailiff:**

Attorney General, you want to give clarification on that.

**The Attorney General:**

I think that is a matter of judgment and discretion for the Minister for Housing in any particular case as to the way in which he thinks the best interests of the community ... where they fall. If he gets that wrong there is a right of appeal to the court against his determination.

**The Deputy Bailiff:**

Very well, the appeal was called for so I invite Members to return to their seat on Regulation 2 and the Greffier will open the voting.

<b>POUR: 36</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Senator S. Syvret		
Senator P.F.C. Ozouf		Senator A. Breckon		
Senator T.J. Le Main		Deputy of St. Martin		
Senator B.E. Shenton		Deputy R.G. Le Hérissier (S)		
Senator F.E. Cohen		Deputy J.A. Martin (H)		
Senator J.L. Perchard		Deputy G.P. Southern (H)		

Senator S.C. Ferguson		Deputy of Grouville		
Senator A.J.D. Maclean		Deputy S. Pitman (H)		
Senator B.I. Le Marquand		Deputy M. Tadier (B)		
Connétable of St. Ouen		Deputy of St. Mary		
Connétable of St. Helier		Deputy T.M. Pitman (H)		
Connétable of Trinity		Deputy M.R. Higgins (H)		
Connétable of Grouville		Deputy D. De Sousa (H)		
Connétable of St. Brelade		Deputy J.M. Maçon (S)		
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy J.B. Fox (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				

Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				

**The Deputy Bailiff:**

Do you propose Regulation 3, Minister?

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

Yes.

**The Deputy Bailiff:**

Seconded? [Seconded] Does any Member wish to speak on Regulation 3? All those in favour of adopting Regulation 3, kindly show?

**Deputy J.M. Maçon:**

Can we have appel, please.

**The Deputy Bailiff:**

On Regulation 3?

**Deputy J.M. Maçon:**

Oh no, never mind, Sir.

**The Deputy Bailiff:**

Very well, all those in favour of adopting Regulation 3, kindly show? Those against? Regulation 3 is adopted. Do you propose the Regulations in Third Reading, Minister? Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Regulations in Third Reading?

**Deputy J.M. Maçon:**

Can we have the appeal, Sir?

**The Deputy Bailiff:**

Very well. The appel is called for in relation to the Third Reading so the Greffier will open the voting.

<b>POUR: 40</b>		<b>CONTRE: 7</b>		<b>ABSTAIN: 3</b>
Senator P.F. Routier		Senator S. Syvret		Deputy M. Tadier (B)
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		Deputy of St. Mary
Senator T.J. Le Main		Deputy of Grouville		Deputy M.R. Higgins (H)
Senator B.E. Shenton		Deputy S. Pitman (H)		
Senator F.E. Cohen		Deputy T.M. Pitman (H)		
Senator J.L. Perchard		Deputy D. De Sousa (H)		
Senator A. Breckon		Deputy J.M. Maçon (S)		
Senator S.C. Ferguson				

Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				

Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				

**Senator S. Syvret:**

As I remarked yesterday, I am seeking to defer debate on P.49. I am having some discussions over an amendment to the amendment by the Council of Ministers, which are proving to be difficult. Apparently it is okay for my proposition to be negative by an amendment but their amendment cannot be negative by an amendment. I am still trying to quite get to the bottom of that.

**The Deputy Bailiff:**

Senator, as you well know, your proposition is not negated by the Council of Ministers amendment.

**Senator S. Syvret:**

Well, it is. At the moment I have ... that is one of merely 3 propositions I am trying to table at present which have been repeatedly nitpicked and obstructed so I am going to have to defer this.

**The Deputy Bailiff:**

When you lodge things which are in order they will be allowed, when you lodge things which are not in order, Senator, they will not be.

**Senator S. Syvret:**

I would be grateful if even standards were applied to all.

**The Deputy Bailiff:**

Which they are - applied across the board.

**2. Committee of Inquiry: Reg's Skips Ltd. – Planning applications (P.50/2009)**

**The Deputy Bailiff:**

Now, the Senator defers debate on that one so then we come to P.50 Committee of Inquiry: Reg's Skips Limited - Planning Application in the name of the Minister for Planning and Environment and I will ask the Greffier to read the proposition.

**The Deputy of St. Mary:**

On a point of order, can I just ask when the statement from the Minister will be taken because it was earlier in the order paper than this projet, and I just wonder when we are going to hear this statement.

**The Deputy Bailiff:**

We can take it whenever Members wish. Would the Members like to take the Minister's statement now? Is it a convenient moment?

**Senator A.J.H. Maclean:**

I am very happy to make it now if Members wish. I see the Minister is keen to do Reg's Skips ...

**The Deputy of St. John:**

On a point of order, if the Minister or his Assistant Minister cannot give the statement on time surely it should fall to the end of the agenda.

**The Deputy Bailiff:**

I think it is a matter for Members. Shall we proceed with Reg's Skips at the moment and then see what happens after that. Very well, the Greffier will read Reg's Skips.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion (a) to agree that a Committee of Inquiry should be established in accordance with Standing Order 146 to inquire into a definite matter of public importance, namely to investigate all planning matters relating to the various relevant planning applications made by, or on behalf of, Reg's Skips Ltd. in connection with the activities of the company as skip operators, (i) to determine whether the various planning applications were determined appropriately and to a standard expected of the Planning and Environment Department; and (ii) to establish whether the legal fees accrued by Reg's Skips Ltd. totalling nearly £300,000 was as a result of any failings in the processes or actions of the Planning and Environment Department; (b) to request the Chief Minister to take the necessary steps to select a suitable Chairman and members to undertake the Inquiry and to bring forward to the States for approval the necessary proposition relating to their appointment.

**2.1 Senator F.E. Cohen (Minister for Planning and Environment):**

During the recent debate on Reg's Skips, Members raised a number of concerns about the performance and decisions of the Planning and Environment Department. Much of the concerns related to whether or not the department had encouraged Reg's Skips to move to Heatherbrae Farm in 2005. I am determined that when suggestions are made that the department has made poor decisions or that standards are below those that could reasonably be expected that there is a full and frank independent investigation to clarify the facts. I have followed this policy previously and have commissioned independent investigations. We should not be too precious about the likelihood of making mistakes. Planning is a subjective process where errors are inevitable. To put it into perspective, Planning processes 2,500 applications a year. If we get 99 per cent absolutely perfectly right that still means that we will get 25 wrong every year. The important thing is that we learn from our mistakes and endeavour not to repeat them. However, whatever we do we will never develop a perfect process in the Planning Department. That does not mean that I am saying that there are errors in relation to Reg's Skips but it does mean that I think that they should be fully and independently investigated. It is absolutely essential that public confidence is maintained in the decisions and actions of the Planning and Environment Department and that we are seen when we do or are accused of making errors to properly and thoroughly investigate such errors. In the case of Reg's Skips the issues raised are significant and I believe that the most appropriate way forward is therefore to establish a committee of inquiry. The inquiry should concentrate on the planning issues and determine whether or not the Planning Department made errors and whether or not any such errors led to Reg's Skips financial predicament. I believe it is absolutely appropriate that I lodge this proposition. From the public perspective the Minister is seen as the guardian of the department and when there are suggestions that errors have been made, the Minister should always be expected to instigate appropriate inquiry. In the most serious cases the most appropriate method is a committee of inquiry. In order to ensure the independence in the selection of the Chairman and members of the committee of inquiry this proposition leaves this selection to the Chief Minister. I urge Members to support this proposition.

**The Deputy Bailiff:**

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

**2.1.1 Deputy P.V.F. Le Claire:**

In gladly seconding the proposition I welcome the move by the Minister to take this action. It has been highlighted already in the comments from the Minister for Treasury and Resources that the funding will have to come from the Minister's budget and no doubt a narrow inquiry such as this will be able to be conducted, in my view, with limited impact upon the budget of the Planning and Environment Committee. In supporting this I would just like to add that I am also running for Assistant Minister and I am happy to support this. [Laughter]

### **3. Committee of Inquiry: Reg's Skips Ltd. – Planning applications (P.50/2009) – amendment**

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

Now, there is an amendment to the proposition in the name of Deputy Le Hérissier and I will ask the Greffier to read the amendment

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

Page 2, Paragraph (a), after sub-paragraph (ii) insert the following new sub-paragraph: “(iii) to make recommendations for changes and improvements to the planning process to ensure that any failings identified in relation to these applications are not repeated in the future.”

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

I am accepting the amendment.

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

I will say a few words but I would like to thank the Minister for his acceptance and say how much I appreciate his kindness and support over the last few years. But I think I ought to make some points because I was slightly thrown by his comments. It is, in a sense, a very minor amendment and why I put it forward was not that the Minister should clothe himself in sackcloth and ashes but there is a concept that was imported into Britain called Kaizen. It came from the Japanese motor industry and it related to the days when British car factories, generally on Friday afternoons, used to sort of knock the cars off the production line into shape with hammers, because basically the production line had not worked and the Japanese said: “This is truly awful and you ought to have a system which builds in proper quality as the car is moving along the line, not try and hammer into shape as it comes off the line.” That really is the point I am trying to make. The Minister said: “Oh, look at the statistics” but the point is - the Deputy of St. John, as I recall, made this great point - this was a major, major failing. There were some major alarm bells that rang in this case and when the Minister gave his response to people like the Deputy of St. John and Senator Shenton he took a very narrow view, and I know he crossed swords with the Deputy solely, for example, on some factual issues. He never said: “Look, there are some major issues with our system here, something seems to have gone wrong, and I really need to look into it.” We have got to have a system, a Kaizen system, that really works and minimises faults or rings alarm bells at appropriate stages. I felt the response did not embrace that kind of thinking. That is why I felt this somewhat modest amendment was called for. I know the Minister is very open to that change but I really think he has to take on board the full realisation of what may have gone wrong and that means really owning up. The second reason, and why I have got this rather sad little phrase that we will learn from our failings as if somehow we are attending Sunday School - we will learn from our failings - is I sat through a lot of sittings of a Connex inquiry and a lot of people observed. It was an inquiry that was allowed - until the recent resolution of the compensation and that brings another issue up which we will not go into - it drifted for a long, long time and there was never any attempt to pin down what had truly gone wrong and for the department to answer in those terms to this Assembly. It just drifted and drifted and drifted. That is why I want that particular point to be made and I want us to see as an Assembly, through a report - and I am sure the Minister will do this - how have procedures been strengthened, how has Kaizen been introduced to the department. Thank you, I move the amendment.

**The Deputy Bailiff:**

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

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

I should just say that I have met with Mrs. Pinel in relation to Reg's Skips to get a better understanding of the whole issue following I think what all Members will agree was a very uncomfortable debate and a number of unresolved issues as a result of Senator Shenton's proposition. We said at the time that it was not a vote against Senator Shenton's proposition; it was that there was considerable sympathy and a need to understand the issues. An amendment has been made, which is supported, by Deputy Le Hérissier. Some discussion was taken about whether or not there should be a wider review of the other issues which were raised in the debate. I regard even this amendment and the slightly broadening of this inquiry to be welcome but I do not think that this necessarily is going to be the end of the investigation in the matter. We need to first of all understand the issues of planning, certainly - as the amendment puts forward - make recommendations to the planning process. There are other issues and I would just make some comments in the substantive debate, because it is not appropriate to say them now, in relation to the wider issues that I have just learned about in relation to the legal fees. But widening it to make recommendations is obviously a good thing.

**3.1.2 Senator J.L. Perchard:**

Briefly, Senator Ozouf alluded to speaking on the wider issue to do with this case and Deputy Le Hérissier ... it seems we do not even need an inquiry because he has already made up his mind the Planning Department are to blame. That may be the case. This is simply about whether to hold an inquiry. The substantive proposition is that and we must resist debating the detail.

**The Deputy Bailiff:**

Does any other Member wish to speak? Very well, I call upon Deputy Le Hérissier to reply.

**3.1.3 Deputy R.G. Le Hérissier:**

I thank Senator Ozouf for his words and I must say it is unfortunate Senator Perchard thinks that way but I totally refute it.

**The Deputy Bailiff:**

Very well, all those in favour of adopting amendment, kindly show? Those against? The amendment is adopted so we return to the proposition of the Minister as amended. Does any Member wish to speak on that? Senator Ozouf.

**4. Committee of Inquiry: Reg's Skips Ltd. – Planning applications (P.50/2009)**

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

Very briefly. The proposition now before the Assembly is in part A(2), is to establish whether the legal fees accrued by Reg's Skips totalling £300,000 was result of any failings in the process or actions of the Planning and Environment Department. Without in any way ... and I do not know what the facts are and what the inquiry will conclude in terms of the failure of the Planning Department, certainly in relation to the legal fees there are issues, and there are issues that need to be questioned going forward. I just would ... I say this with some hesitation. I express the hope that the lawyers involved would not progress action in relation to this matter until not only this inquiry has concluded but other inquiries into the way in which individuals could be put in and gotten into the situation of effectively owing some £300,000. I would say it is not probably even £300,000 because there has been taxation and appeals and mediation and all sorts of other things going on, I think that there are issues about the legal process. I am not criticising, I just think that there are some questions and some further clarification and understanding of how individuals could have gotten into this situation which need answering. I express the hope that the people concerned

are not actioned or progressed until all inquiries have concluded. I should just say one thing about the £15,000 for the Committee of Inquiry, the Treasury always has to be difficult with departments in relation to their spending, this is not a large amount of money; the discussions about 11(8) requests, et cetera, yesterday, I would give the Minister for Planning and Environment the assurance that while it is expected to be taken from his limited resources and from the limited amount of unallocated money that he has got in his department I would regard this as a first call on any underspends for next year in the event of needing to put forward further resources to get a proper inquiry done in the appropriate way that Members would expect.

#### **4.2 Senator B.E. Shenton:**

I will be very brief. I would like to thank the Minister for Planning and Environment for bringing this proposition. From my research an inquiry is certainly due and I look forward to the results. Also Deputy Le Hérisier was going to bring this proposition and was beaten to the punch by the Minister for Planning and Environment and I think this works out quite well because it means that Planning will pay for the Committee of Inquiry whereas if Deputy Le Hérisier had brought it we would have had to go through all the hoops of where are you going to get the money from. So I ask Members to support this and I think it is the right course of action.

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

Again, very brief. Just the fact that maybe we get some idea from the summing-up of the timescale. We know they have got to appoint a panel, got to come back to the States, et cetera. I would hope that this is not going to be a long running saga and we will get a timescale from the Minister in his summing-up.

#### **4.4 Deputy R.G. Le Hérisier:**

Just a brief thing, the Minister for Treasury and Resources set a hare running and I do hope we have set the right terms for this inquiry but there are issues which he is now, shall we say, uncovering through his own inquiries, I would have thought they should be dealt with by bodies, perhaps like, for example, the Jersey Law Society. I do not want to feel, and I am sure Senator Shenton does not, that we have started on a road to an inquiry and then all of a sudden, rather like a defoliating flower, we are going to find more and more things are exposed as we progress. I hope that this will be a proper inquiry and it will bring comfort and not just lead to other inquiries.

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

Will the Deputy give way? To clarify there are certain different aspects that need to be reviewed. The planning matter is a separate and discrete matter from some of the other issues about the lawyer charges and there may well be issues of Law Society, et cetera. Those are separate issues and I would not wish ... and I do not think this inquiry should be polluted by those separate issues. This is just Planning. I do not want to have any hares running but there are perhaps other matters - certainly that have been drawn to my attention - which in the public interest we would wish, I think, this Assembly to understand or at least a delegated number of us to understand.

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

I am pleased for the injection by the Minister for Treasury and Resources; in other words do not muddy the waters, let us deal with one issue at a time. It is important that we see justice done from within this Chamber and within the Island and therefore I will not say more than that, but let the legal process be dealt with at another time. Let us go ahead and support the Minister with his report and proposition.

#### **4.6 Deputy A.E. Jeune of St. Brelade:**

I applaud the Minister for bringing this proposition to the House. In his opening words he said: "We learn from our mistakes." That is a must and we should also ensure if and where we do make mistakes, we address all the issues that result. I believe the amendment seeks to ensure that. This

is good management and must be applied not just to Planning and Environment but all States Departments. I welcome the proposition.

#### **4.7 The Deputy of St. Mary:**

I will be brief. I entirely agree with the previous comments which were ones I was going to make myself and I also agree completely with the proposer about how important it is to maintain confidence in the planning process, especially as it is always under pressure in a place like Jersey. I just want to make one point about the funding. I did check the Standing Order and so on. I do find it a little bit strange that the Minister for Treasury and Resources is directing that the cost of the committee of inquiry should be met by the people being investigated or by the department which is sort of looking at itself. I just wonder whether anyone else would want to comment on this issue of where funds should properly come from when a department is being scrutinised in this way. I just have a niggle here that this is not satisfactory and that it should not come from the department's budget who are being looked at.

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

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

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

Thank you to those Members who have raised points. Firstly, I would like to say that I cannot claim credit for the principle of a Minister proposing a committee of inquiry into his own department. Indeed the concept was established by my esteemed immediate predecessor, Senator Ozouf, who as President of the Environment and Public Services Committee commissioned the committee of inquiry into the Trinity infill issue. So I am merely following an established precedent. Senator Ozouf raised the issue of requesting lawyers to hold off taking action for the recovery of fees in relation to Reg's Skips. I concur entirely. The position, regardless of the committee of inquiry, Mr. and Mrs. Pinel find themselves in is extraordinarily difficult for them and I have the greatest sympathy for them. I would indeed urge lawyers who are involved in this matter to hold off, if they possibly can, to see the outcome of this Committee of Inquiry and any subsequent or related inquiries. Senator Ozouf raised the issue of the fees coming from first call on carry forwards, I am delighted to hear that because while £15,000 maybe a relatively small sum to larger departments, it is a significant sum to the Planning and Environment Department which has been under-resourced for many years and struggling to fund such issues as the unscheduled north of town master plan, which indeed is most important. So £15,000 is an issue for us. The Deputy of St. Mary raised the issue of whether it was appropriate - he thought it was rather niggling, I think - that the department being investigated was responsible for paying for the inquiry. But do remember, the department will not have control of the inquiry. The Chief Minister will bring forward to the House recommendations for a chairman and members of the committee and they will act entirely outside of the Planning and Environment Department. But, indeed, if the Deputy of St. Mary can convince the Minister for Treasury and Resources that someone else should pay I would, of course, entirely support such a suggestion. **[Laughter]** Senator Shenton supported the Committee of Inquiry and I am grateful to him for that. The Deputy of St. Martin asked for a timescale. I am afraid I am completely unable to give you a timescale. The Committee of Inquiry will be set up, I hope, relatively quickly but, again, it is up to the Chief Minister to bring forward the proposed names to this House for approval and the timescale, of course, will be in the hands of the Committee of Inquiry. What is important is that they act quickly and that they do their job properly and that we have a full and thorough investigation. It certainly should not be rushed. The issue raised by Deputy Le Hérissier was answered by Senator Ozouf so I do not need to go into that further. The Deputy of St. John wanted to see justice. He is quite right. That is the intention of this. The department will be investigated holistically and whatever comes out of this we will address and ensure that mistakes, if there were any, are not repeated, which also answers the issue raised by Deputy Jeune who supported the amendment, quite rightly, and suggested that we must

learn from our mistakes. I hope that has answered all questions and I urge Members to support the proposition and I call for the appel.

**The Deputy Bailiff:**

The appel is called for in relation to the proposition of the Minister for Planning and Environment. I invite Members to return to their designated seats and the Greffier will open the voting.

<b>POUR: 46</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				

Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

## **LUNCHEON ADJOURNMENT PROPOSED**

### **Senator P.F. Routier:**

Before we start the next item, to be fair to the proposer of the next item, rather than have just a short start, I would propose the adjournment now, Sir.

### **The Deputy Bailiff:**

It is either the adjournment or whether we take the Minister's statement, although there is 10 minutes questioning allowed for that.

**Senator P.F. Routier:**

All right, I propose the adjournment, Sir.

**The Deputy Bailiff:**

The adjournment is proposed. Do Members agree to the adjournment?

**The Deputy of St. John:**

Why do we not try and finish the business?

**The Deputy Bailiff:**

You have your proposition, Deputy.

**The Deputy of St. John:**

I am hoping they will all support it.

**The Deputy Bailiff:**

Do Members want to vote? All those in favour of the adjournment, kindly show? Those against? The adjournment is agreed. One moment, Members, I am so sorry, before formally adjourning can I inform Members of 2 matters which have been lodged. The first one was lodged yesterday but was not announced, that is States Employees' Pay Increase for 2009-10 - Projet 68 - lodged by the Deputy of St. John. Secondly, lodged today, Commissioners of Appeal for Income Tax appointment - Projet 70 - lodged by the Minister for Treasury and Resources. There is one other matter I think I would like to mention. I have been informed that the Dean was taken into hospital yesterday and is undergoing tests so I am sure Members will wish him a speedy recovery. **[Approbation]** Very well, adjourned until 2.15 p.m.

**LUNCHEON ADJOURNMENT**

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

Twenty-six Members are present, I therefore, in accordance with Standing Orders, request the usher to summon the Members. Very well, the Assembly is quorate and we now move to the next item of business which is remaining on the order paper, although there was a decision yesterday on moving the order, which is Family X: Placement in the United Kingdom.

**Senator P.F. Routier:**

Excuse me, Sir, I believe the media cannot hear.

**5. Family X: Placement in the United Kingdom (P.62/2009)**

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

Deputy Le Claire, I understand you wish to proceed with the debate.

**Deputy P.V.F. Le Claire:**

Yes, I believe it is something that will give the Assembly 'belt and braces' in respect of this family. I do not believe there is a need for a lengthy debate and I would just like to move straight to the vote after it has been proposed.

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

That will be a matter for Members, Deputy, if you propose it the debate will be opened and every Member will be entitled to speak. So I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion; (a) to request the Minister for Health and Social Services to take the necessary steps to ensure that the X children are moved as soon as possible to the United Kingdom placements that have been identified as suitable for them; and (b) to request the Minister for Treasury and Resources to assess whether the funding required for these placements can be identified through the reprioritisation of existing heads of expenditure and, if not, to further request the Minister to bring forward for approval a request under Article 11(8) of the Public Finances (Jersey) Law 2005 for the necessary additional funding to meet the cost of these payments in 2009 in view of their urgency and to then make appropriate provision in future annual business plans to meet the on-going annual cost.

**5.1 Deputy P.V.F. Le Claire:**

The Minister for Treasury and Resources has already very kindly agreed to fund the money to get the children to the place that they need to go. The Minister for Health and Social Services has made a very good decision at an early stage, this will ensure that the request is made as a States decision to request the Minister for Treasury and Resources to provide in future annual business plans the ongoing annual cost and I make the proposition.

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

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

**5.1.1 Connétable J.M. Refault of St. Peter:**

Yes, I second the proposition and if I may just have a few brief words. I think - through the Chair - Members you will have seen Deputy Le Claire yesterday and the reaction when he first spoke about Family X. I too have come into contact with Family X and everyone that has either worked with them or has met them have the same reaction. I would implore Members to respect the privacy and to go straight to the vote, if possible. Thank you.

**5.1.2 Deputy G.P. Southern:**

Since yesterday we set a precedent that words can mean what we choose them to mean then it matters not today that some of this has already been done. I think we can take it as read. But what is important is that funding is identified for the subsequent years so we are not in a stop-go position. That clear instruction from the States goes to the Minister for Treasury and Resources that the funding will continue into the subsequent years and that is an important thing to read into this proposition and why I support it.

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

I call upon Deputy Le Claire to reply if he wishes.

**5.1.3 Deputy P.V.F. Le Claire:**

I thank once again the Minister for Treasury and Resources, the Minister for Health and Social Services and the Constable of St. Peter and Deputy Southern for their remarks and ask for the appel, please.

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

Very well, the appel is called for on the proposition. If all Members are in their designated seats the Greffier will the opening for or against the proposition of Deputy Le Claire.

<b>POUR: 38</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator S. Syvret				
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator S.C. Ferguson				
Connétable of St. Helier				

Connétable of Grouville				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

## **6. Code of Conduct for Elected Members of the States: review (P.63/2009)**

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

We come now to the proposition in the name of the Deputy of St. John: Code of Conduct for Elected Members of the States: review. I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to request the Privileges and Procedures Committee to review the Code of Conduct for Elected Members of the States and the sanctions available for breaches of the Code and put forward measures to ensure that States Members maintain acceptable standards of behaviour when undertaking their public duties.

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

Over the years in this Chamber I have seen certain behaviour of our elected Members which concerns me, whether it be a senior Senator chastising a new Deputy for the manner in which he presented himself when speaking, or when I was in the Chamber in the mid-1990s when Senator Syvret was removed from the Assembly by the Speaker of the day. I was also present in 2005 when, in the Members' computer room, 2 Senators came to blows. I recall some 5 or 6 years ago on a royal visit when a Member failed to stand for our royal guests and I asked that Member why they had not stood. Their reply was that they had no time for the royal family. So I put a second

question and asked why they had attended, and their response had been they came for the meal. These and other instances were few and far between. But since my return to this House in December 2008 one thing that has pained me is the lack of respect some Members have for others, both elected and non-elected. I was surprised that Privileges and Procedures had not brought to the House for debate a robust Code of Conduct. In the absence of P.P.C. (Privileges and Procedures Committee) doing this, I have brought today a report and proposition asking for the review of the Code. Can I apologise to the Assembly here and now if I stand on anyone's toes in my speech. Most of you know me well enough to know that it is the way I express myself. That said, if you are upset by my remarks I am sure you will let me know in no uncertain terms when Members speak. As I have said in my report, we are seeing States Members being arrested for various offences, and in some cases pleading guilty to offences, yet within our Code of Conduct there is nothing to prevent these Members who have pleaded guilty from putting questions to the Law Officers or bringing changes to the law under which he or she has been charged prior to the case being heard by the courts. This cannot be right. A member of the public is not permitted to ask Her Majesty's Attorney General or Her Majesty's Solicitor General questions on issues to do with charges for offences to which they have pleaded guilty, nor should a States Member be permitted to do so. In other areas, we have seen 2 Senators going head to head with a verbal exchange in this Chamber which has resulted in a Minister resigning after months of infighting between the 2 Members. That is still going on, it was happening again yesterday. We see here as well, as in other parliaments around the world, a war of words by politicians over offensive emails being sent out. This is an area I would ask P.P.C. to look at and put in place a robust procedure after taking advice from Data Protection, the Law Officers, *et cetera*, and returning to this Chamber with a system that can be put in place that would benefit all Members, both elected and non-elected while reviewing the Code of Conduct. I would respectfully request that P.P.C. look at the position of elected Members' immunity from prosecution while carrying out their legitimate business as elected Members of the Government. But this may already be in train. In putting any Code of Conduct together I would expect a monetary sanction available as well as a period of suspension from office, which would give a Member considerable thought as to the actions he or she takes against fellow Members. With the removal of one's wages for a week or 2 then it may be sufficient to bring us to our senses. Members must respect others and in turn will regain the respect of the Members and the public at large. I ask Members to respect my report and proposition and accept it as a way forward so we may all be better prepared to take our Island forward through the stormy seas that lie ahead. In making the proposition there are no significant financial and manpower implications arising from this proposition other than the time that will be needed to draft the amendment to Standing Orders in relation to the Code. I make the proposition.

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

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition?  
The Deputy of St. Mary.

**6.1.1 The Deputy of St. Mary:**

I am still scribbling the last few words but never mind. I do welcome this proposition from the Deputy of St. John, but in the limited sense that it does give us an opportunity to look at the way we conduct ourselves and that is an important matter. I know that Senator Ferguson often objects to us looking at ourselves, but in fact these things do matter and so this proposition matters. But I do feel that in some respects I take quite a different angle to the Deputy of St. John and I feel that there is underlying this proposition things that I am certainly not too happy with. I would like to cover a few things. One is the ... I will start by talking about acceptability. What do we mean when we talk about acceptable behaviour? I will give some examples of that. Then I will move on to what really is important in terms of acceptable and not acceptable and hopefully what is to be done about it. So, acceptable: if person A is upsetting person B - and I have had personal experience of this kind of situation over quite a long time, not direct involvement but observing the situation as it

unfolded - we assume that person B is being upset so they are the wronged party so person A is therefore in the wrong. That is the kind of going assumption. But it is quite suspect because it could be that person B, the one being upset, is being upset for “no good reason” or they are being upset because they are super-sensitive, or they are being upset because they had a bad night, or whatever it might be. So I just question the presumption behind acceptable if person A is upsetting person B therefore person A has done something wrong. It may be a little bit more complicated than that. The Deputy, in his opening remarks, gave a very good example of this when he talked about someone who refused to stand for a member of the royal family. Now, in his view ... I think he said: “I was upset.” I think the Deputy said that. That clearly comes into this sort of category. Some people do not feel they should stand for a member of the royal family. Now, I agree that in the context of this Assembly, a member of the royal family sitting there, that is quite a bit step to take but nevertheless this person took it. The Deputy found this very hard to take but you could argue that the other person/party was within their rights. Now, to bring an example that is closer to home, if I take my jacket off, now I am not going to do this even on radio **[Laughter]** but because I am too hot ... now there are many reasons why I should want to take my jacket off. I am too hot, I do not function well when I am too hot, I have got a very sensitive thermostat and I sort of ... I notice other Members, as soon as they get out of here they take their jackets off, which is interesting, that means they have been too hot while they have been in here. So here we are sitting, deciding important things, having interesting and exciting debates about important matters and we are too hot, or many of us are, so we are doing our job while our functioning is impaired. I also have a cold and I have forgotten to bring in my water and my throat is bothering me and that is partly due to the fact of being slow-roasted in here on a daily basis. I am picking up some lessons from Deputy Le Hérisier. Anyway, some would be upset if I took my jacket off and others would not. I think that those who would be upset would say my behaviour would upset the decorum of the House, some would say it would show lack of respect for the Chamber, and some would say it would even show lack of respect for the office. Now, I suspect that there are quite a few Members who are younger in mind and spirit - and that is a bit of a slur on the others, but there you go - who would not be so upset. The question is, in my view, or the key matter is what does the public expect of us? They expect of us to do our job well. They expect of us to take the right decisions and to engage with each other and with the public in an open and honest manner. I shall come back to that later. So the question of acceptability is not as simple as the proposer is possibly suggesting. I think it is fraught with difficulty. What we have in the Code of Conduct as it is now is quite a carefully worded - again those words - stab at how we should behave. I read it admittedly when I was being inducted and it did seem to me at that time - I have not had a close look at it again - to be pretty well on the button. It seemed a pretty good Code of Conduct and I did not have any major issues with it. That has codified what Members feel is acceptable, how we should behave to each other. We are free to propose specific amendments as and when we feel that there is some specific issue that is not covered or that has arisen more recently and I think at the bottom of this proposition is just that. Some issues that have arisen recently about possibly the use of language, I do not know exactly where the proposition comes from, but I feel that perhaps it should be more specific and it should be recommended to P.P.C. that they look at certain specific matters that the Deputy of St. John is not happy with. Now, I mentioned what the public expects of us and doing our duty by the public and I come now to what I take to be real matters of acceptability, really important matters of when we go over the line and when we act in a way that is definitely contrary to the Code of Conduct, and I refer to openness, transparency and truth management as the Deputy Tadier mentioned in a note to all Members today. He pointed out quite correctly that in last sitting we were misled by some comments from, I think it was, the Council of Ministers in their comments on his proposition about timing of oral questions. Now, he is absolutely right, those comments were meant to ... they were calculated to be misleading, they did not ...

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

I am not sure it is proper to say they were calculated to be misleading, that is quite a serious imputation. Obviously they may have proved to be misleading but I do not think I can let you say they were calculated to be misleading. It is a very serious allegation.

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

All right, I shall amend that to they gave sources and a very partial view of the truth was presented to Members in a way that would mislead them. Now, that was one issue that happened the last sitting, another issue was the comments, I think, again of the Council of Ministers on Deputy Hill's proposition about suspension where they said, and I quote: "It says ..." - that is proposition says - and then some words and then end quote and the proposition did not say that. Now, that is a serious matter. If we cannot talk to each other honestly, especially in written documentation, which one presumably should be able to take at face value but which we now know we no longer can, we have to investigate every word, everything to make sure that the source has been quoted in the round in a way that gives a true impression. We have to make sure that a statement that is in quotes is a statement that was there. Where does this all go? That was just in the last sitting. If we go further back we have Imagine Jersey 2035; I will not dwell on that, but just to say that the opinions of the public at that event were misrepresented in the press and that gave me great sorrow and it gave me great anger because I went to that event in the Royal Yacht ... and I felt - and presumably other people there felt too - that they had been manipulated, that their views have been misrepresented, and that is a serious charge to make. But I think it was and I think the goal was to present that the public were okay with an increase in the population, and those methods that were necessary were used to get there. I will be talking about that more in the debate we have on population later on in this session of the States, but I just mention it as an example of how deeply we have betrayed the public. That was a major event on a major matter of importance, the population of the Island - probably the most important single matter - and I feel that event was managed in a way that was not worthy. Then there is the second example more recently; I am sorry to go back to it, but it was pretty startling at the time to be told that water with 40 more times lead in it, and so on - 100 times more iron in it than ambient - was sea water and rain water mixed. I do not know what the purpose of saying that was. I just find this really, really hard to take. It is covered in Standing Orders that we have to be open and, I think, honest with each other. It is certainly in there. I just bring these matters again to our attention to point out to the good Deputy that acceptability does have some really important connotations. I take them to be in this area of what Deputy Tadier mentioned, called "truth management". I think that is where we should be concentrating our gaze. When we talk about treating each other correctly and we talk about treating the public openly, then these things really matter. I was talking to a Deputy outside the House in the lunch break and he said: "Well, but the public are not interested." That was a throwaway remark. We were talking about the number of people who go to public meetings, and so on, in the area of general political debate. That is a very sad statement that comes back to this issue of trust in the Government; it comes back to the issue of whether people out there feel that we and they are working together; whether they can trust what they are being told and have an honest debate; when they are being consulted with in consultation documents that it is up front, that it does what it says on the tin and that the consultation will be done honourably and properly. I have another example - which I will not go into - of consultation that seemed to have been skewed. So I do want to put to Members that these are the important areas. I just commend those thoughts to the Deputy of St. John. I am not quite sure how they fit into his proposition but I think my recommendation to him would be that I am not really happy with this proposition. It should be more specific. We should be asking P.P.C.: "This, and this I am not happy with, would you look at those again?" But on the whole, the Code of Conduct does cover in general what these issues are about. To try to tie them down, to try to make them more specific is a dangerous way to go, probably. One further comment - the last comment - when I think in the proposition it talks about "sanctions", that goes back to what I have been saying about how difficult this whole area is. If you are wheeling out a

week's loss of pay or a month's this or exclusion from the Chamber on the basis of things that are highly disputable then you just have to tread very carefully. Thank you for listening.

### 6.1.2 Senator S. Syvret:

I probably will not be able to be here for the vote because I have to go as I have a meeting with a group of yet more abuse survivors later this afternoon. As this proposition is plainly largely targeted at me, I think it is only fair that I suggest that - given the work I have had to do and the battles I have had to fight over the last 2 years or so - before Members or anyone else for that matter rush to judgment against my conduct, they just try and consider the things that I have been dealing with and the things I have been fighting for and the people upon whose behalf I have been fighting. It is going to be quite sad in some ways that I will not be here for the vote because I was going to vote for the proposition. I do enjoy a good joke. The carrying of this proposition will be very helpful to me because I shall add it as yet another evidential item in my forthcoming personal human rights legal action against Jack Straw in London, which will be a very interesting thing indeed because I will at least get a full hearing in court on that. But it is worth looking at some of the issues because if the Assembly had any sense it would throw this out - and any similar propositions - with very little debate because there are a number of very obvious reasons as to why going down this kind of path can only be, essentially, profoundly undemocratic and a threat to the free expression of the will of the people. For example, the Deputy of St. John, the proposer of this proposition, does not like the fact that I or other Members questioned the Attorney General. Well, I happen to consider that if it is unacceptable for me or other Members to question the Attorney General, then it is equally unacceptable for the Attorney General to be in the Chamber, even to be in a position to be answering questions about such matters in the first place. This illustrates I think what is the great problem with these kinds of moves to whip into shape political dissidents and make them behave themselves and stop rocking the boat. It is the kind of absolutely comical double-standards we see in virtually every quarter. I mentioned earlier, I have no fewer than 3 propositions I am trying to get lodged at the moment, all 3 of which have been interfered with and obstructed, even though there is no provision whatsoever in Standing Orders that confers upon the Bailiff or Deputy Bailiff the power to amend the content of a report. Double-standards, I am afraid; double-standards, making it up as we go along. I was very interested with the speech of the Deputy of St. Mary because he touched upon a lot of the items of behaviour - bad behaviour, bad conduct - things that the public would look upon as being truly terrible. But perhaps the majority of Members in this Assembly do not even recognise or - even if they do - do not take it sufficiently seriously. For example, any disciplinary accusations against me I regard as entirely trivial in comparison to quite nakedly going before the electorate at election time pledging to support exemptions for G.S.T. (Goods and Services Tax) on essentials [**Approbation**] and then betraying that electoral promise within a matter of months. I consider that to be despicable and reprehensible behaviour. But do I believe that we should sanction individual Members for that, for that kind of betrayal of the public's trust and faith? No, I do not. Because the instant we start going down the path where a majority of Members of this Assembly decide they can take it to themselves to start deciding what other Members of the Assembly - especially the minority Members of the Assembly - can do and say and how they act, then we are well into the territory of tyranny by the majority. There is no respectable legislature in the democratic world that confers upon the dominant grouping - the dominant party, the majority in the Assembly - the right to intimidate, harass and oppress minority Members of the Assembly. Yet we have a Chamber here in which the culture is exactly that. This Assembly and the majority in it positively revels in its ability to harass, intimidate and try and constrain minority Members and indeed the debate we are having now is yet another example of that. I consider Ministers and Committees - as they were in the old days - and so on, writing reports to the Assembly that had complete untruths in them, I consider that reprehensible behaviour. I remember when I brought a vote of no confidence against the previous Council of Ministers. There were assertions in that report that were so brazenly and demonstrably untrue, that I just had to laugh out loud when I read them. They tried to claim things like they were

responsible for the appointment of Professor Thorburn, and so on, in the child protection stuff, when the truth is I had to identify and make contact with and recruit Professor Thorburn myself, individually, in the teeth of opposition from the officers in my own department and my then colleagues on the Council of Ministers. That is the evidence as to proof. I have another example of a pack of lies which I am going to be saving up to deliver to the Scrutiny Panel when we start examining these issues. If we are looking at Members' behaviour, bear in mind that a lot of Members of this Assembly - the Ministers principally - have statutory duties they are obliged to carry out. They are bound by law to carry out certain actions and to fulfil certain duties. For example, in my case I was bound by the Children (Jersey) Law and I was fulfilling the requirements of that Law. Information had come into my possession which showed the system to be failing catastrophically and I tried to take action against those failures. Yet, in an act of absurd political partisan opportunism, the rest of the Council of Ministers decided that they would get rid of me. Effectively, they were getting rid of me because I was carrying out my statutory duty and they and the officers to whom they are beholden did not like that; did not like the fact that the boat was being rocked. So as far as I am concerned and indeed I have made this complaint to the police and given them very detailed statements but somehow I cannot imagine the Attorney General ... this one ever getting across his desk somehow. What happened then and what took place was effectively a conspiracy to pervert the course of justice because I was aware of multitudes of criminal offences against children I was trying to expose and the Attorney General, Solicitor General of the day, the Council of Ministers, and a lot of the senior officers, conspired to stop me from doing it. But of course that complaint - along with about 15 others I have made to the police - will get absolutely nowhere because there is a Member of the Assembly over there who is a *de facto* unelected politician who will make sure that that is the case. So when we are talking about the conduct of Members of this Assembly, I also think it is important that we talk about the conduct of the unelected Members of this Assembly because at the moment they are able to exercise all kinds of powers and obstructions over ordinary elected Members of this Assembly, to a degree that would be quite extraordinary in virtually any other Western legislature: they can be inconsistent; they can be biased; they can use their positions for partisan political purposes, and there is absolutely no effective or practical remedy against anything that they may do. The Deputy of St. John mentioned an occasion - and he raised this, not me - in 1995 when the Bailiff caused me to be suspended indefinitely from the Assembly. That is another example that I would hold up as utterly reprehensible behaviour because there was no provision whatsoever - in either the States of Jersey Law or the Standing Orders of the day - for indefinite suspension. It just did not exist. The Bailiff just invented it and made it up as he went along. To make things even worse, when he put the vote to the Assembly not only was I - but other Members too - not allowed to question it and speak in my defence. It is that kind of utter casting aside and trampling into the dirt of natural justice; is that supposed to be regarded as good, sound and respectable behaviour? A majority of Members of this Assembly might think so but I can assure you the vast majority of Members of every respectable Western legislature would not. Indeed, I was thrown out on that occasion because I had exposed a then Member of the Assembly using his position in this Chamber to forward the passage of a very, very controversial piece of legislation. That, as I discovered, was being introduced at the sole and express request of his own law firm. Contrary to the dishonest assertions that were made in this Assembly at the time, it was evidenced. I do not recollect the Deputy of St. John on that occasion declaring when all that was going on, the indirect interest of the fact that he is a fellow Freemason to the Member who I had exposed.

**The Deputy of St. John:**

A point of order. I have declared umpteen times in this Chamber that I was a Freemason and I am sure the Senator was in the Chamber on many of the occasions when I declared that.

**Senator S. Syvret:**

I do not recollect the Deputy declaring it during the debate in question.

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

Well, presumably, Senator, because there is no requirement in Standing Orders to do so.

### **Senator S. Syvret:**

No, but one would think if we are very concerned about standards of behaviour those kind of conflicts should be declared automatically. But the fact is, I am going to have to go and have my meeting shortly. I would probably vote for this, out of sheer entertainment value, but if the Assembly has got any sense it will get rejected. Because what this Assembly cannot do - if it is to be regarded as credible - is go any further down the path it has already gone too far down, whereby it starts putting in place quasi-disciplinary rules, regulations, sanctions, *et cetera*, that are effectively nothing more than political tools to enable the ruling majority in the Assembly to harass, intimidate, oppress, obstruct and silence the minority Members, the opposition Members. No other respectable legislature in the Western world would go down that path. If our behaviour - if my behaviour - if the behaviour of any other Members is deemed unacceptable, so you then ask: "Well, what then happens? What is the sanction?" The answer to that question is blindingly obvious to any democrat. It is the electorate who cast the judgment at the end of the day as to whether they regard the conduct and the performance of their politicians has been acceptable. It cannot be any other way in a democracy. It cannot be any other way if you are a democrat. The electorate must be the judges of our performance, our conduct and what we have done politically. The instant we get into the position where we usurp the electorate and start interposing ourselves - a majority of Members of this Assembly - and start oppressing, harassing and intimidating minority Members, rather than just letting the electorate be the judge of things, then we are on the path to a police state.

### **6.1.3 Senator A. Breckon:**

I have some sentiment with what the Deputy of St. John is proposing here. I would describe him as - and I am sure he knows what I mean when I say he is - "old school". I say that because some of what it is saying in the proposition is to ensure that States Members maintain acceptable standards of behaviour. I would suggest that may be a matter of opinion and not a matter of fact. What is acceptable to somebody is not acceptable to somebody else and therefore it is opinion, not fact. I think that what some of this is getting back to is respect. It is respect for each other and respect for the system that we operate in. I think we should keep any differences political and not personal. It is good and healthy to have the differences and the challenges that we do have, but we must keep it at a political level. After you can have a cup of tea, or a pint or a glass of wine or whatever it may be, but it must not become personal. I think perhaps some of that unfortunately has happened. The other thing that I would like to touch on is how Members themselves perhaps approach some debates. An issue that comes to mind is the declaration of interest. I have always been careful. In a former life I used to work for Jersey Gas and I was always careful with the Trade and Industry sub-committee, which Deputy Duhamel will remember we were members of, and sometimes there was information before that committee that was sensitive to utilities and I asked not to be circulated with it; I did not take part in things. If there was a discussion or a debate in this House on a lease where the gas company or subsidiary companies were involved - although the interest might have been considered pecuniary and remote - then I did not take part. That was my view on it. I had a couple of rulings from the Bailiff. He said it was remote and I said: "Well, I would still rather not take part." The reason I say that is because when we have had other debates - I remember we had a debate on Sunday Trading and a number of Members of this Assembly with retail interests took part and expressed their view. When we have had G.S.T. debates, people with - what I would consider - too close an interest also took part. So, when we talk about maintaining acceptable standards of behaviour, what exactly does that mean? That is why I think, as I said, it is a matter of opinion and not fact. The other thing - as some of the newer Members might find out - you will get asked to do all sorts of wonderful things to raise money for charity; maybe stand in the stocks or go in a gunk tank. Is that acceptable standards of behaviour? Again, if it is for a good cause you might say, yes, but should we make bigger fools of ourselves? I say "bigger fools of

ourselves” because perhaps that is where we may be going, but again you see it is a matter of opinion. When we have the question and answer sessions, there is a barrier to leap over to get a question in. There is no such thing for the answer. I have seen lots of answers that have not answered the question. So, is that an acceptable standard [**Approbation**] of behaviour from whoever is giving the answer? I know where the Deputy of St. John is coming from but again it is a question of somebody’s judgment here, and I think it is virtually impossible for P.P.C. or anybody else to give a load of guidelines that fit every situation. I do not think we can really do that, but what we must do is maybe get back to our own consciences and decide ourselves - personally and among us - what is acceptable and what is not. I think that coming back to the old school, a lot of that comes back to respect. I was just thinking as well that there are all sorts of occasions, inside and outside this House, where sometimes things happen and things have to be done very quickly and Members have to make their mind up, but I do not think anybody would deliberately bring the good name of this House down in what they do, but sometimes their behaviour might be judged by others - including some of us - not to be acceptable. But, again, I do have a problem with this and I welcome the comments of the Chairman of P.P.C. as to how they might interpret this and do something about it but even if we just put a marker down and perhaps because P.P.C. have been requested to do that, before I vote on this I would welcome the comments of the Chairman of P.P.C. and perhaps others.

#### **6.1.4 Deputy S. Pitman of St. Helier:**

I would just like to point out, with reference to the reports, the first sentence. It says: “In recent months we have seen several members detained or arrested for various offences.” That is incorrect. There has only been one States Member who has been detained and arrested. [**Approbation**] Firstly, and I will be brief because a lot of the points have already been covered but I would like to emphasise the fact that in this House there is a huge imbalance of power and passing such sanctions could be extremely biased and unfair to an individual - as Senator Syvret said - who is in a minority. As to the fines, well we have some in this House with considerable wealth and some not and so this punishment could mean nothing to those with wealth and a considerable punishment to those least well-off. Regarding elected Members, well I too think where are the non-elected Members in this? They have a responsibility to this House and the general public. We are well aware that during the elections there were other candidates who broke the 39(a) Public Elections Law. We also know that the Attorney General was well aware of this and seemingly aware of other States Members, one of whom allegedly admitting a more serious offence. There are also several questions over past actions of a serious nature of the Bailiff, which I will not go into. Whether or not Members believe these officers are perfect, there should be some instruments which can be used in which we can hold such officers to account. I would like the Deputy to answer the question as to why he has not included unelected Members and also, what he is proposing, does this exist in other jurisdictions?

#### **6.1.5 The Connétable of St. Peter:**

I stood to second this proposition that we are debating at the moment. I am rather saddened to hear Senator Syvret say that he thinks this is all about him. If that was the case I would not have stood to second this proposition. It is not all about him; it is about all of us in this Chamber and the way that we behave towards each other and the respect or the lack of it which is shown within this Chamber. When I first came into the Chamber, which was only some 5 months ago now, I was rather dismayed at what I saw to be the lack of respect that there was across the floor of this Chamber from one side of the House to the other. I spoke to a couple of Members around me on that and they said this is the worst it has ever been. That is their view. It is not only their view, it is also the view of the members of the public because many members of the public that I speak to have said to me: “What have you got yourself into?” They are right. They have a view about how we behave in this Chamber. It is not about going into gunk tanks as Senator Breckon said or the things we may do for charity, it is about how we behave here: how effective we are as politicians;

how effective we are at doing the work for the people who put us in here. It is not about having a go at each other across the floor of this Chamber it is about making good debate on good subjects and good principles for the good governance of the people of this Island. Unfortunately, I cannot agree with Senator Breckon when he says it is very difficult to come to a good consensus about what is acceptable behaviour. I stood for this position to make difficult decisions, and this may well be one of them. There will be decisions made through the P.P.C. given on the back of the input of each and every one of us, who will have hopefully an opportunity to have input, to set out own standards of conduct within this Chamber.

#### **6.1.6 Senator B.E. Shenton:**

I would tend to agree with the Constable of St. Peter. When I meet people in the street for the first time I am more inclined to say that I am a banker than a politician because, even in these days, bankers are probably held in a higher esteem than politicians. **[Laughter]** This is not about Senator Syvret and it is not about anyone else as an individual. This is about the Code of Conduct of us all within the Chamber. When I was on the Council of Ministers I used to use the word “perception” quite a lot because it is about how we are perceived to the outside world, and we are not perceived in a very good light at the moment. I am all for rigorous debate, and if you are standing as an independent you have got to expect to take it on the chin if you are being criticised. I was often amazed - especially in the previous House - when Members could stand up and criticise the J.D.A. because it was a party, but if someone stood up as an independent they could not be criticised because then they were being personal. **[Laughter]** It seems a little bit of a one way street. Having said that, you have got to make sure that if you are criticising someone’s policies, you are criticising them on their policy and not on them as an individual. **[Approbation]** I must admit that perhaps I have stepped over that line in the past. I think the public of the Island do perceive this Assembly to be in quite a low esteem at the moment. It does not help when you pick up the *Jersey Evening Post* and find that when 2 of the Members are called before P.P.C. that one of them refuses to go and the other one is a little bit flippant about the effects of going before P.P.C. I think we do need to have higher standards. That does not mean that you can put your beliefs behind you. You can still stand up and shake your fist for what you stand up for, but it is the way you do it that is very, very important. I do not get a lot of time to follow football of late but I was reading about Alan Shearer who has taken over at Newcastle United. Since he joined he has brought in a much stronger discipline standard at Newcastle United. It is said it got very lax. People were coming and going as they pleased, and the dress code had slipped, and so on. I notice that they have pulled themselves out of the bottom 3 and it looks like they may well survive. Well, unfortunately, if we were a football club we would be in the bottom 3 at the moment. Senator Syvret goes on about there is no other Western democracy that would depress the minorities like they oppress Senator Syvret. But I do not think there is any other Western democracy that would put up with the actions of someone like Senator Syvret. So I think we can draw a line under this. I did not read this as an attack on anyone in particular. I just read it as someone saying the perception of us all, and we are all politicians, and maybe it is just me but the number of people that come up to me and say: “They are all useless”, they do not go: “They are all useless except you” they go: “They are all useless” and I would rather just for once someone come up to me and say: “You are all doing a very good job.”

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

I commend the Deputy of St. John for he reflects much of the views of people I have spoken to. In fact, I have not heard an alternative view spoken. This is not to stifle democracy nor is it to stifle differences of opinion and it is important that we all realise we have fundamentally different opinions, but we have been elected to have different opinions. The important matter is that we are able to express those differing opinions in an atmosphere of courtesy both within this Assembly and outside and I will pick on one fellow Member as an example. Deputy Southern has fundamentally different political views to me. However, we are able to express our differences in an atmosphere

of courtesy and consideration with some amusement and have done so over the last 3½ years. Never once have I felt embarrassed to express my views in fear that he was going to retort in an aggressive or inappropriate manner, and I hope he has felt the same. That is important; that we are all able to feel that we can express our views without feeling that we will be humiliated or that others will act against us as a result. For we are a small jurisdiction, we are smaller than most county councils and it is, therefore, important that as we have the structures of a nation that we must maintain what is at the very heart of those structures and that is maintaining the dignity of this Assembly. We all sit surrounded by the history of this Assembly and much of that is reflected in the dignity that previously applied in this Assembly and, undoubtedly, there has been a reduction in a sense of Members' respect for the required dignity of the Assembly. We must deal with the Crown Officers in a respectful and respectable manner. Whether we like their views or not they are providing a function and doing their very best to play their part in maintaining our important democracy, and the best way of maintaining our much cherished structures that have evolved over a period of over 800 years is by ensuring that we have mechanisms to force the House to maintain the dignity of the Assembly. Regrettably, therefore, in the current circumstances proper sanctions are required and I, therefore, wholeheartedly support the Deputy of St. John's proposition and urge other Members to do the same.

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

I too welcome the Deputy of St. John's proposal. I think this is a useful piece that we have been given here and I hope it will add to the cathartic process which the House seems to be going through. In the light of it, I would like to make a short statement. Members will be aware - and it is in the context of the debate - of some allegations that have been going around. I think it is very important at the moment for the reputation of the House, for other Members and also for myself that I clarify the situation regarding the "sleeping beauty" incident as we might want to call it or otherwise. So I will just clarify and the reason I do this is because I think it is unfair that other Members are maybe having their reputations ... or they are being asked: "Was it you who was caught in the Chamber the other day?" and so I would just like to clarify the facts that I believe it was me they are talking about but I would like to put to rest some of the more scurrilous and what I believe to be false allegations that are being put over. So I would quite simply say that some time about 2 weeks ago, I believe after one of the States sittings, I was out with the Care Leavers' Association. I believe Senator Alan Breckon and Deputy Le Hérissier, among other Members, were also present and that was a social event and afterwards I was with some of the constituents from the Care Leavers' Association. I was working in town until quite late. I did enter the Chamber to finish off some work. It is very peaceful as you all know at that time of night and I was working for part of the time in the computer room, part of the time in one of the side rooms and I decided that I had lots of work to do and that is what I was doing. There may have been a point where I did drop off and I am quite happy to say I do not believe that is a crime. States Members have access 24/7 to the building. I believe that is right and proper that we chose to carry our work out as and when we see fit. Some Members chose to burn the candle at one end. I know my good Deputy Sean Power likes to rise early and do work; sometimes I see fit to stay up late to get my work done. That was something I was certainly used to doing as a student and I think that would hopefully put some of the speculation to rest. Certainly if anyone has an alternative version of events I would like them to come forward now but I do not think it is useful for speculation and wild rumours to be going around about drunkenness because that certainly was not the case. If anyone wants to say otherwise I would be happy to talk to them but that will hopefully clarify for States Members and the public.

#### **The Connétable of St. John:**

Excuse me just a moment. Can I just thank the Deputy for getting 52 of us off the hook.  
[Laughter]

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

That is really the reason, but to bring us back to a more serious point and I do not want to go on too long about this particular proposition because as a Member of P.P.C. I have been able to discuss the issue and we have our own opinion on that. I think the actual wording of the proposition itself is nothing too controversial. It is simply charging P.P.C. to review the sanctions available. What I would say though is I was interested by the comments of the Connétable of St. Peter - and it does seem all of a sudden to have got hotter in here but we shall be keeping our jackets on no doubt - about the underlying tensions in the States that there does seem to be, certainly anecdotally, a lot of, what shall we call it, possibly hostility, certainly a lot more vocal dissent and obviously part of that has to be seen to be a good thing. Good dialectal debate in a Chamber, be it between the left and right or conflicting ideas, as we know in a Hegelian sense can produce a really good synthesis hopefully. That is the idea that you have thesis, antithesis and you can come to some kind of consensus. Unfortunately, that last part seems to be lacking in Jersey. We seem to have developed to a certain point where we have 2 conflicting ideologies if you like, and no real middle ground can be found and I would suspect this is perhaps a necessary part of the process that we are going through as part of the maturing of local politics in our democracy. But I would suggest that is the real reason there is an underlying tension politically and that is manifesting itself in outward hostility and sometimes it comes out in personalities. That is regrettable but I would suggest it is very difficult sometimes to separate the personalities from the politics which is certainly something we must do. I will not say any more than that and I hope Members will be happy with the statement I have given.

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

That soon? The list cannot be that long then so we may get away some time today. Briefly, I would like to thank the contribution made by Senator Cohen for praising me inordinately when I continually refer to him, most annoyingly I am sure, as the Minister for Door Handles. Be that as it may, yes, he always treats me with the utmost respect and, indeed, the only thing offensive about him is his charm offensive. That said, I disagree almost entirely with the conclusion he came to that this proposition and some form of sanction was what was necessary in order for him to stop being so charming to me because sometimes it upsets me **[Laughter]**. We are talking about people upsetting ... charm does upset me occasionally as the Minister for Economic Development knows too well. I keep asking him to stop being so charming to me. Just tell me straight and he never does, he always does it very charmingly and I wonder if I have been told off or if we disagree at all, when I know fundamentally we do. We are at polar opposites, but never mind. So what does this strange mish-mash of a proposition contain? Let us focus our minds a bit and let us turn to the Code of Conduct for Elected Members that we are supposed to be reviewing and item 5 in the Principles in Practice say: "Elected Members should, at all times, conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Jersey and shall endeavour [an important word that] in the course of their public and private conduct not to act in a manner which would bring the States or its Members generally into disrepute." It then goes on: "Elected Members should at all times treat other Members of the States, officers, and members of the public with respect and courtesy and without malice, notwithstanding the disagreements on issues and policy which are a normal part of the political process." So at its core that is what we are talking about; maintaining the integrity of the States and treating the other Members of the States, officers and members of the public with respect, courtesy and without malice. The Deputy of St. Mary started it off on the right foot when he talked about the principles underlying this and he said: "Is it respectful to spin a piece of information in order to seek to mislead, to give a false impression of what the facts are?" Is that respect? I do not believe it is. It is treating Members with the ultimate disrespect of thinking you can pull the wool over their eyes just because you have the title Minister or you are a Member of the Council of Ministers and, yes, it happens time and time and time again. Is it respectful, as Senator Syvret stated, for Members to promise - see that wet, see that dry, cross my heart and hope to die - to vote for exemptions on food and then 5 months later turn around and not do that? Some Members in this

House did exactly that. Is that respectful to the public? It is not. Does it bring this House into disrepute? Absolutely. Promises made at the hustings, as we know full well, mean what we take them to mean - often absolutely nothing. That is the fundamental reason why this House is not widely respected out there and I join the club that Senator Shenton's in, indeed I must meet the same people because they universally say: "You are all the same. You are all a waste of space." Yes, including me, you are right, let us pass on, let us move on. Do not argue the toss because in many ways perhaps they are right. But here we are and we are talking about some sanctions. Now let us focus on that for a minute. As Deputy Shona Pitman has already pointed out, some of us are relatively wealthy, some of us are less so. It is one of the points of dispute I often have with Senator Cohen because he swears blind that his taxable income is about the same as mine. He may well be right but then he has a better accountant than I have and I do not think his total wealth is the same as mine. We are now talking about sanctions; some sort of monetary sanctions is suggested in the report from the good Deputy on my left. Is that a sensible way forward? I do not believe so. Some form of suspension is suggested. Some form of docking of pay is suggested. Is that the way to enforce standards? I seriously do not believe it is. I think that is a very, very dangerous ground. Why? Because it will be Members of this House making judgments and making rulings and making fines and suspensions on other Members of this House in a completely amateur way and given what some of us can do unaided, I hesitate to think what we might do if we got together and decided who was going to get fined, who was going to get suspended, *et cetera*. My, we could have fun with that, could we not? That would be open to all sorts of political chicanery. Or would it? No, of course, Members of this House would never sink so low - and I have said that before and it happened - as to be open to political chicanery but the suspicion would always be there. Why have you picked on this party? Oh, hang on, we have only got one party. Why have you picked on this person and not that person? Why this level of fine? Why the suspension? Why are you acting now in this case and not in that case? It would be open to the most almighty rows and respect for this House, would it go up? I doubt it. It would go down again; down, down, down again. That is the reality. For example, I chose to break the law contained in Article 39(a). I was convinced at the time and I said so at the time that I believed it was not human rights compliant and it disproportionately limited the rights of disabled and housebound people to get a postal vote and, thereby, to vote or participate in the electoral process. Now I may be right or wrong in that but I believe I did it with integrity. It was my honest judgment in the balance of harm that I believed it was a harmful act. I understood how it was brought in because it apparently was supposed to relate to actual acts of fraud taking place in the U.K., where the system is different and you can get bespoke postal voting ballot forms sent to your own address as a candidate or as a party. Now that is open to fraud, our system is not. The request for a postal ballot form is not the same as a ballot paper and the candidate is never anywhere near a ballot paper nor has it been proven, but on the back of that moral panic this House voted in Article 39(a) on the grounds that somehow the mere act of knocking on someone's door and canvassing their vote and then helping them, where appropriate, to fill in that form was said to be some form of undue influence.

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

Deputy, there is a debate coming on this. You said yourself last week that you agree the matter should be deferred. I think it is time to move on.

**Deputy G.P. Southern:**

I am moving on. So I am before the court next week to be sentenced. Is it for this body to suspend me or to fine me as well? How much are you going to fine me? More or less than my legal fees which, believe you me, are already substantial and are one of the reasons why I will not be taking Rosa Park's (?) line anymore except with extreme caution because I have learnt my lesson and it is appropriate that the courts and the court process have taught me my lesson; absolutely. It is appropriate perhaps, as Senator Syvret said before, who is the ultimate judge of us as politicians? Why, the electorate. Now I hope they forgive me in 2 years time but they may not. They may say:

“That was absolutely abysmal. That was the pits. Off you go.” I will take my punishment. I will take my punishment in the courts. Do not bring that process in here and start in an amateurish **[Approbation]** way dishing out punishments ourselves on ourselves. That is not the way forward. We are also criticised for asking questions of the Attorney General. The Attorney General presents himself as the legal adviser to all Members of the States; the Ministers, Back-Benchers, Scrutiny, all of us. The channel for legal advice is the Law Officers Department- the Attorney General. So if I want to know about the way in which a law is worded and what it means in general terms, it does not matter that I am to be prosecuted through that. It is not *sub judice* in the sense of I am asking about me. I am asking about the law. I asked the Attorney General. That upsets the Deputy of St. John. Should I be punished for that? I do not believe so. The fact is that in terms of whether it is human rights compliant, the Attorney General has given advice to the old P.P.C. Committee and, thereby, it is privileged; it is confidential so I cannot know what that advice was because he cannot tell me. But be that as it may, I can and I have and I will continue to ask. The Attorney General knows exactly where to draw the line because he is an experienced man used to giving advice in the States and he knows about *sub judice*. He is a lawyer so he knows how far he can go and what advice he can give and he has done that to the limit that he can and some of his information has been very useful indeed. For example, only last week he said: “Article 39(a) cannot be interpreted in any way, shape or form as undue influence.” It could not possibly be which is very satisfying because that is part of my mitigation - not my defence - my mitigation as to the way in which I acted. The point is, however, that we should not be setting ourselves up to be a Kangaroo Court. That is not the way forward. I shall be voting against this half-baked proposition, with respect, from the Deputy of St. John and I urge Members to vote against it as well.

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

I think one of the most unfortunate ramifications of some of the scurrilous comments and statements made by Members both in and out of the Chamber is the effect it has on the States employees’ morale. Members will be aware that as States Members they are part of the body that employs States employees and thus must carry a degree of responsibility. It is so easy to make off-the-cuff remarks but I would urge P.P.C. to consider this particular facet of Members’ behaviour when reviewing the Code. I think the Deputy of St. Mary alleged that my department was responsible for disseminating misinformation. I do take exception to this, not only personally but also on behalf of my staff in whom I have the utmost confidence. Very often we suffer from selective interpretation and I would suggest that very often better communications between all parties can only be advantageous, and not only to save staff a lot of time but to give accurate answers and give the public value for money which as States Members we must do. I think it is also important that we respect that we have different opinions and I know there are those Members in this House that do not seem to be able to do that but we almost sometimes have to agree to disagree. It cannot be overlooked that we all come from different backgrounds and educational systems and this no doubt colours the way in which we carry ourselves in this House, but I think we have to realise that the States Chamber has a code which we must adhere to and I think this is what the Deputy of St. John is trying to draw our attention to and I fully respect him for doing that so I shall support him and I should urge other Members to do the same.

#### **6.1.11 Connétable J. Gallichan of St. Mary:**

I would like to draw Members back to the proposition. We are talking about the Code of Conduct for Elected Members here. Many Members have strayed off what the proposition is. It is purely that: to discuss the Code of Conduct for Elected Members and the sanctions available. I would stress that the Assembly has determined its own Code of Conduct. It was not forced upon the Assembly, it was determined by the Assembly. It was also determined previously what methods are used by the Privileges and Procedures Committee to investigate breaches of this Code of Conduct. The comments of the P.P.C. are clear. We support this proposition. We have been working for some time on looking into ways in which we could perhaps strengthen the Code

through a meaningful sanction. When I stood for this position as Chairman of P.P.C., I expressed my frustration at the lack of tools that P.P.C. have in order to maintain the standards which we have set for ourselves. If Deputy Southern is concerned about the kinds of sanctions that will be brought then he has the absolute right to challenge that proposition when it comes. That is democracy; that is how it works. I am grateful for the Deputy of St. John for bringing this proposition. When I first read it, I thought, well, it is totally superfluous because the P.P.C. is looking at that anyway, but in fact this is an excellent opportunity for Members of the Assembly to air their views as to what they are looking for from States standards and to what they are looking for the P.P.C. to be able to do to maintain those standards. I hope out of this debate there will be perhaps something that we can use to reinforce, strengthen or perhaps even temper the proposals that we are very near the point of lodging at this particular moment. I think it is important to say that what the proposition requests us to do is look at the Code and put forward measures. The examples given in the report really should not colour the way we are looking at things; they are illustrative. The thing we are voting on here is the proposition that P.P.C. undertakes work that is already in its remit and strengthens, if necessary, the Code. I would point out that the P.P.C. does not necessarily feel that the Code is defective but it is not entirely effective and that is surely due to the lack of sanctions and this Assembly can rest assured that when P.P.C. brings its proposals which it hopefully will do extremely shortly, having listened to the results of this debate, they will have been informed by the usual work that our officers do in investigating what happens in other jurisdictions, in other parliaments and they can rest assured that we hope to bring forward measured proposals; proposals which will reinforce the integrity which States Members must act with and not to challenge their democratic role. Deputy Southern has already alluded to certain areas of the Code of Conduct ... other Members who have spoken, even those expressing concern at some of this proposal, the Code of Conduct they have said seems to be reasonably quite balanced. It is not extreme. It sets out what is acceptable and what is not and as I have said, the committee believes that it is not necessarily defective in its current form. The work of P.P.C. is almost complete on this and I am sure that almost immediately after this proposition has been finished we will be in a position to lodge something for Members' further discussion but I commend the proposition and I certainly support it.

**The Deputy of St. Mary:**

Can I ask for a point of clarification from the previous speaker? I just want to be sure that when you bring this proposition and you say you will bring evidence of what the situation is in other parliaments and jurisdictions, whether this information will be complete and accurate?

**The Connétable of St. Mary:**

I have just made a statement to that effect and I am quite shocked that the Deputy of St. Mary would challenge me on that. I do not think my integrity has ever been questioned in this Chamber and I resent it being questioned now. [Approval]

**The Deputy of St. Mary:**

I am sorry, I may have gone too far there but I suppose I was affected by other things that have been happening in this Chamber recently.

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

I think perhaps you should withdraw any allegation, Deputy, that the Chairman would do otherwise. Perhaps you should make that clear that you are not making an assertion that the Deputy would be likely to do that. You are asking a question.

**The Deputy of St. Mary:**

Yes, I am confirming that she will not.

**6.1.12 Deputy T.M. Pitman:**

It is getting hotter and hotter so it must be nearly home time. I found this debate really informative because sitting where I do I had always wondered why the Deputy of St. John had one trouser leg rolled up but now I know, it is because he is a Freemason. I support a strong Code. I do not think that what we have now is defective. My concern is how it might be developed and whether that will be fair. Because what is showing a lack of respect? I think somebody said already it is different in the eyes of all and that will be informed by where you are coming from. I was fortunate to have a first management role while I was still under 20 and I can remember the Managing Director of this firm giving me a stern talking to and telling me: "I do not care what you say to me or about me as long as you are willing to say it to my face" and that is the way I like to try and live. Certainly far more adult than going behind people's backs, I think. But let us just consider a few of the things that might be considered to be disrespectful or breaching the Code, and I will not go into some of them at length because they have been touched on. Come election time States Members who do mislead the voters ... I would say in some cases intentionally because they change their whole platform in 3 months. That is a huge affront to people and it must bring this House into disrepute, and G.S.T. has to be a prime example. How can someone happily maybe get 1,000 votes extra because they supported G.S.T. exemptions then 3 or 4 months later say the world has changed when, in fact, the world had not changed that much at all? Again, Ministers who give only partial or even misleading answers - and I use Ministers because, let us face it, it is the Ministers who we are usually questioning. Worst of all is the double-standards. I have listened to the Assembly for more years than I can remember and when people say it is currently worse than it has ever been I really have to raise my eyebrows at that. This brings in the issue of how these things are enforced because I have sat by and listened to people like Deputy Southern, Deputy Martin, *et cetera*, called communists, called corrupt because they were in a party by a Member who is no longer here. It was never challenged from the Chair; not a bit of it. It seems to vary and it has to be said it is totally different what you can say if you are a Member of the establishment as to what you can say if you are one of the dishonourable 17.

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

Deputy, are you making an assertion that the Chair is acting in this way or are you just referring to Members generally because I do not think you can make that ...

**Deputy T.M. Pitman:**

I think I am saying when any Chair - and I am not aiming it at any particular person - sits in silence when some aspersion is cast then that has to be wrong. It should be the same for everyone. I could give some examples if you would like me to to back it up.

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

All I would say from the Chair, Deputy, is it not an easy job sitting here.

**Deputy T.M. Pitman:**

I appreciate that.

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

We do our best but there are times I sit here myself and I think I should have called somebody up and I did not and I have had occasions when perhaps he went too far. I do not think you should make an assertion this is done willingly and deliberately ... **[Approbation]**

**Deputy T.M. Pitman:**

There is some good foot stamping from the establishment there. I will accept your word.

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

You are welcome to come and try it. **[Laughter]**

**Deputy T.M. Pitman:**

I may well do when the speaker is independent [**Members: Oh!**]. It was a joke. Do not be so sensitive. Or sitting here when people make scant ... probably the worst thing I have ever heard in this House were false allegations of electoral fraud and who had to intervene? Senator Syvret, the *bête noire* of politics. I do not support everything Senator Syvret says or does. Far from it, but on that occasion there was no intervention from the Chair until another Member intervened. I wonder what would have happened if I had made that statement.

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

Exactly the same thing, Deputy.

**Deputy T.M. Pitman:**

I will not respond. So again, what is respect? I think constant interruptions; some people cleverly seem to make 3 or 4 speeches with various interruptions on points of order or clarification and I have to say the Deputy of St. John is a master. He really gets his money's worth. I should probably salute him for that but that is one thing I find annoying. If we go to some system where we are going to be fined or banned, what sort of appeal is going to be involved? Because whether we like it or not, though the makeup of the House is changing, there is still the establishment - if we can call them that - who are still in the majority. I am confident it will not be that way within 2 elections but even then it would still be wrong to have people voting when there is one dominant factor. It would be totally wrong whether that was left, right or whatever. So perhaps the Deputy or P.P.C. can tell me what sort of appeal there would be because there are bound to be contentious instances. Again, what is disrespect? Well, I think a very good example was the Deputy of St. Mary when he brought his incinerator rescindment and he was rubbished. I think he was described as barking mad or words very similar because he had gone out and done research. Is that behaving within the Code? Certainly, in my interpretation it would not be. Yet things like that go unchallenged. So what are we going to have, are we going to have someone hauled in front of P.P.C. almost every week? I do not happen to believe the House is worse than it has ever been and certainly the people I meet do not think that. People are pleased to see there is some balance now and the so-called anti-establishment faction are more and more able to hold their own probably because the argument is more often with us. I come back to it: I do support the Code of Conduct. I do not get overly upset if someone wants to say something quite strongly-worded about me. I can challenge it I hope and I hope that challenge would be accepted back in the same way. I think we really should be focusing on bigger things; the whole make-up of the States of Jersey. Why, for instance it can be an awful crime to help someone who is perhaps a stroke victim or disabled to complete a registration form yet, as I say, we are happy to print complete rubbish on a manifesto that we seemingly have no intention of following through when we are elected? That is far worse to me. So if there is some kind of review I would like it to go really quite a long way not just to the surface issues. I think there are too many people in the House who are happy to try and make political gain from opportunities. I mean today we have seen an instance. We could be talking about how bad the housing situation is that a Member has to sleep in the Chamber but instead all these bizarre stories have been going about, about somebody being drunk and slumbering in the facilities room or whatever and that is a shame, I think. So I must admit I am not really clear on whether I will support this or not. I support the strong Code. I am very concerned about sanctions that will be applied to people when, as Senator Syvret said I think, they are in a minority; and without any explanation of how an appeal system will be in place because to say it all comes back to us and that is democracy, as I say that is not good enough when one faction, as it were, holds sway as it still does. So I have no problem with the Deputy of St. John bringing this. I will probably listen to his summing-up and make up my mind. Incidentally, to put this in perspective, just a few weeks ago the Deputy of St. John was talking to Deputy Southern and myself and I am sure he will correct me if I have got this wrong but he said: "I actually like you 2 because I know where I stand with you. I might not always agree with you." That is all I would ask of other

people. Let us not get upset over ridiculous things. Let us not always portray the left or the centre-left as dishonourable anti-Jersey way. Complete and utter nonsense and that does none of us any favours. So I think I will end on that note and just say I will wait and see what wondrous insights the Deputy has got in his summing-up and make up my mind, but I hope he can enlighten me as to what type of appeal process he envisages.

**6.1.13 Deputy C.H. Egré of St. Peter:**

It is just to add to what my Chairman has already said based on what has been said recently. We are reviewing at the moment, which is really following the proposition from Deputy St. John. The one point I would make is the rules and regulations that run this Assembly are sanctioned by this Assembly. I just want to point out to the last speaker but one. It will not be up to the Privileges and Procedures to come up with some form of personalised system. It is something that will have to come in front of this House and be accepted by this House and I just wanted to make that point absolutely clear.

**Deputy T.M. Pitman:**

The House, as I point out, is uneven with the best will in the world ...

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

It sounds like a second speech to me, Deputy. You are trying your luck.

**6.1.14 Deputy A.E. Jeune:**

Professionals, for example lawyers, doctors, nurses and other health professionals - I would not wish to miss them out - and many other professions abide by a Code of Conduct which they have regularly reviewed in order to ensure that they are fit for purpose. As politicians we are paid, and from the public purse, and should be no different so I welcome this proposition and thank the Deputy of St. John for bringing it.

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

Does any other Member wish to speak? Deputy Maçon.

**6.1.15 Deputy J.M. Maçon:**

Just going back to what the actual proposition says: "... and put forward measures to ensure States Members maintain acceptable standards of behaviour when undertaking their public duties." It kind of ties-in with what Senator Breckon said earlier. We are public figures. We are under constant scrutiny of the public and what might be acceptable to the public in certain terms might be unacceptable to public members in other terms and because I do have concern over that I would hope the proposer could clarify that for me given we are public figures. Also, I will not go on about this point but again what Deputy S. Pitman raised about the issue of monies and fines. I would not want P.P.C. to pursue this in that because if we are saying if a Member behaves badly they will receive £X fine, a richer Member may be able to say: "Well, I do not have to care about the rules because I can support myself" [**Approbation**] whereas a poorer Member may have to say: "Well, I cannot do X, Y and Z because I have my family to think about, I have got my mortgage to pay" and so on, so I do not think that is a good road we should be going down. However, I will have to say that what I think the Deputy was trying to point out when proposing this is when you have questions to the Attorney General ... the problem he had was more when it was issues that concerned the individual Member and that particular law and not necessarily things in general. However, we also have to measure it against perhaps smaller - of course all laws are important - offences, perhaps driving issues. For example, an issue may come up with a constituent where you need clarification on a driving law in which a Member may be also under the same type of charges in which case if we are saying this is unacceptable for a Member to raise such a question to the A.G. (Attorney General) or S.G. (Solicitor General), again there is a concern about where do we draw the line on this and it might be important, it might be relevant, it might not be. Also I would

like to highlight things like media portrayal and politicisation of issues. Certain Members are highlighted particularly by the media and other Members are not. This, of course will filter out into the public and then this kind of links into what Senator Shenton was saying. When we talk about politicians as a homogeneous group then there is one strong feeling but then when you talk to members of the public about individual politicians ... I know one particular Senator polarises the public, some absolutely hate him, some absolutely adore the Senator. Other individual politicians when you are talking about them there will be some who say: "Yes, that individual Member is very hard-working, does a very good job." I would just like to conclude with saying that the majority of Members, because it seems to come across that we accept that the Members are behaving badly, but the majority of Members are behaving very well and have good standards and are polite to each other [**Approbation**] and I think we need to bear this in mind as well.

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

As a Member of P.P.C., I support the Deputy's proposition and the reason is quite simple because what he is asking for is what we are already doing. We have been looking at obviously the Codes of Conduct, we have been looking at possible sanctions and so on, but what I would say is it is absolutely essential that whatever measures P.P.C. brings forward are balanced and will achieve consensus in this Chamber because if P.P.C. come forward with divided measures and then the House also becomes divided you have the worst of both worlds. It has got to be something that we will sign-up to and as I say, if there has been accusations, majority versus minority or whatever, but if there are factions within this Chamber who are driving things one way or another then we will fail and we will bring the House into disrepute. So what I do say is we will try and bring the best possible measures forward and I hope we will have consensus when we do otherwise as I say we are heading for a fall, a big one.

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

Just a few salutary cautions and I am very grateful to Deputy Higgins because there is no doubt that discipline does divide P.P.C. and quite frankly the political colour of the person appearing in front of it often leads to that division and it makes it a relatively weak body. It happened with me, it is happening quite clearly with the current group and you get these calls from other groups in the States, you are not being tough enough, you are not making decisions and it all goes down, sadly, because of the impossibility of distinguishing between the personality and the content of the offence. It all starts to divide itself totally on political lines and I find that very, very difficult to work with in this small jurisdiction. There was an argument once and the Attorney General was involved that there should be an appeal to the Royal Court but this was seen quite rightly as a surrender of parliamentary privilege and, as you well know, there was a debate about that and the decision was very strongly made that the retention of discipline over Members should stay with the House. But by staying with the House it does stoke-up problems for us. Of that there is no doubt because you are often faced with a divided committee where people are blind to the content of the offence and they focus entirely on the political colour of the individual and the pressures that have brought that case to where it is. So I am afraid much as the Deputy of St. John is to be commended for wanting, shall we say, a clearer line and perhaps a tougher line, whether he will achieve much beyond a rhetoric of toughness, if that is what he is after is quite frankly ... While Members themselves ... unless there is some device we can come up with where independents... and there is a little provision already in Standing Orders where independents can get involved in the process - if anyone is as unwise as that to want to get involved of course that is another matter - but if independents get involved that I can see as the only possible solution. The next thing I would say is to be fair Deputy Southern said that he has a right, as did Senator Syvret, to ask the Attorney General, but oddly enough I think we do have to be fair. The whole debate is not about the general issue of asking questions of the Attorney General, it is asking questions about the cases in which those particular individuals are involved. I have to say, because as Deputy Southern and Deputy Pitman know, I have a basic disagreement with the way they are approaching this, not that it is my

direct business it should be said. I have to say this is not going down well with the public and quite frankly it would help restore their political capital ... which is why I was pleased to hear Deputy Southern's gracious sort of speech as he enters the final run-in, so to speak. The view is that we as Members do have, by virtue of our membership here, extra privileges by being in this House not given to other members of the public who may themselves be in front of the courts and they have not got that ability to question the basis upon which their case is being formulated and progressed and my personal view is, and they know it, I just think very wrong. The other issue is, we have had this argument and I do feel some sympathy with it, that one set of misdemeanours can be excused because there is a greater set of misdemeanours being committed. For example, that the establishment are doing things which morally or politically or whatever ... whose effect is greater than the use of coarse or angry language than the making of casual and unnecessary allegations against civil servants. One set of misdemeanours excuses another set. Again I think that is a dangerous road to travel quite frankly but it is a road that is often used so that you can excuse yourself. Some of it also ... I think quite frankly people are saying, and I see where Deputy Pitman is coming from ... you know people are making these statements. Now there is a difference between political hyperbole and making perhaps a promise which you then do a total u-turn with but people are making these statements on electoral campaigns. Well, politics for good or for bad is about hyperbole. I mean we do have in today's *Jersey Evening Post* a photograph of a very young and stress free looking Deputy Noel, for example. Now we might say he is deliberately misleading the public **[Laughter]** because we know the effect of stress and explaining 500 times the 1(1)(k) taxation policy. We know what it is doing to him but the public are quite clearly going to be misled. So I say there is a certain latitude where you just have to go along and take it with a big pinch of salt and hope you can apply the appropriate degree of cynicism or scepticism. But the bigger issue is the point that has been made by Deputy Tadier and was made as an introduction by the Deputy of St. Mary. I have always struggled with this and the Minister for Treasury and Resources said yesterday: "Will I ever be convinced by anything he says?" Well, in a sense I will not because he has never ever been convinced by anything I have said, not that he has to be and maybe I have made a total set of totally unconvincing points, but I think the bigger issue is - and I used to debate this *ad nauseam* and quite interestingly with the former Deputy Dubras - we are a House that pretends to be a consensus House where we will have a rough and tumble and then consensus will be reached and that demands that we run the place on a degree of trust, we run the place on a degree of understanding and we listen to each other. Quite frankly, I find that in fairly short supply that people really listen. I would ask Members just to reflect as a side aspect of that - and I am accused so often of sitting on the fence but I would much prefer to be sitting on the fence when I am struggling to make a decision on that fence - how many times do Members say: "By Jove, I never thought that but I have really come to a different view. That Member has put a very different view forward. Yes, they are not my cup of tea in terms of their overall values or whatever, but I have come to a very different view." In terms of managing the overall situation of the House and trying to prevent the kind of deterioration to which Senator Shenton alluded and which all Members of the public currently believe, I think Members of the so-called establishment have to look at themselves and say are we manipulating the situation because there are some people in the establishment who on the one hand play a great game of consensus but underneath they are very skilled macavelian players, of that there is no doubt, and you only have to catch them in an off-moment to get their macavelian analysis of what is going on in the House to realise just where they do stand. So for them to preach to other people and say: "Oh, you are not handling this well. You are being unreasonable. You are not listening to me" when they have quite clearly got a totally pre-determined agenda which will be handled either by macavelian techniques, dare I say it even charm offences or whatever, suggest to me that they have missed a political trick in the overall management of the House and increasing the level of trust. They have missed a political trick and they are marginalising people when they could deal with people, quite frankly, in other ways and much more effectively.

**6.1.18 Connétable J.L.S. Gallichan of Trinity:**

Could Deputy Le Hérisser repeat his speech, I cannot remember what he said. **[Laughter]**

**The Attorney General:**

If I may speak very briefly and I do so with great hesitation knowing and understanding the view expressed by some Members that this is a Code for elected Members and not unelected Members, but I wish to say a couple of things. The first of them was that some Members have said that the distinction is in questions to the Attorney General between those questions which relate to particular cases and those which are of general import, and I would like to say that those Members are absolutely right as far as I am concerned. That is where the question is one of a case which is pending. I find that very difficult and I do not think it is right or appropriate I should comment and that is why in all the questions that have been put to me about Article 39(a) in the last 3 months, I have tried to answer them as far as I can whenever they are questions of principle, but when it gets too close to questions relating to the cases themselves I do not think that is appropriate. I think with some hesitation I am going to say something about the speech made by Senator Syvret. I have professional duties to undertake and it would be an unacceptable luxury and self-indulgence for me to allow myself to trade insults with the Senator. I would lose the objectivity which is essential for the purposes of the job that I do and while some Members have been kind enough to say that I showed patience and forbearance, it is just a question of being objective. The reason I say that is it chimes a little bit with what Deputy Le Hérisser was just saying about the standards that have to be applied by the Privileges and Procedures Committee and I put it forward for consideration no more than standards should be objective. They have got to be objective. Of course in this Assembly we all expect Members from time-to-time to disagree with each other and that is the way it should be but the standards of how one expresses that and how one expresses the disagreement and the non-imputing of lack of integrity or poor standards. Those are the key issues by which it seems to me one should be concentrating on in the case of conduct issues. I hope that would be helpful to Members. I would encourage the review which the P.P.C. are conducting in so far as it relates to questions to the Attorney because I think maybe there is scope in discussion with P.P.C. for some clarification to be introduced there.

**6.1.19 The Deputy of St. John:**

It is not my intention to reply to Members but I will do one thing, I will repeat the proposition. The proposition is to request the Privileges and Procedures Committee to review the Code of Conduct for Elected Members of the States and the sanctions available for breaches of the Code and put forward measures to ensure that States Members maintain acceptable standards of behaviour when undertaking their public duties. I make the proposition and ask for the appel.

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

Very well. The appel is called for; I ask Members to be in their designated seats for the vote. The vote is for or against of the proposition of the Deputy of St. John. The Greffier will open the voting.

<b>POUR: 43</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy J.A. Martin (H)		
Senator P.F.C. Ozouf		Deputy G.P. Southern (H)		
Senator T.J. Le Main		Deputy of St. Mary		
Senator B.E. Shenton		Deputy T.M. Pitman (H)		
Senator F.E. Cohen				
Senator A. Breckon				
Senator S.C. Ferguson				

Senator Maclean	A.J.D.				
Senator Le Marquand	B.I.				
Connétable St. Ouen	of				
Connétable St. Helier	of				
Connétable of Trinity					
Connétable Grouville	of				
Connétable St. Brelade	of				
Connétable St. Martin	of				
Connétable St. John	of				
Connétable St. Saviour	of				
Connétable St. Clement	of				
Connétable St. Peter	of				
Connétable St. Lawrence	of				
Connétable St. Mary	of				
Deputy R.C. Duhamel (S)					
Deputy of St. Martin					
Deputy Le Hérissier (S)	R.G.				
Deputy J.B. Fox (H)					
Deputy of Grouville					
Deputy of St. Peter					
Deputy J.A. Hilton (H)					
Deputy Le Claire (H)	P.V.F.				
Deputy Le Fondré (L)	J.A.N.				
Deputy of Trinity					
Deputy Power (B)	S.S.P.A.				
Deputy S. Pitman (H)					
Deputy I.J. Gorst (C)					
Deputy of St. John					
Deputy M. Tadier (B)					
Deputy (B)	A.E. Jeune				
Deputy (C)	A.T. Dupré				
Deputy E.J. Noel (L)					
Deputy M.R. Higgins (H)					

Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

## STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

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

Very well. Well, we come now to the statement - if I can have Members' attention - that the Minister for Economic Development will make.

### 7. Statement by Senator A.J.H. Maclean, The Minister for Economic Development regarding the payment of compensation to a group of local residents who were victims of misleading advice from Alternate Insurance Services Limited:

I, as you know, have been trying to make this statement for some time. **[Laughter]** At the last sitting, the Deputy of St. John raised some questions concerning a recent decision to compensate a group of local residents, who were victims of mis-selling. While the decision has been made, I appreciate the concern that it may have caused some Members. This statement is intended to offer clarification as to the circumstances behind the decision. In arriving at my decision, I consulted the Council of Ministers to seek their support before requesting a source of funding from the Treasury. The Minister for Treasury and Resources agreed to the request in accordance with Article 15 of the Public Finances (Jersey) Law 2005 to allocate funds from the 2008 underspend. The total carry forward request was for £597,000, although compensation could in fact be less and will be made available to allow one-off payments to be made to the 28 local investors. These individuals suffered losses as a result of recklessly misleading advice given by a local company called Alternate Insurance Services Limited. Payments to the investors will be made on the same basis as the U.K. Financial Services Compensation Scheme, with each investor limited to a maximum payout of £48,000. Following a full external audit, the payments will be distributed to the investors by my department, as Economic Development has the responsibility for financial services. My decision follows a Royal Court judgment in the case of *The Jersey Financial Services Commission (The Commission) v Alternate Insurance Services Limited*. In light of the unique circumstances of the case, which are unlikely to be repeated, there were clear and compelling arguments to support compensating these individuals. I gave particular regard to the following exceptional facts when arriving at my decision: without exception, those affected could fairly be characterised under the commonly used phrase "widows and orphans." The affected investors in this case were all local residents who were not sophisticated investors. The Royal Court found that they were given recklessly misleading advice, which led them to invest in high-risk products, believing they were in fact low risk, resulting in significant losses, sometimes in excess of their initial investment. The court's view was that all such investors should be compensated. In 2001, when this case occurred, the sector was not fully regulated. Normal professional indemnity cover became invalid. Due to the insolvency of Alternate, only a small proportion of the losses could be recovered. All other possible avenues for recovery through the courts were exhausted by the Jersey Financial Services Commission. Given the uniqueness of this case, the Council of Ministers supported my view that there were sufficient grounds to make one-off payments to the affected investors. I hope that these payments will go some way in helping to relieve the consequences, including genuine hardship, that many of these people have suffered, as set out in the judgment of the Royal Court. As a result of this case, I have asked my department to commence a review of investor protection. In the past it was decided, in common with other jurisdictions, not to have a standing scheme, due to the costs of running it. It was always intended to deal with exceptional cases as and when they arose on a

case by case basis, as in this instance. We will now look again at the cost benefit analysis of establishing a standing investor compensation scheme and will report our findings and proposals to Members.

### **7.1 The Deputy of St. Mary:**

I can see the list of circumstances that the Minister has put before us, but I am curious to know, what is the responsibility in this which led the Minister and the Council of Ministers to believe that compensation was the correct response? When you compensate, there is a responsibility that you are compensating for. I want to know what the responsibility was. I accept these very circumstances, that is not the issue.

#### **Senator A.J.H. Maclean:**

The responsibility quite simply was that these investors had been let down by the fact that the system did not suitably protect them. They were given advice by members of this particular company which was recklessly misleading. Because the investors were let down in this way, we felt - and the court indeed felt - that it was bordering on dishonesty, and on that basis, we felt that it was reasonable to make the compensation payments.

### **7.2 Connétable D.J. Murphy of Grouville:**

I know a little about these instruments that we use, the T.E.P.s (Traded Endowment Policies) and because I have some experience of them, I find it very, very difficult to understand how they manage to do this without committing a fraudulent act. In that case, why were individuals not prosecuted instead of the companies?

#### **Senator A.J.H. Maclean:**

The Constable is absolutely right, and I know that it was a very close call as to whether indeed the individuals were going to be prosecuted, and it became a fraudulent act. However, indeed, the products of which the Constable is referring to- Traded Endowment Policies - in themselves are medium-risk investment products. What was the problem here or the additional issue here was the fact that this was packaged products which involved a degree of leverage; in other words, the investors were asked to borrow money to leverage the investment into a package and the risk was not explained to them, but the Constable, in principle, is absolutely right. The individuals came very close to being prosecuted.

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

The Minister has talked in very neutral terms about defects in the system; a system devised by whom? Was it J.F.S.C. (Jersey Financial Services Commission); was it E.D. (Economic Development); who was responsible for these defects that occurred at the time? E.D. or J.F.S.C.?

#### **Senator A.J.H. Maclean:**

As the Deputy will be well aware, it is in fact the J.F.S.C. who are responsible for regulating financial services. I believe that they carried out their statutory obligations in this regard. I have to say that there are 2 factors: 1, at that particular point - and bearing in mind we are talking about the period from 2000 to the end of 2002, at which point it was a transitional period - that particular sector of I.F.A.s (Independent Financial Advisers) was not fully regulated. But if he is looking for accountability for regulation, that is in fact the J.F.S.C., but it was not fully regulated at that stage.

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

If I may, a supplementary: so then the blame clearly lies with the equivalent of the Economic Development Industries Committee of the day, that regulation had not been extended to this apparently dangerous area?

#### **Senator A.J.H. Maclean:**

I think regulation is being improved all the time. There has been a tremendous increase in regulatory control in all sorts of areas. This, as I was mentioning a moment ago, we are going back to 2000/2002, the level of regulation has moved on a long way since then. I would certainly like to think that the chances of a similar case to this occurring is highly unlikely.

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

Briefly, Deputy. There are others waiting to speak.

**Deputy G.P. Southern:**

In answer to my question, who was responsible, nobody knows. There is no responsibility, no one responsible. Who was responsible?

**Senator A.J.H. Maclean:**

If the Deputy is asking who is responsible for the loss to the investors, then it would be the company themselves, because clearly they were the one that imparted the advice. If he is asking about regulatory oversight, the J.F.S.C. had regulatory oversight, but the level of regulatory oversight at that particular point is not at the stage that it is now. So I am satisfied that the J.F.S.C. did all that was reasonable and could be reasonably expected of them at that time.

**7.4 Senator A. Breckon:**

Could the Minister confirm that the court judgment was critical of the States of Jersey, among others, of not having a suitable compensation scheme and also could he advise when one will be in place?

**Senator A.J.H. Maclean:**

Yes, I can confirm that in the judgment - and in fact, if Members would like to read the judgment, just as an aside, there was a lot of very interesting information, it is over 100 pages long. I have it here and it would give some very useful background - it does refer to the fact that we do not have an investor compensation scheme. That is one of the reasons that I have asked for it to be reviewed again, for the reasons that I stated in my statement, why we have not had one to date. Fortunately, these incidents are relatively rare, certainly in Jersey - other jurisdictions are not quite as lucky, necessarily - once the review is complete, then I will make a statement to the House as to the position, and indeed timing of any scheme should indeed it be decided that a scheme will come forward.

**7.5 The Deputy of St. John:**

Given the public airings we have had of both Woolworths and Pound World, *et cetera*, will the Minister bring this to the Chamber to be debated by the Chamber, if necessary in camera? If he is not prepared to do so, a private Member is very likely to do it.

**Senator A.J.H. Maclean:**

Could I ask the Deputy to clarify what he is asking me to bring to the Assembly to debate in camera?

**The Deputy of St. John:**

The facts of the case have been explained to you. The Members, I am sure they were all given the facts with the Woolworths and the Pound World debate. They can give us the facts in their entirety, laid out by your department or the Treasury Department, Council of Ministers, so that we can decide for ourselves if that £600,000 has been correctly spent, or going to be spent.

**Senator A.J.H. Maclean:**

As I mentioned a moment ago, the judgment of the Royal Court, extending to over 100 pages, is here. All the facts are contained within this document. I am more than happy to let the Deputy

have a copy of the judgment with all the facts in it, and indeed, any other Member in the Assembly if they would so wish.

**7.6 Deputy D.J. De Sousa:**

Most of my question has been asked already. Can the Minister really justify making this decision himself, knowing what we were put through as a House when debating the Woolworths and the Pound World at the time when it came? How can he now justify making this decision without coming to the House?

**Senator A.J.H. Maclean:**

Well, first of all, there is no direct relationship between the 2 cases, but I have to say that the decision that this House took with regard to Woolworths was something that I had in the back of my mind when considering this particular fact. It is clear the level of compassion that this House has for cases like Woolworths, and I have no doubt that having read the details of this particular Royal Court judgment, that Members would support my view. It is absolutely clear cut, in my view, and indeed, in the view of the court, and if I can indulge Members for one second, I will just quote what the judge said. He said: "To this court, it seems inconceivable that investors should be left uncompensated for their serious losses. This recommendation is made because it is not acceptable that unsophisticated small investors in Jersey can be so badly advised in relation to their small resources." These are not wealthy people, these are not sophisticated investors. The advice given was dishonest, it was misleading, and in my view, this was the right decision, and I hope Members accept it.

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

Yes, it is very close to what the question has been going around the House. It is just a direct question of the Minister, because he knows how he upset me when he made his remarks about Pound World. With hindsight, would the Minister not have thought it would have been better to have brought this to the House so the Members could have a part in the decision, and maybe if a future occasion came, that he would bring it to the House and not make it an in-house decision? So would he bring a proposition in the future to the House if he had a similar occasion?

**Senator A.J.H. Maclean:**

I take the Deputy's point. I think you have to assess every individual case on its merits. I think the judgment that I took and I took to the Council of Ministers, which they supported, in this instance I believe was correct. However, I do say or am prepared to say to the Deputy in future, depending on the circumstances - and I certainly hope we do not have another case similar to this - but should we do so, I will assess it on merits, and it may well be one that would come for consideration to this House, depending on the circumstances.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

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

I am afraid that concludes the time allowed for questions to the Minister, so we come to the arrangement of public business and future meetings. I call on the Chairman of the P.P.C.

**8. The Connétable of St. Mary (The Chairman of the Privileges and Procedures Committee):**

The arrangement for future business starts with the basis of the order on the pink sheet, with the additional for the next sitting on 19th May of P.67 - Insolvency: a temporary scheme for compensatory payment extension lodged by Deputy ...

**The Bailiff:**

That matter has not been lodged long enough.

**The Connétable of St. Mary:**

Sorry, I beg your pardon.

**8.1. Deputy G.P. Southern:**

Nonetheless, I was going to stand to ask that it were put on the paper so that I can come to the House and ask that they shorten the statutory notice.

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

Would it assist the Chairman if you made that request now, Deputy, or are you going to make a request that the lodging period for your proposition be reduced?

**Deputy G.P. Southern:**

I do, I believe it is a matter of urgency. There are people who have been made redundant and have not been paid for 5 weeks, and the compensatory scheme, it seems to me, does not meet the urgent need for compensation that this House requested that it should meet. So I think there is a matter of urgency in dealing with this issue, and if we can possibly make adjustment to do that, then we should do so.

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

So you are proposing, Deputy, that P.67, which you lodged this week, Insolvency: Compensatory Payments Extension, should be taken with one week's notice rather than the required 2 weeks' notice?

**Deputy G.P. Southern:**

Indeed.

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

Minister, any comments on that?

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

I am afraid that I cannot at this point support this proposition, nor the actual proposition itself. I have not had time to study the proposition in depth, but it is my understanding that the thrust of the Deputy's proposition is that I should go away and liaise with the Viscount to see if what he is requesting is possible. So although he claims that it is timely, as I have said, these issues do take time, and it is only right and proper that this particular company is given time to decide what is the best way forward. It is not appropriate, if the company is able to continue trading that we should make a decision that might influence that, therefore I do not believe that it is appropriate to bring it forward to next week.

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

You will be able to reply.

**Deputy G.P. Southern:**

I believe the Minister is misleading the House.

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

Other Members may wish to speak briefly. Connétable of St. Peter?

**The Connétable of St. Peter:**

No, I do not wish to speak on that. May I just raise another point?

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

Can we deal with this one first, please? Will you wish to reply before the Members vote on it, Deputy?

**Deputy G.P. Southern:**

Yes. I believe the Minister has misinterpreted the wording of the proposition. It does not ask that they go and consult now with the Viscount's Department. It says that we discuss giving them the power, the discretionary power to act following the advice from the Viscount to deliver more prompt payment, as appropriate.

**Senator P.F. Routier:**

I know the proposer has just summed-up that debate, but I do think we are rushing into something here which half of us have not even had a chance to read.

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

You must vote accordingly. Deputy Southern has therefore proposed that the lodging period for P.67 be reduced to one week, rather than the normal 2 weeks, regarding insolvency compensatory payments. Somebody needs to call for the appel. The vote is therefore for or against the proposition of Deputy Southern to reduce the lodging period. The Greffier will open the voting.

<b>POUR: 9</b>		<b>CONTRE: 37</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Deputy of St. Martin		Senator P.F.C. Ozouf		
Deputy J.A. Martin (H)		Senator T.J. Le Main		
Deputy G.P. Southern (H)		Senator F.E. Cohen		
Deputy M. Tadier (B)		Senator S.C. Ferguson		
Deputy of St. Mary		Senator A.J.D. Maclean		
Deputy T.M. Pitman (H)		Senator B.I. Le Marquand		
Deputy M.R. Higgins (H)		Connétable of St. Ouen		
Deputy D. De Sousa (H)		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Connétable of St. Saviour		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy R.C. Duhamel (S)		
		Deputy R.G. Le Hérisssier (S)		
		Deputy J.B. Fox (H)		
		Deputy of Grouville		
		Deputy of St. Peter		
		Deputy J.A. Hilton (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		

		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		

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

Chairman, back to you.

**8.2 The Connétable of St. Mary:**

Sorry, Sir, I apologise for that. I think the heat must be getting to me there; I went cross-eyed for a moment. The business for 19th May is as per the pink sheet. For 2nd June, it is as per the pink sheet with the additional P.67, which was the one we just discussed, Insolvency Temporary Scheme for Compensatory Payments; P.68, the States Employees' Pay Increase for 2009/2010, brought by the Deputy of St. John; P.70, which is the Commissioners of Appeal for Income Tax Appointments, lodged by the Minister for Treasury and Resources, and also I am given to understand, Sir, that the Minister for Social Security may seek to take P.69 that day as well.

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

Minister, would you like to address P.69?

**8.3 Deputy I.J. Gorst:**

Yes, Sir, I would. I hope that the House will be able to indulge me. P.69 - I am not sure if Members have had time to have a brief glance at it - is related to the outbreak of pandemic flu and the containment phase that we find ourselves in. It has been a hard piece of work for my officers to bring forward in such a timely manner. What it does is allow for an increased co-payment so that no Member of the Island community feels that they must attend a surgery, but they are able to take the best advice of the World Health Organisation and our own Medical Officer for Health and remain at home and call the doctor out if they have flu-like symptoms, and it helps take the cost away between the difference from a surgery visit and a home visit. I think it is absolutely vital, and I hope that Members will indulge me and take it next week.

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

Just to clarify, Minister, I think the Chairman referred to 2nd June, but you are referring to next week now.

**Deputy I.J. Gorst:**

Sorry, yes, I would like to take it next week, not 2nd June.

**The Connétable of St. Mary:**

Again, Sir, I apologise, I think the heat really is getting to us here today.

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

Are there any Members who wish to comment on the proposal from the Minister? Deputy Southern.

**Deputy G.P. Southern:**

Yes. I do not recall hearing any mention of my proposition - P.18 - the rescindment of Article 39(a).

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

Sorry, I thought you were addressing the proposal from the Minister in relation to health insurance. Can we just deal with that matter first, sorry, to get that one out of the way. Does anyone wish to comment on the proposal from the Minister that the lodging period for the Health Insurance and

Income Support Influenza (Jersey) Regulations be reduced? Do you wish to address that matter, Connétable?

### **8.3.1 The Connétable of Grouville:**

I would just like to back the Minister's application. It was felt at the Emergencies Council that what would happen, in fact, is if people were put off from calling a doctor to their homes, they would not call them at all because of the cost. So the implication was, in fact, that the disease would spread quicker and faster without the incentive of perhaps the topping-up of the medical fees. So this, I think, is a very good idea indeed. There is no other alternative, really, for doing it, I do not think, in order to encourage people to call doctors at the first opportunity to their homes. Thank you.

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

It seems to me that need for urgency in this particular case is somewhat misplaced. Those, I understand it, who have recently returned from Mexico or the U.S.A. (United States of America) are asked, should they get flu symptoms, to call out their doctor. They can afford it; because they have just returned from the U.S.A. or Mexico, they can probably afford to call out their doctor. The people who might require assistance with calling out the doctor will not be just returning from Mexico.

### **8.3.3 The Connétable of St. Mary:**

I really feel I must respond to what Deputy Southern has just said. People who have been fortunate enough to have a holiday in Mexico come into contact with people the minute they arrive at the airport, and it spreads, and that is a totally superfluous argument. We are looking here that this would normally carry a 6-week lodging period, so if it is not brought forward, it would be debated on 30th June, so that could be quite a considerable time then for people to be suffering.

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

All I would say, is that there has been a lot of debate about reducing lodging periods. If ever there was a case of something needing to be urgent and not being prejudicial to the Island's interest, then this is it [**Approbation**] and I respectfully suggest and ask Deputy Southern to reconsider his position. I think it is quite unfair to cast aspersions in the way he has.

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

The Minister is perfectly correct, and I accept his position.

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

Are Members therefore content to reduce the lodging period for this proposition and to list it for next week? Very well. No need to put that to the vote. Chairman.

### **8.4 The Connétable of St. Mary:**

I will try and get it right this time. The next item also lodged for 2nd June would be a rescheduling of P.49 and the amendment to P.49, Child Abuse Compensation Claims, Freedom of Expression for Survivors, and I believe that apart from that, the rest of the business is as per the pink sheet.

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

Very well. So with the additions mentioned by the Chairman, the business is as per the pink or purple sheet. You wish to raise a matter, Connétable of St. Peter?

### **The Connétable of St. Peter:**

Yes. I would just like to draw to the Chair and the Members' attention the temperature in the Chamber is currently 26 degrees. Now, my memory is rather old in this, but under the old Offices and Factories Act, the comfortable temperature under Health and Safety is something like 21

degrees, and I wonder whether, through the Chair, we could ask the Minister for Social Security to ask his Health and Safety officers to take a view.

**Deputy I.J. Gorst:**

I suspect it is more something that needs to be addressed to the Treasury Department and Property Holdings, and I understand that they do have it in hand.

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

If I could just say from the Chair, the cooling system was put in place when the building was refurbished, and my memory is that cooling system always worked reasonably well. In fact, the Members who sat in these positions often became very cold. I suspect, despite what I have been assured this afternoon, the system is not working properly. We will take steps to ensure that it is robustly looked at before the next meeting, because it has not been like this for the past 2 or 3 years. Do Members have any comments on the future arrangement of business? Deputy Southern, Senator Ozouf.

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

Can I just draw Members' attention to the fact that the States Strategic Plan now is lodged for debate on 2nd June, and that means that there is 2 weeks' lodging required for any Members who wish to amend it. There has not been, the Council of Ministers has advised, any amendment to it. It is an important debate, and just to remind Members that they must submit their propositions or amendments 2 weeks' prior to that debate, so they have about another week to go.

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

Less than that. Deputy of St. Mary?

**8.6 The Deputy of St. Mary:**

Mine genuinely is on, whereas Deputy Southern's has just been left on. No, I just wanted to make the point - I do not suppose anything will come of it - but I do feel quite strongly that the population issue should be debated before the Strategic Plan. I think it is so big on its own, and we are expected to take the whole lot in one go, and I do not know whether the Council of Ministers would listen to a suggestion that the debate be split in this way.

**Deputy M. Tadier:**

In response to the Connétable of St. Peter, could we have a ruling from the Chair that in fact under Standing Orders, there is nothing to stop the Connétable taking his jacket off if he wants to.

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

The Chair has ruled on many occasions, Deputy, that jackets must be worn in this Chamber, I am afraid.

**Deputy M. Tadier:**

Under Standing Orders?

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

The Standing Orders provide that the Chair must provide for matters that are not provided for.

**Deputy M. Tadier:**

That is sophistry, if I have ever heard it, Sir.

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

Very well. Are Members content with the arrangement of public business as amended? Therefore the meeting is closed. The States will reassemble next week on 19th May.

## ADJOURNMENT