

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 12th MAY 2009

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

QUESTIONS

1. Written Questions

1.1 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE VALIDATION OF G.P.s:

Question

Given the proposals to require doctors to be revalidated, what infrastructure, if any, is in place for this to happen; if none, how long will it take to put in place, at what cost and will it be the doctor or taxpayer who pays?

Would the Minister describe the proposed process of revalidation and indicate whether there would be any negative impact upon the services provided by GPs?

Answer

When we talk of ‘doctors’ in the context of Jersey’s health and social care services, we must talk firstly of those doctors employed by the Health and Social Services Department, and then secondly, of those doctors who are general practitioners (GPs).

As to the doctors employed by the Health and Social Services Department, work has been underway for a number of years now in anticipation of the revalidation process which is to be introduced later this year. These doctors are in supervisory relationships, they undertake continuous professional development, they participate in clinical audit and this year are to begin participating in appraisal (appraisal being seen as a crucial component of the revalidation process).

GPs in Jersey have been mindful of the development of the revalidation process, but for a number of years have – with some legitimacy – been unsure as to what form this revalidation process would take and how it would apply to them. This lack of surety has been largely as a result of the revalidation process itself being somewhat specifically attuned to GPs working within the English and Welsh National Health Service – a managerial regime which obviously is inapplicable here in Jersey.

With encouragement from my Department, GPs here in Jersey have latterly created a Jersey Primary Care Body (whose membership includes all GPs practising here in Jersey). One of the purposes of this body is to ensure that all GPs are fully able to understand the great significance of this revalidation process – and are then able to comply with it. This is important because if GPs in Jersey cannot comply, they will effectively be disbarred from clinical practice on the Island.

If members wish to explore in detail the revalidation process, then I would invite them to access

<http://www.rcgp.org.uk/revalidation.aspx> (which is the website for The Royal College of General Practitioners), where the latest guidance is to be found.

The Jersey Primary Care Body has undertaken its own costing exercise to quantify what it believes are the additional costs required if its membership is to successfully comply with the revalidation process. GP’s in Jersey operate as private businesses and increases in their cost base must be either absorbed within their practices or passed on to their patients and customers. The question of increasing the level of medical benefit to patients from the Health Insurance Fund equivalent to a reasonable level of the unavoidable additional costs of revalidation, to enable them to meet the additional charges which they are likely to face, is to be considered by the Minister for Social Security. At this time there is no agreement between the States of Jersey and the Primary Care Body as to the precise costs involved in ensuring that GPs comply with the revalidation process.

I trust that my answer to the Deputy’s question is accurate in all respects, but I believe it is worthwhile describing the context and indeed defining revalidation itself a little further.

Revalidation is a process - very much like 're-licensing' - which is to be undertaken by the General Medical Council (GMC). Both GPs and directly employed doctors will be required to submit themselves individually for revalidation. A doctor practising in Jersey must be registered with The Royal Court and for this registration to take place that doctor must be fully registered with the GMC or its equivalent. This is another way of saying that unless GPs are revalidated they cannot receive full GMC registration and if this occurs they cannot practise either in the United Kingdom, nor the Channel Islands.

The process of revalidation seeks to 'quality assure' doctors to ensure that their proficiency and practice remains up to date, skilled and safe. Revalidation itself finds its origins in numerous 'scandals' in the NHS throughout the 1990s and the early part of this century - with the case of Dr Harold Shipman being the most obvious and noteworthy of these scandals - and the need for governments to be in a position to maintain public confidence in the medical profession.

1.2 THE DEPUTY OF ST. JOHN OF THE CHIEF MINISTER REGARDING THE EMERGENCY PLANNING COUNCIL:

Question

Would the Minister advise what budget is available for the Emergency Planning Council and how frequently it holds training for all of the parties involved with dealing with full scale Island emergencies?

Answer

I presume the question refers to the Emergencies Council, the political level body constituted under the Emergency Planning and Powers (Jersey) Law 1990.

Following a major review of arrangements and a consequential change of direction in 2007 the Emergency Planning function has been transferred to the Chief Minister's Department to continue to improve civil protection planning arrangements and awareness in the event of an emergency occurring in the Island. This function includes emphasis on closer working partnerships with other organisations, developing the overall resilience framework for Jersey and the development of emergency co-ordination arrangements.

The function has historically been staffed by an Emergency Planning Officer and a secretary. There was also no specific budget for cross service training and initiatives. In recognition of the need to improve the Island's state of preparation the States approved an increase in the budget as part of the 2009 Business Plan debate. This added an assistant post to improve resilience and the budget was increased by £70,000, including £20,000 for training and other initiatives. As a consequence the Emergency Planning function now has an overall budget of £208,200 for 2009 and a staffing resource of 2.8 full-time equivalents.

The States have recently undertaken two major tabletop exercises organised by the Emergencies Council, namely 'Exercise Flying Swan' in November 2007 which focussed on a counter terrorist scenario, and 'Exercise Coldplay' in February of this year when the Island's arrangements for pandemic flu were tested. The tabletop exercises included Parish officials and honorary services.

1.3 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE FISHERIES VESSEL, THE NORMAN LE BROCCQ:

Question

Could members be told of the total mileage to date of the fisheries vessel, the Norman Le Brocq; the mileage covered in 2008 and how many hours sea time this equated to in 2008?

Will the Minister undertake to advise members in October 2009 whether the total sea time from 1st May – 30th September 2009 for the Norman Le Brocq has increased or decreased as a result of the introduction of the Sea Fisheries (Licensing of Fishing Boats) (Amendment No.4) (Jersey) Regulations 2009, which it was maintained would have no financial manpower implications (according to P.35/2009, adopted by the States on 29th April 2009)?

Answer

Total mileage for the Norman Le Brocq is 55,778 nautical miles. Mileage in 2008 was 4,100 nautical miles and 427 hours were spent at sea.

The Minister will, of course, be able to advise members in October of sea time accrued by the Norman Le Brocq but Members will understand that any increase or decrease in activity may be due to a combination of factors and circumstances.

1.4 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE WATER RESOURCES (JERSEY) LAW 2007:

Question

Would the Minister advise whether there have been any problems with the Water Resources Law (Jersey) 2007, requiring householders to register their wells and boreholes, and, if so, would he consider inviting the States to rescind this part of the Law?

Will the Minister agree to review this part of the water law for those householders who do not have the opportunity to be connected to a mains supply, and, if not, what action, if any, will the Minister take to put in place a portable water supply to all the Island by 2015?

Answer

The Department launched its campaign relating to the registration of boreholes in early January 2009 and, to date, it has proved a successful exercise with more than 2500 registration forms being received. Each form provides information that is vital to understanding and effectively managing the Island's water.

The registration form is a two page format supported by full guidance notes. Applicants who required assistance can contact the States Customer Services Centre or the Department. Where required, Officers visit homes in order to locate boreholes/wells or to assist people to complete the form. Where information is unknown - such as the borehole depth - people are simply asked to write 'not known' on the form.

The vast majority of forms have been completed accurately and without difficulty. Very few verbal complaints (less than 10 people) have been received regarding the need to register a supply and about the same number of comments were received about the process or form itself.

The major objective of the Water Resources (Jersey) Law 2007 is to enable effective and equitable management of this vital resource. This requires accurate information, including a valid estimate of how much water is abstracted from the Island's aquifer.

Domestic boreholes individually do not abstract large quantities of water. However, given their number, in totality, they represent the major group using this resource. The Department therefore needs to understand where they are located and how much water they abstract. This information is captured within the registration form.

Added benefits of registering a water supply are that the borehole or well can be protected against future large licensed abstractions being located nearby which could have an adverse affect.

Knowledge of the location of boreholes and wells is also important in pollution incidences where preventative measures might be required to guard against contamination of a householder's water supply.

It is of vital importance that we protect our Island's water resources and encourage registration of boreholes and wells. Given the level of success to date, and the value of the information collected, the Minister will not be requesting that the States rescind the law.

Regrettably the Minister cannot address issues relating to the provision mains water supply. These are the responsibility of Jersey Water.

2. Oral Questions

The Deputy Bailiff:

We then come to oral questions and the first one is from Deputy Southern. It was deferred from the last sitting at the request of the Minister for Health and Social Services.

2.1 Deputy G.P. Southern of St. Helier of the Minister for Health and Social Services regarding the progress of negotiations with the Trustees of Brig-y-Don over the future of that children's home:

Events have moved on since. Would the Minister advise Members of the progress of negotiations with the Trustees of Brig-y-Don over the future of that children's home, along with its experienced staff, as outlined in the Implementation Plan for the Williamson Report?

Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):

The Williamson Report identified Brig-y-Don as a centre of excellence in residential childcare with highly trained staff. Health and Social Services have been in longstanding negotiations with Brig-y-Don committee to develop a sustainable future for the excellent Brig-y-Don residential facility. The Williamson Implementation Plan proposed that Brig-y-Don would become one of the range of units designed to focus upon the needs of the smaller groups of young people. However, the Brig-y-Don building is in poor repair, requiring urgent refurbishment and redesign in order to bring it up to the standard required for modern residential care. Therefore, a plan was agreed that the home, in its current form, would close in order to allow major building work to take place. The target date for work was to begin September 2009. Brig-y-Don receives part funding from my department, which is supplemented by their own rapidly diminishing investment monies. Subsequently, the refurbishment was reliant upon funding within the Williamson Implementation Plan. The process of putting this plan in place involved the relocation of both staff and children to other care settings by early summer 2009 in order that the programme of alteration and refurbishment could begin. An urgent application for funding was made which included £300,000 for Brig-y-Don refurbishment programme and is for debate later on today.

2.1.1 Deputy G.P. Southern:

Will the Minister outline for Members what difficulties there were coming to a service level agreement with the Trustees of Brig-y-Don?

The Deputy of Trinity:

I met with the Chair and staff yesterday afternoon and obviously, as has been going back for many years, there have been great discussions about the future of it, not only the refurbishment but also the children that are placed there. I have not read all the information that they have on that because it goes back into 2 or 3 several files. At this moment in time, if we get the funding, as I said, later on today or tomorrow hopefully, we can now begin negotiations with the charity and the Trustees to begin to look at a way forward for the home to stay as a children's home and move forward with that.

2.1.2 Deputy G.P. Southern:

There was no reference in there to any service level agreement. That was not an answer. That was an evasion. Could the Minister please refer to any problems that have been met in reaching a service level agreement for future provision of service at this centre for excellence?

The Deputy of Trinity:

Yes, it is a centre of excellence and, as I said, I have not seen the service level agreement because the charity has decided as an outline policy that they had to close by the end of August. I will leave it there.

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

Would the Minister identify whether one of the issues has been the inability of her department to accept the work that Brig-y-Don did with a younger age group and the need for them to concentrate on this younger age group? Is part of the sticking point that the department now wishes to enforce a policy where they must take a broad age group?

The Deputy of Trinity:

I understand that there was some difficulty because many children, whatever ages, can be very challenging and have very many different and very specific needs to them as individual children, and that needs to be assessed and each child is an individual. I understand that there was some difficulty with having older children there with very challenging needs but when I met them yesterday, I can say that there were not any older children. There were all younger children there.

2.1.4 Deputy R.G. Le Hérissier:

Just a supplementary. Could the Minister therefore indicate whether, if reform is to go ahead or a new agreement is to go ahead, Brig-y-Don will be focusing on younger children or whether her department will insist on a mixed age range depending on who basically requires placing?

The Deputy of Trinity:

Brig-y-Don is run by a charitable organisation which, as I said, does great work and if we can have this money, then is to begin negotiations with that charity to find a positive way forward. Younger children, whether they are in foster care or needing foster care or whatever age... if their parents arrive at the port and for one reason or another they are arrested and the children have to be put in care for over one night or longer nights, they will always need a place which Brig-y-Don has been able to offer. That goes without saying, so I am hoping that we can start negotiations to find a positive way forward and that the home which has changed for many years - because it used to be a T.B. (tuberculosis) home originally - that it can develop and change and bring it up to the 21st century.

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

The Minister mentioned about having to be closed because of urgent refurbishment. Surely there must be some refurbishment plan. Can the Minister assure us that the reason for closing is not really because of urgent refurbishment or some other reason which we have not been informed of?

The Deputy of Trinity:

The urgent closing at the end of August, as I understand from the Trust, is that they are going to virtually run out of money and they are a charitable organisation which employs, I think, something like 14 or 15 staff and, under good employment law, and they being good employees, they have to give due notice to them and also the care of the children too is paramount and work needs to be done to make sure that the children are placed in other homes which are suitable to their needs.

2.1.6 Senator S. Syvret:

Would the Minister agree with me that the management committee of Brig-y-Don has done a fantastic job over the years and that they have been, in some respects, treated quite abysmally by the Health and Social Services Department, for example, waiting for one member of staff of Health and Social Services for a period of at least 4 years - I will repeat that, 4 years - to make any progress at all in the service level agreement?

The Deputy of Trinity:

Yes, I do agree with the Senator that the trustees and the chairman and the staff at Brig-y-Don have done an excellent job over all these years and they should be congratulated. As I have not been aware of a service level agreement with the agreement, I cannot comment on the Senator's other comments.

2.1.7 Deputy A.K.F. Green of St. Helier:

In a similar vein to the previous Senator. The chair of Brig-y-Don told us the other day that for 7 years she has been trying to negotiate a way forward. Would the Minister agree to look into and report back as to why this has taken 7 years? **[Approbation]**

The Deputy of Trinity:

Yes, 7 years is too long. I think this should have been sorted out years beforehand but yes, I can give that guarantee to the Deputy.

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

I appreciate the Minister is fresh out of the blocks and she is running a fine race already, but I would like to ask her a particularly difficult question. I have been informed that one of the challenges that Brig-y-Don faced was having to receive a 14 year-old who was drunk who then beat up a 4 year-old and forced the management to say to Health and Social Services: "Keep your money, we are not geared up for this." Is this correct and, if so, why has this been kept out of the argument so far?

The Deputy of Trinity:

As I said previously, I am aware that there are older children with very difficult and challenging behaviour but I would not like to comment on the specific case that the Deputy has made because I do not know the ins and outs of that. I think it is one specific one and I would not like to pick it up in this Assembly.

2.1.9 Deputy P.V.F. Le Claire:

Could I then ask a supplementary if that is too difficult to answer? I appreciate the words that the Minister is using are very carefully chosen. Can I therefore ask her in general terms, will she be seeking to ensure that proper facilities for children that have particular problems, in particular drunkenness, are tackled and dealt with and handled and managed in a better way than put in rooms with 4 year-olds where they can beat them up?

The Deputy of Trinity:

Yes.

2.1.10 Deputy D.J. De Sousa of St. Helier:

Can the Minister assure the House that any funding that will be applied for today will not have unrealistic constraints put on it?

The Deputy of Trinity:

Yes. If we do get the funding, I will begin negotiations with the Trust to find some sort of a way forward but, at the end of the day, the building and Brig-y-Don is still owned by the Trust. The department does not own the building and it is trying to find a working relationship through that of

which Brig-y-Don can still in some way continue as a children's home and also they have had negotiations working together, and I give that undertaking.

2.1.11 Deputy T.M. Pitman of St. Helier:

Slightly pre-empted by my colleague's question. Could the Minister give 100 per cent guarantee that Brig-y-Don reopen and could she clarify for the House what progress, if any, was made at the meeting she told us of that happened yesterday?

The Deputy of Trinity:

I cannot give 100 per cent guarantee because the States of Jersey do not own that building. As I said, the building is a Trust and at the end of the day they have to decide for themselves what they wish to do with the building. I am sorry, I cannot remember the second part of the question.

Deputy T.M. Pitman:

Nor can I. [Laughter] [Aside] The progress of the meeting yesterday.

The Deputy of Trinity:

Yes, I went down to Brig-y-Don yesterday and met the chair of the Trustees and one of the Trustees whose family has had long involvement with Brig-y-Don because I understand one of the conditions of the Trust is that a family member has to be always on the Trust, and also the head of house. I walked around the place; they told me what has been going on - the 7 years' negotiations - as I said. They showed me all the files. They are wanting to move forward but they are also realistic that at this moment in time if they have not got the money, they have to close at the end of August.

2.1.12 Deputy A.E. Jeune of St. Brelade:

I am almost reiterating what other people have said, but if the Minister could kindly confirm. It would appear she has inherited a major problem and, if I am hearing correctly, we may well have lost the opportunity to have Brig-y-Don. Is that a fair assumption if the Minister could reassure me?

The Deputy of Trinity:

As I said, I cannot guarantee that Brig-y-Don will never ever open again because that bit is out of my hands but, as I said, if we get the funding, I will have negotiations with the Trust to see if some way forward can be reached which is agreeable not only to the Trustees but to me, and also be able to care for young children which they have been doing exceptionally well over the last years.

2.1.13 Connétable P.F.M. Hanning of St. Saviour:

Perhaps the Minister has answered a lot of what I was going to ask but I would just like confirmation, if I can, from the Minister. Can she confirm that in the negotiations with Brig-y-Don, that their reputation for achieving excellence in their care will not be compromised and pressure will not be put on them by taking children of an inappropriate age, because if there is pressure in their negotiations the whole level of excellence is going to be compromised. Can she confirm that they will not be pressured in their negotiations?

The Deputy of Trinity:

Yes, I can. The trustees are very firm and they have worked with young children, as I said, for many, many years and they know and they are a highly trained and expert staff. I am sure they will not be pressurised into doing anything that they do not wish to be doing.

The Deputy Bailiff:

Senator Perchard and then a final question from Deputy Southern.

2.1.14 Senator J.L. Perchard:

I am delighted to have had the opportunity to ask this question after the question from Deputy Jeune of St. Brelade. Can the Minister confirm that an agreement had been made with Brig-y-Don to secure their future and the last straw for the Brig-y-Don trustees was the decision of this Assembly to put back the debate on their future funding until the end of June, and that is when they decided enough is enough, they have had enough of the States of Jersey and they intend to close.

The Deputy of Trinity:

As I said, the building was going to close at the end of August anyhow because things had turned out differently in need of some refurbishments. Other than that, I have not been party to the ... I have not seen the agreement that might have been reached. I do not know so this is where I am coming from at this present moment in time, and if we do get the funding today or tomorrow I will begin as soon as possible negotiations to try and find some way forward.

2.1.15 Deputy G.P. Southern:

I am very disappointed with the quality of the answers provided today, given that she had a fortnight's notice that the question was going to be asked. Will the Minister undertake to return to the House this morning in time for No Notice questions with some further documentation from the brief she appears not to have read, about the service level agreement and the issues still outstanding with the management of Brig-y-Don?

The Deputy of Trinity:

I do not know what that can achieve because we are where we are at this point in time. The trustees are closing at the end of August because they do not have any money. I cannot go forward to begin negotiations however hard that will ... whatever service agreement can come out of it without that money because my hands are tied and I do not see what that can add.

2.2 Deputy R.G. Le Hérissier of the Minister for Treasury and Resources regarding the beneficiaries of the Fiscal Stimulus Package:

Under what circumstances will facilities like Fort Regent benefit from the Fiscal Stimulus Package?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

To benefit from the Fiscal Stimulus Package, proposals should be achievable, represent value for money and bring real economic benefit and, of course, as the Deputy knows well, they must meet the 3 Ts; that is to say that projects should be timely, targeted and temporary. I was able to discuss with the Corporate Affairs Scrutiny Panel yesterday the rigorous evaluation process that will be put in place, I hope, after next week's successful States debate on the Fiscal Stimulus Package. Each of the bids will be independently assessed to ensure that they will conform to the criteria that I have laid out. For Fort Regent to be considered as part of the Fiscal Stimulus Package, the Education Sport and Culture Department would need to bring forward a detailed bid for funding in response to the recent request by Treasury and Resources for States departments to submit their bids for projects and that they feel that they could make a case that any Fort Regent project could qualify for funding as part of the Fiscal Stimulus Package.

2.2.1 Deputy R.G. Le Hérissier:

Would the Minister acknowledge that while there might not be immediate benefits and while, for example, an installation of a lift might require an up-front technical investment, it is the creation of solid, enduring facilities and longer term jobs which will be of ultimate benefit to the economy?

Senator P.F.C. Ozouf:

I cannot help but agree that if we can find projects as part of the Fiscal Stimulus Package... I do not pretend to be anything on the same scale as Jean-Baptiste Colbert, Louis XIV's Finance Minister,

who built in Paris in his term of office a *grand projet* which had an enduring benefit to the benefit of Paris. The difficulty is that we do have opportunities to use the Fiscal Stimulus money for infrastructure projects but my concern of the immediate outlook of the economy is an immediate one and therefore we need projects that are literally shovel-ready that can be started immediately in the next few months to keep people in work that otherwise would be out of work. I agree with the Deputy about the important need to take a considered view of an investment of Fort Regent. My concern is his plans are not simply developed enough.

2.2.2 Deputy R.G. Le Hérissier:

I have another question. Would the Minister not accept it is short-term thinking of the greatest order? Despite his wish to be the new Sun King of Jersey, would he not admit that if we were to build enduring facilities rather than getting a lot of people busy with shovels to give the illusion of activity, it would ultimately be a much better investment? **[Approbation]**

Senator P.F.C. Ozouf:

I agree and that is the reason why. I am sure it will not have escaped the Deputy's notice that some of the proposals coming forward for the Fiscal Stimulus Package are, for example, in bringing forward much needed housing maintenance to improve the standard of accommodation for hundreds of units of accommodation in our social sector. There are many people who last night would have been going to sleep in homes that might be not regarded - and rightfully not regarded - as acceptable in modern day standards. That is just as important in infrastructure as other matters. I agree with him that we need to invest in our infrastructure. I agree that we need to have a considered look at the capital project plan but I would ask him not to use the opportunity of the Fiscal Stimulus Package, which is needed for urgent economic intervention for, might I say, some desirable, but his own pet projects in relation to Fort Regent. That is not what the debate for the Fiscal Stimulus is about.

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

Will the Minister confirm who will make the independent assessments for allocation?

Senator P.F.C. Ozouf:

Absolutely, that is a very good question, and it is contained within the report and proposition. What is happening is that departments are being requested to put in their bids. Members will have heard, for example, a bid that has been into the public domain by the Skills Executive to keep young people with job opportunities, for example. Those detailed bids are going to be ... their business cases are being assessed by a group of officers under the Chief Officer of the Treasury and Resources Department. The validated business plans will be considered by an independent team of officers. Those recommendations will come to me and I then intend to take those recommendations and have offered the Corporate Affairs Scrutiny Panel a veto on individual projects. I am absolutely acutely aware of the difficulty that the States themselves are not - because there is not the time - going to decide on each individual project. The alternative, because we need to act swiftly, is to bring the Corporate Affairs Scrutiny Panel and to effectively give them a veto on behalf of this Assembly.

2.2.4 Deputy M. Tadier of St. Brelade:

I am not sure whether to address the Senator as Minister or Sun Majesty. I would ask the Minister what steps has he taken to ensure that all monies injected into the economy stay within the local economy as part of the Fiscal Package?

Senator P.F.C. Ozouf:

Jean-Baptiste Colbert was the Finance Minister. It was Louis XIV that was the Majesty. There is a difference, I would say to the Deputy. **[Laughter]**

Deputy M. Tadier:

With respect, I was referring to the interjection from Deputy Le Hérissier.

Senator P.F.C. Ozouf:

Not in the question, I am afraid. **[Laughter]** I beg your pardon. There is, of course, the real issue of economic leakage and one which is a key criteria that needs to be looked at. I draw the Deputy's attention to the urgent need, for example, of dealing with skills training. It may well be, and there is an emerging issue - a real issue - with young people who might not be able to get into the workplace following completion of their studies, whether that be at secondary school, Highlands or in further education. That is, I think, a very clear example of whereby we need to help Islanders in a direct sense. Also, for example, the suggestion of deferring the withdrawal of transitional relief under income support. It is widely acknowledged by economists around the world, and governments have been taking this action; that injecting money into the lower income areas of the economy makes a real difference in terms of injection in the local economy which helps local shops and local High Streets, *et cetera*. That is the kind of analysis that we are looking at. We want maximum benefit for the local economy in dealing with what, I am afraid, is going to be ... while we have been protected to some extent from the economic meltdown around the world we are not expecting that insulation to continue in the forthcoming months.

2.2.5 Deputy D.J. De Sousa:

Can the Minister inform the House how he can say this is an independent review of how the fiscal stimulus will be spent when it is his own officers in his own department that will be looking at it?

Senator P.F.C. Ozouf:

That is exactly the point, as I would say to the Deputy. The Treasury is independent of the individual spending departments, with the exception of Property Services, but there are clear guidelines. I have an Assistant Minister who makes all of the decisions in relation to Property Services and Property Services are regarded as arm's length. It could be the case that the Economic Development Department would have been carrying out that review. Treasury has to do the independent evaluation and bring in necessary expertise, and I fully intend to bring in and harness expertise from outside. We have had the benefit of the Fiscal Policy Panel, 3 independently renowned experts having effectively, I think, given a sign-off and given agreement and given the green light for the action that we need to take. They have been very clear. While the process will never perhaps be perfect, we need to get on with it.

2.2.6 Senator S.C. Ferguson:

First of all, can I assure Members that the Corporate Affairs Scrutiny Panel will not be acting as part of the Executive and doing their work for them. Would the Minister not agree that for any proposals, it is essential that they must not add to the long-term expenditure base?

Senator P.F.C. Ozouf:

I am grateful for the chairman's clear statement that she is not being expected to be part of the Executive but effectively doing the job that this Assembly would wish her to do, which is scrutinising and holding the Executive to account. In relation to long-term States spending, we had, I think, a difficult discussion yesterday at the Corporate Affairs Scrutiny Panel. I am determined that none of the allocation of the fiscal stimulus builds into the base budget of States departments and there is a risk of individual Members coming up with projects that they want long-term funding for. We have to say no; they have to be targeted and timely and not increase the base.

2.2.7 Deputy R.G. Le Hérissier:

Just a final question. Would the Minister not accept that while up-front capital expenditure may not be possible, if, for example, a minibus service was financed and renovation work was undertaken, is that the kind of quick improvement absorbing and creating work which he would be in favour of?

Senator P.F.C. Ozouf:

In a sense, no. If the minibus service - and I know another favourite hobbyhorse of the Deputy, well-intentioned again, is the hopper bus. The hopper bus, I would represent to the Deputy, is a long-term plan and would require the Minister for Transport and Technical Services to have his budget increased year on year, precisely against what the Corporate Affairs Scrutiny Panel is contending. It must be temporary. It must not build the base. It must be one-off; it must be targeted and lift people that otherwise would be, and continue them into employment.

2.3 Senator B.E. Shenton of the Minister for Transport and Technical Services regarding the continuation of the current free bus pass arrangements for pensioners:

Will the Minister give a commitment to continue the current free bus pass arrangement for pensioners during his term of office?

Connétable M.K. Jackson of St. Brelade (The Minister for Transport and Technical Services):

I will give my commitment to continue the provision of free bus travel for pensioners over the age of 65. [Approbation]

2.3.1 Connétable A.S. Crowcroft of St. Helier:

Would the Minister agree that it would be preferable for him to bring forward the transport policy that the House has been waiting for for several years rather than having these discussions on individual matters such as bus passes, disabled parking, and so on?

The Connétable of St. Brelade:

Yes, I agree entirely with the Connétable of St. Helier. My predecessor drew up an Integrated Travel and Transport Policy and that was put on my desk when I first came into office. I am not in complete agreement with it. We have passed it to Scrutiny who are not in complete agreement with it, and I feel it is important that we give it a thorough review which the department are doing at present before presenting it to the States.

2.3.2 Deputy G.P. Southern:

Can the Minister inform the House what negotiations are in progress now that the H.I.E. (Health Insurance Exemption) scheme, which provided some free transport passes, has been scrapped and what arrangements will replace it?

The Connétable of St. Brelade:

We are continuing to support those who are receiving support under the previous scheme as long as they are in demand of it.

Deputy G.P. Southern:

The Minister did not answer the question. Is there any progress in negotiations to replace the H.I.E. scheme which is obviously now defunct?

The Connétable of St. Brelade:

The H.I.E. scheme is not really for my department to deal with, it is the Social Security Department, but we will support schemes as put forward and we will discuss them on an individual basis. I reiterate that those at present receiving the benefit of concessionary bus travel by virtue of the H.I.E. exemption will continue to receive it.

2.3.3 Deputy J.M. Maçon of St. Saviour:

The Minister said that he will support and carry on the commitment for pensioners over the age of 65. It is my understanding that women retire at 60. Will he also give that commitment that he will continue to support women at the age of 60?

The Connétable of St. Brelade:

Currently the scheme applies to all those who are permanently resident in the Island who have reached their 65th birthday and all those in receipt of a Jersey Social Security pension. There is, however, an issue regarding the age of eligibility for both men and women to be equalised and currently the departments are in discussion with the Law Officers regarding this and how the department should deal with it.

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

Given the most recent answer, given equal rights for men and women have been adopted for a long time now by this Island, can the Minister please explain why he is trying to differentiate between a 60 year-old lady and a 65 year-old man receiving aged pension pass given that until now it has been equitable for both parties to receive it at 60. So therefore he is changing the goalposts. Will he accept that he is changing the goalposts?

The Connétable of St. Brelade:

No, this is not the case. In fact, there is a human rights issue, as I understand it, which indicates there is a need to equalise not only pensions but, of course, other ancillary matters and it may be that perhaps I could ask the Attorney General to elucidate on the ...

The Deputy Bailiff:

No, not at this stage.

The Connétable of St. Brelade:

The situation is that the department is taking advice and we will issue guidance to the States in due course.

2.3.5 The Deputy of St. John:

Supplementary after that one. Given that over 60s have been able to get a bus pass for a number of years, is the Minister telling us that those people will now have them withdrawn?

The Connétable of St. Brelade:

No, there is no question of having anything withdrawn but I would say that I am keen to tighten the reins on the scheme principally as the rules have not strictly been followed in the past, but I am keen that all those who are eligible to have free travel do so.

2.3.6 Deputy D.J. De Sousa:

Can the Minister inform the House of the rough date of when he will be looking to bring the transport policy to the House and will he also be asking Scrutiny for a date of when they will finish their review? Will it be before the next elections in 2011? **[Approbation]**

The Connétable of St. Brelade:

Clearly, I wish to bring the policy to the States as soon as possible and it is up to my department to produce the policy and then submit it to Scrutiny with whom we have, I consider, excellent working relationships. No doubt, once they have considered the revised policy, they will comment accordingly and we will bring it to the States.

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

To follow on from Deputy Southern, there was a direction - a proposition - from this House in October 2007 that asked the Minister for T.T.S. (Transport and Technical Services) and the Minister for Education, Sport and Culture to work with Social Security to tie-up all the loose ends under H.I.E. - the free exercise scheme. Could the Minister inform us how many times these 3 Ministers have got together and followed the directions of this House and if it is none, could he confirm that as well, please?

The Connétable of St. Brelade:

I confirm that it is none.

2.3.8 Deputy M. Tadier:

Under the previous Minister, there was talk about restricting the hours during which O.A.P.s (Old Age Pensioners) could use their free bus passes. Is this something that the current Minister will be looking to pursue?

The Connétable of St. Brelade:

I think as part of the whole package, we have to consider charging for peak hour travel in light of the fact that the bus service during peak hours is presently very well used. In fact, the trouble is we are almost victims of our own success because there are too many people on the buses at peak times and I might, if I may, just point out the latest figures in that the ...

The Deputy Bailiff:

I think it is probably sufficient just to say it has been very successful.

The Connétable of St. Brelade:

Just simply, to sum up, there has been an increase in the last year of usage by concessionary passengers of 14.62 per cent.

2.3.9 Senator B.E. Shenton:

Will the Minister give a commitment to continue the current free bus pass arrangement for pensioners during his term of office?

The Connétable of St. Brelade:

I refer back to my previous comments in that there will be changes as a result of the equalisation of ages and possibly the peak hour considerations which will be brought into account. So generally speaking, over 65s I can guarantee, but those between 60 and 65 will receive further consideration.

2.4 Deputy S. Pitman of St. Helier of the Minister for Social Security regarding his discretionary powers in granting a person a benefit:

Would the Minister for Social Security inform Members what discretionary powers, if any, he has in granting a person a benefit?

Deputy I.J. Gorst of St. Clement (The Minister for Social Security):

The Social Security Department administers a wide range of benefits under several different laws. The Social Security Law and the Health Insurance Law do not include any discretionary powers for the Minister, and benefits paid under these laws are subject to a clear set of rules which are laid out in the legislation. The Income Support (Jersey) Law 2007 does include discretionary powers for the Minister. These are set out in Articles 8(2) and (3) of the Income Support Law. They allow the Minister to make a payment in exceptional circumstances. In particular, they are designed to allow the Minister to provide assistance in an unusual situation which could not reasonably be covered by legislation.

Deputy S. Pitman:

The Minister just said which laws where he cannot make discretions, Social Security and what was the other law?

The Deputy Bailiff:

Sorry, what was your answer, Deputy?

Deputy I.J. Gorst:

The Health Insurance Law.

2.4.1 Deputy S. Pitman:

With his discretionary powers under the Income Support Law, has the Minister or his former Minister allowed back payments further than 6 months?

Deputy I.J. Gorst:

The Deputy is probably aware that I recently answered a question in regard to a question put to me by Deputy Southern. I cannot answer to say whether those payments were backdated. I can say that 10 Ministerial discretion payments have been made since the introduction of income support but I do not have the details of the timing with regard to when the application was made and when the decision was made.

2.4.2 Deputy M. Tadier:

Would the Minister confirm whether the paying of social security contributions to unemployed people is discretionary or an automatic right?

Deputy I.J. Gorst:

I am assuming that the Deputy is asking about credits for contributions rather than the paying of contributions. I wonder if he could just confirm that.

Deputy M. Tadier:

Yes, that is correct.

Deputy I.J. Gorst:

Yes, it is a little bit, shall we say, of a grey area. It might depend on why the individual concerned is unemployed. If an individual has decided to take themselves out of employment rather than being made redundant it would not be fair that my department should go and credit those contributions when it has been a decision on behalf of the individual. If the individual has been made redundant against their will, then it is only fair that the department should credit those contributions in a reasonable and even-handed manner.

2.4.3 The Connétable of St. Lawrence:

Under the Income Support Law, will the Minister give examples of the exceptional circumstances under which he has discretion?

Deputy I.J. Gorst:

This is quite a difficult area because who can say what is exceptional and what is not. If I refer the Connétable to the answer, as I alluded to earlier, that I gave to Deputy Southern in March - I am not sure if the Connétable has a copy of that, but it would certainly be available on the website. It was 1240/5(4351) and there, there was a very brief outline of what those cases were and the Connétable might find that helpful.

The Connétable of St. Lawrence:

If I may, I think the question deserves an answer that elucidates more.

The Deputy Bailiff:

You were asked to give examples of any exceptional circumstances you ...

Deputy I.J. Gorst:

It is not possible for me to list every single exceptional circumstance. Unfortunately, we fall into what has become known as “Rumsfeld talk” which is unknown unknowns. I cannot say now what an exceptional circumstance that might come before me this afternoon. If I, however, refer to the answer that I gave to Deputy Southern and perhaps list 2 of those, that might satisfy the Connétable. If you just bear with me for one moment. One of the payments was made in respect of a rental component to an individual moving out of residential care. One of the payments was made in respect of a living component to a young adult previously in foster care. That is the nature of the exceptional circumstance.

2.4.4 The Connétable of St. Lawrence:

A supplementary, if I may. Will the Minister confirm that those have now set precedents?

Deputy I.J. Gorst:

I might like to think that. However, the very nature of the word “exceptional” should indicate that those circumstances were exceptional. If the identical circumstances were to arise, then, yes, I would have expected a precedent to be set. But by the very nature that they should be exceptional, one might expect that they might not arise in exactly the same way that they have in the past.

2.4.5 Deputy R.G. Le Hérisier:

A variation on the Constable’s question. Notwithstanding the very clear compassionate approach that the Minister takes to these matters, would he identify whether there are needs that have come forward under the discretionary system which mean that the system has to be, in his view, reformed?

Deputy I.J. Gorst:

My department and I have a network for the support of the low income within the Island. There are a number of areas which over the 3 years will require to be reviewed. The Scrutiny Sub-Panel, no doubt, will shortly be making a recommendation for where they feel improvements could be made. Members have had an email circulated by a Member of this Assembly saying where that Member feels improvements could be made. There are always improvements that could be made but they come with a cost and it will be ultimately for this House to decide. I am proposing a review of Income Support next year in 2010 and perhaps that will result in improvements that could be made but they will come with a cost and it will be for this House to decide if it feels that those improvements’ cost benefit are appropriate.

2.4.6 Deputy G.P. Southern:

Given that income support has now taken over from welfare as the basic safety net for all residents on the Island, does the Minister believe that his powers to use discretion should be further increased especially in deciding in individual cases where expenditure may be unusually high?

Deputy I.J. Gorst:

I am sure that the Deputy is well aware of the powers afforded to the Minister under the Income Support Law and I have got to say that they are indeed written in the broadest possible terms and, therefore, I do not believe that they, at this stage, need to be increased. I have got to say that this is a difficult area. Every job has its difficulties.

The Deputy Bailiff:

I think, Minister, you have answered the question. You do not need to elaborate at the moment.

Deputy I.J. Gorst:

Sorry, I thought now we had 2 hours I could ... [Laughter]

The Deputy Bailiff:

No. The 2 matters I would say to that is that first of all, at the moment, we only have one and a half and secondly, even when we have 2, answers will still have to be reasonably concise.

2.4.7 Deputy S. Pitman:

The Minister has said that under Income Support he does have discretionary powers. I presume this would include special payments and also has he given any discretionary decisions to an application for a special payment and if so, under what circumstances?

Deputy I.J. Gorst:

I do not want Members to be confused between special payments, which is a separate section of the law and Ministerial discretionary payments. They are quite separate although perhaps we sometimes get confused because they appear to be similar in nature. I am not sure if the Deputy has a copy of the Income Support policy guidelines, but I would be quite happy to provide her with a copy, and there is, as I say, a section there which quite clearly covers special payments and there is a budget to cover those special payments. The Ministerial discretion is quite different and it is covered by 8(2) and (3), as I said, and, as I said earlier, there have been 10 such decisions made and I believe was made one of those under Ministerial discretionary payments.

2.5 Senator B.E. Shenton of the Minister for Home Affairs regarding the current penalties for driving whilst under the influence of alcohol or drugs, or without insurance:

This question is prompted by constituents who have suffered financial loss or significant stress as a result of the actions of others. Does the Minister consider that the current penalties for driving while under the influence of alcohol or drugs, or without insurance, are sufficient and, if not, what measures, if any, does he plan to implement to address this matter?

Senator B.I. Le Marquand (The Minister for Home Affairs):

This question is not strictly in my area. I think it is in the area of T.T.S. but as it is a very good question and as I know a few things, I will answer it anyway. The answer is no, I do not think the penalties are sufficient. I could go into more detail but I think that is a sufficient answer for this moment. In terms of implementing matters, there was a complete review of Road Traffic Law penalties which began about 8 years ago but unfortunately got lost in the midst of time. I am going to urge the Attorney General to look deep in his desk to find the necessary paperwork on that because I think we should go ahead with that now.

2.5.1 Senator S. Syvret:

Does the Minister for Home Affairs agree with me that there needs to be frankly a stringent increase in the criminal penalties for hit and run driving so that the penalty incurred for people who cause accidents and leave the scene is severer than that which would be incurred for drunk driving or driving without insurance? This is because by seeking to leave the scene of such a collision, people fail to help those who may be seriously injured and indeed whose lives may be in danger. I understand that this is the legal position in France.

Senator B.I. Le Marquand:

Yes, I do agree with that. The last Magistrate worked on a complete rewrite of the penalties currently used by the Magistrate's Court and included in that was a recognition that offences of hit and run, of failure to stop and report an accident, should be treated much more seriously.

2.6 The Deputy of St. Martin of the Attorney General regarding the legal definition of a Parish Hall Enquiry:

Will the Attorney General inform Members of the legal definition of a Parish Hall Enquiry, outlined in the Honorary Police powers of arrest should a member of the public decline to attend such an enquiry and, in view of the fact that while conducting Parish Hall Enquiries, Centeniers are performing a prosecution and not a policing function, is that function - particularly when administering sanctions - Human Rights Convention compliant? If so, how?

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

Although the expression occasionally appears in legislation such as in Article 30 of the Police Procedures and Criminal Evidence (Jersey) Law 2003, there is no statutory definition of a Parish Hall Enquiry as far as I am aware. By way of usage, it reflects the enquiry that is made by a Centenier at a Parish Hall to ascertain whether there is sufficient evidence to charge an offender with having committed an offence and whether it is in the public interest to do so. There are currently no powers of arrest should a member of the public decline to attend a Parish Hall Enquiry. The present position is that a person who fails to attend is liable to be charged with the offence for which he or she was warned to attend the Parish Hall and summonsed to appear in the Magistrates Court at a later date. In my opinion, the Centenier's functions at a Parish Hall Enquiry are compatible with Article 6 of the European Convention on Human Rights. The enquiry is not a court determining criminal charges but a prosecution process. Although the Centenier can sometimes impose a sanction, that is always subject to the consent of the person charged with the offence and that person has the right to require that he or she attends, in the Magistrates Court, a convention compliant tribunal if he or she so wishes. Centeniers are required to advise members of the public attending an enquiry that this is their entitlement if they so wish.

2.6.1 The Deputy of St. Martin:

Would the Attorney General agree that it might be helpful if the form that was now issued to people who are required to attend a Parish Hall Enquiry is clear and makes it absolutely clear that they do not have to attend if they do not wish to and what would happen to them if they refuse to or decline to attend a Parish Hall Enquiry?

The Attorney General:

I am very happy to look at that form in conjunction with the Minister for Home Affairs because, in a sense, that will be very often part of the States policing operations and, as he so kindly passed to me an initiative in relation to penalties, I am very pleased to pass this one back to him as well.

2.6.2 Senator S.C. Ferguson:

Would the Attorney General like to confirm, however, that with a Parish Hall Enquiry, you do not incur a criminal record whereas if you go to a Magistrates Court and are found guilty you could well incur a criminal record.

The Attorney General:

I can confirm that a determination to a Parish Hall Inquiry does not amount to a conviction.

2.6.3 Deputy R.G. Le Hérissier:

Would the Attorney General confirm that the role of Centeniers at such enquiries is in part similar to the role of U.K. police officers who are involved in diversion programmes?

The Attorney General:

I think the role of Centeniers at such enquiries is often to be involved in diverting people out of the formal criminal justice system. I am not sure I know enough about the U.K. policing officers to be able to agree completely.

2.6.4 The Deputy of St. Martin:

I would like to pick up on the answer that was given to Senator Ferguson because I think it is very useful because while I agree with her it may not be a Parish Hall sanction, would the Attorney General agree that when people make applications for jobs they are required to show whether, in fact, they have had a Parish Hall sanction? So even though they have, in fact, not had a court conviction, it nevertheless is still a sanction, which is applicable when people are applying for jobs, because I have an application form here for the Education, Sports and Culture job and it makes it quite clear here that one, indeed, has to ensure that even if you have got a Parish Hall sanction that one is required to show that. So a Parish Hall is ...

The Deputy Bailiff:

Brief question, please, Deputy.

The Deputy of St. Martin:

So will the Attorney General agree that a Parish Hall sanction does have similar connotations as it would be a conviction to court? Does it have the same meaning?

The Attorney General:

It is not a conviction and therefore it does not have the same consequences as a conviction. For example, there are occasions where on a second conviction the maximum amount of the penalty which can be imposed by a court goes up and therefore in those circumstances the earlier sanction of the Parish Hall would not count. But I can certainly see that in the light of the form that the Deputy of St. Martin has just described, then there may be occasions when the fact that somebody has been charged with an offence and the charge has been resolved at the Parish Hall, will be taken into account by a prospective employer. That is quite possible.

2.6.5 Connétable D.J. Murphy of Grouville:

I wonder if the A.G. (Attorney General) has figures about the number of Parish Hall Enquiries there are per annum and how many complaints he receives about the misconduct of those hearings. Thank you.

The Attorney General:

I certainly do not have those figures with me. I am not sure if I have the figures but I can say that the number of complaints that I get in relation to the conduct of Parish Hall Enquiries is very low indeed. It is certainly counted on the fingers of one hand, each year.

2.6.6 The Deputy of St. John:

Given the glowing report in the Howard League Penal Reform on Parish Hall Enquiries, would the Attorney General agree with myself that they are an asset to this Island more than anything else?

The Attorney General:

Yes.

2.7 Deputy T.A. Vallois of St. Saviour of the Minister for Treasury and Resources regarding measures to address the backlog in the maintenance of States-owned properties:

In view of the information provided to the States that there is a significant backlog in the maintenance of States-owned properties, would the Minister advise what measures, if any, have been put in place to ensure that the public purse does not have to face pressures in the long term to meet high maintenance costs?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

If I may, I would like to ask Deputy Le Fondré, Assistant Minister with the special responsibility for property, to answer the question.

Deputy J.A.N. Le Fondré of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):

I will just say it is a very difficult question to answer briefly, I am afraid. But the short answer, unfortunately, is that there will be pressures on expenditure to meet the cost of maintaining States property to an adequate standard. That is because the level of funds presently allocated is well below that required to avoid a further build-up of deferred maintenance, which builds on to the backlog of maintenance. To clarify the problem: we have spent quite a long time identifying maintenance items for about the next 10 years, as well as public use for potential costs. There are all sorts of various reports that have been produced on the matter. If we do nothing, the outstanding maintenance will cost around £120 million. That is excluding professional fees and all that type of stuff. The solutions, i.e. the measures that the Deputy has asked about: firstly we believe this can be reduced to approximately £80 million by limiting maintenance, for example, on properties that will eventually be sold. In the short-term, the priority is for works that must be carried out to ensure the safety of the public and States employees, and those are being funded by reprioritisation of existing maintenance, and, I have to say, no essential items have been deferred. We have requested additional funds, as the Minister has alluded to previously, as part of the fiscal stimulation package. In the medium and longer term, the only way to reduce all types of maintenance is basically to significantly reduce the amount of space occupied and to replace older buildings which are more expensive to operate than with, in our view, a modern efficient building. That is the purpose of the office strategy which is being developed at present. The aim of the office strategy is to reduce the office portfolio by approximately 30 per cent - that is about 2,000 square feet - and that has quite significant positive implications in terms of savings for the States of Jersey. Those, essentially, are the first few steps in the measure that we are taking.

2.7.1 The Deputy of St. John:

Given that over the last 20 years plus the States have been very remiss in carrying out repairs to properties, and, in fact, where an annual expenditure of somewhere in the region of 10 per cent should have been invested or reinvested in these properties nothing of that type of figure has happened, can the Assistant Minister give an assurance that from hereon we will not see properties that are only 20 or 30 years old being demolished and rebuilt, that we will have a proper maintenance programme that can be scrutinised by any Member of this Chamber at a session like this in the future? Because if he cannot give us an assurance, we are creating problems for the future.

Deputy J.A.N. Le Fondré:

I can always give an assurance. It is always in the hands of the Assembly, though, in terms of how funding authorities are established.

2.7.2 Deputy D.J.A. Wimberley of St. Mary:

In the light of that last question I would just like to ask the Assistant Minister how this situation came to be in respect of maintenance and could it be that prudence and the mantra of low taxation constantly meant mismanagement of our assets?

Deputy J.A.N. Le Fondré:

As to how this situation has evolved over time, I am afraid I cannot clarify that because it goes well before my days. In terms of is it a result of low taxation policies, no, I disagree. Is it a case of, in the past, the Assembly or the departments have found different priorities, that may well be the case. However, it is always a case of: we have to establish an efficient programme going forward and we have to look for the efficiencies that undoubtedly are available.

2.7.3 The Deputy of St. Mary:

Could I ask a supplementary on that? Is it not the case that if you are prioritising and dealing with different budgetary requirements in a time of what we have had over the last 20 years “constant budgetary restraint”, that maintenance will always come bottom of the list and that is why we are facing this problem today?

Deputy J.A.N. Le Fondré:

There will always be attention on maintenance. But, as an example, one of the issues we are looking at at the moment is, I think, the opportunity has been taken, as we sometimes need to elsewhere... if you have the space, people fill it. As an example, there is a wonderful figure that you might like to work on later, is that we have done lots of reports and I have been trying to get solid data to build our strategy going forward. One of those facts that has come out recently is that we have 5 work stations - desk areas - for every 4 full-time or equivalent employees. So the point about that is that there is definitely scope for efficiencies to be made going forward.

2.7.4 Deputy R.G. Le Hérissier:

Would the Assistant Minister not acknowledge that one of the hidden issues has been the perhaps lax management of leases, for example, the retention of Oriel House when there was no ongoing need; and the retention of the Economic Development offices in Bath Street? Would he now assure the House that the management of leases is much more rigorous and we are not finding ourselves with inflexible leases from which we cannot emerge once a building should be vacated?

Deputy J.A.N. Le Fondré:

I will not give an assurance that we are 100 per cent perfect yet, but I would agree that, I believe, matters are improving and certainly, as I think the Deputy is aware, by restructuring the Property Holdings Department internally, physically - the building - we have managed to get rid of the lease of Oriel House by, essentially, putting a lot more people into an existing area.

2.7.5 Deputy T.A. Vallois:

I just highlighted the area purely because we are going to have some very difficult decisions to make coming forward to the House. But also because of the States Property Plan 2006, where it is stated that it would set a standard across the States of providing and maintaining property fit for purpose. I had hoped that this will be taken on board and for the silo mentality we seem to have within the departments to be broken down so we can all work together. Would the Assistant Minister take on board and carry forward this?

Deputy J.A.N. Le Fondré:

Yes, and I would also note that, because there are structures in place, whether it is at the political level or at the officer level, that are aimed to improve the whole system. Of course, on that basis we rely also on the professionalism of the Corporate Management Board to move things forward, as we would all expect.

2.8 Deputy T.M. Pitman of the Minister for Treasury and Resources regarding the annual income from 1(1)(k) residents from 2005 to 2007:

Following your written answer on April 28th concerning the annual income from 1(1)(k) residents from 2005 to 2007, would the Minister provide a breakdown indicating the amounts paid by those residents accepted under the current taxation system, i.e. the 20 per cent on the first million, and those settling in Jersey under the older regulations, and indicate the number of residents in each category for each year in question? Sir, with your permission, could I ask that the Minister breaks with tradition and gives as long and as a full a response as possible?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

Deputy Noel has specific responsibility for certain areas of tax and I will ask him to be the rapporteur for this question.

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur):

The breakdown of the pre-2005 onward cases is as follows: 2005 tax paid £6.9 million, number of 1(1)(k)s 120; 2006 tax paid £7.5 million, number of 1(1)(k)s 118; 2007 tax paid £7.1 million, number of 1(1)(k)s 116. Post 2005, which are those 1(1)(k)s treated under Article 134A, because so few 1(1)(k)s took up residency in Jersey in 2005 and 2006, the Comptroller of Income Tax is of the opinion that he may very well breach his Royal Court oath of office of confidentiality, as well as the Data Protection legislation, if he releases the tax paid for the years 2005 and 2006 independently. But he is able to give a global figure for both years by combining these 2 years on a basis that the figures for 2005, 2006 and 2007 are as follows. 2005 and 2006 tax paid £816,000, number of 1(1)(k)s 13; 2007 £1.7 million, number of 1(1)(k)s 15. It must be remembered that 1(1)(k)s take up residency in Jersey during the tax year, so the tax they pay for the first year of residence is apportioned accordingly.

2.8.1 Deputy T.M. Pitman:

Could the Assistant Minister advise the Assembly as to his thoughts or his Minister's thoughts on any possibility of reassessing of some of the agreements under the older regulations or what problems would be faced if he were to do so?

Deputy E.J. Noel:

The Comptroller of Income Tax has sought legal advice on this matter and under that advice the advice is that we cannot go back and renegotiate the pre-2005 places.

2.8.2 Deputy J.A. Martin:

Just to refresh my memory ... it is not my memory; I do not know the answer. It seems a very big difference and probably for the better that we only had 15 or 16 1(1)(k)s. Was the threshold between these years lowered at all for people coming in? I know you have to have X amount of money. I am not sure what that amount of money is. But we have either been very lucky, or, as I say, I would have imagined the threshold would have been lowered.

Deputy E.J. Noel:

Jersey is a very competitive international marketplace for rich immigrants. The minimum tax paid for a person to get a 1(1)(k) housing licence in Jersey is £100,000 per year. Switzerland has a one-off rate which used to apply in Jersey pre-2005, based on a person's outgoings, not their income. An average of £35,000 per year is paid in Switzerland. The United Kingdom has introduced a non-dom, which is non-domiciled rules, for immigrants into the U.K. where they pay £30,000 per year. So Jersey has chosen a very much higher premium than either Switzerland or the United Kingdom.

2.8.3 Deputy J.A. Martin:

Supplementary - but did it change in these 2 years? Was the threshold of £100,000 less or more than that before that? That was really the question.

Deputy E.J. Noel:

Since 2005 Jersey has had a minimum for new 1(1)(k)s coming to the Island to pay a minimum amount of tax of £100,000.

2.8.4 Deputy C.F. Labey of Grouville:

Did I understand the Assistant Minister correctly when he said that we cannot renegotiate the 1(1)(k) tax rate but obviously we can renegotiate ordinary residents' tax rates at any time?

Deputy E.J. Noel:

The legal advice that the Comptroller of Income Tax has received would indicate that we cannot go back and renegotiate deals that have been made prior to 2005.

The Deputy of St. Martin:

Could we ask the Assistant Minister if maybe he could look at that with a view to achieving equality throughout the tax-paying residents of Jersey?

2.8.5 Senator S. Syvret:

In these discussions of 1(1)(k) residents it is always asserted that they contribute a substantial amount of money in taxation receipts and also it is asserted that they contribute in ways of greater added value to the community in other ways. Frankly, I have never seen any evidence to that effect. On the contrary, I have seen a good deal of evidence that could be used to argue that they have a net disbenefit on the Island in many respects. Will the Assistant Minister undertake to co-operate with the relevant Scrutiny Panel so that a factual evidence-based analysis of the cost benefit of 1(1)(k) tax exiles be undertaken?

Deputy E.J. Noel:

I can simply assert that we are currently carrying out a review of the 1(1)(k) situation to see if there is any possible way that we can open up negotiations with 1(1)(k)s that arrived here pre-2005.

Senator S. Syvret:

That was not the question I asked about renegotiation. I asked if the Assistant Minister would give an undertaking that his Minister and his department would, in co-operation with Scrutiny, undertake a detailed evidence-based cost benefit analysis of the benefits or otherwise of 1(1)(k)s to Jersey.

Deputy E.J. Noel:

I would be delighted to do so.

2.8.6 Deputy P.V.F. Le Claire:

I am certain I am not the only that is not completely *au fait* with this subject. I have asked many questions over the years. But can I ask the Assistant Minister this? Am I right in thinking that a 1(1)(k) can come into Jersey on the agreement that they pay £100,000 a year in tax but after the first year renegotiate that downwards if they are not ... they have to pay every year £100,000 a year in tax?

Deputy E.J. Noel:

Deputy Le Claire is correct. They have to pay a minimum of £100,000 per year in tax.

2.8.7 The Deputy of St. John:

Would the Assistant Minister accept that 1(1)(k)s are, in fact, of benefit to the Island, given that they give employment, whether it be in the building industry, whether it be gardeners, housekeepers, *et cetera*, and therefore there is a benefit accrued to the Island long-term and they are not a leach on the Island's back, as some people might be trying to say?

Deputy E.J. Noel:

I agree wholeheartedly with my learned Deputy. The 1(1)(k)s give hopefully far more to the Island than merely tax.

2.8.8 Deputy G.P. Southern:

Can the Minister confirm that the average 1(1)(k) is currently paying around 6 and a half per cent tax compared to 8 per cent tax for those on marginal rates - those just able to pay tax - and 14 per cent, on average, for the rest of us? Is he content that that situation will go on into the future?

Deputy E.J. Noel:

I cannot confirm that 1(1)(k)s do pay an average of 6 per cent tax because we do not know the full extent of their worldwide income, and, under the legislation, nor should we know.

Deputy G.P. Southern:

Surely that figure of 6 per cent is on their declared Jersey income?

Deputy E.J. Noel:

1(1)(k)s pay 20 per cent of their declared Jersey income.

2.8.9 Deputy T.M. Pitman:

Simply to ask: does the Assistant Minister accept that anyone who questions that we are hopefully receiving the tax that we should is not accusing people of being leaches on our community?

Deputy E.J. Noel:

For once I have to agree with Deputy Pitman. The 1(1)(k)s are not a leach on our community, far from it.

2.9 Deputy G.P. Southern of the Minister for Home Affairs regarding the search of Senator Syvret's premises:

Will the Minister give Members further details of the sequence of events and the officials involved in the decision not to pursue a search warrant under the Data Protection (Jersey) Law 2005 but to use the provisions contained within the Police Procedures and Criminal Evidence (Jersey) Law 2003 in relation to the search of Senator Syvret's premises and advise when he or his department were informed or consulted?

Senator B.I. Le Marquand (The Minister for Home Affairs):

There are 2 questions here. The first gives me an opportunity to give further details if I so wish, but I am not going to do that. The second is in relation to the involvement of myself and my own department. I was notified by the Acting Chief Officer at about 11.30 a.m. on 6th April that Senator Syvret had been arrested. The Acting Police Chief and I are both sure that I was not told that a search was taking place without a warrant. But we are not sure whether there was anything mentioned at all in relation to a search. There is a reference to my department, which I assume means the Home Affairs Department, not the States of Jersey Police. The Chief Officer of Home Affairs has very limited functions in relation to the States of Jersey Police and was not separately involved.

2.9.1 Deputy G.P. Southern:

Could the Minister please inform Members what his understanding is of the decision to rely on the general provisions, either under Article 20 or 29 of the P.P.C.E. (Police Procedures and Criminal Evidence) (Jersey) Law 2003) and, if under Article 20, when such a search was authorised in writing by a policeman at or above the rank of inspector?

Senator B.I. Le Marquand:

As I indicated during the debate 2 weeks ago, the search was authorised under Article 29(2)(b) of the P.P.C.E. Law.

2.9.2 Deputy G.P. Southern:

Does the Minister accept that Article 29 refers to serious breaches of the law and should not be brought into force over the relatively lower level Data Protection Law 2005?

Senator B.I. Le Marquand:

No, I do not accept that. There is no qualification under article 29(2)(b) in relation to the seriousness of offences involved.

2.9.3 Senator S. Syvret:

I declare an indirect interest in this matter, obviously. But I am curious about a point of the law and the way in which the particular law, the Article 29 was chosen. Would the Minister for Home Affairs confirm that the reason that the signed search warrant was not, in fact, relied upon, and that Article 29 was chosen instead, was because the search under the search warrant would have been confined to the purposes of the warrant, whereas the use of Article 29 enable the police to search everything on the property from top to bottom on a fishing expedition?

Senator B.I. Le Marquand:

No, that is not correct in either way. Firstly, the reason the search warrant under Article 15 was not acted upon was because it only operated in relation to serious offences. Therefore the search warrant should not have been granted under that article, and, once this was realised it was not acted upon. But there were very clear limitations under Article 29(2)(b) in relation to the search, which is solely in relation to obtaining evidence in relation to the matters for which a person has been arrested.

2.9.4 Deputy G.P. Southern:

Will the Minister come to the House and give his reasoning why he refuses to give any further details about the first part of this question?

Senator B.I. Le Marquand:

Yes, because as I said during the previous debate, this matter is still an operational factor. Any further details would identify individuals involved, which is not appropriate. It is also not appropriate at this stage to identify the reasons for actions which were taken. That is partly in order to protect Senator Syvret, if this matter comes to trial.

2.10 Deputy G.P. Southern of the Minister for Social Security regarding payments under his temporary scheme for the ex-employees of Collas and Le Sueur:

Would the Minister explain to Members why no payments under his temporary scheme for redundancy payments have been made to ex-employees of Collas & Le Sueur since they were made redundant 5 weeks ago and advise what steps, if any, he has taken to alleviate any hardship caused to these redundant workers, and to facilitate payments in the shortest possible timescale?

Deputy I.J. Gorst (The Minister for Social Security):

Insolvency has not been declared in the case of Collas & Le Sueur and until it is I cannot consider claims from the former employees of that company under the Temporary Insolvency Scheme. The rules that I set out for the scheme were in accordance with Deputy Southern's proposition. Making compensatory payments to employees where a business is not insolvent would be contrary also to the States decision and would be open to public criticism. Other jurisdictions, including the U.K. and the Isle of Man, as well as the European Directive, require formal or legal insolvency proceedings to be instituted before an insolvency fund is evoked for the protection of employees. My officers have maintained contact with the former employees of Collas & Le Sueur since the date of redundancy. We have obtained copies of documents that will be required to support their

claims for compensation, so that payments can be processed rapidly if the company does become insolvent.

2.10.1 Deputy G.P. Southern:

Is the Minister satisfied that the scheme he has devised has failed in its first aim, which is to get redundancy payments in short order when the need is there to those made redundant in these sorts of cases, and does he accept further that in many cases it will take some weeks to establish insolvency procedures and that his system will fail to meet the prime aim of supporting redundant workers in the short term, as requested by this House?

Deputy I.J. Gorst:

I am surprised at the terminology that the Deputy is using. He uses the term “redundancy payment”. The scheme is not about redundancy payment, as he well knows. I am also surprised that he feels that this scheme has failed. He appears now to want to change the scheme when I have carried out the wishes of this House and carried out the request from his very own proposition. He now wants to change the terms of that proposition. I do not really feel that it is appropriate for me to start quoting back to the Deputy his own proposition. It most certainly has not failed. I have taken instruction from this House. I believe that the scheme that I have proposed is fair and reasonable. I have given a 4-week disregard. It is unfortunate that the Deputy feels that payment should be made somewhat instantly. That is never the case with situations of insolvency. They always take time because, dare I say to yourself, lawyers are involved; perhaps one for myself, accountants are involved. These things take time and that is right and proper, so the owners of businesses are given an opportunity to carry on trading because going insolvent or going en désastre is the last possible course of action that they should consider.

2.10.2 Deputy G.P. Southern:

Will the Minister consider giving such assistance as is needed to these redundant employees to accelerate the process and ensure that the company is brought before the courts in insolvency proceedings, if necessary, assisting them with legal advice in order to do so, in order to accelerate this process?

Deputy I.J. Gorst:

I do not believe that it is for a government department to precipitate a company going into liquidation or going en désastre. I am quite surprised at the Deputy’s suggestion that I should be helping with legal fees. It does not seem very many days ago that I stood in this Assembly proposing that very course of action with regard to the Woolworths employees and I was shot down in flames as being scurrilous, scandalous and many other such terms. In other words, I will not be.

2.11 The Connétable of Grouville of the Minister for Treasury and Resources regarding allocations from the Drug Confiscation Fund for charities associated with assisting recovery from alcohol and drug abuse:

Given that in the years 2008-2009 allocations from the Drug Confiscation Fund totalling £1,767,800 were made to Health and Social Services and Home Affairs of £1,061,000; Customs, Police and Prisons £589,800; and Health and Social Services £117,000, while charities associated with assisting recovery from alcohol and drug abuse received only £105,000, would the Minister undertake to redress the balance and assist such charities struggling to cope with the demands put upon them?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

Could I call on Deputy Noel to be rapporteur for this question?

Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

All bids submitted to the Drug Confiscation Fund, whether from the States departments or external organisations, are considered by its committee using a criteria laid out in Article 14 of the Drug Trafficking (Miscellaneous Provisions) (Jersey) Law 1996, namely: “For the purposes of (a) promoting or supporting measures which, in the opinion of the committee, may assist in (i) preventing, suppressing or otherwise dealing with drug trafficking or the misuse of controlled drugs, (ii) dealing with the consequences of the misuse of controlled drugs or (iii) without prejudice to the generality of clauses (i) and (ii), facilitating the enforcement of any enactment dealing with a drug trafficker or the misuse of controlled drugs.” If the bids meet the above criteria and there are sufficient funds in the Drug Confiscation Fund, then a grant will be awarded.

2.11.1 The Connétable of Grouville:

Does he believe then that allocating 5 per cent, roughly, of this fund is sufficient to help the charities associated with alcohol and drug abuse?

Deputy E.J. Noel:

Probably not, but we are dealing with a finite amount of money and the committee judge their criteria from those applying with the guidance that they have got.

2.11.2 The Deputy of St. John:

Could we be told the actual balance of the fund and which departments benefit mostly from this fund because in my previous time in the House I am aware that the Crown Officers’ Department, in fact, appeared to be benefiting more than most from these monies instead of going to put a case to the Treasury to get their funding, as all departments had to do?

Deputy E.J. Noel:

The current balance of the funds available in the Drug Confiscation Fund is only £30,000. The committee is unable at present to consider any new bids because of this. Maybe the Deputy is getting confused with another fund, that is, the Proceeds of Crime not necessarily Drug Trafficking.

The Deputy of St. John:

Yes, that is correct.

2.11.3 Deputy J.A. Martin:

Could the Deputy inform the House who this committee consists of please, who makes the decision as to where the money goes?

Deputy E.J. Noel:

I believe it is the A.G. and the Treasurer of the States.

2.11.4 The Deputy of Grouville:

You never look in this corner, I say it often enough to my Member. Will the Deputy confirm that in order to aid transparency and understanding, that the details of these funds, both in income and expenditure, will be listed in a note or presented as a separate set of accounts to this House, either as a note to the States accounts or presented in the report to this House?

Deputy E.J. Noel:

I am quite willing to do so, but much of that information has already been given in a previous written question but I am quite happy to circularise that again.

2.11.5 Deputy D.J. De Sousa:

I wonder if the Assistant Minister has the figures because Health and Social Services and Home Affairs are locked together. Which proportion was for Home Affairs and which proportion was for Health and Social Services?

Deputy E.J. Noel:

The only figure I have available today is that it was a combined project and so the sum of £1,000,061 was a combined project. So I do not have the detail. I am quite willing for you to have that in due course.

2.11.6 The Connétable of Grouville:

The Assistant Minister has very carefully not answered my question. I did say: would the Minister undertake to redress the balance and assist the charities struggling to cope with the demands put upon them?

Deputy E.J. Noel:

I am quite happy to take that forward on behalf of the Connétable. Unfortunately, some of the charities putting in bids do not qualify because they are putting in bids for alcohol abuse as opposed to drug abuse and under the rules of the fund, alcohol abuse funding cannot be forthcoming.

The Connétable of Grouville:

I am sorry but I have to reply to that because I am obviously referring to those charities that are acceptable charities, in other words, they would not be known as charities unless they were acceptable charities. I am not talking about any other charities. If I have to amend the question, then would he accept that: would he assist acceptable charities?

Deputy E.J. Noel:

I have already said that we will give further thought to including more charitable contributions from the fund in the future.

2.12 The Deputy of St. Martin of the Chairman of the Privileges and Procedures Committee regarding a health and safety audit on the public areas of the States Chamber:

Given that the acoustics and heating systems are poor and there are no toilets or lift facilities in the public area of the States Chamber, has a health and safety audit been conducted in recent times? If so, what was the outcome, and if not, would the Chairman agree to call for one?

Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):

At the time of the refurbishment of the States Building, an access audit was completed, and wherever possible, in practical terms, the recommendations were incorporated in the scope of work being carried out. Investigation was undertaken at the time of the refurbishment into the provision of access for the disabled to the public gallery in the States Chamber. However, it was considered impossible to provide a lift to the gallery level. There is a limit to what can be achieved when operating in an historic building which is designated a Site of Special Interest. A site risk profile is due to be completed on the States building by September 2009. The site risk profile is a co-ordinated report which details the results of surveys carried out in relation to specific risk assessments, from working at height, to fire and glazing, *et cetera*. The Department of Electronics has confirmed that an induction loop has been installed in the States Chamber to assist those with hearing aids, and discreet speakers are present in the public gallery. The problems experienced recently with the heating system have been resolved by the toning-down of the valves within the heating system. The Privileges and Procedures Committee continues to keep the matter of facilities under consideration but recognises that there are limitations in relation to what can be achieved within an historic building.

2.12.1 The Deputy of St. Martin:

I am one of those who like to make sure everyone in the House hears what I am saying but I believe there are a number of people who do not speak very loudly and I feel very sorry for those people

who are up in the public gallery who I can see stretching to hear what the Chairman was saying. Even though I accept that there may well be acoustics that checked-out, can I get an assurance from the Chairman that probably another check-out will be made and probably ask the members of the public whether they themselves can hear what is being said in the Chamber? Because, again, I have complaints made to me and I know that they have been to P.P.C (Privileges and Procedures Committee) in the past but it appears that nothing is happening. So can I have an assurance from the Minister that if we cannot do anything about the lifts and we cannot do anything about the toilet facilities at least we can do something about those people up in the gallery so they hear what is being said in this Chamber?

The Connétable of St. Mary:

I was given to understand that the Department of Electronics were going to try, if it were possible, to conduct another test today. I do not know whether that has happened. But certainly they have informed me that the loop and the discreet speakers are available. This matter has been considered recently by the Privileges and Procedures Committee and we did decide at that time to inquire whether there were any new revised speaker systems which could be installed to improve acoustics in the Chamber, especially in the public galleries. I understand that in the past when it was attempted to boost the level of sound generated in that area, there were problems with feedback to the microphones in the lower Chamber and so there is a balance to be struck. But I do advise the Deputy that the P.P.C. is looking into this at the moment.

2.12.2 The Deputy of St. John:

Given there is concern that security of this building is being breached and maybe by Members locking themselves in rooms at night, what is the policy of the P.P.C. in Members being allowed to use this building overnight and, furthermore, do they supply breakfast in the morning?

The Bailiff:

I am sorry. **[Laughter]** The question is about acoustics, heating and health and safety - so I think that is straying a bit far.

The Deputy of St. John:

It is all part and parcel of health and safety. On a point of order, it is part and parcel of health and safety within this building in general.

The Bailiff:

Sorry, Deputy.

2.12.3 The Connétable of St. Helier:

Would the Chairman advise whether she is comfortable with the fact that it would be impossible for somebody in a wheelchair to get into the visitors' gallery, and, indeed, challenging for a States Member in a wheelchair to attend sessions of the House and that in the United Kingdom, certainly under the Disability Discrimination Act, the States would be required by law to make changes to the structure of the building to accommodate disabled people? Would she be prepared to undertake to pursue disabled access in the States Chamber with her colleagues?

The Connétable of St. Mary:

In an ideal world I would like to see the building fully accessible to all members of the community. I repeat, though, there are limitations that are imposed on us by the building. I am not an expert on U.K. law, but my understanding of the Disability Discrimination Act is that where there is an existing public building the Act does not necessarily override planning considerations and listing status. That is my understanding but, as I say, I am not an expert.

The Connétable of St. Helier:

I did ask whether the Chairman would be willing to pursue this matter with the appropriate authorities.

The Connétable of St. Mary:

I am sorry. I thought that was implicit in my answer. We work within the constraints of the building. I understand that all these matters were looked into when the refurbishment was undertaken, I think a matter of only 6 or so years ago. I would also advise that while the Privileges and Procedures Committee is responsible for the provision of Members' facilities here, there is also, in fact, a cross-over area of responsibility with Property Holdings who are more responsible for the building. What I can assure the Constable of St. Helier is that I will - and, where necessary, liaise with Property Holdings to - investigate what is possible.

2.12.4 Deputy T.M. Pitman:

Really, just to follow on from the Constable of St. Helier, would the Chairman of the P.P.C. not concede that this is just one part of the wider issue of engaging with the public and is a very, very urgent matter, and give an undertaking to take that forward in any way she can?

The Connétable of St. Mary:

I am sorry, could the Deputy qualify which particular aspect is he ...

The Deputy Bailiff:

The question of wheelchairs, I think.

The Connétable of St. Mary:

I can only say what I have already said. The building has its limitations. In an ideal world ... and many parliaments around the world have, in fact, moved into completely different buildings other than the historic ones where it was not possible to modernise them. I do not believe in this economic climate that would be a possibility that any of us readily propose at this moment. All I can suggest is that we continue to work with what is possible within the building. There are other ways to engage with the public. We do have a feed broadcast. Persons can appear, clearly ...

The Deputy Bailiff:

I think generally it was about wheelchairs.

2.12.5 Deputy D.J. De Sousa:

Can the Chairperson please inform the House as to whether, staying on the same subject, this is human rights compliant? Surely people have a right to access the building and through disability are possibly being excluded.

The Connétable of St. Mary:

I am not aware that there is a human rights issue with this. As I said, there are constraints there on the building and I am not qualified at this moment to say which overrides which. I have indicated previously that I will liaise where necessary with Property Holdings to investigate what the levels are and I will take that forward, of course, in all areas.

2.12.6 Senator T.J. Le Main:

I go on health and safety. Can the Chairman give me some assurance that Members of this Assembly will not use this Chamber downstairs for sleepover purposes and that health and safety is not compromised, and that, as I say, Members do not use this, as has been the case in the last week or so, of a Member sleeping over after a drinking session?

The Connétable of St. Mary:

I do not have any firm facts what activities take place within the building. What I can say is that one of the facilities provided to States Members is 24/7 access to the States Members facilities. The 24/7 access is so they can meet the needs of their constituencies as required. No Member of the States would therefore presumably have a right to occupy one area to the exclusivity of others. However, as regards health and safety, all Members must operate knowing that they have to take responsibility for their own actions. If they are in the building overnight working, as Members come in very, very early - I know that from personal experience - there is a possibility that in, for example, the event of fire ... enough said.

Deputy P.V.F. Le Claire:

Could I seek clarification? What are the rules regarding sleeping in the Chamber? [Laughter]

The Bailiff:

As long as you do not ask how many Members do it. Very well.

2.13 Deputy K.C. Lewis of St. Saviour of the Minister for Health and Social Services regarding an emergency payment to Brig-y-Don children's home:

Will the Minister advise whether she intends making an emergency payment to Brig-y-Don Children's Home to enable this charitable facility to remain open and continue its important work, and, if not, will she explain why?

The Deputy of Trinity (The Minister for Health and Social Services):

I hope I have answered most questions of Deputy Southern's but here I am. Members will be aware that the Minister for Treasury and Resources is seeking early debates on P.17 to resolve the urgent funding issues, not only of Brig-y-Don but of family X. As I said before yesterday, I visited the home and met the staff and the children and have been in communication with the chair at Brig-y-Don Trust. In the coming days I will be meeting with the charity's patron, which is His Excellency the Lieutenant Governor, and will discuss the future of both the charity and the children's home. If this funding can be agreed today then, as I have said previously, I will go forward to discuss future plans for the home as identified in the Williamson Implementation Plan. The children's welfare and consideration of this excellent staff are my paramount concern.

2.13.1 Deputy K.C. Lewis:

I thank the Minister for her answer. Given the funding, is it desirable for the Minister and the department that Brig-y-Don reopens again?

The Deputy of Trinity:

Yes, it is my wish that we can, working with the charity... that Brig-y-Don can reopen. As I have said before, it needs quite a lot of work done to it but I hope if the funding is there that we can take it and work a way forward to it.

2.13.2 Deputy G.P. Southern:

If it turns out that that agreement cannot be reached over a service level agreement with the management committee of Brig-y-Don, and they carry out their promise to close in August, what alternative plans does the department have to continue some activities at Brig-y-Don or otherwise?

The Deputy of Trinity:

As I understand it, the home will be closing at the end of August. The plan was that the home was going to close anyhow, even if we have funding, as I said, because of the need of refurbishment. There are some children there and placing them and also care of the staff too, is important. That is why, as I said before, the 4 months' notice was important.

2.13.3 Deputy G.P. Southern:

If I may, a supplementary. That was no answer again. In the case of failure to reach agreement is it the intention of the department to take over the property of Brig-y-Don and run it as the sole responsible operator of that institution to deliver Children's Services in Jersey?

The Deputy of Trinity:

Yes, I want to move forward; the department wants to move forward with Brig-y-Don Trust that it still remains a children's home. But at the present moment it is owned by the Trust and I cannot speak for the Trust to say whether we can reach negotiations. I certainly hope so. But the property is owned by the Trust.

2.13.4 Deputy A.E. Jeune:

Could the Minister advise us how many children are currently residents in the home and what is the percentage occupancy at the moment? Thank you.

The Deputy of Trinity:

At this present moment in time there are 7 children currently in the home. I did answer that question yesterday about the percentage. Yesterday they were full. I think they can take up to 9 but 2 were sharing. But these children have all got separate bedrooms. I am sorry, I do not have that information about the percentage occupancy. But I can get that to the Deputy.

2.13.5 Deputy R.G. Le Hérissier:

Would the Minister acknowledge that there still remains an irreconcilable division between her department and the home insofar as the home wishes to control its admissions and the department wishes to have control over the admissions?

The Deputy of Trinity:

Yes, and that will be one of the negotiating points that, if I do get the funding, has to be resolved if we are going to move forward.

2.13.6 Deputy R.G. Le Hérissier:

Would the Minister who has, in a sense, inherited a thankless task, not acknowledge that this issue, not having been resolved over 7 years... does she see any kind of miracle on the horizon?

The Deputy of Trinity:

Seven years is an unacceptable time. As you know I have only been Minister for Health and Social Services for 2 weeks, just ... not quite. It is unacceptable. But I am an optimist and I hope that if we do get the money that we can sit down and thrash all these out to look at some sort of future.

2.13.7 Senator S. Syvret:

Will the Minister take my advice and go back to her department and instruct by a Ministerial Decision the relevant senior staff in her department to negotiate a settlement with Brig-y-Don within one month and impose that deadline on them? Enough is enough. Seven years is an absurdity.

The Deputy of Trinity:

As I said, 7 years is a long time and I think, Senator, some of it was under your Ministerial...
[Approbation]

Senator S. Syvret:

Part of the consequence of being lied to by staff repeatedly.

The Deputy of Trinity:

But I will go forward. I can instruct and I will, and I will sit down with the charity. But it is not in all the department's hands. We have to work with the charity to be able to move forward. I need to get that point across. It is not all in my hands. It is the charity who have been doing a very excellent job over a long period of time.

2.13.8 Senator S.C. Ferguson:

Would the Minister not agree that it appears to be failure of her department to recognise that Brig-y-Don has expertise in certain areas and with certain ages of children and that her department does not recognise these and wishes to impose its own views?

The Deputy of Trinity:

Yes, the staff are doing an excellent job and they are trained and the home is registered. The Children's Service has changed and I know it is under pressure, and that is the whole point of the Williamson Plan is that the Children's Service needs to change, need to develop into a service that fits the purpose for the 21st century. All the staff need to understand that and all the department staff need to move forward with that. I am waiting for the Scrutiny Panel review on Williamson so that we can take that plan forward and change the service. It does include Brig-y-Don.

2.13.9 Senator S.C. Ferguson:

Supplementary, please. Surely if Brig-y-Don is full at the moment then there is a need for the area in which they have particular expertise, and her department is really being quite unreasonable in trying to impose clients on to Brig-y-Don which are outside their area of expertise?

The Deputy of Trinity:

It is a very specific and, as I said before, that is one of the specific areas that we will have to negotiate, is the vulnerable children and the ones with really, really challenging behaviour problems. That is something that I will have to do if we get the funding.

2.13.10 Senator P.F. Routier:

I congratulate the Minister for taking on the job of trying to resolve the issue with Brig-y-Don and going to meet with them, and also the previous Minister for coming forward with the proposals and plans for resolving the issues for Brig-y-Don, which I hope we are going to fund today. Considering some of the comments made by Senator Syvret earlier and also just the recent comment about the Minister should instruct the department to come back within one month, and also the comment that this has been going on for 7 years, does the Minister agree that there is a need to have a greater political oversight in what has been a Cinderella service - the Social Services Department?

The Deputy of Trinity:

Yes, even over these 2 weeks there is a big problem in the Children's Service and we need to understand the problems and go forward with it. But, as you said, the problems with Brig-y-Don have been going back for ... trying to negotiate for 7 years, and that is unacceptable. We need to move forward and we are now, with the Assistant Minister who has got responsibility for Children's Services... and I welcome the Scrutiny and everyone's input into it. But we need to make sure that any investment that we are going to put into Children's Services is, as I said before, fit for purpose and up-to-date for the 21st century.

2.13.11 Senator J.L. Perchard:

The Minister has indicated that she will be encouraging Members to enthusiastically support the opportunity to debate P.17 today and support the substantive proposition in P.17. Will she explain why she supported the motion to defer the debate on P.17 until the end of June?

The Deputy of Trinity:

Yes, I can, because I think at that time we were not given enough information or understanding of the severe pressures that the Children’s Services were under. If I remember rightly, Senator Perchard, unfortunately, you were not in the House to explain. But also I believe that a Scrutiny Panel needs to look at the Williamson Implementation Plan to make sure that it is what we need, it is what Jersey needs and that all Members can have some input into it and that we can move forward and get a service that the States of Jersey can be proud of.

Senator J.L. Perchard:

Point of order, Sir, the debate was never taken. It was a motion not to have the debate that was supported by the Minister for Health and Social Services and it was a sabotage and supported by the majority of this House.

2.13.12 Deputy K.C. Lewis:

Can the Minister confirm that negotiations with Brig-y-Don are still ongoing and, given the funding, is it just a question of admissions that is a stumbling block?

The Deputy of Trinity:

Negotiations will still be ongoing, especially if we do get the money. As I understand it, the admissions are a major stumbling block. I am sure over a period of time there will be others but at this moment in time I am just aware that that is the main one.

The Deputy Bailiff:

Very well. I am afraid that the time for oral questions has expired.

The Deputy of St. John:

Sir, I ask that Standing Orders be lifted so that we may finish the agenda.

The Deputy Bailiff:

You are stealing the Deputy of St. Martin’s thunder. **[Laughter] [Seconded]** Very well. There is a proposition which is seconded that Standing Orders should be lifted so that we can deal with the remaining 4 questions. All those in favour kindly show. The appel is called for. I invite Members to return to their seats and the matter before the Assembly is whether to extend the time to complete the questions and the Greffier will open the voting.

POUR: 38		CONTRE: 2		ABSTAIN: 0
Senator S. Syvret		Connétable of St. Saviour		
Senator P.F. Routier		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				

Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
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 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)				

The Deputy Bailiff:

We come to question 13 which the Connétable of St. Helier will ask of the Minister for Home Affairs. Before the Connétable puts his question can I just remind Members that under the relevant statute any discussion of the suspension of the Police Chief has to be in camera. Now the Bailiff has approved this question as being an open session and the answer on the basis that it is purely factual about matters which are consequential upon the suspension, but can I make sure that Members fully understand they cannot raise in supplementary matters any question relating to the suspension. If they do we will have to go into camera. It is only matters which are consequential and factual in the way that the Connétable of St. Helier's question is.

2.14 The Connétable of St. Helier of the Minister for Home Affairs regarding the duration and cost to date of the suspension of the Chief Officer of the States of Jersey Police:

Would the Minister state the duration and cost to date, including staff cover and investigation by Wiltshire Police, of the suspension of the Chief Officer of the States of Jersey Police, and also advise which Members of the current Council of Ministers were present at the briefing meeting on the evening of 11th November 2008 at which the suspension was discussed?

Senator B.I. Le Marquand (The Minister for Home Affairs):

There are 3 answers there. The suspension commenced on 12th November 2008. The costs to date, that is costs both of the Wiltshire Police and also acting up and replacement costs is £162,924.71 and the current Ministers present at the meeting on the evening of 11th November 2008, the answer to that is none, there were no people who are currently Ministers present at that meeting.

The Connétable of St. Helier:

Sorry, just a minor point of clarification. I did ask for the duration and the Minister gave me the starting date and if he could just give me the duration, thank you.

Senator B.I. Le Marquand:

In case the Connétable of St. Helier is in any doubt whatsoever the suspension is still continuing.

The Connétable of St. Helier:

I just wanted him to say "6 months", that was all, but it does not matter.

2.14.1 Senator S. Syvret:

The question refers, and as indeed did the answer, to the investigation by Wiltshire Police - the outside U.K.-based police force. Will the Minister for Home Affairs confirm or deny that U.K. police officers who are operating under secondment in Jersey are not in fact falling under the ambit of the Police Complaints Authority and the only avenue of potential complaint relates to their home force in the U.K.?

Senator B.I. Le Marquand:

I can confirm that matters in relation to investigation and matters concerning the Chief Officer of Police do not fall under the ambit of the Complaints Authority. That is because the Chief Officer of Police disciplinary matters are not covered by the Police Complaints Authority, they are covered by statute which deals specifically.

Senator S. Syvret:

That was not the question I asked. I understood, I think we all understood from previous discussions, that that was the case in respect of the Chief Officer. The point I am making is that in the case of U.K. police officers seconded to work in Jersey they are not covered by ... they do not fall within the protections given to the public of the Jersey Police Complaints Authority.

Senator B.I. Le Marquand:

That I understand to be so, because they are not States of Jersey Police officers.

2.14.2 Deputy G.P. Southern:

If I may, the Minister has stated that no Member of the current Council of Ministers was present at the meeting of 11th November. Is he prepared to state which Members of the then Council of Ministers were present at that meeting?

Senator B.I. Le Marquand:

Yes, I can answer that. The answer is the Minister for Home Affairs and the Chief Minister, the then Ministers.

2.14.3 The Deputy of St. Martin:

I will just ask the Minister for Home Affairs, is the complaint which has been investigated by the Wiltshire Police also being covered by the Police Complaints Authority, in other words I gather the Jersey Police Complaints Authority will be keeping an investigatory eye on the whole proceedings. Can I have that confirmation from the Minister, please?

Senator B.I. Le Marquand:

As I indicated before, matters relating to a disciplinary matter of the Chief Officer of Police do not fall under the Jersey Complaints Authority.

2.14.4 Deputy P.V.F. Le Claire:

A remarkable revelation, for me anyway, that the seconded police officers operating in Jersey under any circumstance are not subject to the checks and balances that we would expect from our own police forces. Would the Minister undertake to investigate whether or not this can be remedied, whether or not it is desirable to be remedied, and if it is not desirable to be remedied under what circumstances, and in what procedure does the ordinary person in Jersey make a complaint about a seconded police officer operating within Jersey - to which department - and how would that affect their discipline and who would discipline them in the U.K.? I think the issue that has been raised this morning is of significant importance, regardless of the Chief of Police Officer's case in question, this also relates to seconded drug officers that work in the Island and also would this cover matters such as customs officers, *et cetera*?

Senator B.I. Le Marquand:

My understanding is that seconded officers who remain officers of a different force would be subject to the disciplinary procedures of their own force. I am perfectly satisfied with that, because they cannot be subject to 2 sets of discipline. If they remain officers of a U.K. force it is perfectly proper they be subject to their disciplinary arrangements.

2.14.5 Deputy P.V.F. Le Claire:

Could I press the Minister for the supplementary that would then follow on from that? If the Minister is satisfied that is the process, in what terms can somebody go to a judicial review in relation to a decision that has been made by the Police Complaints Authority from outside of the Island? Where would they go for that review? Privy Council?

Senator B.I. Le Marquand:

I do not know if decisions of the U.K. Complaints Authority are subject to judicial review. If they are then you would go normally to the High Court, as I understand it, for judicial review.

Deputy P.V.F. Le Claire:

So would the Minister then please answer my first question with a yes or no, that he would be willing to look into the matter as it has raised some issues and get back to us on it, and if he is not then he can tell us and then if he is, he can tell us?

Senator B.I. Le Marquand:

The answer to the question is no, but I want to just explain why, because it is not generally understood by people what the function is of the Police Complaints Authority. We are well off the original question now, but I will answer it anyway. The function of the Police Complaints Authority is to determine in circumstances in which the police have not already decided to bring disciplinary proceedings against officers as to whether such disciplinary process should be brought. That is why in relation to officers, who are officers of a foreign police force - if I could use that term for a moment - it is right that it be the U.K. disciplinary authorities because they would be disciplined there and not here. It would be nonsensical to have a situation in which you had a Jersey authority making recommendations as to the taking of disciplinary action in relation to people who are subject to discipline of a different force.

Deputy P.V.F. Le Claire:

I am sorry to labour the point. My point is, though, at what point does the ordinary man and woman in the streets of Jersey have the ability to review the decision, make a complaint, have that complaint reviewed and seek a proper judicial review? The Minister was not able to answer, in my view, in a way that satisfied my curiosity and all I am asking is if he will look into it and get back to us, yes or no; it is a simple answer. Yes or no?

Senator B.I. Le Marquand:

Well, I did say no.

2.14.6 Senator S. Syvret:

I think the Minister for Home Affairs misunderstood the point being made by other questioners. The point is we have seconded U.K. officers working in Jersey who are not subject to the same accountabilities and the same checks and balances as their Jersey counterparts. The only mechanism is a disciplinary complaint to their home force but suppose their home force rejects the disciplinary complaint? Then the Jersey Police Complaints Authority has no authority and ambit to re-examine that decision of their home force and would then the Police Complaints Authority in the region of that home force then have the powers to look into a complaint that arose from Jersey? I am afraid it is a total mess.

Senator B.I. Le Marquand:

It is a very simple matter. If the performance of the officers who are seconded is unsatisfactory they will simply be sent back to their force, they will not be allowed to remain here. That will be a decision for the senior management of the local Jersey force. But if it is right that they then face disciplinary action it is not right that that disciplinary action take place in Jersey. It should take place where they are employed by their employing body and not by the Jersey body.

2.14.7 Deputy P.V.F. Le Claire:

It seems a very interesting point the Minister has made that they will be disciplined outside of the jurisdiction where they could possibly make an offence or take part in something that is against the law and then be disciplined in their home jurisdiction under their authority. I just wonder whether or not this calls into question human rights laws in relation to the ability to make an appeal against the decision, and I also wonder whether or not he stands by his previous statements of saying no matter what the police officer does from a seconded unit he will be disciplined in the U.K. What if he breaks the law here?

Senator B.I. Le Marquand:

That is entirely a new point. That point has not been raised before. The answer is anybody who breaks a law, whether they be Senator or police officer or anybody else is subject to the penalties of the law. That question was not asked before. It is blindingly obvious, in my opinion, that that is so, but we are talking about disciplinary action which is action by an employer against an employee who has acted unsatisfactorily. It can only be the person's employer who takes such action and if the employer is a U.K. police force the action can only take place there. It has nothing whatsoever to do with the criminal law.

The Deputy Bailiff:

The Connétable of St. Helier, did you wish to ask a final question?

The Connétable of St. Helier:

No, thank you, sir.

The Deputy Bailiff:

Very well, then we come to question 14.

The Deputy of St. John:

Sir, on a point. I had my light on and you acknowledged me.

The Deputy Bailiff:

I did acknowledge you, you are absolutely right, Deputy. I think I must stand by my acknowledgement.

2.14.8 The Deputy of St. John:

Could the Minister for Home Affairs try and answer this question. How long can a seconded officer remain on Island in post and, further to that, does he have to have housing qualifications or is he given a 1(1)(d) category automatically or does he get put up in hotel accommodation?

Senator B.I. Le Marquand:

Of course I do not know the answer to any of those questions because we are now so far away from the original question that nobody could have guessed we would have ended up down this particular avenue. They will not have housing qualifications because by its nature it will be a temporary appointment, but what arrangements are made will depend upon individual officers and similarly with the latter comment, I want the House to understand that we have a shortfall in certain areas of expertise. In particular an acute shortfall in the public protection area where we have had a 150 per

cent increase in the number of matters being referred, mainly child protection matters. The House, I believe, shares my view that this is an important area. It takes about 3 years to train an officer up in a necessary expertise, so exactly in that sort of area it is absolutely vital that we utilise the services of seconded officers.

2.15 Deputy T.M. Pitman of the Attorney General regarding parliamentary privilege and the security of confidential contact between politicians and their constituents:

In the light of recent concerns about parliamentary privilege and the security of confidential contact between politicians and their constituents, would H.M. Attorney General either confirm or deny that a number of States Members have had their phones tapped over the past 12 months. Further still, should this be the case, would he confirm the number and whether any of these taps is still ongoing?

The Attorney General:

I have been previously asked questions about whether or not telephone intercepts have been granted. The answer is always going to be the same. For policy reasons I neither confirm nor deny whether intercepts under the Regulation of Investigatory Powers (Jersey) Law have been issued. It may be helpful to Members if I just add a couple of things about the process generally of granting intercepts. The statutory authority to grant an intercept is under Article 10 of the Regulation of Investigatory Powers (Jersey) Law 2005. The grounds upon which it is permissible to issue such a warrant are: “(a) in the interests of national security; (b) for the purpose of preventing or detecting serious crime; (c) for the purpose of safeguarding the economic well-being of Jersey; or (d) for the purpose of giving effect to a mutual legal assistance agreement with a foreign country in respect of criminal matters involving serious crime.” I will just add that the process requires that an interception warrant has to be applied for, it is not something which the Attorney General just dreams up one night on his own account. Under Article 11 the application for an intercept warrant may be issued by one of the following people: “The Chief Officer of Police, the agent of the Impôts, the Chief Immigration Officer, the Director General of the Security Service; the Chief of the Secret Intelligence Service; the Director of G.C.H.Q., (Government Communications Headquarters); the Chief of Defence Intelligence of the Ministry of Defence of the Government of the U.K. or a competent authority from an outside jurisdiction.”

Deputy T.M. Pitman:

Could I ask the Attorney General would I be right in assuming that his answer is confirmation?

The Attorney General:

No, he would not be right at all.

2.15.1 Senator S. Syvret:

I declare an indirect interest in this matter. I put it to the Attorney General that my phones and my emails were in fact tapped, intercepted, call it what you will, because when I was questioned at the police station a variety of questions that were put to me can only have originated from information so obtained.

The Attorney General:

I remind the Assembly that the Senator is under criminal investigation and it is completely inappropriate that a person under criminal investigation should seek to put questions to the Attorney General in this Assembly. It is completely inappropriate. **[Approbation]** The Senator should be aware of that. I have no intention of answering his question.

2.15.2 Senator S. Syvret:

A supplementary. The matter is not *sub judice*. I do wish the Attorney General would in fact hurry up and charge me, but perhaps in respect of taking communications technology, he might explain why following my arrest and the copying of my S.I.M. (Subscriber Identity Module) card a number of people, including some very prominent national public figures up and down the U.K., have received intimidating phone calls in the evening from the police who have got the contact information for them from my phone S.I.M. card?

The Attorney General:

I have absolutely nothing to say in answer to the Senator's question, if that was a question.

2.15.3 Deputy G.P. Southern:

In a totally general way, does serious crime, which he referred to twice in his statement, include breaches of the Data Protection Act, as it appears to do under the Police Powers and Criminal Evidence Act?

The Attorney General:

No. Serious crime is defined under Article 1(1) of the Regulation of Investigatory Powers as meaning: "Conduct which constitutes one or more offences (a) which involve the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose; and (b) for which a person has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more." As the data protection offences do not carry sentences of 3 years or more these would not amount to serious crime which would make an intercept warrant legitimate under the Regulation of Investigatory Powers Law.

2.15.4 Deputy G.P. Southern:

Can the Attorney General then clarify that what he has just stated about the law concerning ... sorry, I have forgotten the name of the law, under the R.I.P.A. (Regulation of Investigatory Powers) Law are different or the same as those under P.P.C.E.?

The Attorney General:

Intercept warrants are granted under the Regulation of Investigatory Powers Law. There are occasions when property interference warrants may be issued under the Police Procedures and Criminal Evidence Law.

2.15.5 The Deputy of St. John:

Could the Attorney General confirm or otherwise whether Jersey is participating with the U.K. and other European countries in storing all phone call data and email data, *et cetera* - texts - which are being as of, I think, a fortnight ago, being automatically stored for government use or government research, I presume, in England. Is Jersey participating in that?

The Deputy Bailiff:

I am sorry, Deputy, I think that is too far removed from the original question. You need to ask a specific question about that.

The Attorney General:

If I might just assist the Deputy, it is better directed to the Minister for Home Affairs.

2.16 Deputy S. Pitman of the Chief Minister regarding the Council of Ministers confidential 'B' agenda:

Would the Chief Minister inform Members of the criteria for an item to be placed on the Council of Ministers confidential 'B' agenda and advise whether he is satisfied that the exemptions under the Code of Practice on Public Access to Official Information are always correctly applied?

Senator P.F.C. Ozouf (Deputy Chief Minister - rapporteur):

Members will be aware that the criteria applied for placing items on the Council of Ministers 'B' agenda is laid out in section 3.2 of the Code of Practice on Public Access to Official Information to which the Deputy refers. I believe that the Chief Minister is correctly applying the procedure. I reviewed myself, as it happens, the Council of Ministers agenda last week and I can advise Members that in fact I have the 'Part B' agenda here and 4 items were moved from the 'B' agenda to the 'A' agenda after the discussion. I believe that the particular issue that Members may have is part 6.14 of the procedure which says that: "There should be an ability to retain information when it constitutes a premature release of draft policy which is in the course of development." That is the real issue which Members are concerned about and, as governments around the world, we do not release information which is in the course of development.

2.16.1 Deputy S. Pitman:

Increasingly we are seeing smaller 'A' agenda minutes and larger 'B' agenda minutes, I have it from a very reliable source that there has been a significant number of items that did not need to be on the 'B' agendas, including the waste strategy, travel and transport strategy and other strategies. Could the Minister explain the reason for the extended 'B' agenda minutes?

Senator P.F.C. Ozouf:

I regret the insinuation by the Deputy that there is some inappropriate activity by the Chief Minister and the Council of Ministers in hiding information. Nothing could be further from the truth. The Chief Minister has made and put in place strengthened arrangements and strengthened procedures to the Council of Ministers agenda and I would say to the Deputy that we cannot continue to operate on this presumption of a lack of trust. The Council of Ministers and the Chief Minister is working in a way which is designed to put as much information into the public domain as possible and Members should be, I think, grateful and appreciative of the fact that he is trying. He is moving items from 'B' to 'A' whenever it is possible and I cannot say that I see, as a Member of the Council of Ministers, truth in the allegations that the Deputy makes. It is really not founded and not fair.

2.16.2 Senator S. Syvret:

Would the Assistant Minister not accept the fact that the clause he referred to in the Code of Practice on access to public information is there as a minimum standard and not an obligatory standard so that policies under discussion or development can in fact be released, should the Council of Ministers so choose, unless there were other legitimate pressing reasons for their retention as secret documents? Does he not accept that the Council of Ministers, much like frankly the old committee system, abused the 'Policy under development' clause in order to keep things out of the public domain that were entirely reasonably publishable?

Senator P.F.C. Ozouf:

For not the first time in the last 7 days Senator Syvret makes suggestions of, I think, inappropriate motive for what the Council of Ministers are seeking to achieve. Deputy Le Claire circulated to me and other Ministerial colleagues a very helpful statement by the new incoming President of the United States when he stated that there should be a presumption of openness, and that is absolutely the way that the Council of Ministers wishes to operate. Members will be aware however that there are issues which need to be discussed but which need to be properly debated, ventilated within the Council of Ministers within departments, before they are released into the public domain, because premature release of policy indicates that a decision has been made and that is not the case. Matters that were on the Council of Ministers' agenda last week which are remaining under 'B' are exactly

that; discussions, policy under development, which no government in the world - not the United States or any other - would release prematurely.

2.16.3 Deputy G.P. Southern:

The words sound fine, a commitment to transparency and openness in theory, but is it not the case that, in fact, the Council of Ministers increasingly is using 6.14 to hide perfectly normal policy decisions which are in the process of being debated and which could very safely be out in the public domain for the public to debate what should happen? **[Approbation]** For example on the 'B' agenda quite recently was the question of bus passes and at what age to set the free bus passes, which has been already discussed this morning in general terms by Transport and Technical Services. Why did the 3 options presented to the Council of Ministers not be presented to the public so that they can make their mind up as to which way is the best way forward?

Senator P.F.C. Ozouf:

The Chief Minister and Council of Ministers are trying. I will give Members an example of ... precisely an example, I will deal with the issue of bus passes. The Council of Ministers discussed last Thursday the issue of Haut de la Garenne and the very sensitive issues concerning putting in place restorative work to undo some of the damage that had been caused to the building. Contained in the confidential paper that the Council of Ministers considered was sensitive information which could not be released into the public domain. The Chief Minister decided that he was going to convert the matter into an 'A' but has not put into the public domain the confidential briefing. Frankly, if we were to put in place ahead of the Council of the Ministers' time the discussion on bus passes we would have set hares running. The Council needed to discuss what its options were in relation to buses and the Minister for Transport and Technical Services has explained to the Assembly what the matters are. If we can do better in terms of recording actions after discussion so be it. We will continue to try. There is a presumption of openness but we do not wish to issue papers which will get hares running and effectively suggest to the public that decisions that have been made have not yet been made and are still under quite vociferous discussions in some cases.

2.16.4 Deputy G.P. Southern:

The Minister's answer insults the public and its intelligence. It can work out 3 options with 3 costings from bus passes. The Minister did not address the issue of bus passes. That issue could perfectly healthily in a perfectly open and transparent way be discussed now, and the public could be making their minds up on what the costs and benefits are of all of those 3 options. Why could that not be in the public domain? I have no objection where you have commercial individuals identified or legal issues that the 'B' agenda should be kept for what it is for, which is keeping those sort of issues secret, but policy information when they are fairly straightforward could be out in the domain and that would be true transparency and true openness. When is he going to put his money where his mouth his?

Senator P.F.C. Ozouf:

I repeat the fact that the Chief Minister has given an absolute assurance that where it is appropriate and possible there will be a presumption of transparency. The issue of bus passes, the Minister took away ... if he is asking for immediate release following a Council of Ministers' discussion, the Minister for Transport and Technical Services took that issue away and had further discussions with his officials, further discussions with advisers in relation to coming to a considered matter. He has been careful in his words this morning about what he has already been able to commit but also explained to Members very clearly that there are still some issues to be resolved. That is policy under development as opposed to putting into the public domain complete information which is not decisions, which has hares running, and which gives the appearance of decisions made that have not been made. There is a presumption of openness and I think the majority of Members understand the new approach by the new Chief Minister.

2.16.5 Deputy P.V.F. Le Claire:

It is really related, although I know it is slightly off, I believe just as a fragment of memory that we had approved, and I stand to be corrected, that the minutes of the Board of Management would be circulated to States Members and I do not have any as yet. I wondered what was happening in that regard because those are important meetings of the Chief Executive Officers of the States?

Senator P.F.C. Ozouf:

I think we all realise, I need notice of precisely exactly where we are and I am happy to circulate a note to Members on the issue precisely, I think the issue is the Corporate Management Board issues a record of actions to be taken. It must be the case that all committees including Scrutiny Panels do hold discussions behind closed doors in order to develop their arguments and develop effectively their lines of questioning. I am sure that Scrutiny Panels do it. Other governments do it, other cabinets do it and I am sure that this administration is no different. There is a presumption of openness in all matters that we do; can we improve? Yes. Are improvements being made? Absolutely.

Deputy P.V.F. Le Claire:

I am not certain and I do not want to put the Senator on the spot because he is answering for the Chief Minister and his memory, he is going to go and check it, but maybe the Greffier or somebody could remind us whether or not we took a States decision to circulate these minutes? I am certain we did, certain that it was approved. I certainly have not seen anything yet.

2.16.6 Senator A. Breckon:

I wonder if Senator Ozouf could comment on the stated intent of the machinery of a government review, commonly known as the Clothier Review, that policy and development should be shared by the Executive with others to provide checks and balances? In light of what he has just said I wonder if he could say where that sits now?

Senator P.F.C. Ozouf:

That is absolutely the right way that indeed Ministers and their corresponding Scrutiny Panels should be in a position to discuss policy under development. Three of the papers, I will say to Members, that were discussed at the Council of Ministers last week considered the issue of the financial affairs of the States. We looked at a draft capital programme in very, very, very high level detail. We considered what the funding pressures for different departments are. These are very early discussions of which I have already had some discussions with the Corporate Affairs Scrutiny Panel and certainly there is an opportunity for Scrutiny Panels, on the basis that confidentiality can be maintained and one is not going to put inappropriate information in the public domain, of course there is that additional opportunity for Scrutiny but until now we have had Scrutiny Panels examining Ministers in public of which they have had to be guarded in relation to what they say in public, because it is policy under development and no decisions have been made.

2.16.7 Deputy S. Pitman:

I would like to point out that it is a rarity for Scrutiny to hold meetings in confidence. If it is a rarity, that is a fact, and States Members do understand the sensitivity of issues like Haut de le Garenne to be kept confidential in 'B' agenda minutes, but the facts are there. There has been an exponential increase of the 'B' agenda.

The Deputy Bailiff:

Your question, Deputy?

Deputy S. Pitman:

Well, there has been an increase of these items on the 'B' agenda. Can the Minister explain why?

Senator P.F.C. Ozouf:

I have not looked at the minutes in that regard. What I perhaps could explain is the fact that this is a new Council of Ministers which is discussing its priorities and there is a great deal of high level issues which are coming forward. There are 2 policy issues which were finally decided on the Council of Ministers last Thursday which were put immediately in the public domain; namely, the submission to the States of further tax information exchange agreements and a tax information exchange agreement with Australia, Italy and New Zealand. Immediately that the Council had considered that it was put into the public domain, and what I would say to the Deputy is that I suspect that there is going to be ... now matters of policy are being concluded and worked on there is going to be a preponderance of matters moving from 'B' to 'A.' There is a presumption of openness and I would ask Members to respectfully trust the Council of Ministers to adhere to that principle.

2.17 Deputy K.C. Lewis of the Minister for Treasury and Resources regarding compensation payments to people who invested in high risk/high return schemes:

Given the recent difficulties to get a few thousand pounds compensation for the staff at Woolworths, does the Minister consider it appropriate to pay up to £600,000 compensation to people who invested in high risk/high return schemes?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

The Minister for Economic Development will shortly make a statement to the Assembly regarding these compensation payments. Suffice it to say that I, along with Members of the Council of Ministers who the Minister consulted before asking me to make the payments under the carry forward request, did decide in the light of the extremely unique circumstances of this particular case that there should be some redress for these individuals. The payments, as the Minister will explain, will be made in accordance with those that would have been paid in the event of Jersey having an equivalent to the U.K. Financial Services Compensation Scheme. The decision that both Ministers have made follows a court action brought by the J.F.S.C. (Jersey Financial Services Commission) against Alternate, which is the company concerned in which the Royal Court found that these local individuals were given reckless, misleading advice and they were sold high risk investments that were totally unsuitable to their needs. Therefore it is not the case, as I think the Deputy is quite understandably suggesting, because he does not have the full information, that these were sophisticated investments, that knowingly and wilfully entered into high risk schemes. That was not the case. We concluded that this was an extremely unusual set of facts that could not be repeated and we needed to deal with the redress of that.

2.17.1 Deputy K.C. Lewis:

I thank the Minister for his reply and I will await the Minister for Economic Development's statement under K. My question now is would any of these monies be reclaimable from the company concerned?

Senator P.F.C. Ozouf:

The Minister will answer the full extent of the mis-selling that occurred. I am quite familiar with it, having dealt with it for 2 years prior to assuming my new position, and a number of vigorous attempts were made and indeed some efforts have been made recently which have borne fruit to reclaim some of the money that was lost by the investors. It is only part of the overall figure. Extensive efforts were made in order to gain recompense from those companies concerned and this is the net minimum after what is a very tragic set of circumstances. It is inappropriate to deal with obviously individuals, but if Members were to know some of the individuals concerned and their circumstances it really is an issue of widows and orphans, not sophisticated investment.

2.17.2 The Deputy of St. John:

Can Members be told of the largest deposit of any one claimant and if it was over £200,000 could these residents be called “not sophisticated investors”?

Senator P.F.C. Ozouf:

The pro-rata'ing allocation... there are maximum amounts as I am advised payable to individuals. I think the worst case was some £300,000 of investors. That is not being ... the Minister will explain himself to the Assembly what exactly was the compensation made. There should be no doubt in Members minds that these were not sophisticated investments. These were tragic circumstances of people who over-extended themselves, were encouraged to over-extend themselves, in many cases their life savings which would be required to pay their pensions for their families and their partners in future. I know that some of the amounts may seem big but in the individual circumstances they were enormous and represented virtually the whole of their life savings.

2.17.3 Deputy G.P. Southern:

Could the Minister for Treasury and Resources inform Members what the funding base of the J.F.S.C. is? Is it not completely self-funding at the moment and supports itself by charges on the people it regulates, and could this money not have been found by the J.F.S.C. rather than taxpayers?

Senator P.F.C. Ozouf:

I think the Deputy is aware that fees are levied by the J.F.S.C. The J.F.S.C. now regulates its fees independently in order to conduct its own business. The J.F.S.C. ... as no regulator in the world is there to raise fees in order to pay for a compensation scheme. That must be either an issue for a statutory scheme, which the Minister has announced that he is looking into to put in place in Jersey... It is not appropriate that one would use regulatory fees. I have looked at the accounts of the Financial Services Commission. It is absolutely important that this Island sends out a clear message that we have a Financial Services Commission which is sufficiently resourced, which has the ability to go after inappropriate regulation in an appropriate way. The Financial Services Commission I think has approximately £7 million in relation to dealing in terms of its balance sheet, and I would say to Members that that is not a great amount of money when dealing with some of the international crime and some of the international matters which the Commission needs to have proper fortified resources to do so. It would be wrong to use the F.S.C. (Financial Services Commission) monies for this purpose.

2.17.4 Deputy G.P. Southern:

Is it not then the case that blame for this issue is accepted by the Government rather than J.F.S.C., and is it not true that we were lax in failing to regulate properly to include this particular area in the proper regulations run by the J.F.S.C.?

Senator P.F.C. Ozouf:

I do not think that is right. The F.S.C. have improved because this Assembly has given it the additional powers, additional regulatory oversight. There is no suggestion that there has been a failing in relation to the F.S.C. Sadly there will always be some rotten apples in a barrel and the J.F.S.C. is there to identify with their risk approach in order to deal with those issues. I would remind Members that this Assembly organises and governs over an Island which has a low percentage of G.D.P. (Gross Domestic Product) on spending. France has 52 per cent of government spending and has all sorts of measures of protection that we do not here. We have run on a low-cost model of arrangements in Jersey, and there are some issues that sometimes we need to stand in the breach to deal with and this is one such one. There is a completely different issue that the Assembly seems to want to go down. It is putting in place huge protection, huge expensive

schemes, to protect in all eventualities. I would just say to the Deputy and the Assembly that that comes at a cost.

2.17.5 Deputy J.A. Martin:

Getting back to the original question from Deputy Lewis, I really think the Minister for Treasury and Resources absolutely misses the point. He has just told us how in the Chief Minister's view we need to be open and transparent but there is one law for Peter in Jersey and one law for Paul, because suddenly they could find half a million pounds and we are supposed to believe - and I put it that these people come under widows and orphans - and we are supposed to take this on trust and not ask any questions. Does the Minister really not understand why States Members and the public out there are angry over what has happened? **[Approbation]**

Senator P.F.C. Ozouf:

I completely agree with the Deputy's sentiments. I would remind her respectfully that the carry forward requests, which were under-spent balances last year, have been applied to the Woolworths' issue and to other issues. I would also remind the Deputy, she seems to characterise the fact that this Assembly has not looked after, I am not sure the wealthy ones and the not so wealthy ones and whether they are the Peters or the Pauls... but this Assembly has a proud record in the last 2 to 3 years of investing and directing money in the low income support to help families and individuals who have not been helped previously. We can only do so on the basis of a prosperous economy. I was faced with a difficult decision in relation to dealing with carry forwards and underspends and I had to make a balance of decisions as to where that money would be allocated. This Assembly has placed social improvement, child protection, improving the resources available to low income families as a high priority and we have invested much in that area. We need to make sure the economy continues to work so we can continue to do that. As far as transparency is concerned, as soon as the decisions were made they were put into the public domain and I circulated the Ministerial Decision. They have all been made in public: the public can see where the money is.

Deputy J.A. Martin:

The Minister is totally missing the point. Exactly as he ended that: "When he had made a decision" he put it, he made a Ministerial Decision and he put it in the public domain. Woolworths' staff, Pound World staff and the whole of this Assembly had to sit through about 4 days of debate to decide whether they were going to get the money. **[Approbation]** Can he not see the difference?

Senator P.F.C. Ozouf:

I can see the difference and there is an important difference in the 2 matters, because of course I as Minister for Treasury and Resources have to find the available resources to deal with issues. I have an opportunity only once a year with no contingency to find money for additional expenditure. What is clear after discussions with the Health Department is that they are already heading for an underspend, and I have no alternative if we are to increase the resources of the Health Department but to come forward under Article 11(8) in order to allocate additional monies. I am afraid the carry forward was used up in the manner which Members have had the full communication. It is a difficult balancing act and I accept that.

2.17.6 Deputy M. Tadier:

To follow on from Deputy Martin, does the Minister not concede that there are double-standards at play here? We did quite rightly sit through a long-winded and I feel ignominious debate for people who, in the Minister's words, were perhaps also not sophisticated workers, for a sum which is effectively peanuts compared to this £600,000 and meanwhile the Minister simply gives us a memo and that is the first that we ever hear of this decision which has already been taken without the consent of the House. Does he concede therefore that there are double-standards at work in the Council of Ministers and would he pledge to have better communications and to have real consensus in future?

Senator P.F.C. Ozouf:

There are, I would respectfully submit to Deputy Tadier, different issues here. First of all the Woolworths issue was debated prior to these decisions. I am quite clear that if the Alternate investors' scheme would have come to this Assembly; I was fully expecting that a Back-Bencher would bring forward a request to the Minister for Treasury and Resources to find the money. I have absolutely no doubt that if this Assembly would have considered that request we would have been asked to find those resources. I have no doubt about that. We have also taken clearly on board Members' increasing desire to deal with issues such as Woolworths. There are balancing acts to be taken. I would remind the Deputy that it is only this Assembly, with the exception of carry forwards, that allocate money to departments. That is the role of the Assembly; that is the role of Parliament. On this occasion, on this issue, once a year there are underspends which have to be allocated, and I am charged with making those decisions and they are not always easy.

2.17.7 Senator S. Syvret:

Following some very expert financial advice I recently gave up the habit of a lifetime and started to take up gambling. I put my life savings on Laughing Boy at 50:1 in the 3.10 p.m. at Kempton and it fell over and I have lost everything, and notwithstanding some expert advice from a minicab driver who assured me it was a banker, what action will the Minister take to reassure and rebuild confidence in the gambling sector?

Senator P.F.C. Ozouf:

The Senator attempts to make some sort of joke out of a very different circumstance. The circumstances, as the Minister will explain, in relation to the Alternate investors was not taking a punt on a horse from the back of a minicab driver, it was by taking advice from supposed professionals that were regulated by the F.S.C. but did not ... only to a point at that stage, regulation has been improved subsequently, it was reckless and it was mismanaged. It was on the borderline of fraudulent activity, dealing with individuals. This is a very different issue from Senator Syvret sitting in the back of a minicab and putting something on the 3.20 p.m. at Aintree. If he were to know the circumstances I think that he would agree that we needed to make redress of this issue and the Minister has made a further commitment to look to put in place a statutory scheme for depositor compensation, something which will cost money and this Assembly will have to adjudicate on.

2.17.8 Connétable G.F. Butcher of St. John:

I am not sure if I am having hearing difficulties but I thought the Minister said earlier that this circumstance would never happen again. I would like to know how he can convince us that that will not happen again?

Senator P.F.C. Ozouf:

I think the situation, and this is clearly a matter for the Minister for Economic Development to answer probably more than me, but I am aware that since the misunderstanding took place a number of years ago there has been a change in regulation, there has been additional focus by the F.S.C. on the issue of domestic financial services regulation, and putting in place domestic financial services regulation is a top priority of the F.S.C. and certainly consumer awareness, there is work going on with the Consumer Council and additional work to raise awareness by consumers. We need empowered consumers, we need a J.F.S.C. that will go around and do difficult things like mystery shopping expeditions to see whether or not people are being given the right advice with, effectively, decisions about their savings, their futures, their children, *et cetera*. Standards have improved, new regulations have been improved and I hope it does not happen again.

2.17.9 Senator B.E. Shenton:

I brought a proposition to this House seeking compensation for Reg's Skips. One assumes that if I was still on the Council of Ministers I could have just had a chat with my colleagues and written out a cheque. Does the Minister concede that while technically he may have been in order to pay out this compensation fund morally - and I think he had a duty to this Assembly - that this should have been brought forward in a proposition to this House and this policy change should have been agreed by the Assembly as a whole? **[Approbation]**

Senator P.F.C. Ozouf:

I would say to the Senator that there are judgment calls on individual issues and perhaps there could have been a proposition in relation to this particular matter to request. That was clearly a policy option. However as usual, as in normal circumstances, Ministers take a judgment on whether or not something is likely or should be supported, and clearly the Council of Ministers believed it was to be supported. I have no doubt that if this Assembly would have considered the individual circumstances the matter would have been requested to the Minister for Treasury and Resources to find the resources. I would say to Senator Shenton in relation to Reg's Skips: I have met - also having clearly understood the mood of the Assembly in relation to Reg's Skips - with the principal of Reg's Skips and I am in discussions to understand better what the circumstances were. I would remind Senator Shenton that what he asked ...

The Deputy Bailiff:

I am sorry, I do not think we need to go into Reg's Skips.

Senator P.F.C. Ozouf:

He asked for £300,000 for lawyer's fees, which is a rather different situation from widows and orphans in relation to a mis-selling of investment products.

The Deputy Bailiff:

I think 3 more and then we will have to call it a day, I think.

2.17.10 Deputy A.E. Jeune:

Could the Minister confirm that I have the right understanding inasmuch as it was effectively a ruling in the courts which identified failings in the system that we had here in Jersey at the time that these people invested which failed those persons and therefore, effectively, in order for Jersey's credibility, it was in order that we should compensate these people in some way?

Senator P.F.C. Ozouf:

Reckless and misleading was the judgment of the court. There was a clear statement by the court which was high up on the Council of Ministers consideration of whether or not there was a case. The Council of Ministers does not give and does not support another Minister lightly in terms of dealing with compensation on this scale. The Deputy's sentiments and research is correct.

2.17.11 Deputy M.R. Higgins of St. Helier:

I would like to also highlight another piece of inconsistency and double-standards being applied by the Minister. For example the depositors of the Landsbanki Guernsey Bank also include widows and orphans. There was also regulatory failure in the sense that the Financial Services Commission had not brought in an advertising order or legislation that would have, for example, insisted that details of the lack of a depositor protection scheme would have been made known to these people. Thirdly, the people who were investing in Landsbanki Guernsey thought they were investing in the Cheshire Building Society which was taken over by Landsbanki Guernsey and these people, like most people in the Island, believed that if you place money in a bank or a building society it is probably the safest way to put your money into something. These people ...

The Deputy Bailiff:

The question?

Deputy M.R. Higgins:

I am coming round to it. The thing is that the people who invested in Alternate Investment were investing in highly risky endowment policies; yes there was leverage, yes there was misleading and so on, however my question to the Minister is are you not applying double-standards to the Alternate investors and denying the people in Landsbanki Guernsey assistance as well, especially that the Minister only wrote one letter to the Guernsey authorities seeking some information from them when this case came up?

Senator P.F.C. Ozouf:

The Deputy, I am getting increasingly of the opinion, is the Deputy for cheap shots in relation to some matters. He said one letter was written. I carried out extensive discussions with people involved in Landsbanki and I know a lot about it. The Landsbanki issue is very different. That was a bank which was regulated by Guernsey, not Jersey. I will not speculate on the action that we would take in this jurisdiction in relation to Landsbanki, that is a matter for Members to decide, but it was a very different situation and he is quite wrong to parallel and to attempt to cast the 2 issues in one light. I would also ask him to consider whether or not he thinks we have some extra-territorial powers over dealing with advertising order. I know, because I have asked them, where the majority of the Landsbanki investors took their investment awareness, in terms of this product. Yes, there was some local advertising, but it was also in the *Daily Mail* and other journals and other newspapers that were advertised over which we had no control. Does he really believe that we were in a position to cut out adverts from the *Daily Mail* in Jersey?

The Deputy Bailiff:

I think you are answering the questions. Deputy Higgins, do you wish a supplementary?

2.17.12 Deputy M.R. Higgins:

I think yes. It is a bit hard to say that for example the Jersey Government has no responsibility for Jersey citizens who have been wronged. Certainly I have criticised him for writing one letter to the Guernsey authorities. He has supplied that information to me in the past, there is no other correspondence, no other sort of information has been given about trying to help the Jersey citizens recover the money that has been lost through this bank failure.

Senator P.F.C. Ozouf:

I am not going to get into a tit for tat with Deputy Higgins, he also promised the investors he was going to carry out lots of work on their behalf and I am unaware of what he has done. What I will say in relation to the Landsbanki investors is that was a Guernsey institution of which, I am afraid to say, we have responsibility for Jersey institutions and the Jersey regulatory authorities and I know that that is a sound regulatory authority and that Jersey did not have any of the issues that, sadly, other jurisdictions have had. We certainly do have a duty of care to assist the Landsbanki people in making representations to the authorities in Iceland, to the authorities in Guernsey, and that is exactly what we are doing and I would finally remind the Deputy that only recently, and every Member of this Assembly will be pleased to hear this, that there is an indication that those investors, of which there are some very sad cases, will be getting, as I understand it, up to 70 pence in the pound from their investment. No investor should have lost in any bank and we hope that they get all of their money back and 70 pence is a good start.

Deputy M.R. Higgins:

I hope that the Minister will give to the House all that information.

2.17.13 Senator A. Breckon:

First of all for Members' information I do have a copy here of the full judgment of the Royal Court from 16th February 2007, if anybody wants to borrow it or copy it, then perhaps that will be useful to give an insight into that. But knowing of that and having some dealings over the years my question to the Minister is this, does he agree that perhaps there is a failure of the former Minister for Economic Development to listen to those who wanted a financial services ombudsman for exactly these situations?

Senator P.F.C. Ozouf:

I will say to the Senator that I am afraid that an ombudsman would not deal with the tragic circumstances of a mis-selling issue. What is the remedy required in relation to mis-selling is a statutory investor compensation scheme and there are discussions, as he well knows, and I think that he misrepresents the point. My position is that I do believe that there should be an ombudsman, there should be a case of dealing with disputes for financial services players, but we also need and we are going to get a bank compensation scheme - an investor compensation scheme - but it comes at a cost and if we are moving to a higher cost Island in order to deliver high levels of protection then that is a matter for this Assembly to consider. That has not previously been the decisions that I have not made, but have been supported by this Assembly. It is this Assembly that decided ombudsman, not me.

Deputy K. C. Lewis:

I too have constituents who have lost their retirement funds in Landsbanki but I accept the Minister's word that he will continue to press Guernsey and Iceland. Thank you.

The Deputy Bailiff:

Very well. Then we come to questions without notice and the first question for the period is to the Minister for Education, Sport and Culture. We have some very keen Members here. Senator Ferguson.

3. Questions to Ministers without Notice - The Minister for Education, Sport and Culture

3.1 Senator S.C. Ferguson:

The Minister was very hawkish with regards to States expenditure when he was vice-chairman of the Public Accounts Committee. In view of the current dismal financial forecasts would he tell us what he is doing in this area in his department?

Deputy J.G. Reed of St. Ouen (The Minister for Education, Sport and Culture):

The first thing that I can tell the Senator that I am doing is spending time with my Finance Director understanding how the department currently manages its budget, and I can assure Members that up to now I have found a department that is well run, that aims to not only manage its budget in an effective manner but equally ring-fences the funds allocated for that purpose, and I would suggest that in part that is the reason why at the end of 2008 the carried forward sum - which was the underspend - amounted to just over £2 million. In other words the department is run on the basis that you spend what you need to spend and you return what you do not. Clearly, especially with the Education Department, there are many variables, so it is very difficult to determine at the beginning of the year the exact amounts to be spent and that is partly the reason why on occasions there are underspends available.

3.2 The Deputy of St. Martin:

A very short question which will need a very short answer. In relation to the historic abuse inquiry, is the Minister able to reassure Members that there are no Education, Sports and Culture employees under police investigation.

The Deputy of St. Ouen:

I have already answered that question and I believe that the answer was I can neither confirm nor deny.

3.2.1 The Deputy of St. Martin:

Can I just get back to the Minister? Will the Minister at some time or other make a decision as to whether it is a yes or no because at the moment he is sitting on the fence? **[Approbation]**

The Deputy of St. Ouen:

I would be absolutely delighted to tell this Assembly yes or no. However, my hands are tied in the fact that there is a police investigation going on and until such time as that police investigation is terminated I am unable to comment further.

3.3 Deputy J.M. Maçon:

Does the Minister agree with me that the performance of Beautiful Jersey by Sadie Rennard was superb and will the Minister scrap the dirge that is the new national anthem? **[Approbation]**

The Deputy of St. Ouen:

Suffice to say I believe that the lady in question who sang Beautiful Jersey did a wonderful job. **[Laughter]**

3.4 The Deputy of St. John:

Could the Minister tell us what action he and his department are taking to help the many young skateboarders to arrange events across the Island for their type of sport?

The Deputy of St. Ouen:

First of all, we are as a department doing much to encourage many activities, including skateboarding. Indeed, one of my Assistant Ministers, Deputy Green, has responsibility for the Youth Service and has been working alongside the young people that are using the facility down on the new North Quay. Equally, we attended a meeting up at the Les Quennevais Communauté with a group of young people who would like a facility in their area. I am proud to say that in St. Ouen we are ahead of the game and have been for some while, and as a Parish and a community we have already - and have continued to provide - a relatively small, but useful facility for our young people. Regarding the events, clearly there is a Skateboard Association and we would encourage any individual who chooses to develop and promote this sport to come and have a talk with us.

3.5 Deputy T.M. Pitman:

Could the Minister clarify for the House whether he fully supports the potential introduction of social workers to all schools and is this something he will be pushing for strongly?

The Deputy of St. Ouen:

I think it is absolutely important that schools and the Social Services Department, especially the Children's Services Department, work extremely closely together. There are great opportunities to be had in early intervention programmes which include social workers being actively involved and working with the schools on a day-to-day basis. I support any initiative that develops this area further.

3.6 Deputy M. Tadier:

If someone in the department is the subject of a police investigation perhaps for having abused children, beaten them up, locked them in a squash court, kicked them, *et cetera*, would it be normal process for the department to suspend that person while they are being investigated or to leave them at work?

The Deputy of St. Ouen:

I am not very clear on the policy that the department operates, suffice to say that if there was a known concern about an individual that was involved directly with young people then the appropriate action would be taken.

3.6.1 Deputy M. Tadier:

A supplementary. We already know that the Home Affairs Department, for example, would suspend someone as a neutral act. Is there a similar policy in operation in the Education Department?

The Deputy of St. Ouen:

As I said, the action that would be taken by the department and the Human Resources Department would be appropriate to the concern.

Deputy M. Tadier:

How can the House judge if it is appropriate if we do not know what that action would be? It is a non-answer, if I may suggest.

The Deputy of St. Ouen:

Maybe I can help the Deputy by providing him with the policy within the next day or 2.

3.7 Deputy S. Pitman:

How much time is given a week in secondary schools to local historical, cultural and political education and does the Minister think this is enough and if not what will he do about it?

The Deputy of St. Ouen:

I am unable to give you the exact amount of time that is dedicated to this subject. All I will tell you is that the curriculum provides a well-rounded education for our young people and I would hope that these areas are dealt with in the appropriate manner. If the Deputy would like to know more I would suggest that she contacts the department who can give her more detailed information.

3.8 Deputy S. Pitman:

During my time as a youth worker we recorded in the youth centre the ethnicity of the young people coming in and those who were born in Jersey, not Portuguese origin but white locals, 90 per cent of them often referred to themselves as English and not Jersey. Does the Minister recognise this among young people and if he does will he not look at the curriculum of the P.S.H.E. (Personal, Social and Health Education) and history?

The Deputy of St. Ouen:

I do think that it is important for all of our local children to fully understand our local history and heritage and culture and, as such, I am very keen to see that promoted throughout our schools. Indeed, perhaps it is important that we pay attention to the adults who arrive on the Island and equally encourage them to understand more about our culture. One of the areas that I am aiming to pursue and have raised with my department already is the opportunity perhaps of including more of our local history within the G.C.S.E. (General Certificate of Secondary Education) curriculum as is the case in the Isle of Man.

3.9 Deputy G.P. Southern:

Will the Minister state whether he considers that education and skills training in particular play a vital part in times of recession and give his commitment to this House to maintain services and levels of staffing throughout this recession?

The Deputy of St. Ouen:

Absolutely.

3.10 Deputy K.C. Lewis:

It is my understanding that Education, Sport and Culture have the intention of bringing the Island Games back to Jersey. If this is the case, what improvements will the Minister make to sporting facilities in the Island and will he be attending the games in Aland later this year?

The Deputy of St. Ouen:

In 2008 it was approved by the last Council of Ministers that support would be given to making a bid to hold the Island Games on the Island in 2015 and a bid committee was formed. It is still very much the intention of me and the department to support this idea for many reasons, one of which is that the last time the Island hosted the games was in 1997 and was one of the largest Islands involved in its own right.

The Deputy Bailiff:

I think if you would not mind, Minister, a reasonably concise answer to what was a fairly straightforward question.

The Deputy of St. Ouen:

Am I going to Aland? No, Sir.

3.11 Deputy R.G. Le Hérissier:

Building on Deputy Hill's question, would the Minister not acknowledge that the current situation where he can neither affirm or deny any sort of suspension or action is in fact cruel both to the individual who is subject to all sorts of trial by bloggery and various other things, and to parents and students of the system? Can he not come up with another method which somehow marries these 2 demands and leads to openness, albeit without compromising people personally or without compromising future trials? To deny and to do nothing else is making the situation utterly unsatisfactory. Secondly, why was the social worker removed from Le Rocquier School?

The Deputy Bailiff:

I think that is one question.

The Deputy of St. Ouen:

Is it unsatisfactory? Yes. Can I do anything about it? No. We have to rely on the justice system and police carrying out their investigations. They are the responsible authority. I would just remind Members and people listening that currently our justice system recognises that one is innocent until proven guilty. I would suggest that paying attention and listening to, and promoting, unsubstantiated allegations about individuals is absolutely not the way to behave.

3.11.1 Deputy R.G. Le Hérissier:

A supplementary. Would the Minister not agree that it is for precisely that reason that we should be open as far as we can be about this and not allow the rumour mill to totally take over and fear to increase?

The Deputy of St. Ouen:

I believe that I and the department have been entirely open. It is others that seem to choose to increase the rumours.

3.12 Deputy J.A. Martin:

Can the Minister inform the House what talks, if any, he has had with outside clubs and sports associations to open up the excellent facilities in most of our secondary schools, even some of our

primary schools, for children to use either after school or at weekends? If he has not had any could he tell me why not?

The Deputy of St. Ouen:

I have not directly spoken to any school about the use of the facilities outside school hours. However, I have required the department and the department's officers to pursue this line. Indeed, we are considering the redevelopment of St. Martin's School and I have held discussions with the Constable with a view to seeing whether or not we can support the community within the school development. I would like to point the Deputy to a very good example that I saw last week at First Tower where the community use of that building after school hours or during school holidays is wonderful so we are doing much at the moment.

3.13 Deputy S. Power of St. Brelade:

The Minister will be aware that he has responsibility for a much loved 22-acre site in the middle of St. Helier, namely Fort Regent. Would he support the principle of funding from the Economic Stimulus Package to carry out a master plan for the future of Fort Regent on the grounds that it is timely, targeted and temporary?

The Deputy of St. Ouen:

I am not sure if Fort Regent has not been master-planned out over the past number of years. Would I support the fiscal stimulus funds to be used to fund developments at Fort Regent? I am not sure. In all honesty, I believe that we as the Scrutiny Panel need to come up with a long-term solution to the Fort that can properly provide the facilities that the users and others require for the foreseeable future. Using small amounts of money to tinker around the edges I do not believe achieves that target.

The Deputy Bailiff:

I am afraid that ends the questions without notice to the Minister.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

Yes, the adjournment is proposed. Before the Assembly does adjourn could I raise 2 matters? First of all, Deputy Southern has lodged P.67/2009 - Insolvency Temporary Scheme for Compensatory Payment Extensions, so I inform Members of that. Secondly, Senator Maclean has passed me a note in that he is due to make a statement on a matter of official responsibility under K, but I understand, Minister, that you have to leave the Island on States business this afternoon, is that right, and you are asking the Assembly whether you could perhaps give it tomorrow?

Senator A.J.H. Maclean:

Yes, Sir, if Members would agree to that, please.

The Deputy Bailiff:

Are you back in tomorrow morning?

Senator A.J.H. Maclean:

Yes, I am on the first flight tomorrow morning?

The Deputy Bailiff:

Does the Assembly agree that we should take that at a convenient moment tomorrow morning when the Minister returns?

Senator S. Syvret:

Just before we adjourn, I forgot to mention as a matter of courtesy to Members I am going to seek the deferral of P.49/2009 from the present meeting as I am working on an amendment to the amendment of the Council of Ministers.

The Deputy Bailiff:

Very well, the Assembly adjourns until 2.15 p.m.

LUNCHEON ADJOURNMENT

Senator S. Syvret:

I wonder if I may just, as a courtesy to Members before we move on to the next section of Questions without Notice, say that when we get around to Public Business I am going to be proposing that P.62/2009 in fact be taken as the first item of Public Business? There is a real degree of genuine urgency about this and I do think the family, the children and those caring for them need a decision on this matter. If need be, P.17/2009 could be moved up immediately behind it.

The Deputy Bailiff:

No doubt we will make that at the appropriate time.

4. Questions to Ministers Without Notice - The Minister for Health and Social Services

The Deputy Bailiff:

Very well, so we return then to the second question period to Ministers without notice which is to the Minister for Health and Social Services. I had seen Deputy Dupre first. **[Laughter]**

4.1 Deputy A.T. Dupre of St. Clement:

I was fast on the button today. Hearing the news this morning that Jersey Hospice Care is going to extend Clarkson House does the Minister envisage that the Health Service will be asked to contribute towards this worthy cause?

The Deputy of Trinity (The Minister for Health and Social Services):

Hearing it on the news - as you know I used to be a home care assistant with the Hospice - it is very nice to see that they are wishing to extend. They provide a very good service not only to their patients and families of the Island, but also the expert advice that they give to my department now. I am very pleased with that and I know that at the moment they wish to be self-funding and they need to be congratulated for that. If they need any funding - at the moment I do not see that because that is one of their strengths - I am open to anything really.

4.2 Senator S.C. Ferguson:

President Obama is intending to reduce the cost of healthcare in the U.S. (United States) by 2 billion dollars a year. In view of the fact that Health and Social Services is one of the largest budgets in States expenditure and in view of the current dismal financial forecast and probable structural deficit in 2012 how does the Minister intend to approach this?

The Deputy of Trinity:

As with all States departments we are under great financial pressures, and I am very much aware that is not going to go away in the short-term especially, hence P.17/2009. I think one of the things I did do was appoint one of my Assistant Ministers who has special responsibility for the finances, and it is perhaps that over the years the department has lacked political oversight into this so he has that portfolio of looking at the finances to see where and if money can be saved. There is no easy

answer because there are great pressures underneath health and that is not going to go away with modern technology, the price of drugs, *et cetera*, but it will have some political oversight.

4.2.1 Senator S.C. Ferguson:

A supplementary. I would ask the Minister if this means that we can expect to see some accurate figures for management costs as highlighted in the recent report on health structure.

The Deputy of Trinity:

I hope so, and I am sure with the Deputy's political oversight he will be able to ensure that.

4.3 Deputy A.E. Jeune:

Does the Minister consider that the Health Department have robust procedures in place to ensure that those persons receiving emergency and necessary care within the hospital and/or from other services - for example the Ambulance Service - can either be charged themselves or their insurers invoiced and that those from countries with whom we do have a reciprocal agreement, that the costs of treating these persons are identified?

The Deputy of Trinity:

It is a very difficult area. Tourists that come over here, whether they are to stay... or to stay with their families, need to be aware that they have to be insured. I think that Tourism have worked very hard with that and are working with a company to try and make sure that they are informed. I understand that there was an advertisement in one of the national papers over the weekend advertising that tourists need to be insured. There are different reciprocal health agreements with other countries like the Isle of Man, the Isle of Wight and some European countries and yes, it can be very confusing. Perhaps we need to get some sort of leaflet out that can explain to everyone which health reciprocal agreement we have with which country, and if we do not to ensure that the tourists have travel insurance in place. There are some procedures set down in the hospital if that does happen and we will look at it; we are looking at it.

4.4 The Deputy of St. Martin:

At present there are 2 Health and Social Services employees who have been suspended for very lengthy periods. Is the Minister satisfied with the continuation of the suspensions and if not what steps is the Minister taking to expedite the investigation into the allegations that have been made against the 2 employees?

The Deputy of Trinity:

I understand that is correct and I am certain that there is going to be delay while criminal investigations are undertaken. Other than that you must appreciate I have not had time to get down to ask for the full briefing on that, but that is on my agenda fairly soon and I will be briefed on that.

The Deputy of St. Martin:

Could I seek assurance from the Minister that maybe she could keep me posted if nobody else, maybe within the next week? I would be grateful.

The Deputy of Trinity:

Yes, Sir.

4.5 Deputy S. Pitman:

The Minister has recently publicly said that she would like to see free doctor's visits for over 50s. Does she not agree that this should include all those on income support given that a significant number are chronically ill and are only on income support because they are ill and they cannot work, and that we really should be scrapping free prescriptions for all?

The Deputy of Trinity:

There are a couple of points to your question. Free prescriptions and those on income support really come under the remit of the Minister for Social Security. Regarding over 55s getting free G.P. (general practitioner) visits, the *J.E.P. (Jersey Evening Post)* headline was: "Over 55s free." In fact, if you read the article I stood up here and said what I suggest is one free G.P. visit perhaps for over 55s equivalent to an M.O.T. (Ministry of Transport) test because I still think that is a good idea because prevention is better than cure.

4.5.1 Deputy S. Pitman:

As the Minister has expressed that she believes there should be at least one visit for over 50s does she have an opinion that this should expand to all those on income support that are chronically ill?

The Deputy of Trinity:

I need to be briefed in that before answering the question and I will take it up with the Minister for Social Security.

4.6 The Deputy of St. John:

Could Members be told which countries Jersey currently has a health agreement with, and if the Minister is not able to answer the question in full at the moment will she please inform the Members in writing later on, but also put out a press release to that effect so when people are travelling off-Island they have an indication of where they can go and are covered by insurance? Also, will she work with Social Security to put in place an off-Island travel scheme for all ages?

The Deputy of Trinity:

As I said yes, we do have reciprocal health agreements with different countries. It is confusing and I give that reassurance that I think it would be a good idea to put a leaflet out so everybody is absolutely clear if they go to other places than the U.K. that they know whether they need travel insurance or do not need travel insurance so they know exactly where they are. It can only be of benefit to them. What is the other point?

The Deputy of St. John:

The second part was to do with would you work with Social Security to put in an insurance scheme for travelling off-Island?

The Deputy of Trinity:

Yes, I think we need to look at this especially for over 80s or 85s because they are finding it difficult to get travel insurance. I have meetings lined up with some of the insurance companies just specifically to look at this area to see if we can do something positive, especially for that age group.

4.7 Deputy G.P. Southern:

Notwithstanding the outcome of any debates to be had today or tomorrow on funding and notwithstanding the agreement, or absence of a service level agreement, with the current management board at Brig-y-Don, will the Minister undertake to return to this House with a clear strategy for a way forward for the use of Brig-y-Don as a children's home and its experienced staff within the next 6 weeks?

The Deputy of Trinity:

As I have said many times this morning I want to find a positive way through working with staff at Brig-y-Don, but at the moment, as I said, the building is going to close at the end of August because the charity is a good employer and by law they have to give 4 months notice. I will work through and I will report back to this House when a strategy can be implemented, but to say in 6 weeks is a bit of a tall order, I think. I will try and do it as soon as I possibly can because I know I have to work with the charity and the trust to find a way forward.

4.7.1 Deputy G.P. Southern:

Does the Minister not accept that with or without the charity acting in its current role a future needs to be found for Brig-y-Don and its staff and that notwithstanding any debate about funding or agreements that there must be a way forward found in the shortest possible time scale? Will she undertake to do that in the 6-week period?

The Deputy of Trinity:

As I said, I will try as soon as I can, but some of it is out of my hands. I need to sit down with the charity and I cannot keep them or myself to a 6-week period. I will do it as I possibly can and report back to this House.

4.8 Deputy M. Tadier:

Is the Minister satisfied that progress towards ratification of the U.N. (United Nations) Convention on the Rights of the Child, which incidentally was ratified by the U.K. in 1991, is being maintained and can she assure the House that adequate funding will be available to implement all relevant requirements if this is ratified?

The Deputy of Trinity:

I am very much aware of the Convention on the Rights of the Child, but to give the Deputy as full an answer as I possibly can at the moment, I have not been briefed on that, but I will come back and report and send a note out to all States Members.

Deputy M. Tadier:

I thank the Minister for that undertaking.

4.9 Senator S. Syvret:

It was mentioned by an earlier questioner that the U.S.A. is going to be seeking to cut healthcare costs. Would the Minister agree with me, given that approximately 50 per cent of the population of the U.S.A. do not in fact have ready access to healthcare, that it is the most disastrous healthcare system in the established western democracies in terms of access to healthcare and availability of healthcare?

The Deputy of Trinity:

I have enough on my plate to think about the healthcare of Jersey [**Approbation**] and I do not really want to take on the healthcare of the United States.

4.10 Deputy R.G. Le Hérissier:

Given that over the years there have been rightly or wrongly allegations about the size of the management structure in health, how will the Minister for Health and Social Services go about getting independent advice so she can make her own conclusions about these issues?

The Deputy of Trinity:

I think it is very important to get independent advice and, at the moment, there are several avenues that perhaps I want to expand on along with my 2 Assistant Ministers. Other than that I have not really thought any more, other than I do need it.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

The Deputy Bailiff:

That brings Questions without Notice to the Minister to an end. There are no matters under J. Under K the first matter is deferred until tomorrow so we come then to a statement which the

chairman of the Health, Social Security and Housing Scrutiny Panel Sub-Panel on Vulnerable Children will make concerning the review of the Williamson Report.

5. The Chairman of the Health, Social Security and Housing Scrutiny - statement concerning the Sub-Panel's review of the Co-ordination of Services for Vulnerable Children

5.1 Senator A. Breckon (Chairman, Health, Social Security and Housing Scrutiny Panel):

The sub-panel established to review this subject is well advanced with its work and is therefore surprised an attempt is being made by the Minister for Treasury and Resources to seek the leave of the States to debate the issue contained in P.17/2009 Williamson Report: Implementation Plan. The sub-panel is supportive of providing funding for family X for the appropriate level of care and support in the United Kingdom and believes that the most transparent way is as contained in the projet of Deputy Paul Le Claire of St. Helier. The sub-panel wishes to express concern regarding a number of issues: (1) as identified in P.17/2009, the funds are not intended to benefit family X for off-Island support and placement; (2) the sub-panel has met with the trustees of Brig-y-Don and I can say with some confidence that the outstanding issues themselves are not directly related to the refurbishment and funding attached in P.17/2009. The sub-panel does not believe that the above 2 points are consistent with the appropriate identification of States spending. The sub-panel questions why the temporary use of funds from within the Health and Social Services budget cannot be utilised and topped-up in a timely fashion or that support is given by this Assembly for the P.62/2009 of Deputy Paul Le Claire of St. Helier: Family X: placement in the United Kingdom.

5.1.1 Senator P.F.C. Ozouf:

Does the chairman understand and accept that I have given an undertaking that while P.17/2009 did not identify the so-called family X, perhaps it did not identify it for all the obvious reasons that many Members do not want to discuss an individual case in the Assembly? The terms of the proposition before the States, notwithstanding the Minister's change in view of how to deal with these individuals, can be released in accordance with the desire that Members have to deal with the short-term funding issues for family X and Brig-y-Don. Does he not accept the undertakings that have been given and that the proposition can allow that to happen?

Senator A. Breckon:

When we looked at that issue it was exactly that, and I said in the statement it was about being consistent with the appropriate identification of States funding. If Members look at P.17/2009 there is resource in there, but it is not for off-Island support for this family and that was the concern the panel had. Would we agree something that is then used for something else? The same applies to Brig-y-Don. The things in there refer to staffing and to the premises; they do not address the issue that we picked up which is to do with what we would call a service level agreement.

Senator P.F.C. Ozouf:

I raise a point of order. I know that this should not take necessarily part of the time ticking on the questioning to the chairman, but there is an issue here. I have lodged and asked Members and informed the Greffe to bring forward P.17/2009 to allow funding upon the understanding that the recital that is before the Assembly, to fund urgent service improvements to address critical elements of the Williamson Report on the basis that could be used for the issue of family X which was not wanting to be identified originally, and notwithstanding the Minister's change of view in terms of the way that family X should be dealt with, that the proposition would allow funds to be withdrawn to the Health Department for that purpose in addition to Brig-y-Don, and further to that, I have given an undertaking. Is there any procedural issue that would prevent that from happening because I think we are on the same page in terms of needing to find an urgent issue?

The Deputy Bailiff:

The position is, I think, that the proposition is under Article 11(8) of the Public Finances Law for a specific sum of money and it is always open to departments who have been given expenditure approval to in fact use the money for a different purpose. That happens in the Business Plan and it could happen legally in this case too. In other words, even though the States think they are giving the money for a particular purpose to a department once it is in the department's hands they can in fact legally, under the Public Finances Law, spend it on what they wish. The remedy in those circumstances, obviously if the States feel they have been misled, is a political one against the Minister who sought the resources. I do not see at the moment that it is out of order. In other words, if Members are willing to accept an undertaking that it is going to be used in a particular way and it is used in that way, I do not see that the proposition prevents that. It would be unusual and a neater way might be for the Minister to seek to amend his own proposition to accurately state the current use and ask that the relevant 2-week period be waived; that might be a neater way of doing of it. To answer your question on a point of order, if you ask the Assembly to debate P.17/2009 and the Assembly gives you the money then the Health Department could use it to fund the English expenditure of the X family in England.

Senator P.F.C. Ozouf:

I am grateful for that clarification and certainly I have no wish to cause the Assembly any difficulty. My decision was made in relation to progressing P.17/2009 because I understood that would be the case, and I would just point out respectfully that family X was identified in the need for changes to children's services. It was not named **[Interruption]** ...

The Deputy Bailiff:

They were in Jersey at that stage, not in England.

Senator P.F.C. Ozouf:

Indeed, Sir, the implementation is different, but effectively the issue was the same.

The Deputy Bailiff:

Just to be clear, my ruling is that you can ask the Assembly. You can proceed in the way you wish. It will be entirely a matter for Members whether they are happy to proceed on that basis, because it is an unusual basis, because you are saying something slightly different in the proposition to what you are telling Members you are going to do. The alternative would be for you to table an amendment now, clarifying what you want the money for and asking the Assembly whether they would be willing to shorten the notice period. It is a matter for you as to how you proceed.

Senator A. Breckon:

I wonder if I may respond to that because I do not think, as Senator Ozouf has said, we are very far apart because I said in the answer why indeed could the Health and Social Services Department not fund it with money that they have been given, as you have perhaps alluded to there, in a Business Plan and then come to the States to seek funding providing procedurally that is possible? The other thing is the sub-panel are supportive of funding family X and I make that clear, but we are clear about how that should be and that is the U.K., which is not in the evidence we found which is in P.17/2009, and that is the reason for the statement.

The Deputy Bailiff:

I think I have dealt with the point of order so we will return to question time, having struck out that period of time.

5.1.2 Senator S. Syvret:

Notwithstanding the intervention of the Minister for Treasury and Resources, would the chairman of the panel agree with me that as far as the urgent and immediate need that family X undoubtedly requires that the best thing to do would be to debate P.62/2009 and in fact will he support the

proposal I am going to make to have that proposition moved up the Order Paper to be taken as the first item of Public Business?

Senator A. Breckon:

Another dilemma that the panel had was we were being asked to support something that was not procedurally ... or the intent. Had Deputy Le Claire's proposition not been there then perhaps we would have maybe had to seek to do something, as you suggest, with an amendment, to do that on a temporary basis albeit that an inquiry would continue. I agree with Senator Syvret that we do have an alternative and that is why the sub-panel have come out in favour of debating and indeed supporting Deputy Le Claire. Having said that, if there is the possibility of that agreement through the Treasury, and I think what we do not want to do is get bogged down in procedural stuff when really the decision needs to be made and the intent given so that the family can be assisted.

The Deputy Bailiff:

Just a comment from the chair. Deputy Le Claire's proposition, of course, does not obtain the money then if it is passed it asks somebody else, the Minister for Treasury and Resources, to go and get the money.

Senator A. Breckon:

The other thing is the sub-panel did apply their mind to that and I would not think that anybody in this situation would be demanding money as a first thing, that the care of the family would flow from a decision and the money would follow that. I do not think they want money upfront, with respect.

The Deputy of Trinity:

Just a point of clarification. If the States Assembly did decide to debate P.69/2009 of Deputy Paul Le Claire, it is only to request the Minister for Treasury and Resources to release funding so would the Minister for Treasury and Resources still have to bring a proposition to release the funding?

The Deputy Bailiff:

I would say so, yes. Deputy Le Claire's proposition, if carried, would be a vote from the States saying: "We want the Minister for Treasury and Resources to come to us and ask for the money" and he will still have to come and ask for money.

5.1.3 Deputy P.V.F. Le Claire:

Obviously it is a bit of an invidious position to be in. One of the things that I am trying to do today is to try and avoid uncomfortable debates and get what is best for these children in as quick a form as possible. I believe that it is possible to agree to both things today. The part of my proposition in (b) makes the States decision to request the Minister for Treasury and Resources to bring forward a proposition, but most importantly it makes the States decision not an agreement behind closed doors or from emails, but it makes a decision to make appropriate provision in future Annual Business Plans to meet the ongoing annual costs and that would be a States decision. If the States can do this and approve P.17/2009 today then I think we will have ticked all of the boxes. The Minister for Treasury and Resources has given me great comfort backed by the very good decision of the new Minister for Health and Social Services. If the Minister for Treasury and Resources can agree to this then I am sure we can get this done today. It is just a matter of putting on the record what he has already given me an undertaking to do and I certainly would not be seeking a long drawn-out debate. I would make a very rapid submission seeking the appel without debate and go on the record as to request Members to curtail speeches completely and move to the debate if that is acceptable, if the Minister for Treasury and Resources is willing to accept this approach.

The Deputy Bailiff:

We have gone slightly off question time.

Senator A. Breckon:

The only thing, it is not the object of the sub-panel or anybody else, I do not think, to frustrate this process. If we can enable it procedurally to happen whichever way, if it is a case of debating both things and agreeing it, to give it belt and braces, then I do not think that is a problem for the sub-panel or anybody.

5.1.4 Senator P.F.C. Ozouf:

Can I just ask the chairman, does he not agree with me that there are a number of Members in this Assembly who do not want to make a decision in public concerning one individual case and that there is real concern about a continuing debate about one set of individual circumstances which should not be for the future on any record? There is already information in the public domain about individuals that could be traced and that is inappropriate. Does he not believe that agreeing P.17/2009 with the undertaking ... yes, it is unusual in terms of giving an undertaking, but conditions have changed? Does he not accept that debating P.17/2009 quickly now deals with the matter without any further public debate?

Senator A. Breckon:

If that covers and that satisfies Deputy Le Claire, but I do not think it does if there is an issue of second and third-year funding, and I think therein lies the problem. On the point of view of the sub-panel we have, in the course of this review, come across a certain amount of confidential information and we have been careful that from us this has not got into the public domain or otherwise. We are well aware of the background of a number of cases that are applying the minds of the court, again that we have not dealt with, and if we do include any reference to this in the review then it would be anonymised so that there will be no possibility of identifying the children involved.

5.1.5 Senator S. Syvret:

Would the chairman agree with me certainly that this would be my approach, and would he agree with me that this would be his approach if we were to debate P.62/2009 that, in fact, there would be no reference to the individual circumstances of the case or its history and so on? All that is sought unambiguously is the agreement which the Minister for Treasury and Resources could offer the Assembly right now, the agreement to accept part (b) of Senator Le Claire's proposition and if he were happy to do so I for one would be perfectly content to make no speech whatsoever.

Senator A. Breckon:

It was the intent that whichever way this is debated it is not something to play political football with and Deputy Le Claire has mentioned that. Certainly that is the way forward with care and compassion, but with a result that benefits these children.

Senator P.F.C. Ozouf:

I do not know whether Senator Syvret has read emails. I have given an undertaking to deal with P.17/2009 in the manner this year of which we have already explained and I have further given an undertaking to bring forward with the Minister for Health and Social Services a budget which includes the funding of this in the base budget. All aspects of the proposition are agreed. I have given an undertaking. Deputy Le Claire's proposition achieves nothing apart from to request. We can deal with the fast-tracking of that, I agree, and we are moving forward. Let us get on with the debate for P.17/2009, I implore Members.

5.1.6 Deputy P.V.F. Le Claire:

With respect on a point of order, I partially correct the second part of my proposition: "Further request, bringing forward for approval a request under Article 11(8) for the necessary additional funding to meet the costs of these payments in 2009 in view of their urgency" and then to make

appropriate provision. So all I am asking the Minister to do is accept my proposition. I will not make a debate about it. He has already accepted it in an email. It is just a matter of a States decision being much more robust than a States email from the Treasury, with the greatest respect. He can have P.17/2009. It is the best thing. It is a good start; it is a very productive start to what we need to do. I am slightly concerned that he is not willing to give us a States decision that he is willing to support the 3-year funding. He has done it in an email. Can he not just take that on board in a States decision?

The Deputy Bailiff:

I am sorry, we are still taking questions to the Chairman.

Deputy P.V.F. Le Claire:

Would he think that would be an appropriate way forward?

Senator A. Breckon:

I think we have got into the procedure of it and as has been stated a number of times, the sub-panel support the best way forward to benefit the family. If we can sort out the procedural issue on this then we can deal with it in a timely fashion and give this family the support that they need.

Deputy G.P. Southern:

It is questions to the chair, is it?

The Deputy Bailiff:

No, it is not questions to the chair, it is questions to the chairman.

5.1.7 Deputy G.P. Southern:

To the chairman, yes, Sir. Is the chairman aware that there is an amendment in my name to P.17/2009 which, if we go ahead and debate today, will have to be digested and put on one side and we will come back to it some time later? This is a very unusual way of proceeding with anything, to divert money from one agreed aim to another aim at will. What is to stop any Minister in future spending money where he likes?

Senator A. Breckon:

I was aware of the amendment, but again I am not sure we need to address the amendment because P.17/2009 is not in my name. What we are saying is that the Scrutiny Sub-Panel have seen a number of areas of concern to us procedurally of how best to approach this and what we are doing is bringing this to the attention of the House so that perhaps we can have an informed debate after this as to how best to proceed.

5.1.8 Deputy I.J. Gorst:

I wonder if the chairman could confirm his understanding of the tools available to the Minister for Treasury and Resources. It is my understanding that at this moment in time the only available tool to him is in 11(8) which is what he has on the table in P.17/2009. The other tool available to him is the Annual Business Plan, as it is to every Member. I am really struggling to see what it is outside of those 2 tools that the chairman is asking the Minister for Treasury and Resources to do when they are the only tools available to him to provide both the funding for 2009 and the funding for the following 2 or 3 years.

Senator A. Breckon:

They are not the only 2 tools because the Health and Social Services Department have over £150 million at their disposal. What we have said in there, as has been mentioned, under the Business Plan that was agreed and voted, it could be moved between heads of finance, I am sure, and then funds applied for retrospectively. **[Approbation]**

Deputy I.J. Gorst:

I must have a follow-up there. It is exactly that problem that has got us where we are today. Which services is he suggesting that the Minister for Health and Social Services should stop in order to provide this? This is exactly the dilemma that the previous Minister for Health and Social Services had.

Senator A. Breckon:

Can I remind him we are in May not in December, so we are not even halfway through the year so they cannot have spent the money surely.

Deputy I.J. Gorst:

Could he say which services it is he is proposing to stop?

The Deputy Bailiff:

You have asked 2 questions, Deputy.

The Deputy of St. Mary:

If I have not forgotten, it is a question for the chairman. What was it? It has gone.

The Deputy Bailiff:

It is just as well because time has now run out. [Laughter]

PUBLIC BUSINESS

Senator S. Syvret:

If we are at the stage of public business now ...?

The Deputy Bailiff:

I was about to announce it. You are quick off the mark.

ARRANGEMENT OF PUBLIC BUSINESS (P.62/2009)

6. Senator S. Syvret:

As I mentioned to some Members at the start of the session I would like to propose, in fact, that P.62/2009 be taken as the first item of public business. I would also be perfectly content for P.17/2009 to be moved up and taken immediately after it personally, although obviously that is a matter for Members of the Assembly. I certainly will be probably opposing P.17/2009 because I have found issues with it. Certainly, for the time being, I am just formally proposing that P.62/2009 be moved up the agenda and taken as first item of business regardless of whatever decision Members of the Assembly wish to make. This is an urgent matter. We need to make the decision and I think we should just get on and make the decision one way or the other.

Senator P.F.C. Ozouf:

Can I suggest a move to the Assembly? Senator Syvret has clearly said in his suggestion of moving Deputy Le Claire's proposition up that he is going to cause issues later on and has issues to say with P.17/2009. He mentioned the fact the issue is urgent. Deputy Le Claire's proposition is simply a request. If Members wish to deal with the urgent issue of funding and solving this issue once and for all I make the counter-proposition of putting P.17/2009 at the top of the Order Paper.

The Deputy Bailiff:

We cannot have 2 at the same time, Senator.

Senator P.F.C. Ozouf:

Can I amend P.62/2009 to P.17/2009? **[Laughter]**

The Deputy Bailiff:

No, what I think you can say is that you will be suggesting this next, so if Members want yours to go first they had better vote against Senator Syvret's. We can only have one proposition to go at the top of the list at one time.

Senator J.L. Perchard:

Are we allowed to speak on the proposition, Sir?

The Deputy Bailiff:

Briefly, yes.

6.1 Senator J.L. Perchard:

I would counsel against taking the advice of Senator Syvret on this matter. It was Senator Syvret on 25th March who persuaded the States not to debate P.17/2009 and 31st March and look where that got us. There is an urgent funding issue. We do have a commitment from the Minister for Treasury and Resources to provide the funds for family X for their immediate placement in the U.K. The results of the successful appeal to the Royal Court came about as a consequence of the States not having the funds immediately available to fund the on-Island placements with the necessary expertise immediately as a result of Senator Syvret's intervention on 25th March. Sir, the Senator is a vandal. He just consistently ... **[Members: Oh!]** He is a political vandal ...

The Deputy Bailiff:

Senator, can I remind you of the need not to use unduly offensive language about other Members.

Senator J.L. Perchard:

Yes, Sir. I will use accurate language.

The Deputy Bailiff:

This applies to everyone.

Senator J.L. Perchard:

Sir, the Senator wants to undermine and destroy any efforts made by any good conscientious politician. He sat as President of Health and Social Services and never visited the Children's Services for over 6 years. I was there for 3 months and managed to start moving things on rapidly. I resent his undermining of everybody and anybody who makes an effort to improve Children's Services. Please, I implore the House, to ignore again his intervention which is only there to disrupt and undermine any attempt to move things on. Please, let us get on with P.17, find the money and hold the Minister for Treasury and Resources to account to ensure that these children are going to be funded properly in their future and that the Health Service and the Children's Services will not be affected from us moving forward with P.17 today. I implore Members not to take this course.

Senator S. Syvret:

On a point of order, I do think I am entitled to respond to some of what was said then. It imputed improper motives going on ...

The Deputy Bailiff:

Not at this stage, Senator. You can respond later. **[Interruption]**

Senator S. Syvret:

It is a legitimate point of order. The Senator has just engaged in one of these kind of hate campaigns against me and ... **[Members: Oh!]**

The Deputy Bailiff:

One moment. Let the Senator make his point.

Senator S. Syvret:

I do not wish to waste the time of the Assembly engaging in these kinds of personal antagonisms here. The things that the Senator said about my motivations are entirely untrue and I will explain precisely why I believe the Williamson proposals and various other things are structurally flawed and not in the best interests of children during the appropriate debate.

6.2 Deputy A.E. Jeune:

When Members of this House are considering the proposition to take forward P.62 to begin with, could I just remind Members that we are politicians, we are not clinicians and we really ought not to be discussing clinical issues. **[Approbation]** Personally, I fully agree with the proposition that Scrutiny should look at the Williamson Report, and I do not walk away from that but these children need care. The clinicians, the experts have told us so. So, please when you are voting can we get on with something that allows these children to get the treatment, wherever it is, the most appropriate place for them.

6.3 The Deputy of Trinity:

I endorse what Deputy Jeune has just said. The most important thing is that I have made this decision regarding this Family X. They need to go to the U.K. for treatment. That is my priority. Not only for this year, but if I start a job then they need to make sure that they have proper funding for this year and for the following years. That is what the proposition P.17 will do and it would add in the Business Plan. As for Brig-y-Don, well we have had that discussion many times this morning. We are in that place. I cannot move forward until I get that money and I ask this House, please let us make a decision. Let us make a decision for these children and for this family and debate it in a proper, sensible, statesmanlike way and get on with it please. I urge Members to support P.17.

6.4 Deputy G.P. Southern:

I am sure, inadvertently, that Senator Perchard has misled the House slightly for the second time today. He suggested that the problems at Brig-y-Don are caused by the postponement of the debate on the Implementation Plan when, in fact, the problems caused to the Brig-y-Don management are the absence of services of agreement agreed by them and Social Services so that they can go forward. Brig-y-Don was always due to close in August. The question now is because of the absence of the service level agreement and agreement of the committee with that service level, the question now is whether Brig-y-Don opens again. That has not been caused by the delay in the debate of P.17 but rather by the absence of a proper service agreed service level agreement.

6.5 The Deputy of St. Mary:

There is a problem with not taking P.62 first and taking P.17 first which is that this House agreed to put P.17 to Scrutiny to look at the whole issue of the Williamson proposals **[Approbation]** and so I just urge Members to remember that when they are voting on whether to take P.62 first or whether to take P.17 at all.

6.6 Deputy I.J. Gorst:

The Minister for Health and Social Services has made her decision, the decision which Deputy Le Claire wanted, which was regarding the placement of this particular family. What she now requires is money in order to facilitate those placements. Unfortunately, P.62 does not provide that money. P.17 does and it can provide it if approved from today. These issues and the issues raised by P.62

are extremely difficult issues and involve the most vulnerable members of our society. It should not be about an individual members' political posturing or point scoring. I applaud Deputy Le Claire for raising these issues and bringing these issues to the fore for I believe that it is his raising of them that has helped us arrive at the decision which has been made with regard to their placement. **[Approbation]** Unfortunately, from some of the papers I have read, and let us not try and pass blame to another Member or a previous Member, I believe that we have failed this family in the past. I believe, and Members may not like this, that we will be failing them again should we go ahead and discuss and debate the minutiae of their case. I cannot put it any plainer than that. **[Approbation]** I appreciate that Members have varying opinions regarding Williamson. I am of the opinion that by not debating P.62 but by approving P.17, that will not impinge upon this Assembly's decision in regard to Williamson, which again the Minister for Health and Social Services has said she will bring back to this Assembly for debate, for amendment, for discussion and for funding. I implore Members to look to the best interest of this family, not to debate P.62 but to move to P.17, approve the funding and give them the care and service that they deserve. **[Approbation]**

6.7 Deputy M. Tadier:

Notwithstanding a very moving speech from the previous speaker I believe that the waters have somewhat been muddied here. Only I do not believe anyone does want to go into the minutiae, as it was said, to discuss the family X placement. I believe that we have all had a tacit agreement here that we would not do that and we would proceed straight through and vote so I think that is the first misleading part. I would also just reiterate the comments from the Deputy of St. Mary that it was democratically proposed and passed that P.17 should be referred to Scrutiny to look at the whole Williamson issue of funding. I think that it is anti-democratic to suggest that we put P.17 to the front and forget about P.62, purely because it is politically inconvenient for the Minister for Treasury and Resources to do that.

Senator J.L. Perchard:

On a point of order, P.17 is not being scrutinised in itself. The Scrutiny Panel is looking at an agenda that is far in excess of the specifics of P.17.

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

I think the point today is that a decision needs to urgently be made in relation to the funding which is being put forward and the remainder, concerning the Williamson Report, should go to the Scrutiny Panel which can be done in due time and come back to the States for a full discussion. That is the way I see it and I do not see any problem with anything that has just been said. It is the process that is important. Let us get on with making the correct decision today.

6.9 Deputy P.V.F. Le Claire:

I would like to thank Deputy Gorst for his speech. I was a member of the Health and Social Services Committee in 1999 when this first came up so I do take part blame in what has happened. I think Senator Syvret's proposition to have my debate brought forward is, in part, a good suggestion because I am concerned that otherwise there will be no appropriate provision in future and in plans in a States decision but I must regretfully put my desire to have that debate behind what is my responsibility to the children and support P.17. **[Approbation]** The first thing I would like to say is I do not have a hidden agenda and the lawyers contacted me to ask me to do this. So, I am just trying to do what they want for the children. Williamson has some excellent proposals but does not go far enough. We need a Commissioner for Children and we need to ratify the United Nations Convention on the Rights of the Child but we need to get this money to these children today. **[Approbation]**

The Deputy Bailiff:

Very well, I invite Senator Syvret then to reply on his proposition.

6.10 Senator S. Syvret:

Yes, I was aware of Deputy Le Claire's intention and wish to support P.17 and I have no difficulty with that whatsoever. My understanding though is he still is of the view that the States needs to exhibit the commitment embodied in part of his proposition. It seems to me that there was no reason why we could not do that. It then gives a binding commitment made by this Assembly to include the long term funding and as I think every Member who has spoken has made clear there was no wish to discuss the detail of the case. There is no question of discussing clinical issues or anything of that nature. It is simply a case of acknowledging tacitly that we have failed this family, these children in the past and now we will agree to put forward long term guaranteed funding for their care, that there is a binding States commitment to continue. I see no reason why we could not approve easily and speedily, within the next few minutes, part (b) of Deputy Le Claire's proposition and then, if Members wish, go on to approve P.17. It seems to me to be a perfectly easy and clear way forward. I maintain the proposition, and ask for the appel.

The Deputy Bailiff:

Very well, the appel is asked for then on the proposition of Senator Syvret that projet 62/2009 be taken as the first item. I invite Members to return to their seats and invite the Greffier to open the voting.

POUR: 38		CONTRE: 2		ABSTAIN: 0
Senator S. Syvret		Connétable of St. Saviour		
Senator P.F. Routier		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
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 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)				

ARRANGEMENT OF PUBLIC BUSINESS (P.17/2009)

7. Senator P.F.C. Ozouf:

Sir, may I ask for P.17 to be taken as a first item if Members would wish.

The Deputy Bailiff:

You must first of all, I think, ask them if they wish to take it.

Senator P.F.C. Ozouf:

To take it, yes. I apologise, Sir, yes.

The Deputy Bailiff:

Then if they do, take it as the first item of business.

Senator P.F.C. Ozouf:

I do not think I need to make any further remarks.

The Deputy Bailiff:

No. Very well, is that seconded that proposition? **[Seconded]** Does anyone wish to speak on whether we should take the projet 17 at this meeting? All Members in favour kindly show? Those against? The Assembly agrees to take it. Do you now propose that it be taken as first item then?

Senator P.F.C. Ozouf:

If I may, Sir.

The Deputy Bailiff:

Seconded? **[Seconded]** Does any Member wish to speak on whether it should be taken as first item?

Deputy M. Tadier:

Sir, I just wish some clarification from the Chair. What would happen if we decide not to take this as first item? Would the Order remain exactly the same as it is on the Paper?

The Deputy Bailiff:

Yes.

Deputy K.C. Lewis:

Sir, would that include a P.17 amendment or not?

The Deputy Bailiff:

That will obviously be a matter for the Deputy but I imagine the amendment, Deputy, is going to have to be withdrawn at the moment, is it not? Does any other Member wish to speak? Very well. All those in favour of taking P.17 as the first item of business kindly show? Yes, the appel is called for and to vote to take P.17 as the first item of business. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 38		CONTRE: 2		ABSTAIN: 0
Senator S. Syvret		Connétable of St. Saviour		
Senator P.F. Routier		Deputy J.B. Fox (H)		

Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
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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 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)				

8. Williamson Report: Implementation Plan – funding (P.17/2009)

The Deputy Bailiff:

So, then in accordance with that decision the first item of business of Public Business is Projet 17/2009: Williamson Report Implementation Funding, lodged by the Minister for Treasury and Resources and I would ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion, in accordance with Article 11(8) of the Public Finances (Jersey) Law 2005, to amend the expenditure approval for 2009 approved by the States on 23rd September 2008 in respect of the Health and Social Services Department head of expenditure, to permit the withdrawal of up to an additional £1.3 million from the Consolidated Fund for its net revenue expenditure in order to fund urgent service improvements to address critical elements of the Williamson Implementation Plan.

The Deputy Bailiff:

As I presided in the Court of Appeal in this matter I think it is better that the Greffier preside over this debate.

8.1 Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

I am grateful for Members' support to taking this item urgently and dealing with it now. I certainly do not intend to speak for very long. I think that the issues before Members are very clear. I do not bring Article 11(8) requests lightly. Departments must live within their budgets as approved in the Business Plan. However, I am convinced. I am certain, after having carried out reviews and discussions with Health, that they are unable to deal with the additional expenditure. So, there has been some discussion and suggestion that Health can absorb this additional expenditure or parts of the improvement in Children's Services that are required from their existing budget. I would wish to simply say that that is not the kind of practice that I would wish to encourage. I would not wish departments to be encouraged, while they can spend their budgets on areas which they deem to be a priority, we would not wish a situation for departments to be coming forward using all of their available resources and then simply coming back to a top-up. We deal with some discipline in terms of public finances and departments that are clearly showing that they do not have the resources to deal with this. It is up to this Assembly to decide whether or not the additional expenditure is required. I think it is just appropriate that I do say that I am giving 2 undertakings in relation to the £1.3 million. That is, first of all, that we will only sanction monies to be drawn down from this £1.3 million from the Treasury in relation to the case that we have discussed and, secondly, to make available monies that may be required in relation to dealing with the matters that have emerged and needing resolution, as far as Brig-y-Don is concerned, which are now underway but with the charity, their patron and the Health Department. So, I undertake that this is not a proposition to approve Williamson. As far as I am concerned it was never an issue of approving Williamson. Mine is a Treasury function that the new Minister for Health and Social Services has given an undertaking that she will bring back, after Scrutiny's useful and searching review of Williamson. This Assembly will debate that and, if necessary, I will bring further requests under Article 11(8), funds permitting of course, up for any further improvements. I sense that Members do put such improvement of Children's Services, bringing Children's Services up to maybe peak compliance standards in Jersey, as a high priority. We will have to deal with the financial consequences of that so I move the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Deputy Southern, do I just confirm you do not wish to move your amendment at this stage on that basis?

Deputy G.P. Southern:

No, Sir. I do not believe it is appropriate at this stage.

The Greffier of the States (in the Chair):

Very well, we will just take an immediate withdrawal. Deputy Southern?

8.1.1 Deputy G.P. Southern:

I was just trying to work out which character it was in Alice Through the Looking Glass or Alice in Wonderland suggested that a word means what I say it means. I think it was the Red Queen, was it? Indeed, well. [**Laughter**] My word. Well, here we are at exactly that stage. Here we are setting a very unusual ... is it a precedent or is it not a precedent? This will never happen again in the lifetime of any Minister for Treasury and Resources ever, that he will lodge a request for a sum of money, say £1.3 million for a purpose which does not contain the purpose for which he wishes now to spend it on. He will give a verbal agreement and say: "Well, I have got this money. I know I have told you that this is what I wanted to spend it on but actually I have changed my mind. I do not mean that anymore. The word is what I take it to mean. So it does not mean address critical elements of the Williamson Implementation Plan because what I am going to spend it on was not in

Williamson but, nevertheless, I have done you the courtesy of not making some sort of Ministerial scene and doing it behind closed doors but bring it to the States.” This is absolutely a crazy way to run a wheel stall. In fact, the wheel stall would go broke. I mean this is nonsense. It is convenient nonsense for the Minister for Treasury and Resources but it is not the way a legislature should be behaving. At a whim, at the last minute because we decide so, because I have not got the structures in place to have a contingency plan and how many times have I told the Chief Minister now, the Minister for Treasury and Resources who withdrew his contingency funding that he might need it one day, and what was he playing at because even I do not run my budget at home like that - in fact my wife runs it but she does not really like that - **[Laughter]** but it is a contingency fund, just in case, because she believes in rainy days. It is often raining in our house. But, no, we have not got that so we have got to introduce, in this weird and wonderful way, but of course nobody else will ever use it again, to spend money on something at the last minute that the Minister for Treasury and Resources says: “I fancy spending it on this. Can I do so? Let us go and do it. I have got some money laid aside for this project or this project or this project but I have changed my mind.” What nonsense. Please reject this proposition.

8.1.2 Deputy R.G. Le Hérissier:

Can I just make a short statement based on what a few members of the public have told me, not to do with the substance of this proposition but the considerable concern that this situation has materialised and they really want to know why did it get to this point? The Minister for Health and Social Services has announced an inquiry but I would like her to give us comfort that it is going to be ruthlessly independent. I fear, despite the evidence of the 2 people nominated, one of them is from within the Ministry and I am not sure that that independence, as such, can be justified but I would be obliged if she could tell us it must be ruthless, it must look at political oversight, it must look at managerial oversight and it must look at other issues that are pertinent.

8.1.3 Deputy A.K.F. Green:

This is an absolute disgrace. It is a disgrace that the family have had to wait a year. It is a disgrace that they went to court and it is a disgrace that we are having the political shenanigans over this today. Can we just get on and help this family. Let us have the vote now. **[Approbation]**

8.1.4 Senator S. Syvret:

Some of the speeches that have been made just touch upon the proposition we have agreed not to debate. I was under the impression that Members wished not to debate specific cases. So, what I propose to say is not to do with that specific case. Let us face it, if the States can find a method, one way or another, to produce £600,000 to bail out incautious investors then there must be one way or another that this kind of case could be adequately funded. My reason for opposing this proposition today is the same as the reason I gave for having it referred to Scrutiny. We have already had the temper tantrums from Senator Perchard about it but the great majority of Members rightly agreed that it was wholly inappropriate for this Assembly to agree to essentially throw a lot of money at the funding proposals, the particular policy, without that policy first being subject to proper scrutiny and then being subject to a proper debate on the floor of this Assembly. That is what we should have done and that is what a majority of Members did agree to do. Now, it looks as though we are going to approve the proposition today but on a kind of understanding and an undertaking that it does not actually mean what it says it means and that do not worry about the fact that it, on the face of it, binds the Assembly to committing certain money to the Williamson proposals. Do not worry about that. We can revisit the actual policy that we are going to put in place for child protection issues policies on other occasions. Well, I certainly hope that that is going to be the case because, notwithstanding the views of Senator Perchard and some others, I could provide and will indeed be providing to the Scrutiny Panel a great deal of very hard well-sourced documentary evidence as to the catalogue of grotesque failures that have plagued child protection systems in Jersey for decades. Decades. It is those failures that I wish to stop. It is

those failures I wish to prevent. I want the Island to finally learn the appropriate lessons. If I was asked, indeed somebody did ask me this the other day, what would I say was the greatest political mistake of my career? I will tell you what it was. It was upon receiving the Kathie Bull Report and not, at that stage, demanding the complete dismissal of the senior, expensive, yet hopelessly inefficient and inadequate staff responsible for running this service. In fact that question was put to me by a *Jersey Evening Post* reporter at the time of the Kathie Bull Report, Anthony Lewis. I said to him: "Well, yes. It was me, incidentally, who leaked the Kathie Bull Report and gave it openly to the *Jersey Evening Post*" because I believed that it was such a mess that it needed reporting, whereas everyone else from 3 relevant committees wanted it to be kept secret, certainly another 2 presidents did. He said to me: "Well, this is so bad. This is such a mess. What is revealed in this document is so catastrophic surely heads have got to roll over this." I was naïve then in those days. I said: "Well, perhaps that is a little harsh. Perhaps we have been to blame politically for these failings and deficiencies and maybe there has been inadequate funding and so on and we should try to put in place the appropriate policy to address these issues." The question that was put to me by the reporter was absolutely right. The fact is you can have the best policies on the face of the planet. If they are not enacted, overseen, regulated, enforced and conducted by people of the highest professional calibre and ethics then they just will not work. There are certain safeguards that one puts in place with these kinds of public policies, for example, effective checks and balances, effective oversight, effective regulation, and if you ask me to point to just one of the fundamental and catastrophic flaws in the Williamson proposals it is this. They do not speak of the inescapable need to have a separation of powers. There needs to be an absolutely clear division between those responsible for delivering child protection services and those responsible for the oversight, the policing and the regulation of those child protection services, because that is the catastrophic failing of the system at the moment. You have, essentially, the same people - colleagues, friends - doing exactly the same jobs. That administrative conflict of interests exists in the system. Williamson failed utterly to address that fundamental issue. This was a question I put to Professor June Thoburn at her briefing for States Members concerning this need to separate the regulatory function out from the delivery function and she agreed with me at that meeting "100 per cent", were her words. So, let nobody imagine that somehow the Williamson proposals, which some Members have seized upon and have become very rapidly wedded to, are the last word in ultimate child protection strategies and policies because they are plainly not. I will be providing to the Scrutiny Panel a variety of other professional peer reviews of the Williamson proposals, including from some nationally recognised experts. So, it is not a case of, as some Members would have it, me trying to wreck things. It is a case of me, on an evidenced and well-researched basis, wanting to put in place a system that finally recognises the errors of the past and puts in place a better, effective and working system. Hopefully, that is what will arise out of the Scrutiny Panel's work and ultimately the States debate there will be on these policies.

8.1.5 Deputy A.E. Jeune:

Could yourself or the proposer please clarify, for me anyway, what it is we are actually going to vote on here today? Is it, when we vote, if we vote in favour, to approve effectively (1) the funding of essential clinical care as has been identified, (2) funding for Brig-y-Don for essential maintenance, conditional that we are not going to lose a centre of excellence for children and (3) that Scrutiny will continue in their work looking at the *Williamson Report*. Thank you.

The Greffier of the States (in the Chair):

Well, did you direct the question either to the Chair or the Minister? I think the Minister will touch on it in his summing-up. Just from the Chair I think all I can say is that Members have taken this afternoon's decision to be a relatively pragmatic approach to this proposition and effectively Members are, I understand, voting on funding for one particular family and, secondly, the Minister will explain exactly what for Brig-y-Don, but he has made it clear that Members are not voting

unusually to the precise wording of the proposition, that it is there for taking that pragmatic decision to take the undertakings from the Minister and vote on that basis.

8.1.6 Deputy T.M. Pitman:

I will just say, having spent a lot of my years in my career working with children and young people I do not think anyone can question my motivation or drive to put them first. Nevertheless, I have to say I cannot believe the way we are being asked to work and accept this proposition. Along with the Chairman, Senator Breckon, Deputies Southern and Le Hérissier I have already spent an awful lot of time and thought and consideration, along with Scrutiny officers, in this area. Frankly, I have always been critical of people who do not take part in Scrutiny but if this is the way we are going to work I do not think I am going to waste my time anymore. There are better things I can do. I think this is farcical quite honestly.

8.1.7 Deputy M. Tadier:

I do appreciate the clarification we received from the Chair and also I look forward to Deputy Jeune's questions being answered in the summing-up. I want to take a slightly more nuanced approach than some of the previous speakers though I do have to say, first of all, that I am concerned about the irregularities and the seemingly unprofessional nature in which this proposition has been brought. It literally does not do what it says on the tin and it seems to be quite misleading. That said I do accept the assurances that this proposition will not interfere with the very good work that the Scrutiny Panel, looking into Williamson, is taking out and that that is a reassurance that I was very keen to have. So I will be supporting this. I do not want to be seen to be taking a dogmatic approach and I will be agreeing with the spirit of this proposition. I think it is absolutely important that we do get justice and the correct care for this Family X but not just for these people but looking at the bigger picture and to move on and move forward with getting a healthcare service that Jersey can rightly be proud of. So, I will be, as I have said, giving my conditional support to this.

8.1.8 Deputy P.V.F. Le Claire:

I would like to remind Members that the P.17 proposition today is to provide the money for 2 things. It is not unusual, under the Ministerial system, for Ministers to spend money from one pot to another and I had raised that a few weeks ago. It is something that, perhaps, needs to be considered but my primary duty at the moment is to make sure, as soon as possible, that money is available to get the children where they need to be. I will be supporting P.17. I will, however, be aiming to improve the current proposals when they come back to the States from Scrutiny and are tabled by the Minister, but I will vote in favour of it today. Williamson is a good step in the right direction. It may not be equipped for the entire journey but it certainly is equipped for the first few steps. I would like to just read the letter that I included in Members' packs from the children's guardian: "Dear States Member, Proposition. Deputy Paul Le Claire is bringing a proposition in respect of some very damaged and vulnerable children. I was appointed by the courts to act as their Guardian on 21st July 2008. My role in this respect being to safeguard their welfare and to instruct the lawyers acting for them in care proceedings. The plight of these children is desperate and any delay in them receiving the treatment they need will significantly reduce their prospects of a full recovery. I have read and endorsed the emails from Dr. Silver and Advocate Hanson which I understand you have already received. Please confirm my view that the identified residential therapeutic communities in the U.K. are the only places where the children can be treated in order to recover from the appalling abuse they have suffered. There is nothing yet available in Jersey that will meet their needs. Anything that may be created will be too late for these children. Please think carefully about these children when you are involved in the debates affecting their futures." I have a catalogue of information and I have shared much of it with States Members. What is needed to be said is that the decision to try to treat the children in Jersey was flawed and the courts upheld an appeal instructing the Minister to reconsider. All of the experts, both in Jersey and in the U.K.,

from a clinician's perspective, identified that these children needed to go away. They identified that any delay would impede their prospect of recovery. We are not in this position because we delayed P.17 the first time around. I would like to make that point categorically, it is absolutely correct. Contrary to the assertion of Senator Perchard, the reason why we are in this position is because the Minister for Health and Social Services has made a fresh decision guided by direction under the judgment from the Royal Court and her decision has now been to place these children in the U.K. residential care that they need. That is the reason why we are in this position. I would like to first of all congratulate and thank the Minister for Health and Social Services for sharing with me in confidence some of her private feelings and views about these issues and giving me the guarantees that she will be looking after these children into the next 3 years. Also the Assistant Minister, Deputy Noel, for his support and also, importantly, Senator Ozouf because after we had had my little laugh about the amount of support I got in the Health votes, it actually worked in my favour and I was able to secure a good half an hour, which is quite a long time, in the Minister for Treasury and Resources' company to speak to him quietly and consideredly about this issue. He is a very busy man and even a politician cannot command that much time normally - his time - without him being distracted by one thing or another. He listened sympathetically, as have other Members, to what was needed to be done. P.17, the issues about Scrutiny and the issues about how Ministers spend their money are all things for us to debate, and quite rightly there are a lot of peculiarities in them. One thing is for certain though, if this is approved today the children's Guardian, who is in the Island on Thursday, I hope will be able to make arrangements so that next week those children are in the units that are there for them. I would like to thank all of the Members that have spoken to me privately and given me their support. In particular a very big thank you to the 2 lawyers, Barbara Corbett and Tim Hanson, for their help and asking me to look after this even though, in some way, I am never going to properly debate it. I am disappointed. I am saddened that Senator Perchard has not grasped what I am trying to do. It is not trying to pull things together to make them fit, where otherwise they would not, it is trying to pull us together as individuals working for the community and make us fix our procedures. Just because we do not want Senator Perchard to be Minister today, it does not necessarily mean that we do not want him to be a Minister in the future, so he should not, in my respectful view, be so hard on himself at this time. I support P.17.

8.1.9 Senator P.F. Routier:

Thank you to Deputy Le Claire for his contribution towards achieving what we all want to do. I am sure we are going to support this proposition today and we are going to have the right services in place for this family and also for Brig-y-Don. We, hopefully, will have learned a lot of lessons by this sad episode because there are lots of things that have gone wrong over the years in getting to where we are today and, as I say, I do hope we are going to learn. One of the things which has concerned me for many years, which is one of the things that we are probably extending further today to a certain extent, is the use of budgets within Health and Social Services and the way they are flowed between both. The hospital has grabbed funds away from Social Services and that is part of the problem. That is how we have got to where we are today because, unfortunately, there is a certain amount of money to go around and the hospital has grabbed the majority of the money and the Social Services side has been the Cinderella of that full service, which I think we should look to try and resolve at some stage. Whether it means that we have to set up separate departments, which to my mind that might be a way forward because I think Social Services has been let down for a number of years. It has not only been let down for a number of years because of that joining together of the 2 services but I think it was Deputy Le Hérisier who said he had been questioned by people wanting to know: "Well, how did we get there? How the hell did we get there?" and we do need to find out how we got there. Even I think Senator Syvret himself in his own comments admitted to his mistakes that he had made in the past. I am not going to go into a blame culture at all but there have been some really serious mistakes made in previous years, and I do hope we are going to learn from those mistakes, as I said in my opening comments, but I do take

exception, I am afraid, to Senator Syvret trying to now take the moral high ground. That is one of the things that is really grating with me, I am afraid, because he is now trying to say he wants to do the best for everybody when he did have the opportunity when he was Minister, and President before that, to have achieved quite a lot. So, although he did admit to some of those mistakes in his comments what, as I say, does cause me great grief is him trying to take the moral high ground now. I know we are going to support this proposition and I encourage everybody to get right behind it.

8.1.10 Deputy J.A. Martin:

I will be brief. I can understand a lot of the people's frustrations as to the way we have got here because even up until, I think, yesterday or the weekend the Minister for Treasury and Resources did have 2 ways: put P.17 on the Order Paper or tell us what the money was for. What I do have is a question, and I really need this answered clearly; we are drawing down £1.3 million. I want to know, because it does come under the Williamson Report: Implementation Plan funding. I want to be assured that when Scrutiny comes back, and the original implementation of Williamson was going to be over £5 million, that this money... it is not going to be said to this House: "Hang on a minute, you voted Williamson and you already voted for £1.3 million." Because I think this is a real big confusion. As the Assistant Health Minister, particularly looking at Williamson, the £3.2 million that was promised was never going to be enough and I think now that Scrutiny is looking at it there are some real bigger rabbits they are pulling out of their hat. I really do need assurances and I think the rest of the House should be assured, exactly like Deputy Jeune has said, what exactly are we voting on and not to be told later: "You have already had some of that money." Thank you.

8.1.11 Senator J.L. Perchard:

Just a couple of brief points. I am delighted with the mood of the House that it appears that this will get support. We all have a lot of reason to find this emotional. It has been a long journey for me personally; I know it has been a long journey for others that have got close to it, including Deputy Le Claire. There was a genuine effort on behalf of me and officers to get an urgent, speedy conclusion by lodging with the assistance of the Minister for Treasury and Resources P.17 for debate on 31st March. We are where we are. I just wanted to just correct one little point that Deputy Le Claire made. I believe, and I think it will come out in a written judgment, the Court of Appeal overturned the original decision and that the care plans for these children need to be changed as a result of the lack of funding that was going to be forthcoming after 31st March. The written judgment will prove whether I am right. Deputy Le Hérissier spoke about a serious case review. I instigated that some months ago and that will be undertaken because this whole episode goes back a decade and it is not just the Children's Service, it is not just the Police Service; it is our judicial system that has failed these children as well. Evidence to that effect will be forthcoming; I know, I have read some of it. Senator Syvret was very critical of the Williamson proposals. Can I just remind Members that Lord Laming himself recommended Andrew Williamson M.B.E. (Member of the Order of the British Empire), who spent a lifetime working in Children's Services in the south-west of England, to Jersey as a very competent and able man to review our services. Andrew Williamson came and spent 9 months. Of course, during that period Haut de la Garenne blew up and of course those interested in talking to him far exceeded his expectations. The report that he produced, as I say, took 9 months. We speedily, under Senator Shenton and then latterly I, developed, with officers, a Williamson Implementation Plan. There was never any intention, despite what Senator Syvret has peddled, to deny the States the opportunity of debating that plan. It has been peddled widely, people accept it as truth. Why would there have ever been an intention to stop the debate on the Williamson Implementation Plan taking place? The Minister for Treasury and Resources lodged the request for funding; it was not me as the Minister for Health and Social Services lodging a request. The Minister for Treasury and Resources came forward with urgent funding. There was every intention to scrutinise and debate this plan. I was perfectly content that

that should happen. I am delighted that the Scrutiny Panel has widened its terms of reference. They are not scrutinising P.17 at all; they are scrutinising, and the title of their review is: A Review of the Co-ordination of Services for Vulnerable Children. Wonderful. Even if it does take longer than 30th June, the fact is the ball is in the park, money has been identified, urgent reforms for the Children's Services are taking place. I was about... and I hope my successor will continue to seek to appoint a new Head of Children's Services and not from within the Island, Deputy Le Hérissier; a fresh face from outside the Island. I want a new broom, a new Children's Service, and a new dynamic at that department and I hope my successor will continue with that policy [**Aside**] Yes, we have got lots of predecessors along this row. [**Laughter**] Deputy Pryke will be able to come and join us here in some time, but hopefully not in the too immediate future. Senator Syvret also said there was a failure on behalf of Williamson to identify a mechanism to hold to account those delivering services. That is quite untrue. I think it is recommendation 8 in my well-worn Williamson Plan here, is to ... no, it is not recommendation 8, excuse me. One of the recommendations in my well-worn plan here is a Court Advisory Service, which is a complete set of representatives, to represent the interests and to hold to account the service deliverer of children. As well as Williamson, I recognise that we needed to have a regular, independent, outside inspection of services. I am delighted that my successor will not have to appoint somebody because we did appoint the Scottish Social Work Inspection Agency to lead with the inspection of our Jersey Children's Services and to hold us to account to ensure that our services are of the highest standard. So, I am delighted that the mood seems that we will be supporting P.17. It is, as Deputy Le Claire says, the first step. It is an important first step and I look forward to the Scrutiny review and the Minister bringing the final document to the House, hopefully, in the autumn. But having said that, we have taken the first step and immediate funding has been made available and there is no doubt that this House is capable of holding the Minister to account for how this £1.3 million is spent.

8.1.12 The Deputy of St. Mary:

I will be brief. There is serious concern about the Children's Service and the way it has evolved and where it is now. I just want to pick up on what Deputy Martin said about the need to protect the funds of Williamson and make sure that in the future we are not told that we have already voted for something that was called Williamson or had Williamson in the title. In that spirit of just making sure that we know exactly what we are voting for, I want to call on the Minister in his reply as the Minister for Treasury and Resources to help Members in his summing-up by saying exactly what the money will be spent on and refer to pages 6 and 7 in the proposition and tell us line by line, more or less, what will the money be spent on. Because there is some concern about this approach to budgeting and enabling money to be spent and I just want to have the lines drawn so that we know exactly where we are going. Thank you.

8.1.13 Deputy A.T. Dupre:

I really cannot believe how long it is taking us to get to this point. Commonsense, when I stood as an elector - I prefer to be elected - I would just like to reiterate what Deputy Egré said earlier. Can we please just get on with voting for these funds for these vulnerable children. Thank you.

8.1.14 Deputy D.J. De Sousa:

What I really have a problem with is although this is a really emotive subject the actual proposition in front of us is not asking for the funding to send these children off-Island. We need guarantees that what we are voting for today is just that funding, that it will only be used for that and nothing else. This proposition here is asking for things to be done on-Island to accommodate these children and that is where I have a difficulty.

8.1.15 Deputy I.J. Gorst:

Never one to miss an opportunity to be radical, or at least I hope not; I thought I just wanted to pick up on a point or a number of points made by Senator Routier. I believe that over the coming months and years the budget that Health has and the budget that it provides to Social Services will have to be substantially increased. It is not acceptable, the current service that we provide as a government in those areas. There will need to be some radical rethinking. I personally believe that the route we must go down is personal budgets for those individuals and those young people within society who have need which has been determined. Had we had that particular approach we would not be standing here today because the money would follow the need and that money would then provide the service for each individual within the Island that had a need of this kind. I believe that we will need to go down this route, I fully support it. I look forward to the day when the current Minister for Health and Social Services proposes such a budget proposition to the Minister for Treasury and Resources and I put him too on notice that this is the direction which we should be going. We will need more money and we ought to provide more money for these most vulnerable members of our society. Thank you.

8.1.16 The Deputy of Trinity:

Just a few comments because I know a lot has been said. I would just like to thank Deputy Le Claire for what he has said, but also to thank the States Assembly for not going down to the minutiae of this family X. I have read and I have made a decision that they will, subject to funding here, go off-Island for specialist care. This is a very vulnerable young family and they need all our care, support. In fact, they need our prayers too because they have got a long journey in front of them. Enough has been said about Brig-y-Don too. I think that matter is clear and give the undertaking that if we do get the money then we will start negotiations. Just to pick up one point that Deputy Le Hérissier said, there is a review and it is being undertaken and it will be an independent panel. There is a new chair about to be appointed of the Jersey Child Protection Committee and he will be part of that review as well. I hope that is going to be picked up, the Deputy ... some undertaking. I thank Members and I hope they can support this special funding for these 2 specific purposes and we can go forward and rest assured that this family will be cared for in the best possible way. I will be getting regular updates to make sure that they are just that. Thank you.

8.1.17 The Deputy of St. John:

I was not going to speak, but since you have called me I will stand on my feet. I will just add that given that we jumped from the back of my file here, the last item of the agenda to the first, on the pretext of it not going to take very long, we have already been approximately an hour on it and therefore I ask that if the Minister sums up and we vote for this.

The Greffier of the States (in the Chair):

Deputy, I had seen your light. Apologies. The message seems to have been heard. Senator Breckon?

8.1.18 Senator A. Breckon:

I would like just to make a few comments as chairman of the panel and the sub-panel. When the issue was raised in this House about whether this issue would be referred to Scrutiny, the House believed it to be about the Williamson Implementation Plan. The main panel knew at that time that that was not the case at all; the issue was much bigger than Williamson. I can say already we have spoken to 3 Ministers who made a number of visits. We have spoken to people outside of the Island. We have had all sorts of other contacts. We have also had many professional people who have contacted us saying: "What about us?" including the legal profession, the probation service, G.P.s, the medical profession. The issue is much, much bigger than Williamson. We have spoken, I must say, the other day to Mr. Williamson himself, as well as other people in the system, professionals dealing with it, agencies. One thing that I knew I would find, if this is a double-

whammy, is what I would not find. There is no central source of information that tells you who has contact and is dealing with children. There is not one. I had a conversation with a senior professional the other day who did not know that the N.S.P.C.C. (National Society for the Prevention of Cruelty to Children) were operating in Jersey. He did not know that. "What do they do? Is it national policy? Local? What do they do?" That was a senior professional and that is on the record. We have that on the record. The reason I say that is because the terms of reference that the sub-panel have adopted are a lot wider than Williamson. What has happened, we were aware of this family and others who, to be polite and say, the system has failed and just leave it at that. What we have done is we have kept our own counsel of that but becoming aware of that, then we have papers from courts, we have had decisions, we have had information from officer meetings and things like that that were of concern. Obviously, as I say, we have tried to nudge that along where possible. As Deputy Trevor Pitman said, we have already spent a lot of time on these issues, not just in hearings; we have lost time, we have made time up and we are trying to produce a report for the second week in June. When we have looked, when we have got our terms of reference, we get to ... down a bit, we have looked at the first term of references to review the structures of governance and accountability within Jersey's proposed Child Protection Services. No mention of Williamson; again, it is wider than that. We have been to Education, we have been to the Police, we have spoken to the Minister for Home Affairs, we have been to La Moye, we have been to Greenfields, we have been to Brig-y-Don, we have been to La Preference, I spent a morning yesterday somewhere else, and the issue is, I would say, unco-ordinated, but to the greatest extent it works, but we have not applied the tests yet and we will come to conclusions. The reason I say that is that I have some concern that the deadline was tight anyway. What we do not want to do is to take the foot off the accelerator. We want to keep going because I believe this House needs that information, it needs to get in the public domain, but most importantly we need to act upon it. I think a good point was made, as Deputy Martin made then and I think Deputy Jeune touched on it, will the Scrutiny continue and what will it say? Well, I cannot say what it will say because we have not got there, but obviously we have gathered a lot of information. But the fact is, do not forget what we are approving, if we approve it, is a reduced funding on what was a request for Williamson. I know we have moved away from that to a part of it and I am really concerned about how this was a Scrutiny 'must have' and now it is: "Well, do what you can and you can inform us, you can amend us, the Minister will listen, we will produce another report later." It is not a very good way of doing it. I do not have a problem with the priority and I still feel it could have been dealt with in another way. Having said that, the sub-panel, I am sure, will still try and meet that target, but then others, it may well ... can turn recommendations for others, not just to read and to listen to, but to act upon and to be seen to be acting upon it. I have come to this without any baggage or without any bias and I hope Members will do the same. Obviously, where we have got circumstances like this it does colour the events, but when we have had divisions of responsibility between Health and Social Services, Education and Home Affairs, there was an attempt to bring it together. I can tell you that to date we have not found evidence of that. Behind the scenes perhaps, but perhaps politically not at a high-enough level and with a high-enough priority. That is probably understood and known by others anyway and I think it has been said by others. I think with this I have some difficulty and I am considering whether I should abstain. That is why I have stood up to speak because I think if I voted whichever way then it might be said that I have formed an opinion and with that I have a problem because with the issue that we are looking at, I have not. I know things need to be done; what they are and what the priorities are I am not sure until we do some more work on this, but I think the House should at this stage be aware - and I know the Treasury Minister has hinted at this - it is not just a case of putting money there, it is about co-ordination, it is about people working together and it is about doing the right things when perhaps ... let us be fair about this as well, we have done a lot of things well in the past as well that have benefited many young people and families. We need to move on from that. The idea of any implementation plan was to provide the best possible services for the young people that need them, however that may be. I think that is hopefully what will come out of this. From a Scrutiny point of view, we are

not quite at that stage of making those recommendations. In general terms, I have a discomfort with the fact that Scrutiny must do it and you must get on with it and then suddenly, because of circumstances that we were becoming aware, there is a change of priority which I still feel could have been dealt with financially in another way, in a more compassionate way. Recommendations to that effect did come from outside and internal sources earlier than this, so other people were aware of it. I think the funding was a stumbling block because at the time the monies were not there. I think it needs to be addressed but I think, personally, I am still considering whether or not I will abstain, and I may well do.

8.1.19 Senator B.E. Shenton:

As a member of the former Health Minister Society, I thought I should stand and make a short speech. When I took over as Minister for Health and Social Services it was fairly clear that Social Services was very much the poor relation and needed quite a bit of input and T.L.C. (tender loving care). Senator Perchard was appointed with responsibility for Social Services and he did work tirelessly to put together a plan that would work and albeit it has taken slightly longer than I would have hoped. Andrew Williamson did do an excellent job; he was very approachable, very highly recommended. June Thoburn also gave significant input into the plan. June Thoburn came to us on the recommendation of Senator Syvret and it was, in effect, a very, very good recommendation. Her insight into the problems with childcare were absolutely invaluable. All I would like to say is having been Minister for Health and Social Services and having access to confidential files, that this unfortunately is not an isolated case. Also, I do not want people to think that this is the first time that we will have sent children away to the mainland. We have done it in the past, not always with success, but it is a policy that we do not do lightly and certainly, you need to make sure you have the funding in place. I think Members would be absolutely amazed and quite distressed at some of the cases that Social Services has to deal with on a day-to-day basis and I think that a lot of praise has to go out to them because many times they are doing a very, very difficult job where they are trying to just pick up the pieces and those pieces that they are trying to pick up are often human relationships and family. The service is underfunded, make no doubt about it. Certainly, this only goes some way towards fulfilling the funding requirements of Social Services. This is just one piece of the jigsaw. Therefore, I ask the House and the Minister for Health and Social Services and the Minister for Treasury and Resources to make sure that they complete the jigsaw and put together a Social Services that we can be proud of. We will never, ever have a perfect Social Services Department - there is no such thing as a perfect Social Services Department - but we can certainly do our best and invest what we can to make sure that we do better than we have done in the past.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

8.1.20 Senator P.F.C. Ozouf:

I do think that I need to respond to a couple of the points that are being raised. Deputy Southern raised the issue and criticised the fact that the States does not have a contingency. Some Members have been in this Assembly long enough to remember supply days. Other Members will remember the good old days of the General Reserve. It is this Assembly that decides on an annual basis a departmental budget. That is for good, disciplinary reasons. The availability of a contingency creates a lack of discipline. Departments that are coming forward with requests for additional money are, to my mind, exhibiting traits of difficulty; difficulty in a number of different respects. I would respectfully point out to the Assembly that it is ... and I wish no criticism to the many hundreds and thousands of people that work in our health services, but many of the Article 11(8) requests, which I am very loathe to bring, are in relation to health. I am afraid to say that after having heard some of the remarks from Senator Syvret, I need to say to the Assembly that we do have - and in my 5 months at Treasury - an enormous job of work to do. We have a job of work to

do in relation to Health and Social Services. It is not only about funding. I truly believe that we are dealing with a department that has lacked political leadership, lacked appropriate care and attention, in not only just criticising, but making a meaningful difference. The new Minister for Health and Social Services in the last few days - and I have to say, Senator Perchard, in the weeks that he worked with me - did demonstrate, and I know the new Health team are going to continue this work in reforming, in modernising and improving our health services. We are taking responsibility today and we are making some corrective action for failures. I am afraid the buck does stop with Ministers, it does stop with Presidents. We have failed our health service and there is an enormous job of work to be done. In politics, you have to make decisions. I, last week after ... and I do pay tribute to Deputy Le Claire for the work that he has done to deal with this issue. My attention was drawn, perhaps more starkly than it was before, to the issue that we have before the Assembly. I would just ask Members to look at the proposition because there is some criticism of the decision that I have made in terms of bringing forward this proposition. Last week I was faced with 2 options: either progressing this proposition or lodging a separate proposition and seeking the even more unprecedented steps of asking for literally a day's notice for debate. I would just ask Members if they want any assurance, if they want some proof that we were dealing with these issues a number of weeks ago, then I would ask Members to turn to page 6 and 7 of the proposition. It says, N.B. (*Nota Bene*), on page 7, in red: "Items marked in red relate specifically to meeting the needs of a small family group who urgently require specialist, therapeutic and accommodation services." I fully acknowledge that there has been a change in implementation by the new Minister for Health and Social Services; maybe partly because of some delays. I am not going to enter into that debate. I am absolutely clear that this Assembly, in February, was asked to agree funding in respect of this case. It is for that reason... and I fully accept the criticism if there was an alternative. I am certain that this proposition is *in vires* in terms of allocating Health and Social Services' money for this particular case. I would also draw respectfully Members' attention to the words Brig-y-Don, I think mentioned twice in this proposition. I fully accept, however, time has moved on and times have changed. We are faced with the difficulty of not having political leadership at Health. For whatever reason, we have not been able to progress these matters in the manner in which we have. Therefore ...

Deputy J.M. Maçon:

On a point of clarification, the red bullet points that the Minister has pointed out, from my understanding, seem to refer to Jersey. The whole point of this proposition is that we will be securing funds to send children to the U.K. Can the Minister please clarify?

Senator P.F.C. Ozouf:

I think the issue there is that the solution found for this family group is certainly going to be different based upon the decisions of the new Minister for Health and Social Services; that is absolutely clear. But the issue and the funding issue for this particular case was identified a number of months ago and was required. It may well be that the decision would have been different. The fact is part of the £1.3 million was always envisaged for dealing with this particular family group. The implementation is different - the Deputy is absolutely right - but the reason, the problem, was effectively in this proposition. I do not think I need to go any further in, I hope, giving some measure of assurance to Members that this was very much in our minds when we dealt with it. I will not go any further in saying that we have got a massive job in Health to do. The job is enormous and the funding pressures that this Assembly will need to consider are significant. I will give Members in conclusion an assurance. To Deputy Martin, who I know is doing a great job in relation to Children's Services, she of course will have an opportunity of coming back to this Assembly and debating Williamson in its entirety, based upon her department's proposition. We will need to deal with the funding requests. No, we will not be saying that there is any sort of jiggery-pokery, that there is any sort of underhand dealings in terms of the money. The undertakings that I give to the Assembly is that this money is to be allocated to Health, up to

£1.3 million, but it will be dealt with ... under first instances for dealing with the particular family case, as now decided, and implemented according to the Minister for Health and Social Services' decision and dealing with the issues of Brig-y-Don, however they may transpire to be solved in discussions in the next few weeks. Finally, nothing in this approval should be taken to approve in Williamson at all; this is about funding for health. The Williamson Plan will come back to this Assembly. If Members care about this particular set of incredibly sad circumstances, if Members want to correct an error, wherever that be made in a delayed proposition or whatever, then I urge them to vote in favour of P.17.

Deputy G.P. Southern:

May I have a point of clarification? I have sadly misled the House. When I use a word, said Humpty Dumpty, in a rather scornful tone, it means just what I choose it to mean, neither more, nor less.

The Greffier of the States (in the Chair):

The appel is called for. The vote is therefore for or against the proposition with the undertakings given by the Minister and the Assistant Greffier will open the voting.

POUR: 38		CONTRE: 2		ABSTAIN: 0
Senator S. Syvret		Connétable of St. Saviour		
Senator P.F. Routier		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
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 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)				

9. Draft Health and Safety at Work (Amendment No. 4) (Jersey) Law 200- (P.37/2009)

The Greffier of the States (in the Chair):

Very well. The Assembly now reverts to the Order Paper and the next item is the Draft Health and Safety at Work (Amendment No. 4) (Jersey) Law 200- and I ask the Greffier to read the citation.

The Assistant Greffier of the States:

Draft Health and Safety at Work (Amendment No. 4) (Jersey) Law 200-. A Law to amend further the Health and Safety at Work (Jersey) Law 1989. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

9.1 Deputy I.J. Gorst (The Minister for Social Security):

The Health and Safety at Work (Jersey) Law 1989 is the primary occupational health and safety law in Jersey. Article 3 of the Law sets out the general duty placed on employers to ensure the health, safety and welfare of their employees. It falls to an employer in the discharge of that duty to assess what is reasonably practical by weighing the likelihood and consequences of any harm to employees against the measures that would be required to eliminate or reduce the risk of that harm occurring. This, in effect, requires a risk assessment process to be carried out. However, it is considered that the lack of specific wording in Article 3 setting out a reference to a need for this risk assessment process to take place results in employers being confused, and in certain instances, not meeting the existing legal requirement placed on them. The proposal to amend the Law to include a requirement for them to carry out an assessment of risks is therefore intended to clarify and assist employers in meeting the existing duty placed on them under Article 3. An employer with 5 or more employees is required to prepare a written health and safety statement. The amendment confirms that this statement must include the recording of significant risks resulting from the employer’s activities and the manner in which they are addressed. The amendment also sets out proposals to reflect the need for an employer to effectively communicate the written health and safety statement by requiring it to be prepared in a language which can be understood by his employees. The number of employees which triggers the need for a written health and safety policy statement may currently only be changed by a Regulation made by the States. The amendment puts forward a proposal to allow the Minister to make changes to this requirement by Order. I maintain the amendment.

The Greffier of the States (in the Chair):

Are the principles of the amending law seconded? **[Seconded]** Does any Member wish to speak on the principles? Senator Perchard?

9.1.1 Senator J.L. Perchard:

Just briefly, I would like to ask the Minister when he sums up to just advise the Assembly as to what dialogue he has had with business representatives. This is another tranche of red tape, lots of red tape that businesses will have to comply with. I just wanted to know about the level of dialogue and is this typical of U.K. legislation, or is this Jersey only, or Jersey specific? Simply, that in times where businesses are struggling, has he been sympathetic towards the fact that it is difficult to comply - particularly small businesses with 6 or 7 employees where the owners are hands-on? Will his department be able to assist businesses in compliance? As I say, what dialogue has taken place with representatives from business?

9.1.2 The Deputy of St. Martin:

Members may recall it was last year or the year before I came to the States, the House, asking that when a report or a law comes before the House that we are given an explanation as to why it is something which is human rights compatible. If one looks at page 3 it says: "This particular law is compatible" and one looks at page 4, again, it says: "It is compatible" and I just ask how it can be? Again, I follow on from Senator Perchard, because I am concerned that really, at the end of the day, do we need this piece of legislation? If we do need it, why is it down for 5 or more, and not for one up to 5? Because each one in a workplace must be working in some form of risk. I was looking, of course, to the Constable of Trinity, but I could think probably some of the worst offenders - and I include myself when I worked on a farm - are some of the people who are manual and you think: "We go out and we do a job and how are you going to do a risk assessment?" Now, if you keep under 5 you do not need to do it, but if you have got over 5 you do. I look across to Senator Perchard and think about the business involved there. You have got more than 5, so you have obviously got to do something, but if you keep it under 5 you have not. We are back again with how can this be compatible with human rights? Because either it is important for one person to have a risk assessment, or for everybody. I just wonder really maybe when we ... the Minister is shaking his head, but I just wonder how the Minister can say: "This is compatible with human rights" when you can have it for 5 or more, but if you do not, you work under 5, you do not need this risk assessment? I will leave it to the Minister, who is shaking his head, to satisfy me as to how we can agree to this piece of legislation.

9.1.3 Deputy R.G. Le Hérissier:

I wonder whether the Minister could outline, when such a statement is made and the writer comes to a judgment as to whether there is a likelihood of harm occurring, does this somehow give the employee the option of opting out? Because the statement seems to make it clear that there is indeed a risk. It seems to invite all sorts of opting in and out. If it does not do that, does the employer then have the right to require an employee to go ahead and perform that task?

9.1.4 The Deputy of St. John:

I must say I come from not a dissimilar view as that of the Deputy of St. Martin. I would like to know what consultation has taken place with, say, the Chamber of Commerce, the Fishing Federation, the Building Federation, the Engineering Federation and Farmers Union, *et cetera*, because each bit of legislation is costly to administer on the part ... especially of small employers, but right across the board. We are seeing builders being fined large sums of money, £50,000 seems to be the norm nowadays, and I would like to know what consultation has taken place. Could we be told what the views were of these particular groups that were consulted with, if at all possible, please?

9.1.5 The Connétable of St. Brelade:

Could I ask the Minister to please ensure that his department assists the smaller business by providing suitable templates on which they can produce their risk statements in order to minimise the costs involved to those particular companies.

9.1.6 Senator B.E. Shenton:

We appear to be legislating against significant risks. Could the Minister define what he means by "significant risks", give some examples, and explain whether the definition is subjective or objective, so that employers do not end up deciding that something ... the department does not fine someone for not highlighting the significant risk if the employer decides that he does not think it was a significant risk.

9.1.7 The Connétable of St. Saviour:

I have some worries about this in the way this could be implemented. Firstly, I welcome the fact that the very small employers are excluded from this. I am concerned that you can have an employer who may have a number of men that would work in this category and might be going out

to carry out very small jobs, perhaps only 20 or 30 minutes in length, and as far as I can see, he will be required to go and do a risk assessment of every one of those callouts. Now, this is just totally impractical. Now, otherwise you can say the employee has to go and do his own risk assessment before he does the job; that is one way of doing it. This Law, as I see it, requires the employer to do it, and that is just simply impractical. Perhaps I misunderstand; I hope the Minister can explain in his summing-up.

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

What concerns me is why the Minister feels it necessary to also amend, in this amendment, the present situation whereby the number of employees can only be changed by Regulation and this amendment proposes that it will from now on be the Minister who would make that decision.

9.1.9 Senator P.F. Routier:

Just a general observation. I am not sure how many Members will have read the Health and Safety Annual Report where it highlights the number of accidents that occur within the Island. There are certainly some very serious matters that have caused a lot of pain and injury to people in the workplace. I probably do share some of the comments that people have made about what is coming forward, but I have to balance that with the injuries that have been caused to people in the workplace. I think we have to err on the side of safety for employees because that is certainly a concern, not only for their own health, but also on the mercenary side of it, the funds which have to come out of the Social Security fund to support them when they are out of work through injury. I urge Members to support these Regulations because they are reasonable and they are something which I became accustomed to when I was the previous Minister for Social Security and I recognise that they are well worth having there in place.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

9.1.10 Deputy I.J. Gorst:

I would rather not, if you do not mind. **[Laughter]** I am well aware that health and safety issues are not necessarily ones that find favour with politicians or businesses at large. I would draw Members' attention to what this amendment is today. It is a clarification of the Law as it stands now. I am not, with this amendment, bringing in a new law which creates the onuses which so many Members have said they disagree. What it does is implicitly, or explicitly - I get confused with that - it makes it certain that the employer must carry out a risk assessment. Previously, employers have been, shall we say, confused, or they have said when challenged that they had not realised that a risk assessment must be undertaken. This is not a tranche of red tape, as Senator Perchard said; what it is meant to do is eliminate red tape because it makes it clear that a risk assessment - an appropriate risk assessment - must be undertaken not looking at every single risk and therefore, in some ways, restricting the amount of work which is required of businesses, not this increase of red tape. Will my department assist? They most absolutely will. They initially, rather than proposing this explicit amendment, produce this policy guideline on risk assessment, which is quite clear, to my reading, but still employers felt that even after this guidance was produced that they were uncertain about whether they had to do a risk assessment or not. This amendment makes it absolutely clear that a risk assessment must be undertaken. I have copies of the type of risk assessment, if Members care to look at them afterwards, but it is not - I have got to say - very exciting reading. It is a commonsense approach, looking at the risks around one and thinking and analysing what they are and then putting in appropriate measures to deal with them. What we are talking about here is protection; it is protecting employees from injury. Unfortunately, in this Island we do still have people who are injured because of lack of appropriate health and safety measures within the workplace. Responsible employers will already be carrying this out. This is simply to clarify that a risk assessment must be undertaken. It is not providing or increasing

the existing legal requirement placed upon them; it is simply clarifying them. The Deputy of St. Martin seemed to be getting a little bit hot under the collar about why this Law applies only in his reading of it to employers with more than 5 workers. It does not. I really do not see where he says that the Law applies only to employers with more than 5 workers. What it does say is that employers with more than 5 workers must have a written document which shows that they have carried out the risk assessment. It does not say that this Law does not apply to those who employ less than 5 workers. Yes, they will have to carry out a risk assessment as they have to do now. However, one would expect that an employer with a small number of 2 or 3 can quite happily communicate to those 2 or 3 around a table and say: "There is a risk there on the steps. There is a [let us say] floorboard loose. Just be careful when you are walking over there." Or: "We are going to repair it next week to eliminate that risk." This is what we are talking about. It is commonsense. Therefore, I really fail to understand the point that the Deputy of St. Martin was trying to raise. Templates, as I have said - that was the Connétable of St. Brelade - the department does have templates and they are always proactive, always prepared to visit employers if they have a problem with any particular health and safety situation, and I have no doubt whatsoever, although they are a very lean machine, they are more than happy to visit and help people with their management of health and safety issues in the workplace. The Connétable of St. Saviour raises a point about small jobs, individuals. As I said, this is not ... we are not changing the Law, we are just making it explicit that a risk assessment must be undertaken. So it is not an extra burden in that respect; it is something that, for example, if one is the employer of plumbers, there are certain risks. I must be careful what I am saying here. Perhaps I should pick another profession. **[Laughter]** Yes, I am not sure what the risks are in the accountancy profession, other than slight madness. One would expect that health and safety risks are somewhat ... are going to be the same on each callout for those particular jobs, although they might be slightly different, but that will be about instructing the individual employees in appropriate ways to act in those particular circumstances. The Connétable of Ouen; I did inherit this legislation from my predecessor. It was decided at that time that perhaps this was an appropriate opportunity to allow amendments by Order rather than Regulations, but I will leave that in the hands of Members. It does allow for a streamlined administration and it seems that we are in favour of streamlined administration in relation to what we have been saying with regard to the rest of the amendment. I thank Senator Routier for his comments. I would have expected nothing other than support. As I said, it is an inherited piece of legislation from himself. So I hope that I have put Members' minds at rest. I can see that I have not.

The Deputy of St. John:

Could I ask for the Minister to answer my question, whether consultation had taken place? I will start with, in fact, the Dressmakers' Association, do they count the pins in and out and the needles? Or have you spoken to the Chamber of Commerce, Fishing Federation, Building, the Employers' Federation, Farmers' Union, *et cetera*?

Deputy I.J. Gorst:

I am not sure ... although it was not a plumbing area, perhaps the Deputy could tell me what he sees as the significant risks of the ... what was it, counting the pins?

The Deputy of St. John:

Dressmakers' Association.

Deputy I.J. Gorst:

The what, sorry?

The Deputy of St. John:

Dressmakers' Association.

The Greffier of the States (in the Chair):

The issue is about consultation, Minister, I think. What consultation took place.

Deputy I.J. Gorst:

I cannot say exactly whether it went out to consultation because, as I clearly said, all it is is making the need for a risk assessment explicit. The original Law, which provides the legal requirement, I imagine it would have gone out to consultation; however, back in 1989 consultation was not probably quite as popular as it is today. I do hope that Members will support this. Health and safety issues, as undertaken by my department, they take a very commonsense approach. They are there to help, templates are available, and it is about making the workplace safer for employees, so I call for the appel.

The Greffier of the States (in the Chair):

The vote will be for or against the principles of the draft law. Members are in their designated seats. I will ask the Greffier to open the voting.

POUR: 38		CONTRE: 2		ABSTAIN: 0
Senator S. Syvret		Connétable of St. Saviour		
Senator P.F. Routier		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisser (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
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 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)				

The Greffier of the States (in the Chair):

The matter falls under the remit of the Health, Social Security and Housing Scrutiny Panel. Chairman, is this a matter you wish to ...

9.2 Senator A. Breckon (Chairman, Health Social Security and Housing Panel):

No, there are only 4 Members on the panel, so I do not think as a body we would be covered. **[Laughter]** The other thing is, I believe - and the Minister will clarify this - there is an advisory group on health and safety and I assume they have advised on this, so if the Minister could give that on assurance then I am prepared to leave it.

The Greffier of the States (in the Chair):

Very well. Minister, do you propose Articles 1 and 2 of the Law?

9.3 Deputy I.J. Gorst:

Yes, I do, please. They are indeed straightforward. I will not say anything else at this point.

The Greffier of the States (in the Chair):

Are they seconded? **[Seconded]** Does any Member wish to speak on either of Articles 1 or 2? I put the Articles. You wish for the appel? The appel has been called for again on Articles 1 and 2 of the draft law. I will ask the Greffier to open the voting.

POUR: 38		CONTRE: 2		ABSTAIN: 0
Senator S. Syvret		Connétable of St. Saviour		
Senator P.F. Routier		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
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 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)				

The Greffier of the States (in the Chair):

Do you propose the bill in the Third Reading, Minister?

9.4 Deputy I.J. Gorst:

Yes, I do. I know it is not really my place, but I do find it unfortunate that some Members are prepared perhaps not to fully understand the amendment and allow what employers themselves have said is uncertainty in regarding the need for a risk assessment. It is proper that we as an Assembly do support appropriate practice in the workplace to ensure that the employees of this Island can work in a safe environment. I hope that Members perhaps might reconsider in this final vote. Thank you.

The Greffier of the States (in the Chair):

I put the Law in the Third Reading. Those Members in favour of adopting it kindly show? Those against? The Law is adopted in the Third Reading.

10. Draft Loi (200-) (Amendment No. 11) réglant la procédure criminelle (P.39/2009)

The Greffier of the States (in the Chair):

We come now to the Draft Loi (200-) (Amendment No. 11) réglant la procédure criminelle and I will ask the Greffier to read the citation.

The Assistant Greffier of the States:

A Law to amend further the Loi (1864) réglant la procédure criminelle. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

10.1 Senator B.I. Le Marquand (The Minister for Home Affairs):

The amendment to this Law is about who should be eligible for and who should be disqualified for jury service. The jury system is an important part of the criminal justice system in Jersey. Part of the system in relation to juries has involved in the past excluding certain people with a criminal record. Anybody who has been sentenced to imprisonment for one month or more anywhere is excluded for life. Anybody who in the last 10 years has been sentenced either to imprisonment, including youth detention, or fined more than £500, or placed on probation, or who has received an equivalent penalty outside Jersey, is excluded. When community service sentences were first introduced into the courts, they were introduced as a condition attached to a probation order, so it was not then necessary to amend this Law because they were covered by the existing provision in relation to probation. In about 2003, a specific Community Service Law was brought in so that there was then a specific sentence of community service. A sentence of community service is a serious sentence because it is a sentence which is a direct alternative to custody. That means that it is only imposed where the courts are satisfied that if the order were to be breached then a prison sentence would be appropriate. Unfortunately, when the specific law on community service was brought in, it was overlooked that it would be necessary to amend the 1864 Law in the way proposed now so that those placed on community service were excluded. I need to point out that in terms of the hierarchy of seriousness of sentences that a community service order is more serious than a fine. That is indeed more serious than quite a number of probation orders because probation

orders are sometimes imposed as an alternative to imprisonment and sometimes as an alternative to a fine or to a lesser penalty. Therefore, the offences which would be dealt with by community service must have a certain seriousness. This is clearly a tidying-up operation and should have happened at the time when the specific Community Service Law was brought in and I now move the amendment in principle.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles of the draft Law? I put the principles. Those Members in favour of adopting kindly show. Any against? The principles are adopted. It is a matter that falls within the remit of your Scrutiny Panel, Deputy Le Hérissier. It is not a matter you wish to ...?

10.2 Deputy R.G. Le Hérissier (Chairman, Education and Home Affairs Scrutiny Panel):

No, Sir.

The Greffier of the States (in the Chair):

Do you propose Articles 1 and 2, Minister?

10.3 Senator B.I. Le Marquand:

I propose Articles 1 and 2.

The Greffier of the States (in the Chair):

Are they seconded? **[Seconded]** I put Articles 1 and 2. Those Members in favour of adopting them, kindly show. Any against? The Articles are adopted. Do you propose it in Third Reading, Minister?

10.3 Senator B.I. Le Marquand:

I do indeed, Sir.

The Greffier of the States (in the Chair):

Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? I put the draft Law in Third Reading. Those Members in favour of adopting it kindly show. Any against? The draft Law is adopted in Third Reading. I would also, just before calling the next item, draw Members' attention to the lodging this afternoon by the Minister for Social Security, a document I understand has just been circulated to Members, the Draft Health Insurance and Income Support (Influenza) (Jersey) Regulations 200-.

11. Review of the roles of the Bailiff, Attorney General and Solicitor General: terms of reference (P.44/2009)

The Greffier of the States (in the Chair):

We come now to the Review of the roles of the Bailiff, Attorney General and Solicitor General: terms of reference. I will ask the Greffier to read the proposition.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 4th February 2009 in which they agreed that an independent review should be conducted into the roles of the Bailiff, the Attorney General and the Solicitor General, and (a) to approve the draft terms of reference of the review as set out in the appendix to the report of the Council of Ministers dated 31st March 2009, and (b) to approve the process for the appointment of the chairman and members of the panel as set out in the said report and to vary their decision of 4th February in relation to the appointments process accordingly.

11.1 Senator P.F.C. Ozouf (Deputy Chief Minister - rapporteur)

The States debated on 4th February 2009 a proposition of the Deputy of St. Martin to carry out an independent review of the role of Bailiff, Attorney General and Solicitor General. The Council of Ministers was, in consultation with Privileges and Procedures, to lodge a proposition by 31st March that dealt with the matters that we have heard. So the matter is subject to an amendment, I will not go into the amendment, suffice to say the amendment is accepted by the Council of Ministers. The proposition sets out the basic principles on page 3 of the proposition that the review should be independent and partial, that it should cover the full range of roles inside and outside the States Assembly, the issues to include constitutional principles, the separation of judiciary and legislature, accountability and human rights compliance. The findings must be authoritative and reliable and something which the States can base future decisions. Importantly, local interest groups and the public should be consulted on which obviously this is a matter of considerable public importance. Page 5 of the proposition contain the terms of reference, the overall aims of the draft terms of reference as set out dealing with the scope of the review, the breadth of the issues to be considered, the nature of the findings and how they should be produced, the public engagement, as I have said, and the need for transparency. The draft terms of reference particularly set out the 2 separate but linked parts of the review, i.e. the role of the Bailiff and Deputy Bailiff's role and the review of the Attorney General and Solicitor General's role. The proposition sets out the appointment process for the panel. It contains that the chairperson must be independent and impartial, i.e. someone who has not expressed any public views on issues on related matters and must be suitably knowledgeable and experienced in the fields of constitutional law, human rights and parliamentary functions. In discussions with the Chief Minister I know that he has made informal contacts with the Judicial Office of England and Wales with a view to identifying eligible candidates for the position. He is also going to involve the Appointments Commission to oversee the process. The process of the appointment of panel members is set out, as previously indicated, potential local members of the review must be independent, impartial but well-informed members of the Jersey community. The position of panel members will be advertised locally and suitable applicants will be invited to apply, the Chief Minister, together with the Chairman of P.P.C. (Privileges and Procedures Committee), would be involved in the short listing and the selection of suitable candidates, and it will be this Assembly that will agree on the appointment of the chairperson - not sure I like that word - but chairman in that multi-gender fashion, and also the local members of the panel. I just want to briefly set out the timetable that the Chief Minister wishes to explain to Members and that is the advertising for the members of the panel will be conducted in mid-June. As I have said, the expressions of interest with the judicial committee in the U.K. will be carried out following the States decision. The selection of the chairman designate will be made in early July, the short list of panel also in July and it is hoped that the Council of Ministers would be in a position to lodge a proposition for the membership of the panel some time in July or August and the Council of Ministers would then seek to debate that in the first sitting of the Assembly after the summer break. That would mean that the process of the review can commence really, I think, probably slightly in a more protracted nature than was originally envisaged but I think that Members would agree that that is the most realistic timetable that can be set out, that the report can complete its work by the end of the year. It goes without saying that this is an incredibly important review. It goes to the heart of our judicial and legislative institutions. It has been accepted, or the need for review has been accepted, by the Bailiff in remarks that he has made publicly. Law Officers have been consulted. I put the terms of reference and the proposition to Members and seek to answer any questions.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]** There is, as the Deputy Chief Minister has said, an amendment in the name of the Deputy of St. Martin and I ask the Greffier to read the amendment.

11.2 Review of the roles of the Bailiff, Attorney General and Solicitor General: terms of reference (P.44/2009) - amendment (P.44/2009 Amd.)

The Assistant Greffier of the States:

Page 2, at the end of paragraph (b), after the word “accordingly” insert the words “except the review should be undertaken by a chairman and 4 independent members and not by a chairman and 2 independent members as set out on page 4 of the said report.”

11.2.1 The Deputy of St. Martin:

I am grateful for the Council of Ministers accepting it although it is a little bit of a guarded acceptance, but initially I was surprised - I think probably other Members were as well - that we were only looking at a panel with one chairman and 2 members. My first concern was, certainly, if you have only got 3, what happens if someone goes sick - certainly long-term sickness - the whole thing will come off. The other side of me, of course, was maybe there is a feeling that the Council of Ministers could not find sufficient people. In fact, if one looks at paragraph 3 of their comments it says: “The Council accepts the amendments subject to the understanding that if in spite of its best endeavours it is impossible to propose 4 suitable independent members of the Jersey community, for the panel it will report back to the States.” I would certainly hope that within an Island we have sufficient people to find 4 who will make up the panel. We certainly should have that breadth and knowledge right across the Island to get them. What I want us to do is encourage people who are professionally qualified and who may not necessarily be longstanding, but in many ways there is a lot to be said for that because they may not be too much immersed into the way of life here, even though they may not have been elevated to the perceived respective category. Clothier One, of course, did have more, and Clothier 2 had even more on their panel so we are looking really more to Clothier One which is policing the Island, which had one chairman and 4 members. I certainly agree, and I welcome what the Council of Ministers are saying about having an independent and impartial panel, well-versed in the matters in which are going to be considered. So, I will ask that Members do support the amendment along with the Council of Ministers. Just one other issue, there should not be any great additional financial implication and I will take issue - I am on my feet, and allow the Minister to come back at me - but I really was upset when we heard that initially we would be wanting £400,000 for this particular proposition, and I know that we are not going to look at the Dean, and we are not going to look at the Governor, but with the greatest respect to the Dean and the Governor, I do not think it is really going to cost £200,000 to look into your role and I am delighted that we have been able to come along with a budget which is more in keeping, which I think most of us thought would be around the £200,000. I compliment the Minister in being able to find a way to doing the job within £200,000. I make the amendment.

The Greffier of the States (in the Chair):

Is the amendment seconded? [**Seconded**] Does any Member wish to speak on the amendment? I put the amendment, those Members in favour of adopting it kindly show. Any against? The amendment is adopted.

11.3 Review of the roles of the Bailiff, Attorney General and Solicitor General: terms of reference (P.44/2009) - as amended

The Greffier of the States (in the Chair):

The debate now resumes, or perhaps continues after the last intervention, on the main proposition.

11.3.1 Senator S.C. Ferguson:

I am sorry, this really is another episode of expensive navel-gazing. We have many more important issues to be concerned about. As far as the proposition goes, Jersey is an independent country and here we are parachuting-in someone who although he may be a worthy judge is not a Jerseyman. I mean really do the Americans use an Englishman to chair their committees and investigations? I have heard much muttering about Clothier and reference to the Clothier Report. Guernsey had an

equivalent report prepared by Advocate Peter Harwood. The difference between the reports is that Clothier was a U.K. civil servant steeped in Civil Service and U.K. protocols. Advocate Harwood is a Guernseyman. The overseas balance on their committee was given by Brian Walden who had become a Guernsey resident and a senior parliamentarian from the Isle of Man. Many of the conclusions, as one might expect, are similar except there is one significant difference. The position of the Bailiff, *vis-à-vis* the Assembly, and this has been one of the underlying factors for the proposal that this investigation should take place. Interestingly, Harwood meets the conflict of interest head on. He says: “The principal justification used by those who would argue in favour of creating an independent speaker or presiding officer would appear to be one of perception that the Members of the States should be master of their own procedures. The other justification would seem to be founded on a concern that the duality of roles might somehow be seen to compromise the Bailiff’s judicial function. The panel notes that following the judgment in the *McGonnell* case that concern is no longer an issue.” Now, I know, as I have said, that Members of this House have all sorts of comments and criticisms of the Bailiff’s position and, to some extent, the Attorney General, but these are all based on U.K. theory and we are not the U.K. In fact, looking at the U.K. experience and the cost of their speaker’s chauffer trips to Celtic Football Club I prefer our system and the improving transparency of our accounts. I am not against change *per se*, but we do have more important things to do like getting on with a contingency plan to deal with the current financial position. This is an expensive and, frankly, totally off the point at the moment proposition. I implore Members to reject this and let us get on with the business of governing.

11.3.2 Deputy M. Tadier:

I feel compelled to speak after Senator Ferguson’s what was little short of a rant, I feel. I mean surely the whole point of getting. [Aside]

Senator S.C. Ferguson:

More like a soliloquy.

Deputy M. Tadier:

I am happy to withdraw if the Senator would wish me to withdraw that. [Aside] Getting back to the point, surely the reason we get someone in from the outside, and I believe that is just the chair who will be appointed. I think it is important that we have a balance so that it is not entirely an external affair and it is not entirely an internal affair, so at the same time it can be seen to be credible but also it can be seen to be balanced. Surely, the whole point if we want to avoid navel-gazing... and navel-gazing is usually when one is looking at one’s own navel, I believe. When you have somebody else staring at your navel that is slightly... [Interruption] that is not navel-gazing in my opinion. Also I do not believe we need to rehash the same old arguments. We have had the debate, we have all come to the conclusion that the debate about the [Approbation] role of the Bailiff and the Deputy Bailiff, *et cetera*, are very important issues. It is not something that needs to be considered lightly. It is not something that we, as a body, can do anything about and it is quite entirely right and proper that we do appoint a body, and I believe a body with a chair and 4 people on it is the right way to go, I am glad we have gone down that route. So I suggest we do not go round in circles and we do let the committee that we are going to be appointing, the body, get on with their work and I would suggest that we all get behind it.

11.3.3 Deputy R.G. Le Hérisier:

It was said at the time of the original debate that we were making heavy weather. I think it is always a difficult thing. Jersey has this obsession which Senator Ferguson knows of that if we do not get top line people, generally from outside, to whom we can defer, then somehow the report does not have credibility. Now in a sense Clothier was an exception that perhaps proved the rule because it did not work despite the eminence of the people who were involved. I think the thing is over the top, but the nevertheless it will work. I am very worried, and I thought Deputy Tadier may

have referred to this, I do not see the necessity; in fact, I would question the bias implicit in the appointment of a judge as a chairman. I do not know why on earth we have gone down that route. There are people I would call renaissance people who can deal with both the political and the judicial structures and take an overall view. It seems very strange to have opted for that side of the equation, so to speak. That point was made strongly in the debate but it was ignored and it was quite clear that the elitist branch of the Chief Minister's office won this debate. It is totally over the top that recommendation. I would look for somebody who has a broad view, and I was asked to give a few names in; I did give these names but they obviously disappeared into the ether, as ever. But there are people like the Professor of Constitutional... - not law - but Constitutional Systems at Oxford, Professor Bogdanor, and people such as this, who have a very broad view of these issues and could work with the judicial, the political and the legislative side in formulating a report. I think the thing was totally over the top quite frankly, but we seem to have this need to reach obvious conclusion through very laborious and expensive ways of doing so, and it seems we are going to have to do that.

11.3.4 The Deputy of St. Martin:

It would appear we have only got Senator Ferguson who has gone back on the debate we had on 4th February, we moved on to that and today we are here with a terms of reference. In actual fact, I think the terms of reference are totally acceptable, particularly now we are going to have a 4-person panel. The one thing we have got to look for, I think it is the important one, and Deputy Le Hérisier has touched on it... I think the next debate is the important one, when we are going to be electing or appointing the chairman and the panel. I think that is the crucial one, and with that in mind what I would ask that the ... Senator Ozouf did mention the timetable and I was a little bit concerned that we are going to be mid-June before it goes out and early July when we get it back and it may well be August before it gets to the House, but of course if we know it is August the House is going to be well into September before we debate it. I am rather concerned that we did accept or we did vote for Deputy Pitman's amendment which was it was done in a year. Well, of course, we have still got until March, I suppose, and one would hope that we can get that but the sooner we can get started the better. What I would ask the Minister in summing-up is that is there any possibility of getting on with the thing because I think by mid-June it is going to take a fair bit of time and we could easily run over. But what I would ask Members to do is support the terms of reference, what we have got today; let us get on with that and then ask the Minister to come back as soon as possible with his chairman and the members of the panel, then that will be the real debate. Then no doubt we can put amendments to it if we have ideas that we would rather put in. So I would ask Members to support the proposition.

11.3.5 The Deputy of St. Mary:

In general, I find this proposition excellent and the basic principles and the terms of reference are fine. But I do have a slight problem with part (b) of the proposition itself which is we are asked to approve the process for the appointment of the chairman and members of the panel as set out in the said report, but the process is not set out in a very restrictive way. In fact it is left completely open, as far as I can see, particularly with regard to the members of the panel, and I would ask the proposer to make clear to us exactly how this selection of potential local candidates will be carried out before the second proposition comes to the States for our approval?

11.3.6 Deputy M.R. Higgins:

I just wanted to follow up on the Deputy of St. Mary on this point about process. In the report it says: "The chairman and named local members of the panel shall be proposed to the States after consultation with the chairman of the Privileges and Procedures Committee for approval in a second proposition." Sorry, I read that wrongly. I thought it was going to be before the Privileges and Procedures Committee and I would hope that they would be allowed to put forward names as well as alternatives to what the Council of Ministers is bringing forward, but it appears is it the

chairman only? Is that correct? Chairman only, yes. I would have hoped it would have been the whole of the P.P.C. who would have considered it.

The Greffier of the States (in the Chair):

I think in terms of the proposition, Deputy, it is indeed the full committee because the proposition agreed by the States refers to the Council consulting with the committee, I am not sure what the report says. I call upon the Deputy Chief Minister to reply.

11.3.7 Senator P.F.C. Ozouf:

I do not think I will ever be able to stand up in this Assembly and convince Deputy Le Hérissier of something. He will always find an opportunity for comments, which is really a good thing. I do agree with those Members who have said that we have had this debate. I would say that I think that we are dealing with the heart of our constitutional arrangement, and that calls for intellect and ability at the highest possible level. I did say that the fact that the Chief Minister had circulated the England and Wales Judicial Committee; I would say that I would not restrict it at all to a United Kingdom individual. It would be great as far as I am concerned to identify maybe a Canadian or a New Zealander or an Australian, who would be appropriately qualified to look into our constitutional arrangements, provided that they come forward with the highest level of intellect, the experience in judicial and political matters. I cannot see the criticism of the fact that it should be somebody that has reached the position of judge in a very high level at all. I would say to Senator Ferguson, I know that she certainly has been in the groove of needing to deal with structural deficits in the last 24 hours, having heard her at the Corporate Affairs Scrutiny Panel yesterday. I know that she is concerned about structural deficits. I know that she wants to reduce expenditure. But there are other issues that we have got to do in terms of reforming our institutions. Our constitution has evolved. We have introduced Ministerial government and that introduction of a new system has created new requirements - indeed some tensions - in relation to the way that we operate as a jurisdiction. There is a debate to be had about the role of our Crown Officers and the way that we organise it in future. I thank the Deputy of St. Martin and indeed the Deputy of St. Mary for their comments in relation to being pleased with the proposition in terms of its terms of reference. I think that it has been carefully worded and covers all the issues that need to be dealt with. I think that there has been a discussion from the Deputy of St. Mary in relation to the process and Deputy Higgins too, and I think that the chair has confirmed that it is the Privileges and Procedures Committee. I would correct Deputy Higgins, it is not, I think, for the committee to come up with names. The process that we have set out or wish to follow is that there will be an advertisement for expressions of interest from individuals and it is the chairman of P.P.C. and Chief Minister initially that will go through a short list and then consult with Privileges and Procedures, but it will be this Assembly that will decide on the confirmation of the panel chairman and the members. I think that that answers all of the questions raised. I would like to say one final thing. That is, to recognise the fact that nothing in this proposition should be taken in any way as a criticism of our Crown Officers and the work that they do. I do not think our Crown Officers get the recognition [**Approbation**] that they deserve in serving us and in serving the public of the Island. There is going to be inevitably a period of review. There is going to be recommendations which are going to come through and we express the hope ... this Assembly I hope expresses the hope that our Crown Officers will work constructively, as they always do, and that this period of reform and perhaps modernisation will assist them in serving us, in serving the public and in serving the important roles that they have. I thank them and publicly recognise for the work that they do. [**Approbation**] So with those concluding remarks, I move the proposition.

The Greffier of the States (in the Chair):

The appel is called for. Members are in their designated seats. The vote is for or against the proposition as amended and the Greffier will open the voting.

POUR: 37		CONTRE: 4		ABSTAIN: 0
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Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Connétable of Grouville		
Senator T.J. Le Main		Connétable of St. Peter		
Senator B.E. Shenton		Deputy of Grouville		
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
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 St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (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)				

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

The Greffier of the States (in the Chair):

The Assembly comes now to the Draft Housing (General Provisions) (Amendment No. 26) (Jersey) Regulations. I will ask the Greffier to read the citation.

The Assistant Greffier of the States:

Draft Housing (General Provisions) (Amendment No. 26) (Jersey) Regulations 200-. The States, in pursuance of Articles 14 and 21 of the Housing (Jersey) Law 1949, have made the following Regulations.

12.1 Senator T.J. Le Main (The Minster for Housing):

The report accompanying this proposition clearly sets out the history of this particular Regulation and the way it has been used in the past as a means of endeavouring to manage demand on the local housing stock and influence inward migration. Thankfully, we have come a long way in treating

our citizens more fairly, particularly since the introduction of a qualifying period which had been removed entirely between 1980 and 2000. This removal caused a great deal of hardship and suffering to individuals and families, most of whom had contributed to the success of the Island while being denied for ever access to the controlled housing market. In my view this contributed to a 2-tier split in our society that was very unfair, unjust and just not a reasonable way for a prosperous business community to treat its residents. We have made great strides since 2000 when a residency period was reintroduced of 20 years. Some States Members accepted that this period was probably too long but it was felt at that time that any shorter period may have a damaging affect on the local housing market. Since that time I, as the President and current Minister for Housing, have taken every reasonable opportunity, both as President of the Housing Committee, as I say, and Minister to seek to reduce this period further. This aim has been endorsed by this House when approving the migration policy Projet 25/2005, which itself had the aim of having in place a qualifying period of 10 years by 2010. Each time this House has approved a further reduction to the qualifying period I have thoroughly examined the effect on the housing market. My officers, my Assistant Minister and, previous to that, committee members, have liaised with the Statistics Unit, the Economic Adviser and on every occasion the reduced period for qualification has had a very minimal effect on the housing stock, with very few going on to purchase or lease or rely on States housing. Each reduction however has brought greater fairness and opportunity to many longstanding residents who have committed themselves and their children's future in this very modern democracy of Jersey. Following the last reduction just over 2 years ago, I have monitored with my officers and my Assistant Minister the housing market and noted with serious concern the rising prices. As such I concluded that the time was not right for a reduction in the housing qualifications. However, I am now of the opinion with the recent dramatic changes in the economic climate and the additional residents who will benefit from further reduction can be absorbed into the control sector without having any significant effect on current demand for housing. It must be remembered that by approving this proposition not one extra additional person will be added to the resident population. Quite simply, a tranche of existing residents will gain their housing qualifications one year earlier and the market conditions have never been safer than at this present time to make the stride and help these people. In the 10 years that I have been at Housing, and the 10 years I have been involved with you on this, the time has never been better. It is absolutely safe. Indeed, my objective is not to stimulate the housing market, and I am convinced that this moderate approach for a one year reduction will not have a detrimental effect on prices. This change will, however, further social justice to individuals and families that have committed themselves to this Island, and they have been contributing for the last 11 years, will now have access to the controlled housing market if Members approve this proposition. I intend to continually review the situation in order to consider when I may be able to return to this House with a final one year reduction to 10 years. But I will not be prepared to do so until it is quite clear that any such proposal will not have a detrimental effect on the housing market or those who are already seeking such accommodation. I would reiterate that in approving this proposition there will be no increase in the population at all. What will happen, as I say, an existing tranche of residents will gain their qualifications one year earlier than expected, having already patiently waited 11 years. This is about social justice. This is about families that are working all round the Island in all kinds of essential jobs that need to be done. It is about families who are living with children in accommodation quite often that is most unsuitable, not only for the family needs, but for the social needs, and for the way the children are brought up and being able or not being able to enjoy the quality of life with their children by bringing their friends home and otherwise as happens with a local population. I urge Members that, as I say, it will have a minimal effect; in fact, the last 3 years have only ... 3 per cent of the purchases and transactions and leases have been by people that have qualified a year early so it is very minimal, and in all the years that if we had been doing it from 20 years we have not, with the evidence we presented to this Assembly, have not been caught inasmuch by having an issue with messing about with the housing market. That is the first amendment. The second amendment is an amendment to the 1(1)(k) category and it really is a

tidying up of this current 1(1)(k) Regulation which means that the current Regulation does refer to the fact that economic and social factors can be taken into account when applications are being considered. Policy dictates that the minimum income tax contribution that is required to meet the economic test, currently £100,000, but there is no readily identifiable interpretation of the limit or range of social factors that can also be taken into account. What this amendment will do is to introduce an overall best interest of the community test that can be formally applied and is consistent with all the other parts of the Housing Regulations. What I consider with this simple amendment does provide a clearer, more inclusive, legal framework to allow the Migration Advisory Group and the Minister for Housing - whoever they are, he or she - to take into account the widest range of factors surrounding an application, and not just the issue of the monetary contribution. I propose those 2 amendments to the Members of this Assembly.

The Greffier of the States (in the Chair):

Are the principles of the Regulations seconded? **[Seconded]** Does anyone wish to speak on the principles?

12.1.1 Deputy R.G. Le Hérissier:

Just 2 points: one is the old saucer, it is this issue that we are prepared - and I know the Minister has slaved over this, so to speak, for years as have many Members - we are prepared it seems from the Minister's peroration to have people live in possible misery for 10 years and then they can enter the paradise of the local housing market. It is a very strange policy where we apparently require that as some sort of rite de passage, putting people through this misery and it leads to a very clear 2-tier, as we all know, society. Here we are saying: "Well, we are going to reduce your misery to 10 years now, or 11 years but maybe then 10." Is there any way out of this because it is an awful way to run a society that you say: "Yes, you will get 11 years of misery but then maybe you will enter the paradise of local housing." The second point, and perhaps the Attorney General may wish to comment, I am quite amazed under the change to the 1(1)(k) Regulation, the incredible breadth that the Minister for Housing is granting to himself. It is almost as if he can say: "I do not like ..." as he would not of course because he is an upright and nice man, as I have been reminded, but it is almost like saying: "I have looked at the colour of your eyes and I do not like you." It is unbelievably broad, the power which he is giving to himself and I just cannot believe that we are allowing this, and I do regret I did not pick this up as fully as I should have, that we are allowing this to go forward. I presume the Housing Department or the Population and Migration Office will have to come up with some criteria because I do not believe for a moment - and this is where I would appreciate the assistance of the Attorney General - that a Minister can make a decision and say: "Oh, I had recourse to this basis of what is in the 'best interests' of the community." How on earth do you define that? I wonder if the Attorney General would speak briefly on that matter.

The Attorney General:

If the Regulation stays as it is at the moment, it provides the Minister is satisfied that consent can be justified on social or economic grounds, and on the face of it, that means that if an applicant for a 1(1)(k) consent considers that he meets the social or economic grounds he is entitled to a consent, and if he does not get a consent he would be entitled to go to the court on an appeal under the Housing Law and say that the Minister had acted inconsistently because, let us take it on economic grounds, I am worth £500 million and Smith there is only worth £100 million and he got in and I did not, and therefore the court ought to strike down the Minister's decision as being inconsistent and unreasonable. I suppose the question for the Assembly is that if one were to postulate, for example, a President of an African country who is guilty in most people's minds of some fairly wild and irrational and illegal behaviour but who probably has squirreled away most of the economy of that country in his own control over the last 30 years or so, if he were to apply for a 1(1)(k) consent in Jersey is it really right that the Minister should be in a position of saying: "Well, I have to give him a consent because even though his own country has thrown him out we want to

take him in because we cannot stop it.” So it does seem to me - it is entirely a matter for Members obviously - but to give the Minister some sort of discretion as to what is the best interests of the community seems entirely sensible because there will be occasions when some really quite undesirable people might apply under regulation 1(1)(k). One could think for example, of somebody who is probably in the Sunday Times Top 100 list or whatever who might have a series of convictions for drug trafficking who might apply for a 1(1)(k) consent in the Island. Are we really to be in a position of saying that such person should be given a consent? It is really that sort of matter that this amendment is directed to.

Deputy R.G. Le Hérissier:

If I can follow up; I wonder if the Attorney General would comment on whether it would be necessary to define the seriousness, for example, of the convictions or whether the Minister would make a decision based upon his or her assessment of how serious those convictions look to be, for example.

The Attorney General:

The proposed new Regulation does not, in terms, talk about convictions although convictions would be certainly a matter which the Minister might wish to take into account and I imagine, and of course the Deputy is entirely right to point this out, that the best interests of the community as a test will depend on Ministerial policy from time to time. There may be some Ministers who think that a conviction for drug trafficking is not important and there may be others who think that it is important. So one would expect that the Minister will develop his policy or her policy and make sure that that policy is published so that people know about it. It is the same phrase, of course, that appears in Regulation 1(1)(j) where the test is, is the person essentially employed and is the Minister satisfied that in the best interests of the community the consent can be justified. Ultimately the control of the matter, the reasonableness of the Minister, lies in the control through the appeal rights of the court.

Deputy M. Tadier:

I do have a supplementary for the Attorney General. Is the Attorney General therefore implying that currently we do let all sorts of unscrupulous types in if we need to make an amendment to this Law?

The Attorney General:

No, I was not implying that at all. I think this amendment is being proposed on the basis that it makes clear what the position is.

Deputy J.M. Maçon:

Reading on page 5 in the Regulations, the second line down: “Can be granted on social or economic grounds.” Is that almost to say that we can give the Minister for Housing *carte blanche* that he can just approve anyone on social grounds and not have to consider the economic grounds? My understanding is that we allow people to come into Jersey on the basis that they contribute to our economy and so on “social and economic grounds” would be acceptable but on “social or economic grounds” I do not think is.

The Attorney General:

The present Regulation says “justified on social or economic grounds” and I am aware that there have been occasions in the last 30 years where consents have been given on purely social grounds even though the applicant does not meet the economic criteria which are usually applied. I think they are very rare and those that have been involved in the Housing Committee or have been Minister for Housing will know more of the details than I do, but I am aware that there have been occasions where, rarely, consent has been granted on social grounds.

12.1.2 Senator A. Breckon:

I was not going to speak on the second part but I was just reminded of a case where a prominent actor in a T.V. (television) series applied on social grounds and, I think by the then committee, it was turned down. Coming back to the residence issue, I think what the Minister said is right, the reasons for the reduction are right. I know there was perhaps some tension, let us say, between him and the Assistant Minister, some very public tension perhaps, on this issue and how it was being dealt with at the time, and I think perhaps the market will stand it, but I do not think it is about that really. I think maybe some people with length of residency felt on occasions that some people who were given (j) category status were parachuting-in and getting in front of them for an employment reason, and I think that was a cause of concern to them. Especially where children are involved because there is still a bit of a stigma with some of the non-qualified accommodation and kids can be very cruel if somebody else goes to somebody else's place, they are asking: "Well, do you not have your own bedroom, where is your bedroom?" and all this sort of thing. So I think if we are talking about bringing this down it is, as I say, for the right reason. But people involved have shown by a length of residence that they have contributed in not just financial terms but social security and tax, but also to the community. They might be involved with whatever organisation it is - swimming or scouting or things like that - and contributing in that way as well. Sometimes that is difficult if you do not have the secure home base, and as the Minister will remember, not that many years ago, there was lots of cases that were going on hardship grounds and I will say I think that we have got better non-qualified accommodation but, having said that, it comes at a price. It comes without a great deal of security because you do not have a tenancy agreement as such, although that is not the be all and end all. I think this is the right thing to do now and I think 10 has been a stated aim for a number of years, and it is probably right to do this now and for the Minister to keep it under review because what we were talking about is people's daily lives, it is where they go home to tonight and what those conditions are and when people see this without undue pressure, and I should say organisations like the Jersey Rights Association, which I have been a member of since the early days, this was their issue about housing qualifications and how people were treated. I think if it is seen by the Minister and by this House to give a ringing endorsement for this then it gives hope to people out there who it does make a real difference to, as I say, on a daily basis. So I would like to think, although Members may have something to say on this, we would support it without opposition.

12.1.3 Deputy A.E. Jeune:

On number one of this proposition I agree with the Minister that it is not housing that increases the population, it is the inability of this and previous Assemblies to bring about sensible, logical and appropriate population control. That is what increases population. Number 2, I do acknowledge that many 1(1)(k) residents do contribute much more than just their tax to this Island. But we do need to permit these in the controlled way as outlined in number 2. I think if we can get our population control correct then we ought to be able to re-look at allowing people to fit into the housing that is available at a much earlier time, but let us get population sorted first. I will be supporting this proposition.

The Greffier of the States (in the Chair):

I should just draw Members attention in accordance with Standing Order 47 to the fact that it is 5.30 p.m. I do have 6 Members currently waiting to speak on this proposition. How do Members wish to proceed? The adjournment is proposed. Are Members content to adjourn and reconvene at 9.30 a.m. tomorrow morning? Very well, the States stand adjourned until 9.30 a.m.

ADJOURNMENT