

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 3rd NOVEMBER 2011

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[9:31]

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

PUBLIC BUSINESS - resumption

1. Land Development Tax or equivalent mechanisms (P.147/2011) - resumption

The Bailiff:

Very well, then we return to the debate on Projet 147 lodged by the Deputy of St. Mary and I had called upon the Deputy to reply.

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

I am very grateful to Members for voting for the adjournment, and so should they be, because this will be more concise and better for the opportunity to look at it again. Before looking at the individual points that Members made I just want to make a general observation that, in essence, this is a simple issue. Many of the observations were meant to, or served to, cloud the issues and make them more complicated. Fundamentally, it is about taxing a very, very, very few people who enjoy vast increases in land value, and I am saying that this unearned windfall should be taxed; this has been going on for ages and nothing has been done. That is the issue in a nutshell. So first of all we have the comments that came from out of space, or up in the stands and far away from the pitch. The Minister for Home Affairs asked: "What is land? What is land?" and then answered his own question. Deputy Duhamel said that I was putting all land into one basket and that there are different types of land. Yes. The Chief Minister informed us that significant uplift in land value, the term "significant uplift" might cause problems, and I think he said the tax legislation finds it difficult to distinguish between one activity that is taxable and another that is not. Well, well, I wonder how they have drafted all those laws in the past. Hope value was brought up by Senator Le Marquand, and by the Chief Minister, as some kind of complication that could not be resolved. Are these States Members really saying that our law draftsmen, who drafted for us yesterday those incredibly complex rules about money laundering with categories of people nested inside other categories, nested inside other categories in sub-paragraphs *ad infinitum*, and then the taxman, cannot manage to identify whether something is within the law or not? That is what he does every day: he decides, for instance, whether a business expense is allowable or not, so these issues really are quite spurious. The objections of the Minister for Treasury and Resources in his comments, they were practical objections to all of which Oxera have provided the answers or to which the answers are obvious as I showed in my report. These comments really were clutching at straws and one has to wonder what lies behind them. As I said, this is essentially a simple issue until people try to complicate it. The first complication was that the issue is the delivery of affordable homes, as the Minister for Treasury and Resources said. Deputy Green said: "This proposition does not deliver affordable homes." Well, no, this proposition is about a tax. I am accused by Constable Refault of not lowering the price of housing. I never said it would. Oxera said: "This tax will have no effect on the price of housing" and no one has contested that in the debate. Paragraph (d) however says that the Minister for Treasury and Resources and the Minister for Housing should work together to find a way to use the revenue to assist in providing affordable housing, and that indeed might have an impact on the price of either rented or bought accommodation. That seems simple enough to me but the Chief Minister claimed that it was terribly, terribly complex. So this proposition is about a new tax and a fair tax. Second complication: this tax does the same as planning obligation agreements, therefore, we should wait and let planning obligation agreements do the same job; well, a land development tax on an equivalent mechanism, a tax underlying land value. Planning obligation agreements do not do this; they do not do the same job. They are negotiated between developers and the Planning Department. They are agreements, there is no set tariff, they are not a tax. There could be a set tariff per square metre, for example, as Professor MacDonald suggests, then indeed they become a tax. Then they fall within the definition of my proposition, then the land owner will end up paying. The Minister for Treasury and Resources, and

I must remind Members of what he said in the States: “I cannot answer what the percentage of gain is because that is an issue to be taken on a site by site basis.” That is the whole point about P.O.A.s (Planning Obligation Agreement); they are site by site, they are negotiated, they are not a tax, they are not the same as what I am proposing, they do not fall in the same area. But it is worse than that and Senator Le Gresley pointed out the weaknesses of P.O.A.s and indeed they are spelt-out by Oxera as well: “It is difficult to be consistent or fair when the planners are meeting different developers” and that inevitably leads to the suspicion and the possibility of corruption because there is not a set rule. Senator Le Gresley said: “We do not know if they will work.” Well, yes, indeed. Can any Member forget listening to the Attorney General, question after question after question, in the Island Plan debate about whether P.O.A.s could be made to stick, whether we will not need new legislation, *et cetera*. I held up and showed Members that the Supplementary Planning Guidance about affordable housing was dated August 2010. A year later it had not been resolved. Those issues were still being argued about because of the legal issues; no progress. Further transaction costs - which have not been mentioned - transaction costs when the planners meet developer after developer and negotiate their way through the process. Every time there is a development those costs are there. Then there is information asymmetry. The developer knows more than the Planning Department and knows more than the land owner and that creates distortions. So P.O.A.s do not do the same job and they are fraught with problems. So why in the debate were Members told: “Look, look, look, come over here into this corner and look at P.O.A. as the magic solution”? They are avoiding the issue of this debate which is that land development tax is a tax and it falls on the uplift in value of land. The Minister for Treasury and Resources said that the Deputy of St. Mary was putting this as the only way forward. Clever stuff. The only way forward to do what?

[9:45]

He was suggesting that I was putting this forward as the way of solving the housing problem, the affordable housing problem, and perhaps other issues. No, I am not putting this forward as a solution to the affordable housing problem. It is the only way forward to attack the uplift in land value. The only way forward to get at the uplift in land value is to have a land development tax or equivalent mechanisms to get at the rise in land value. The issue of affordable housing is dealt with by Kelvin MacDonald in his excellent paper and I would refer Members to that. However, I do offer in paragraph (d) some help and suggest that the revenue from this tax goes to the area of housing and therefore help to make housing more affordable. It sounds good, does it not? It sounds good, I hope, because it is good. We are extracting money from completely unearned income - winning the pools, as it was called - and using it for the benefit of many. So to the paragraphs of the proposition. I am going to start with paragraph (b) which is about the timescale, asking the Minister to produce this new tax in time for the 2013 Budget. Three points need to be made about this: the first is the “no urgency” argument. “Two years too soon” said the Minister for Planning and Environment, Deputy Duhamel. Two years too soon. I would suggest that this is 10 years too late. **[Approbation]** In fact, 20 years too late. We, the States, and all taxpayers who we represent have missed out on millions and millions of pounds of revenue. My second point: Deputy Vallois suggested that with the new House, the new Members, and with a C.S.R. (Comprehensive Spending Review) in process and so on, that it would be difficult to adhere to this timescale and I have to agree that that sounds plausible. But on thinking about it, it is not really because the new Members sitting in this House will not be doing the work on this; we will have already asked the Minister for Treasury and Resources to do it. The work on this measure is done by the people in the beefed-up Tax Policy Unit and by the Law Drafting Department. I would point out that much background work has already been done, chewing over the issues has already been done as my report shows. No one has argued the central point that there would be no impact on house prices. This is a pure tax-raising measure. The third point - and the most important - is that the policy we have on population as a States is to increase it. That will create inevitably housing

demand and ensure scarcity and those are the conditions in which land values will go up. The apostles of delay seem to be saying: “The problem will go away” but it will not. We have a policy framework which ensures that the problem will stay. As the Deputy of St. Martin said: “We should get on with it and not miss the boat again.” Paragraph (c) is about making a clear statement that the new tax should apply from the date of this debate if possible and a couple of Members were unhappy with this: the Minister for Home Affairs and the Minister for Treasury and Resources. I can only say to Members what the economic advisers at Oxera have told us, that unless the economic actors - the developers, the land owners, the Planning Department - know in advance they will not factor the tax into their calculations in the coming months, that means that the tax will fall on the end user. Certainly on the developer and the developer will try to shift it on to the end user. Only when everyone knows what is coming will the tax end up falling on the land owners. If any Members doubt this, they have time to read paragraphs 53 to 55 in my report and refresh their memory of what Oxera say about this, but I would urge Members to go with the advice, to stick with the advice that that is how we should handle this matter. Paragraph (d), the Chief Minister, as I said earlier, claimed that this was too difficult. It seems to me perfectly straightforward that the 2 Ministers get together with advisers, whatever, and work out a way of ensuring that this money is spent in the area of providing more affordable housing. What is the problem? We already have a V.E.D. (Vehicles Emissions Duty) which is applied to environmental purposes. I did not notice that that was impossibly difficult to do. So to paragraph (a). Members may take a view on (b), (c) and (d), they make take a view that the timescale is too tight or that retrospective legislation is a step too far or that it is impossible to hypothecate this revenue. But paragraph (a) sets out the principle: “A land development tax or an equivalent charging mechanism or mechanisms of any kind should be introduced to raise revenue for the States from any significant uplift in the value of land when it is rezoned and/or when planning permission is granted.” The Constable of St. Helier reminded us that we have been talking about this for years and Deputy Pitman reminded us of the commitment to fairness within the Strategic Plan. I would remind Members that every pound raised by this new tax which affects the unearned income of a very, very, very few people is a tax pound that everyone else in Jersey does not have to find. I was on the bus this morning and I just looked round at the people, some of them more sodden than others, on the bus, going to work, doing their daily lives, and I thought of people sitting at home with their children, people working here, there on construction sites, at their desks, the young, the old and the in-between. This proposition affects all those people and the question is: does this Assembly vote for the very few or does it vote in the interests of the vast majority of people in the Island? It is an issue of basic fairness and I call for the appel.

The Bailiff:

Deputy, just so I am clear, do you wish them to be taken separately?

The Deputy of St. Mary:

I wish for them to be taken separately, Sir, yes.

The Bailiff:

Yes. So just again, to be absolutely clear, I think this was mentioned yesterday, if paragraph (a) passes then obviously we can go to vote on (b), (c) and (d) and it does not matter what the result is. If, on the other hand (a) fails, then I cannot put (b), (c) and (d).

The Bailiff:

Very well, so the matter before the Assembly for which the appel has been called is the proposition of the Deputy of St. Mary. I invite Members to return to their seats. The Greffier will open the voting on paragraph (a).

POUR: 20
Senator A. Breckon

CONTRE: 23
Senator T.A. Le Sueur

ABSTAIN: 0

Senator F. du H. Le Gresley
Connétable of St. Helier
Connétable of Grouville
Connétable of St. Lawrence
Deputy of St. Martin
Deputy R.G. Le Hérissier (S)
Deputy J.A. Martin (H)
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy J.A. Hilton (H)
Deputy P.V.F. Le Claire (H)
Deputy S. Pitman (H)
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy T.A. Vallois (S)
Deputy M.R. Higgins (H)
Deputy J.M. Maçon (S)

Senator P.F. Routier
Senator T.J. Le Main
Senator J.L. Perchard
Senator S.C. Ferguson
Senator A.J.H. Maclean
Senator B.I. Le Marquand
Connétable of St. Ouen
Connétable of Trinity
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. Peter
Connétable of St. Mary
Deputy R.C. Duhamel (S)
Deputy J.B. Fox (H)
Deputy of St. Ouen
Deputy J.A.N. Le Fondré (L)
Deputy of Trinity
Deputy I.J. Gorst (C)
Deputy A.E. Jeune (B)
Deputy A.T. Dupré (C)
Deputy E.J. Noel (L)
Deputy A.K.F. Green (H)

[If all Members have had the opportunity if voting, the Greffier will close the voting. Paragraph (a) is lost: 20 votes pour; 23 votes contre. The 23 votes contre.

The Greffier of the States:

The following Members voted contre: Senators Le Sueur, Routier, Le Main, Perchard, Ferguson, Maclean, Le Marquand; the Connétables of St. Ouen, Trinity, St. Brelade, St. Martin, St. Peter, St. Mary; and the following Deputies Duhamel, Fox, St. Ouen, Le Fondré, Trinity, Gorst, Jeune, Dupre, Noel and Green.]

The Deputy of St. Mary:

I have to say that I am very, very disappointed in the attitudes of this House. **[Approbation]** I really do find that vote absolutely extraordinary.

Male Speaker:

Just to cheer the Deputy up, could we hear the 20 as well?

The Bailiff:

Yes, the 20 pour.

The Greffier of the States:

The following Members voted pour: Senators Breckon and Le Gresley; the Connétables of St. Helier, Grouville and St. Lawrence; and the following Deputies St. Martin, Le Hérissier, Martin, Southern, Grouville, Hilton, Le Claire, S. Pitman, Lewis, Tadier, St. Mary, T. Pitman, Vallois, Higgins and Maçon. [INSERT VOTE TABLE]]

2. States Members' Remuneration: expenses allowance (P.148/2011)

The Bailiff:

Very well, then we move next to States Members' Remuneration: expenses allowance, Projet 148, lodged by Deputy Pitman. Sorry, can we have quiet, please? Deputy, I think before calling this

matter, clearly it will be necessary for Standing Order 106 to be suspended in order to discuss paragraph (a), so do you wish to make a proposition to that effect?

Deputy S. Pitman of St. Helier:

Yes, Sir.

The Bailiff:

Is that proposition seconded? **[Seconded]** Very well, so in order for this discussion on paragraph (a) to take place it is necessary for Standing Orders to be suspended. It has been proposed. All those in favour of suspending Standing Order 106 for the purposes of debate ...

Connétable J. Gallichan of St. Mary:

Are we able to make a comment on that?

The Bailiff:

Yes.

The Connétable of St. Mary:

At this point I would just like to remind Members of the role of the States Members' Remuneration Review Board and the fact that it has been set up, as Deputy Pitman says in her report, to analyse the situation, to take public comment, to take comment from States Members if necessary, to form a balanced external review and to make a recommendation.

The Bailiff:

Connétable, this is not the occasion for a debate on the merits.

The Connétable of St. Mary:

No, Sir, I appreciate that. I am going to be very brief. I just think it is important that we, having set up the Board, allow them to make recommendations and to ... that is the very reason why the Standing Order raising was, I believe, refused the last time it happened, simply because the Board should be allowed to make their recommendations and then not be hindered by further debate. I just ask Members to consider that when considering whether to raise the Standing Order or not.

The Bailiff:

Do you wish to reply to that, Deputy Pitman?

Deputy S. Pitman:

Yes, I would just like to point out that I am asking that what is looked at is the actual inequality of expenses that are provided to States Members at the moment, so I think, with respect, the Constable, what she has said is superfluous.

The Bailiff:

Just to be clear for Members, it is necessary to suspend the Standing Orders for paragraph (a) of the proposition to be debated but it is not necessary for there to be a suspension of paragraph (b) which of course is just referring another matter to the Electoral Commission. So regardless of the decision on whether to suspend Standing Orders, paragraph (b) is certainly open for debate if the Deputy wishes it. Very well, so the proposition for Members then is to suspend Standing Order 106 in order that paragraph (a) of the proposition can be debated. The appel is asked for then in relation to that proposition of Deputy Shona Pitman and I invite Members to return to their seats. If you wish to suspend Standing Orders so it can be debated you vote pour; if you do not you vote contre, and the Greffier will open the voting.

POUR: 21		CONTRE: 16		ABSTAIN: 0
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Senator A. Breckon		Senator T.A. Le Sueur		
Senator S.C. Ferguson		Senator P.F. Routier		
Senator A.J.H. Maclean		Senator T.J. Le Main		
Senator B.I. Le Marquand		Senator J.L. Perchard		
Senator F. du H. Le Gresley		Connétable of St. Ouen		
Connétable of St. Lawrence		Connétable of Grouville		
Deputy R.C. Duhamel (S)		Connétable of St. Brelade		
Deputy of St. Martin		Connétable of St. Peter		
Deputy R.G. Le Hérisier (S)		Connétable of St. Mary		
Deputy J.A. Martin (H)		Deputy J.B. Fox (H)		
Deputy of Grouville		Deputy of St. Ouen		
Deputy J.A. Hilton (H)		Deputy J.A.N. Le Fondré (L)		
Deputy S. Pitman (H)		Deputy of Trinity		
Deputy K.C. Lewis (S)		Deputy A.E. Jeune (B)		
Deputy I.J. Gorst (C)		Deputy E.J. Noel (L)		
Deputy of St. Mary		Deputy J.M. Maçon (S)		
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				

The Bailiff:

Very well, then I will ask the Greffier to read out the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to agree that the recommendation of the States Members' Remuneration Review Body that there should be an increase for the year 2012 of £350 in the expenses allowance for States Members (taking this to £4,000) should not be implemented and that the expenses allowance should remain at the current sum of £3,650 for 2012; and (b) to agree that proposed terms of reference for the future Electoral Commission as agreed by the States on 15th March 2011 should be extended to enable the Commission to investigate the equity of the current expenses system and whether greater savings could be achieved for taxpayers by improved co-operation between the States and the parishes in utilising existing office space for use by Senators, Connétables and Deputies.

2.1 Deputy S. Pitman:

Given our busy schedule today, I am pleased to say that I do not think we need to speak for long on this matter, nor do I believe that the Assembly needs to spend a long time debating this proposition. I have brought it because while, like most Members, I would never wish to seek to interfere in the setting of rates of our pay, the fact clearly is that under Ministerial Government fundamental desired equality of Members' expenses has eroded. The result is that I believe there is a probability the overall sum set aside for Members' expenses could be more appropriately allocated; furthermore, that the cost to the taxpayer may even be reduced.

[10:00]

Ministers are afforded officers; I have no issue with this whatsoever. They also get significant clerical and administrative support and do not pay for any utility services. Constables obviously get similar access by the nature of their role. Again, I have no problem with this. However, under this Government we have seen BlackBerries provided to all Members of the Executive. I am aware that the Minister for Home Affairs and his assistant have chosen not to take this up. These gadgets, along with the bills that are run up by their use, are paid for by the taxpayer on top of Members'

expenses allowance. This is clearly unfair. To suggest that an Assistant Minister or all Constables will automatically have greater expenses in their work than that of a Senator or a Deputy Back-Bencher with a large constituent case portfolio and Scrutiny work is nonsense, yet such Back-Benchers have to meet all their costs from the same level of expenses as Executive Members. As I have pointed out in my report, Senator Breckon is a good example of this. Every Member is aware, I believe, that he works very hard, yet the rent of his office goes far beyond the expenses allowance and has done so for most of his time in office. The fact is that it is not realistic to suggest that all such Back-Benchers should have an office at home to do such things as meet constituents, for example, and not all Members will have the space in their home. While I believe the Parishes can do more, as indeed the Constable of St. Helier has begun to do so by identifying a small shared space at the Town Hall for the Town Deputies, the fact underlying my proposal is why are taxpayers meeting uniform expenses costs for all Members when, as I have highlighted, a significant number of those expenses have already been paid by virtue of their office? The taxpayer should not be paying twice for such services and materials that a politician needs to do their job, thus, I suggest that our current expenses allowance should be frozen until the issues I have outlined are investigated and come to some resolve. Thank you, I make the proposition.

The Bailiff:

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

2.1.1 Senator A. Breckon:

I know the Chairman of the P.P.C. (Privileges and Procedures Committee) has left but I just wonder if it is something that the Privileges and Procedures Committee could look at and if they can give some sort of assurance (they cannot do it of course, if they are not here) because it is a grey area. Deputy Shona Pitman mentioned my name in that but I can say that I would think it is a good idea for perhaps the P.P.C. to look at because I for one have rented office space for 16 of the last 18 years and have been out of pocket in doing that but that has been my choice. Having said that, the facilities we have now are much better. When I entered the States we did not have access to a photocopier; I had to buy one years ago for £850 and that was a lot of money in 1994. I still have it, it creaks a bit, but it still goes. But now we have laptops, we have access to phone systems, we have facilities downstairs, we can use meeting rooms. We did not have that. The Deputy of St. Martin will remember, we did not have any of that at all. So we do have that and different Members use it in different ways and that is why I think it is something for P.P.C. to (and I know they have tried to do it before) send out questionnaires to people: "What do you think about this; what do you think about that?" Perhaps there should be a resource. I could fill it myself with old publications that people could go and look at and without, I must say, the Greffier and his staff, many of us would be lost when we try to do anything. **[Approbation]** If you want information about Sunday Trading or whatever it may be, or you need to do some research, without the Greffier and the facility of that we would be absolutely lost. The reason we would be lost is because with that £4,000, or a proposal to reduce it, how do you employ somebody to do anything for you? The answer is: you do not; you cannot. About 10 days ago I was at a British-Irish Parliamentary Assembly sitting with colleagues from Scotland, Wales, the Oireachtas, Jersey, Guernsey, Isle of Man, Northern Ireland and they shake their heads in disbelief when they find out that Members of this Assembly get £4,000 a year expenses. They say: "Well who answers the phone?" You say: "We do not have anybody to answer the phone." You answer the phone. "Who types the letters, who would do any correspondence?" The answer is, unless you are a Minister, or perhaps if it is a Parish matter - a Connétable - nobody does. So how do you cope with that? That answer is at times: sometimes with difficulty. So although this is about expenses, it is about a wider thing. Now it is the wrong time to say that we should all have personal assistants, whatever it is, but something I suggested in the past and it fell on deaf ears, as far as I am concerned you can keep the £4,000, put it in a pool and employ 3 or 4 people to provide a service for us. It does not matter who

the States Members are, they would stay in place and they could generate correspondence for us, they could liaise if you want a report ... if Members want to produce a report and proposition, how do you do it? Now if you are not a Minister, if it is not a departmental thing, if you want to do anything else as a Back-Bencher, in essence - with the assistance, I must say, of the Greffe - you do it yourself. You have to research, you have to type, you have to put it together, whatever it may be. There is no facility at all. For £4,000 a year or less, you will not get one either but if you put it back in for £200,000 you will. Now the other side of that which has all gone very quiet, of course, every Parish has an office. Every Connétable has some administrative backup. Now they will say: "We would not put the light on to read States papers, it is only Parish stuff" but that cannot be true, to be honest. It cannot be true. If somebody writes to me about speeding, then I have to generate some sort of response: phone them; write to them; whatever it may be. If somebody writes to a Parish Constable about speeding, then the system can do it for them. They cannot do it for me, so there we have some inequities. So should we get different amounts of money, should we be treated differently, should we have access as Deputies to the Parish facilities? Well why not? They are Parish facilities and they are elected representatives of that Parish. Why should they not have that? Why should the Parish perhaps not pay something towards ... they do for the Connétables. Every Connétable has a fund from the Parish, the Comité des Connétables is funded by the Parishes ...

D.J. Murphy, Connétable of Grouville:

There is a point of order here, we do not have any funds.

Senator A. Breckon:

The Constable will get his turn; he can speak if he wants to, but I am obviously hitting a few nerves here. **[Interruption]** So there are monies available and assistance available to Parish Constables to assist with their States work; there is not to Senators and there is not to Deputies. So this is a mis-match this system, so we need to address it. Now as uncomfortable as it may seem, it is true. The other thing is, if you see Ministers turn up - and perhaps some Constables as well - with their ring binders, they are nicely done, who does it? Who does it? Now some of this has nothing to do with our Ministerial responsibilities; nobody does it for me. Nobody does it for Back-Benchers, we have to do our own stuff. Now this comes into all of this and it is a very, very grey area but I say to P.P.C., be bold enough, take the money back. Take the money back from everybody and create a secretarial facility that Members can use. If they do not use it that is up to them, but it would be available where you could generate correspondence. It would be a central phone line. People could say: "We are in here. We are at the meeting" or wherever we are. We could do that, we could resource it, take it back. Because the other thing is, of course, the Comptroller of Income Tax does not understand States Members' expenses. He does not, I am afraid, or the system does not. "How can you have an electricity bill?" I have. "How do you pay Parish rates?" I do, not everybody does, and I do not pay for another facility. It is not something I use for other purposes, it is used for States purposes only, and I share the facility to offset some of the costs. This thing, I am pleased that Deputy Shona Pitman has raised it, because it is not something we can ignore. We have new people coming in who will have different ways of doing the tasks ahead in the next 3 years and I would say that we need to assist them to do that and some will take to it easier than others. I remember years ago a former Connétable of Trinity on a particular issue received quite a bit of correspondence on a subject and we had some discussion about what was the easiest way to deal with it. It is not easy because it was not all Parish things, so what do you do? I think there is something that needs to be looked at here and it is not necessarily just by the Commission or anybody else, it is something where Members of this House need some input. We are all different, we all do this in different ways, we all get different people contact us on subjects, and the thing is, of course, the email has taken over. It is a lot easier now to send something to different people than it was before where we were writing letters and posting things, faxes and things. The technology has taken over to some extent but it is something I think that P.P.C. (not this one obviously but the next one) needs to take on board. So regardless of what we decide today, maybe the Chairman of

P.P.C. can say that she will pass it on to her successor, whoever that may be, to look at this and look at it properly, not just fudge it and say: "Well you get this" because Members get the money. If they want they can buy a new outfit if there is going to be some special occasion or something like that. The other thing is it is wrong that it is just given without being accountable, because it is given and it is not taxable and as far as I am concerned that is not fair either. At least that does not happen to me; mine is the other way. I have to argue: "Well I have spent a bit more than that" and then they say: "Oh, how many postage stamps did you buy?" It is a nightmare. I am not an accountant and this stuff does not come easy. So with that I hope I have enthused a number of Members to contribute to this debate and maybe the Chairman of P.P.C. could say that she will pass it on and somebody will look at it but look at it properly and look at the reality of the situation. Then if there is an apportionment it will be a fair one so that any Member, existing or new, if they do need some support in some way, are able to get that without perhaps being out of pocket and without feeling that they are embarrassed because they cannot keep up with correspondence. Thank you.

The Bailiff:

Does any other Member wish to speak? Deputy Trevor Pitman.

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

I might not have spoken but as no one else is going to I will. At least the men in the Chamber will appreciate that I do not always agree with the wife but I do agree in this instance perhaps for slightly different reasons. But someone who worked for the States ... there is office space in States buildings which is being completely wasted and I am sure every Minister is probably aware of that going on in their departments and I am sure they are probably trying to do something about it. I know that certainly when I left the E.S.C. (Education, Sport and Culture) there was a whole floor which was like the Mary Celeste. Why? There was probably about one person, I think, sitting on that floor up at Highlands. This is one of the things that frustrates me a little. Surely taxpayers' money could be better used if we got together and (whether it is P.P.C., the new P.P.C. or the Electoral Commission) looked at this and decided perhaps taxpayers' money could be better used. Anyone who has been to the La Motte Street Centre, which is obviously part of the Jersey Youth Service, if they go up there the room is not that much larger than ... I was going to say the "Leather Room" but the listeners will probably wonder what I am talking about: the States Leather Room. It is where Ministers beat Back-Benchers into submission. No, it is not really; the Quiet Room, I think its proper name is. Now there is a facility in the La Motte Street Centre where they had adapted it, so about 7 or 8 people were managing to work together there with desks and quite a good amount of office space. What it did, from my experience, it promoted inclusivity and it promoted people working together, bouncing ideas off one another. I think we would all agree that that is one of the big failings under Ministerial government, people not working together enough, so surely it might be better use of taxpayers' money to look at what office space we have got being wasted and perhaps make that available to those who want it. I am like the proposer, I do not object to the Ministers having an office. It is absolute commonsense and it is surely essential in a modern government. I do not object to the Constables having their office. Father or mother of the Parish, they obviously need it. I do agree with the proposer, our Constable in St. Helier has made some inroads in providing a facility. It is not very big, I have to say, you could not really swing a cat in there, but it is a way to go forward perhaps. Perhaps there is a partnership role here as Senator Breckon said with Parish and the States.

[10:15]

But why are we giving out expenses which, to be quite honest, have completely drifted away from what was intended that we were all equal? One of my frustrations - and this is not the debate to have it in - is that I believe often jobs are not down to the person's practical experience to do that

job; the best person to do that job. The system we have is not a party-political system, so jobs will be afforded to who is going to follow that group thing, and that would be the same whether it was left or right, no doubt. So why is it that we have this system where some people are trying to meet all their expenses from the allowance, and I am not even going to comment on the actual rates of the allowance, yet other people, they are getting their phone bills paid and they are now getting BlackBerries, which never should have happened. That never should have been allowed to slip in because it does breach ... I know the Attorney General, I think when he was asked at the time, said that it did not breach that Regulation or Standing Order. Well I could refer him to 2 lawyers of my acquaintance who will say it does, and it certainly does in spirit. Why should the taxpayer pay twice for things like phone calls? It makes no sense. So if we are going to get back to the equality because we do not want these little carrots to be gradually slipped in by stealth to: come and vote this way; come and be an Assistant Minister or whatever. Things are meant to be equal and things are meant to be ... there is some chuckling there but it is probably somebody who has a BlackBerry. Things are meant to be equal and they are meant to be the best value for taxpayers' money. If the taxpayers - and we are all taxpayers - are paying twice, that cannot be right. I think there is surely absolutely no problem for everyone supporting paragraph (b) of this even if they cannot support paragraph (a). I am going to support paragraph (a) because I do think it is something that might kick start this to being looked at. I have worked in the private sector, I have worked in the public sector, I have never been successful in a job application and been told: "By the way, when you come in on Monday bring your own office" or: "Bring your own computer." I have never had a free lunch and I think those are the sort of things that people objected to, and rightly so. I am pleased that was ended. I do not think any member of the public genuinely would object to us seeing if there is a better use that can be made of our facilities. I do not think that room downstairs - the Quiet Room - is utilised anywhere near as it could be. That could be a much better facility. Things obviously have moved on, as Senator Breckon said, he has obviously been here a lot longer than me but surely this needs to be looked at. Maybe if the Chairman of P.P.C. is going to say: "Yes, I will pass this on to the new panel; it is obviously too late for us to look at"; the Electoral Commission, perhaps it could be put to them. Perhaps they are not the appropriate body. But I do not think this is a proposition lacking substance or thought to something which might be a little bit uncomfortable, but if it is about taxpayers' money, which it is at the end of the day, then I think it is something that we have to be willing to look at. So I too, like most Members, would not interfere in the workings out of what a States Member should be paid because that would not be right, but the expenses thing does seem to be something that has been allowed to drift and for that reason I am going to support this and I will leave it there. Thank you.

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

In a strange sort of way, Deputy Pitman has said what I was going to say. The only thing I would say to Deputy Trevor Pitman is he is a member of P.P.C.: why was the issue not on the agenda and actively looked at? Because I find it excruciatingly embarrassing, as I think we often do, when Members' remuneration comes up. We have made a decision that it be given to an independent party and if we have the policy wrong upon which that remuneration/expenses is based, then we need, as the Deputy and Senator Breckon quite rightly said, a fully-fledged review into that policy. I think that is what is needed. We are all with - well I am certainly - (b) but I wish, given we are at the tail-end of this Assembly, and I know Deputy Shona Pitman was delayed because of the requirement not to use this as some kind of electioneering tool, can we not get an imaginative gesture from P.P.C. who say: "We will very strongly recommend to the new P.P.C. that this issue be looked at"? I think Senator Breckon put this forward, it was not taken up, and I would hope that the Chairman of P.P.C. will take it up, that we can bring a quick end to this debate and that the whole issue which, as Deputy Trevor Pitman quite rightly said, needs examination. That whole issue can be looked at by the new House. It is excruciatingly embarrassing that we are doing it. There is a case for a major review, let us see if the old P.P.C. can encourage their successors to do that.

2.1.4 Senator S.C. Ferguson:

Just a quick comment that the expenses have not been changed since 2004 and if they had been increased in line with inflation, taking into account the time value of money, we should be looking at nearly £4,500 not £4,000. So I think it is a very modest increase over a period when every other States employee has had an increase and over a period when our expenses have gone up significantly. I merely make the point.

The Bailiff:

Does any other Member wish to speak?

2.1.5 The Connétable of St. Mary:

Again, I make a very brief comment, without wishing to be disrespectful at all to the Remuneration Review Body, that you do not have a dog and bark yourself and we have everybody in place. The matter of expenses could have been raised with the review body for consideration during the review period. As regards P.P.C.'s involvement, I can only say that expenses and facilities, *et cetera*, even the use of BlackBerries and the provision of BlackBerries, have all been matters that P.P.C. has actively considered in the last 3 years. I would remind Members that due to various reasons, we withdrew our proposition on the use of hand-held devices in the Chamber, predominantly because we were getting so close to the election period that the period we set aside for the trial could not be completed before the new Members took office. But that had a sting in the tail whereby if Members had, after a trial period, agreed not to use electronic devices in the Chamber, then that would have extended to the use of BlackBerries that we have already seen. On the equality basis, P.P.C. has actively looked at provision of technology to all Members and allowing Members a choice of what they want to use, *et cetera*, within a cost or core benefit schedule; that is something that remains ongoing. In some ways we are overtaken at the moment because the States infrastructure supports one kind of platform. Development in the last 3 years has been rapid and ongoing. We have to make sure that we jump at the right time. So for various reasons, that is on the backburner but it is wrong to say that it has not been looked at, and the issue of equality has not been looked at. The facilities issue and the use of Members' offices, *et cetera*, we did an awful lot of work on that. Members were given questionnaires, the usage of the rooms was monitored. I have to say that there are 3 meeting rooms downstairs. There is the Communications Room, it is well equipped as Senator Breckon has said, there is a large room for bigger meetings; they are under-used generally. For my 3 years when I was Deputy of St. Mary - in fact it was myself and Deputy Power - every morning at about 8.00 a.m. we were in those rooms working. Never had a problem getting a room. I continue to use those rooms regularly for my States work. I am sorry, I think Senator Breckon fundamentally misunderstands the Parish system and the role of the Constable. I do not have a secretary; the Parish has a secretary. The secretary does not do my work; she does Parish administration work. I am not an administrator; I was an administrator, I know the role well. Throughout the 8 years that I was Parish Secretary, I never once did any States work on behalf of the previous Constable. My secretary, the Parish Secretary, does not do any work on behalf of me. I receive no expenses, and I do not use the Parish facilities for States business. I come into the office here, downstairs, and I work, I would say, 2 to 3 times a week and do all my States business or I work from home. Now that is how I have managed it, other Members may have different requirements, but all I am saying is the facilities there are available and, to my experience, they are available regularly. The only time I have a problem using them is on the States meeting days which, of course, is a different kettle of fish because we are all here at the same time, so to say there are no facilities is wrong. Just to lay a few of those ghosts to rest. Senator Breckon talked about putting our money into a pool and paying for facilities and services. We have looked on P.P.C. at that in depth and we came across various problems, for example, how do you allocate the time? How do you stop Members with a particular project they are looking at which is time consuming and taking up all the time? How do you make sure that everybody gets equality of access? How do you ensure that the relatively few numbers of staff that we could afford to fund

with that money would be able to cope with the demand? It is not a simple matter. Deputy Trevor Pitman said we needed to have a way that we could bounce ideas, the meeting rooms, *et cetera*, we could convert the Leather Room and have 6 people in there ... I am using his words but I am not laughing. There is one room in this building for members of the public that is of a reasonably nice aesthetic standard. It is the only Parliament that I have ever visited - and I have visited a few in the course of my work, where - if you were receiving a delegation or a group from another Parliament, there is not somewhere reasonably smart to take them. That is the one room where we can be sure that we can accommodate them in some sort of reasonable ... I say "style"; it is just a room with a few chairs in it but at least it is a pleasant place to take visiting people. I think for that reason alone it is important because we are, after all, a Parliament and that is a very important thing. We are not a borough council debating, we are not a school debating chamber, we do need to have some facility that remains usable by all of us. Therefore, I would say to Deputy Trevor Pitman that we did have that bouncing ideas thing; it worked for many years. We used to meet every lunchtime around the table and discuss the little petty issues that we needed to discuss. We did not bring them up on the floor of the Chamber. Of course, we lost that when Deputy S. Pitman brought that proposition to abandon that and I think that is one thing that we all regret. Maybe we should all agree that if we do take this extra allowance we should all put it in a pool and bring that back. Anything that is left over - and there would be money left over because we did not spend very much on that facility - we could then donate to charity. That is an idea, but there are other ways around it. But I would say P.P.C. has looked at it and, doubtless to say, when the new Members have found their feet and see what their requirements are, the new P.P.C. can easily look at the facilities again. But I do not think there is an easy, magic answer. Carving up the building into smaller and smaller pigeon-holes certainly is not the answer. The facilities, we showed, are not over-used, there is capacity. As regards to whether there should be an increase in expenses or not, as Senator Ferguson said, it is a modest increase if you compare it with inflation. Members may feel that they do not wish to take it at all and of course there is no need for that. I just say what I said at the beginning, that the review board have; looked at remuneration as a whole; have consulted with the public; have had the opportunity to consult with States Members who could have raised this issue with them then. We have a review board who work extremely hard, putting extremely sound recommendations out, and I fundamentally believe that having made that important decision to take this discussion out of our hands, to put it externally, we should not be tampering with it at this stage. That is all I can say.

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

The only thing I will agree with the Chairman of P.P.C. is that we have tried to look at a lot of these issues and exactly the same, we come up with one thing and then we have the argument, we do not try it. We should be trying this; the money should be going into a pot; we should have researchers. To absolutely say we are all equal is absolute rubbish. It is ridiculous. But I will quote from the Standing Order and I really cannot say how anybody ... no disrespect to you, Sir, I do not know if it was you. States of Jersey Law 2005, it is under 44: "No scheme, agreement or other arrangement whatsoever for the remuneration of, or the payment of any allowance to, elected Members out of the Consolidated Fund shall provide for different [different] elected Members to be entitled to receive different amounts of remuneration or allowance." I am telling you now, I have been on both sides: I have been working from home with 3 young kids having no facilities, and I do work from downstairs.

[10:30]

I have also been downstairs when the Constable of St. Mary and maybe a St. Brelade's Deputy have been there and there has been a young girl waiting there asking me what time does Morier House open because she needs to get the papers ready for the States for the Chief Minister. She had not done it the day before; it had been an oversight. I am not going to name names, they get

extra, they have facilities, as Senator Breckon says. He is not the best typist in the world so it really is a labour of love with his 2 typing away his many propositions he has brought. Like the Deputy of St. Martin; the many propositions he has brought. Everything done on their own. The Constable of St. Mary said borough council. We have brought ourselves down to borough councillors. I know the council of Enfield, which is a county council, they are county councillors, they are not M.P.s (Members of Parliament) in the Parliament, they get better facilities than we do. They respect themselves more than we do. I am told I have got a facility downstairs. I want a secure facility downstairs. I want to know I am working with another States Member who is not going to take or look at my papers. It has happened to me. So is it secure? If I need to go to use the facilities in the ladies room I have to take or lock all my papers up. I do now because I cannot trust the people I am working with. It is absolutely terrible, absolutely terrible. **[Members: Oh!]** It happened to me. So you can all go: "Oh." You do not work there and what a lot of you do not work there for is because of exactly that. You do have offices ...

The Bailiff:

Through the Chair, please.

Deputy J.A. Martin:

Sorry, Sir, through the Chair. When I was on the Education Committee I was offered an office up there. I have a little bit of a facility in Health. I do work downstairs. I do not normally do any work that is not Health-related in the office up there, just because it is easier. All my papers are locked in. I have got 4 lockers now downstairs and I go back years. I really do not care about (a). You can keep the money because it is only going to go to the taxman, but (b) really does need to be supported. We are not equal. We certainly are, since Ministerial government ... and even Ministers are not equal. I know my Minister for Health and Social Services does all her own States papers. She does not get anybody down there to do it, but I know other Ministers - and I will not look too far across or behind - as Senator Beckon says, they have got nice little binders and all the things. It is all done for them. So we are all equal in this small pool, are we? No, we are not. (b) is the one. It is like, you know: "Do you really believe" ... all right, the Constable of St. Mary. She goes in. She is not an administrator but if something comes up across, what is it? Is it something just to do with St. Mary's Parish or is it something just to do with States work? Now, which office would you do that in? If a phone call come through to the Constable that is wider ... her secretary would answer that or any of the Constables' secretaries will answer that and pass it on. My secretary is: "Hello, you have reached the phone of Deputy Martin. Please leave a message after the beep." That is my secretary. That is my answerphone. I do not get things passed on. We are not equal. It is interesting ... I did not know this, listening to a couple on the radio about Constables having extra expenses. They do not all get them obviously, but they are there supposedly. Some range from a couple of thousand, I am told, up to £9,000 for events they put into the Parish. Again, it is a little fund that is voted by the Assembly. I do not think that they ... **[Aside]** Well, it was the radio. **[Members: Oh!]** No, no, on the radio. **[Laughter]** The Constable of St. Saviour and the Constable of St. Lawrence said they get an extra fund, on the radio. Not reported. Live, when they were interviewed; they get an extra fund. Well, all the Constables are suddenly ... it cannot be any of the ones that are left in the House. It must be all them having their cup of tea or speaking to their Parish Secretaries, only about Parish work obviously. **[Laughter]** I mean, what are you, a States Member or a Constable? As you say, the Constable of St. Brelade was very upset he was not excusé because he had to do Branchage. Well, what are you first? Should you be going to go and see how tall your trees are ...

The Bailiff:

Again, through the Chair, please.

Deputy J.A. Martin:

Sorry, Sir. Should they be going and seeing how tall their trees are and, you know, needing to fine somebody £20 because their hedges are over or should you be in here making proper decisions? This all comes back to who is equal and who do we need in this House and what is your job. I think I will leave it there but ... no, I will say one thing. We, in this House, the likes of Deputy Southern with the work of the Minister for Social Security ... and this is another thing. You could not have it possibly, could you? There are people in this House who have lost their seats only a couple of weeks ago. They will get paid to the end of this month and some of them have served 12 or 13 or more years. If you were working for any other boss you would have a redundancy payment for the years you have put in, but do not mention that out there because we are very easy to hit but the ones we hit ... we do it to ourselves. We undervalue ourselves. We look at ourselves. You know, we all preen up and: "We are the Parliament." I never agreed with the dinners going. As the Constable of St. Mary said, it was a gathering to get to know new people. There are 16 new people coming in. I will not know them and they will probably be parachuted into Assistant Ministers and I will never see them or some will be Back-Benchers. They will not work in here. So I only know the people I know and that was a loss. I mean we try and do social things, ladies dinners and all that, but even they have fallen by the wayside. (a) I really do not care either way. I mean, as I say, I am just going to be giving it to the taxman. But (b) is the one. It really needs proper consideration. To be honest, if I am back on P.P.C. the first rule is we abolish Standing Order 44 because we are making a mockery, absolute mockery, of it. I have read it out quite clearly: "Nobody should be better off than anybody else." [Aside] It is the States of Jersey Law 44, it is not a Standing Order. It is a law and the law is totally being abused. So why do we have it? I could say "broken" but then again States Members cannot break the law, can they? Not possible.

2.1.7 The Deputy of St. Mary:

Always a delight to follow my colleague Deputy Martin. I cannot follow the entertainment value. However, the first thing is, I have to agree completely with what she said. We are not equal and she made the point so I do not need to go there anymore. But it is very important to remember that. Following on from that, I seem to remember reading a report called the *Clothier Report*. Anyone remember that? That said that for Ministerial government to work properly there had to be checks and balances. The checks and balances were the Back-Benchers. The Back-Benchers would be organised in Scrutiny and the Back-Benchers would have appropriate facilities. That is partly what is underlying this proposition. I will get to the (a) and (b) in a minute, but I think Deputy Le Hérisier was absolutely right. This is a major issue. We do not have a library. We do not have research facilities. We do not have administrative backup. We do not have anyone to type the stuff and we do not have ... we have an answerphone. That exactly the point, we do not get that support. Then we say: "Oh, well, it is all right. We can make do with fewer Members because they cannot keep up with the business anyway. So we will not have any support for them and then we will have fewer of them." So the Ministers will sail on into the sunset. It is a much bigger issue and I do hope that a future P.P.C. will take this on board seriously because it is part of the ongoing aggravation. It really is and we have to do something about it. Now, coming to (a) and (b); (b) first because it follows on from what I have just been saying. I am afraid that I have to disagree with my colleague Deputy Martin on this. This is not an appropriate matter for the Electoral Commission. I am sorry: "Let us just bolt everything into the Electoral Commission." It is mission creep. The Electoral Commission is there to see how Members arrive in the Chamber; whether the voting system is fair; how it can be made better and how this Chamber can be made accountable to the voters. That is what the Electoral Commission is about. It is not about investigating the equity of the current expenses system. I am sorry, but if we put this also into their lap it is just a complete diversion from what they are supposed to be doing. So I would urge Members not to engage in mission creep and to leave the Electoral Commission to do its job. I am not saying it is not an important issue. I have just said it has to be taken up by P.P.C. and I hope Members in the next Assembly will hold them to that because relationships within this Chamber do depend on it.

Paragraph (a), I support the words of my Constable on that. I did not support her other words but on that issue it takes a consistent line. She is absolutely right. The Remuneration Board is there to take away these endless debates about who gets what and so on and take it out of our hands, which is, of course, what the Electoral Commission will do in another field. So I have to urge Members, I am afraid, to vote against (a) as well.

2.1.8 Senator J.L. Perchard:

I do not know if Members are aware, but there are 1,400 people unemployed on this Island. There are school-leavers with no immediate prospect of getting a job. We have a decline in tourism, fulfilment, agriculture and finance industry. We have a public sector pensions time-bomb looming. We have an ageing demographic profile when, at the end of this decade, at least half of our population will be over 50. We talk about ourselves. We talk about trivia like this. This is shameful. There are so many issues that this Assembly should be addressing. We have a crumbling infrastructure. We have a property portfolio that is far greater than this Island needs the States to own and we continue with trivia like this. Shame on the Assembly. Shame on Members. Let us move on.

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

When I first came to the Assembly in 1999 there was very little in the way of facilities for States Members or induction. I came in as a Deputy in a by-election and I think at the time we had one fax machine and a couple of telephones; so no room set aside and no personal computers or laptops or facilities in terms of computers that we could use. Today we have a great deal of support from the Greffe provided to States Members and by way of a personal laptop each hooked up to our house, that bill paid for broadband, and the ability to communicate via that which is very helpful, very useful and helps us to govern better. At the time it was introduced it was deemed to be quite an extraordinary expense and I think if you look back now upon how much has been achieved in States business and communication in that respect, then I think it has been well worth the money that we invested in it. I think we need to move forwards. We boast about our ability to lead the British-Irish Council and other jurisdictions in terms of I.T. (Information Technology) and how we are going to pave the way for the finance industry with I.T. Most of the time we are left scribbling notes to each other - those of us that do not have BlackBerries - and sending them around the Chamber to each other via the ushers, if they are available. I think that we really need to start to consider or rather the States in the future needs to start to consider things such as the iPad, which can communicate via email, be placed on your table, take up no room whatsoever, displace much of this paper, reduce the impact upon the environment and enable each other to communicate not only via email but also to access the Internet for a similar type of cost. I think that sort of thing needs to be done. I really do think the States lunches removal was a retrograde step. I think it did show that we were willing to make sacrifices to show that we were cognisant of the problems within the community and the fact that we were well remunerated. I gave my last 2 pay rises to charity to do similarly. However, I do not back away from the fact that I supported States Members in many respects of the facilities they had. Just for one second focusing on the lunches, I think taking away that facility shot a hole in the foot of the ordinary person's representation. There was never a better time to take a constituent's issue to a Minister that was trying to hide when they were sitting in front of you eating their lunch. You could just sit next to them and force them to talk about the issue that they were trying to hide about for months at a time.

[10:45]

I have had so much success for constituents by interrupting a lunch of a Minister and giving them indigestion than I ever have had in the proceeding months or years since we have dropped that. I think it was a retrograde step and I think it should be reinstated. It is an opportunity for Back-Bench Members to buttonhole the Ministers and the Assistant Ministers on issues for their

constituents. Now we are lucky if we have got 5 minutes to see them. The quorum has been increased. The attendance reports highlighted by Deputy Maçon and Senator Shenton have meant that many of us sit in the Assembly from 9.30 a.m. non-stop until 5.30 p.m., when we do. Occasionally I do not do that. I have not been doing that this week. I have not been very well, but I am trying to be here as possible to allow Ministers to do the work that they have to do, which I recognise is more, much more, than ordinary States Members have to attend to. I would hope that the context of the debate, if there is anybody in here from P.P.C. ... I do not know if there is. There is one Member from P.P.C., Deputy Pitman. Maybe the transcript could be forwarded to the remuneration body so that they could take account as to what Members are saying, especially as there have been some good contributions. Not to dismiss the very important issues that have been raised by Senator Perchard. I do think it is quite wise to take a moment to reflect upon all of these things. If we have a system of expenses that is based upon equality - which we do not - that would be fine. So if we have got a system of expenses that is meant to be there for us to look after our flock, then we really need to determine how big our flock is. In terms of expenditure in an election, you are given a base amount of money as a Deputy and then a certain amount of money extra for every constituent you have. So where you have Deputies in Number 3 and 4 Districts, for example, where they have many more thousands of people to look after than Deputies, with the greatest of respect, in some of the rural Parishes, is it really fair that those Deputies receive the same remuneration as the others? Maybe there could be a baseline remuneration and then a percentage for the population, but these issues will be drawn out, no doubt, in terms of the Electoral Commission when it looks at the system of voting and the kinds of people that we want to represent. Senator-elect Sir Philip Bailhache is going to be entering the States Assembly and has already alluded to the fact that he would like to see a reduction in the States of about 10 Members, which would have a significant saving in terms of what we spend on States Members from the taxpayer but it would also have a significant impact, perhaps, about how the public are represented and how well they are represented. States Members conduct a variety of functions. They not only are parliamentarians but they are also, at the base of operation - not necessarily all of us, but certainly I would include myself as one - an unqualified and sometimes unprepared social worker. Sometimes it can be quite hairy to have to deal with some of the issues that one is faced with by the constituents. Mobile phones, laptops, Constables' expenses; I put a question to the former Bailiff to ask the Constables how much money they were getting in excess or in addition to their expenses in the States and the question was disallowed by the Bailiff. He wanted to talk to me and said: "You know, this is really a matter for the Parishes. This is not a States issue." So it really struck me a bit strange that a few months later there was a question asked of the Constables and it was answered by the Chairman of the Comité des Connétables. Not to make any great weather there, but I do think having heard ... because I met with the Bailiff and we agreed that maybe it was better if I did not ask that because maybe it was trespassing upon the Parish issues. But subsequently, now having heard from Deputy Martin and having spoken to a couple of the Constables, I now know that there is additional money made available to them. I am also assured by one of the Constables that that money, for the first time, is being accounted for in how it is spent and it is spent exclusively upon the Parish. So maybe there is a body of work as to clarifying what those margins are. But I do not think there has been any wrongdoing on behalf of the Constables and I do not think that they are getting any money that puts them at advantage. They have got a different body of work to do. We could be accused of reflecting too much upon ourselves but I think what we need to be asking ourselves is: "Are we representing people in an effective way. The way that we are being remunerated and the way that our elections are being catered for, does that best serve the people?" Those are the 2 starting points that I think anybody needs to begin from. I will certainly be supporting part (a), which is to limit the ... I am going to consider this because I am wondering, not having been elected, whether it is right for me to support that. I think I might abstain on that one because I feel that I might be causing a disadvantage. I remember once I was criticised by the *J.E.P. (Jersey Evening Post)* the night before the election for having supported Members' parking and the advertisement said on the front page: "Do not vote for Deputy Le Claire.

He supports States Members' parking," or: "He voted for States Members' parking. This self-vested-interested Deputy does not deserve your vote." Well, I pointed out in a subsequent advertisement that I had reserved just in case there was those sorts of tricks, which there were, the fact that I have not used States Members' parking for several years because I have my own parking. I supported States Members' parking for those Members that needed to come in from outside to do their work for their constituents, such as the Constable of St. Mary when she comes in to do her work, when she needs to do her work for other departments and other bodies and other committees. So I supported Members' ability to park, to come in to serve the people. Not to do their shopping; not to run their businesses; but to serve the people. I think it was wrong that I was picked up in that way but, thankfully, I was able to spend my own money or my expenses, a portion of it, in correcting that mischief. So, on reflection, standing on my feet, I think it is wrong for me now to vote on (a). So I will abstain because I think I will taking away something for States Members that will not be affecting myself, but I think it is right that I support (b).

2.1.10 Deputy M. Tadier of St. Brelade:

First of all, I think the first thing to say is let us not be silly about this. We have heard some very strange and spurious comments and this is not having a go at anyone at all. The reason I am uneasy about this proposition is I think it is ultimately divisive and I told Deputy Pitman that quite frankly. We are still friends though, I think; I hope. We have heard some very strange arguments. For example, one Constable said: "The secretary does not do my work." There is an implication that for States Members, whichever role we are in, there are completely defined roles that we have. So, for example, a Constable does not simply have the Parish to look after. It also has States business. I am imagining a scenario where the Constable of St. Mary gets a phone call sitting in her office and the secretary perhaps answers or perhaps the Constable answers directly. The secretary, for example, will say: "How can I help you?" "I would like to speak to the Constable, please." "What is it concerning?" They say: "Well, I am not going to tell you. It is a personal issue." The phone is picked up and they say: "I would like to discuss the forthcoming" ... let us say it is a States issue. Let us say it is to do with parking in town: "I would like something to do with the town park or to do with parking in St. Helier," at which point the Constable will say: "I am afraid I cannot talk to you at the moment. You will have to ring back on another number because I am currently in the Parish Hall and it would be wrong for me to use the heating in the Parish Hall and it would be absolutely wrong for me to use the phone line in the Parish Hall or to use the secretary because she is not paid to deal with State's business. But if you phone me back on my mobile phone then I will step outside the Parish Hall, perhaps drive to St. Helier even and take the call there and I can use my computer there; similarly if I have to send an email." Of course, this is absolute nonsense and I am not suggesting that the Constable of St. Mary has said that but that applies to all of us because being an M.P. - essentially what we are - is a complex issue. I have been asked and I am sure many Members have been asked: "How many hours do you work a week? How do you divide your time up? How much time do you spend on propositions, on legislation? How much time do you spend with constituency work in your area, to do with parking, to do with yellow lines?" You cannot give a simple answer. Talking to somebody in the pub of an evening when you are doing your Parish surgery. Is that work? I mean, yes and no. Deputy Power is currently driving a truck to Romania. Is that part of his work? Well, it is not directly part of his work but surely you could argue that if he was not a States Member he probably would not be doing that kind of thing necessarily. It is all tied-up. It is what I would call outreach work. So it is very complex issues that we are dealing with and I think that is why it is difficult when we try and apply models, that we try and make comparisons perhaps with the private sector or other jobs. It does not necessary fit. By the way, I was not having a go at the Constables there. What I am saying is that is a very complex issue and it is absolute nonsense to say that there is a clear defined line. We are all pragmatists at the end of the day and if I am sitting in my office doing private work for my business and I get a phone call on my phone I will take that. Similarly, if I am sitting in the States building and someone phones me on my mobile to discuss translation work I will obviously take that call. I think we have to be realistic

and not be too puritanical about this. There is another statement which said: "The secretary does not do my work." No, but as Parish Deputies sometimes we end up doing the Constables' work. Again, that is not any disparagement on the Constables because people do come to us for issues which can only be resolved by the Constable of the Parish or by the Parish administration. For example, someone will email me or phone me and say: "I want you to take this yellow line away from outside my house," which has happened and I have had to go down there, speak to them, send an email from my private office or whatever, from the States building, and then I have had to then liaise with the Constable and they have decided whether or not it is correct to get rid of that yellow line. So we all work together as a team. In that sense I am quite in agreement with the sentiments of part (b) when it says - and it is something I have spoken about before - that the Parishes really should look to provide space for Deputies within the Parish Hall to exercise some of their functions which are shared functions of the Parish between the Constables and the Deputies. I know that is an initiative which the Constable of St. Helier has already started doing. It is something that I think could be extended and I am looking forward to that perhaps happening in our own Parish in the next few years. The bottom line, though, with this proposition is it does not ... the first problem I have with it is that I think debating States Members' pay or expenses is essentially voyeuristic. We do have a remuneration body which has been set up to look at these things. I think the more appropriate way would be to make a direct representation to them but also to P.P.C. to discuss these issues. Certainly when I was on P.P.C. we did raise these issues to do with States Members' facilities. The second point, which I think is more relevant, is that this does not achieve what it sets out to do. It would do the opposite. Deputy Pitman is quite correctly highlighting that there are certain perhaps inequalities or certainly anomalies in the system about which States Member, depending on their role, gets what. But what this would do is it would freeze States Members' expenses for those who do not have access to an office, who do not get given a BlackBerry, who do not necessarily have officers to do their research for them, who have to employ researchers. So what would happen is that for myself - I think it would apply to Deputy Pitman who also rents an office - when my rent for the office goes up by 3 per cent at the end of the year I am going to be out of pocket. So the expenses which are legitimately being spent on my office, or perhaps on my researcher, am I going to turn around to the landlord and say: "Well, we have just decided to take a pay freeze for expenses. Therefore, do you mind freezing my rent on my office?" Or if my researcher comes to me and says: "Well, look, the cost of living has gone up by 4 per cent" ...

The Bailiff:

Deputy of St. John, I think you are going to leave us inquorate. Sorry, Deputy Tadier.

Deputy M. Tadier of St. Brelade:

That is okay, Sir. I was just getting a phone call through there and it was not States related, so I did not answer it. So many pressures in life; I think we all feel those. The point I am making, though, is that this is completely retrograde because it hits those who are the least well-off in terms of the States, if you like. Those of us who do not have any background support would be out of pocket and having to use our remuneration to pay for what are valid expenses. I think I would ask the Deputy reconsider that. I also agree that it is not an issue for the Electoral Commission. I think the Electoral Commission is to deal with the high-level issues of how the States should be composed, how the electoral system should work: should we vote for people all on one day, should we have super-constituencies, *et cetera*. They should not be looking at the minutiae of whether or not States Members should have ring-binders, laptops, *et cetera*. I do have to bring this point out here though because I think, first of all, it has to be recognised that we talk about inequality very liberally sometimes and it ignores the fact that we all have different roles to discharge. There is absolutely no problem with a Minister who has been given a huge responsibility from the House to have the relevant staff surrounding him, to have the relevant equipment to be able to discharge his or her duties. That is quite correct. I think the point is, though, that when we compare Back-Benchers' amenities and facilities and what they get access to, to other jurisdictions ... and you will remember

in the past I have spoken about the Welsh Assembly where they were issued with, I think, 5 or 6 laptops. We said: "Why do their Members get 5 or 6 laptops?" They said: "Oh, that is for their staff." Okay. Well, it shows how far we are behind. I am not saying that we should necessarily go there.

[11:00]

Another simple thing on P.P.C. when I was on there: I simply suggested that maybe we should have newspapers in the States Members' room; that we should have a copy of the *Financial Times*, perhaps a copy of *La Monde* and a few of the broadsheets every day, which one might expect to have in a national parliament which is trying to increase its international image in the world, so that Members could be informed. We were told that we cannot have them because they get stolen, by States Members incidentally. After what Deputy Martin has said, it is probably not that unlikely that people might steal a copy of the *Sun*, for example, because they did not want to be seen to buy it in a shop, which would be probably the only reasonable motive for stealing it. It just suggests that States Members are completely mercenary. We have got another example of it, saying: "States lunches, it is not terrible that we have taken States lunches away," not because, okay, it is paid for by the taxpayer while the rest of them have to pay for their own lunches but what we are essentially saying is that we dislike each other so much that the only way we will sit together in a room, apart from the States Assembly, if we are bribed with food, and then if I am bribed with food then I might possibly sit next to Deputy Gorst, soon to be Senator Gorst. I might have a chat with Senator Le Marquand, but if I am not getting anything out of it, if my belly is not being satisfied, then I am right out the door there and I want to go across to Le Petit Greek or I am just going to do constituency work. So, if States Members feel so strongly about the fact that States lunches are being removed, what I suggest is that they put their hands in their pockets and they go and sit down in what used to be the States lunchroom and there is a facility for them to do that, or you just go out. It is lucky we do not have a States bar, is it not? I know they do at Westminster. Maybe somebody would be proposing that. But let us bring this back to reality. I think this is the wrong way to do it. I completely agree with what Deputy Pitman is trying to highlight; there are inadequacies and I hope that the next P.P.C. is more forthcoming in bringing forward solutions and addressing the issues because it is all about us doing the best of our abilities. The laptop thing I was going to mention, by the way. Now, the reason I brought my laptop in is because I wanted to research here in the Chamber. At the time I did not have a Blackberry, I am not an Assistant Minister or Minister, and I wanted to be able to have access and also to type-up my notes in a legible format so I could read them so I could discharge my duties better than I could have done otherwise, so I was just trying to do my job to the best of my ability. We are all issued with laptops, I was not asking to be given a free laptop, I was not asking for an iPad; I was asking that the laptop that I had paid for with my own money before I became a States Member that I could bring that in and that I could read from it and that seemed perfectly acceptable. Ministers are already doing that on their BlackBerries. They are already firing away emails, perhaps giving advice to Assistant Ministers on different issues and that is quite valid. We have to use pieces of paper; that is why you have seen me scribbling away and passing messages and quite fortunately it keeps our ushers in a job which I think they do very well, although that is only a small part of their duties of course. So, that is a good thing. But we have to look at things holistically. I think we have to move away from treating States Members often like children and accepting that they are M.P.s who sometimes go around the world and represent the Island internationally. So again I completely agree with the principles underlying this proposition. It does not do what it sets out to do; it is actually retrograde and so I will have to vote against both parts.

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

Good people of this Island who give their time freely deliberate and decide on their recommendations on the various review bodies that the States of Jersey has. Why would these

people bother to give their time freely if we are not going to seriously consider their recommendations? All Members were invited to give their views to the review body in respect of our remuneration. I certainly responded to that invitation, as did many other Members but not all and I would like to ask the proposer whether she in fact availed herself with this opportunity.

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

I have been listening to this debate, paying close attention to it in another place and what I am struck by is how what we are doing today parallels what is going on in what I call the real world. In the real world public sector workers are about to have a full frontal attack made on their terms and conditions. They will have an offer for a pay rise of 2 per cent when inflation is running at 5.4 per cent, i.e. an effective pay cut, and at the same time they will be asked to change their terms and conditions to save the States £7 million. What will I say to them? I will say: "Of course you do not readily give up your terms and conditions; do not be stupid. You fight it. Go to your reps and negotiate properly because no negotiations have started yet" and yet what is happening here? Here we are about to voluntarily give up some of our terms and conditions. Where is my union rep? Where is my shop floor convenor? Where is he? Missing. We are not organised. The Deputy of St. Mary is hinting that it is me. No, I have not involved myself in any way with terms and conditions at all in my time in the States but the parallel still applies. We should not be sitting here saying: "Oh, life is a bit tough let us show an example, let us give up some of our terms and conditions." That is not what we should be doing. That is not what we are here for. So, part (a), apart from ignoring the remuneration committee and avoiding the mechanism that we have set up to decide what we pay ourselves so we do not get locked into these debates, part (a) I cannot possibly, in a month of Sundays, support because effectively if I did I would be saying to all my colleagues in the public sector, in the private sector who are under pressure now, I would be saying: "Just roll over, give up." That is not the solution. Part (b)... and here I agree entirely with Deputy Tadier of St. Brelade that this is not an issue for the Electoral Commission in any way, shape or form. If they get bogged down at a level like this then (a) we will never see a report, it will never happen, it will drag on and on and on, and (b) when we see the report we will just stick it in the bin. It is asking the Electoral Commission to waste their time on something that is irrelevant because the Electoral Commission will surely pay clear attention to the recommendations of Clothier and say: "What Constables? What Senators? You need a single States Member" I am sure, if it has its head screwed on in the right place and if we do not sabotage it in some way along the way. So, no, I cannot support either of these propositions.

The Bailiff:

Does any other Member wish to speak? I urge any Member to think very carefully whether they have anything new to add. The Assembly has now been speaking for well over an hour about its own matters and what the proposer said, a simple matter, when there is a long agenda, so I do hope Members would feel they had something new to add. The Constable of St. Brelade.

Senator A.J.H. Maclean:

Sir, it was not about speaking, I just wondered if it would be possible if you might make a call for some other Members to come into the Assembly. There are some of us who have been here all morning who have a call of nature.

The Bailiff:

Yes, Constable of St. Brelade.

2.1.13 Connétable M.K. Jackson of St. Brelade:

The views with regard to part (a) being well-ventilated in that Members' remuneration issues should only be dealt by the body and not by Members here and I think there is no reason why the Deputy should not make her point with them. Moving on to other issues which have not been raised; one of the reasons for, as I understand it, that propositions are lodged au Greffe was

traditionally that the Connétable could take them back to his parishioners for discussion. There is of course an inevitable link between the States work and Parish work and I think there is a perception, and I have found this as a result of the last election, and it may be put about by others in the Parish that this link is not important. I think it is incredibly important that the Connétables work with States issues and perhaps that point needs to be reinforced with the public so they do understand that in order to get work done certainly the Connétables have to focus on their States work in whichever form they feel most comfortable so that their duties can be properly fulfilled. There are, I think, perception issues among the public on how we operate. There is a lack of understanding and maybe the Electoral Commission when it comes up with its results will better inform the public. Just with closer reference to part (b), my experience with the Parish Halls and that particularly of my Parish is that it simply does not have the room to permanently accommodate Senators or Deputies, whether for constituency work or perhaps in the Deputy's case sleeping, if necessary. The Parish Halls are busy old places with rooms having multi-uses. They are used every day of the week including weekends and while there is no reason why Deputies or Senators should not request the use of a room for any particular reason, I am sure they would be accommodated, permanent use will not be so practical without considerable expense in converting rooms and that will be an issue for parishioners to decide. The Parish Halls are paid for by parishioners and I have to say in most cases I am sure run in a fairly lean manner. I can vouch that certainly from my point of view we all have a different approach to how we deliver our duties and I think it is the present system whereby we have a base from which to work is quite a sensible one. We all have different work capacities. I prepare my own paperwork because I am more comfortable with doing that, perhaps not terribly well, but that is the way I have always done it. The Parish have absolutely no role in that, although if I felt there was to be a benefit in the Parish and having a role I would probably take advantage. From the Ministerial point of view I share a room with my Assistant Minister, a back room at South Hill, and that room is used when we are not there by an officer of the department and it seems a sensible use of the facility. I think efficiency is the name of the game and I think anyone sensibly, and whether it be a Parish role or Ministerial role, will be doing that and I think we would justifiably criticised if they were not. So, to conclude I am looking forward, and I certainly know that the bulk of my States work is done at home and the paper generated by States activities certainly will not be missed by those with whom I share my household.

Deputy T.M. Pitman:

Sir, can I seek clarity from the last speaker, please. I was interested and I did not understand but I think the Constable said that one of the reasons the propositions were lodged with the Greffe was so that the Constables could then take them back to discuss with their parishioners. Is that something that happens with Assemblies and things? Because I am certainly not aware of that happening regularly and I just wondered if that is something that I have missed.

The Connétable of St. Brelade:

That is my understanding of the original role. I do not think it is utilised perhaps in the way that it could be but certainly that is the opportunity for parishioners to comment to their Connétable and the Connétable should come back to the States, taking on board their views.

The Bailiff:

Does any other Member wish to speak? I call upon Deputy Pitman to reply.

2.1.14 Deputy S. Pitman:

Firstly, I would just like to point out that this is not about remuneration; it is about our expenses allowance. Firstly, with regard to the question put by Deputy Jeune, I did make a submission to the P.P.C. on the consultation on issues such as this. I would also like to point out that I did not remove the provision of lunches for States Members; I actually removed the provision of the States

actually paying for those lunches. Members can, and still do, request lunch and pay for it themselves. With regard to what Deputy Tadier said, those of us who are least well-off in the States, he did not think it was right that £350... we could not do without that. In actual fact I think it is unrealistic to suggest that we could not do without the rise of £350 over 15 months, which I believe is when the Electoral Commission is coming back to the States with their proposals.

[11:15]

I do think it is the right time, when we are putting pay freezes on our workers and we see people across the economy getting pay freezes so I think absolutely we should be setting an example. With regard to the Deputy of St. Mary, he said this is not a thing for the Electoral Commission. We have heard today that P.P.C. have done a lot of work in this area and nothing has been forthcoming so where do we go from there? I believe we put this in the hands of the Electoral Commission to come back with something. Really, as a few Members have said, the crux of my argument is that this is really about equality and each Member valuing the other Member and unfortunately that has not come across since Ministerial government and we know that with the seriousness in which the Council of Ministers are taking scrutiny reports and all the hard work that is put into these reports by other Members. I would just like to finish by saying I totally agree with what Deputy Martin has said about nobody should be better off than anybody else and that is something which we promote and espouse through our Strategic Plan.

The Bailiff:

Do you ask for the appel?

Deputy S. Pitman:

Yes.

Deputy A.E. Jeune:

Sir, before we do, could I just ask the Deputy to answer my question. I did not ask the Deputy whether she had spoken to P.P.C. I did ask whether she had given a submission to the States Members Remuneration Review Body who are the ones recommending this increase.

Deputy S. Pitman:

No, I have not. I would like to split the ...

The Bailiff:

Take them separately?

Deputy S. Pitman:

Yes.

The Bailiff:

Very well. The appel has been called for. I invite Members to return to their seats. The proposer has asked that the matters be taken separately, so the first vote will be on paragraph (a) and the Greffier will open the voting.

POUR: 6		CONTRE: 31		ABSTAIN: 2
Senator A. Breckon		Senator T.A. Le Sueur		Connétable of St. Lawrence
Deputy of St. Martin		Senator P.F. Routier		Deputy P.V.F. Le Claire (H)
Deputy J.A. Martin (H)		Senator T.J. Le Main		
Deputy S. Pitman (H)		Senator J.L. Perchard		
Deputy T.M. Pitman (H)		Senator S.C. Ferguson		
Deputy A.K.F. Green (H)		Senator A.J.H. Maclean		
		Senator B.I. Le Marquand		

	Senator F.du H. Le Gresley		
	Connétable of St. Ouen		
	Connétable of St. Helier		
	Connétable of Trinity		
	Connétable of Grouville		
	Connétable of St. Brelade		
	Connétable of St. Mary		
	Deputy R.C. Duhamel (S)		
	Deputy R.G. Le Hérisssier (S)		
	Deputy J.B. Fox (H)		
	Deputy G.P. Southern (H)		
	Deputy of St. Ouen		
	Deputy J.A. Hilton (H)		
	Deputy of Trinity		
	Deputy K.C. Lewis (S)		
	Deputy I.J. Gorst (C)		
	Deputy M. Tadier (B)		
	Deputy A.E. Jeune (B)		
	Deputy of St. Mary		
	Deputy A.T. Dupré (C)		
	Deputy E.J. Noel (L)		
	Deputy T.A. Vallois (S)		
	Deputy M.R. Higgins (H)		
	Deputy J.M. Maçon (S)		

The Bailiff:

Very well then, the Greffier will reset the machine in order to vote on paragraph (b) and we will now open the voting.

POUR: 8	CONTRE: 31	ABSTAIN: 0
Connétable of St. Lawrence	Senator T.A. Le Sueur	
Deputy R.G. Le Hérisssier (S)	Senator P.F. Routier	
Deputy J.A. Martin (H)	Senator T.J. Le Main	
Deputy J.A. Hilton (H)	Senator J.L. Perchard	
Deputy P.V.F. Le Claire (H)	Senator A. Breckon	
Deputy S. Pitman (H)	Senator S.C. Ferguson	
Deputy T.M. Pitman (H)	Senator A.J.H. Maclean	
Deputy A.K.F. Green (H)	Senator B.I. Le Marquand	
	Senator F.du H. Le Gresley	
	Connétable of St. Ouen	
	Connétable of St. Helier	
	Connétable of Trinity	
	Connétable of Grouville	
	Connétable of St. Brelade	
	Connétable of St. Mary	
	Deputy R.C. Duhamel (S)	
	Deputy of St. Martin	
	Deputy J.B. Fox (H)	
	Deputy G.P. Southern (H)	
	Deputy of St. Ouen	
	Deputy of Trinity	
	Deputy K.C. Lewis (S)	
	Deputy I.J. Gorst (C)	
	Deputy M. Tadier (B)	

		Deputy A.E. Jeune (B)		
		Deputy of St. Mary		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy M.R. Higgins (H)		
		Deputy J.M. Maçon (S)		

3. Sunday trading legislation: additional considerations for the granting of a permit (P.149/2011)

The Bailiff:

Very well, so we move to the next item on the order paper which is Projet 149 - Sunday Trading Legislation: Additional Considerations for the Granting of a Permit - lodged by the Deputy of St. Mary and will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to refer to their Act dated 21st July 2011 in which they adopted the Shops (Regulation of Opening) (Jersey) Regulations 2011 and – (a) to agree that the Regulations should be amended to provide that, in addition to the existing matters that must be considered by a Connétable before granting a general permit, the following considerations should also be added – the Connétable shall have regard, when considering a request by a retail enterprise for a general permit, to other retail enterprises which are likely competitors (i.e. trade in the same type or types of goods) and in particular the Connétable will have regard to – the effect on the overall efficiency and resilience of the enterprises seen as a group; the effect on prices; the effect on the freedom of workers not to work on Sunday if they do not wish to; and the effect on the demand for labour; and the Connétable shall also have regard to these effects as they relate to the individual enterprise requesting the permit; (b) to request the Minister for Economic Development to bring forward for approval the necessary amendments to the Regulations to give effect to the decision.

Senator P.F. Routier:

May I declare an interest. I am a retailer and I feel it is not appropriate for me to ...

The Bailiff:

Well, it is certainly not an interest you have to declare or retire for Senator. It is up to you.

Senator P.F. Routier:

All right. I might talk against it then.

The Bailiff:

This is a proposition saying what matters the Constable must take into account.

3.1 The Deputy of St. Mary:

I thought it was appropriate to bring this in this session, partly because I will not be here in the next one, [Laughter] but also because we discussed this at length earlier in the year. It was a long debate and I think that we made a big mistake and I think that became quite clear very soon afterwards, as a result of the media coverage but I will just remind Members that the Regulations as they stand allow Constables to refuse an application for a general permit from a shop in their Parish only on the grounds of the peace and tranquillity of a neighbourhood and the avoidance of nuisance to residents. Those are very, very limited grounds and if an operation was free of neighbours, had no neighbours, if it was in a trading estate, for instance, or had very few neighbours and could show that there would not be much traffic generated and so on it would be very, very difficult to refuse and I think most shops would win an appeal on a refusal. We have to remember that these

Regulations now apply to all shops under 700 square metres, which is a very substantial size, all but 36 of the shops in the Island. I want to change those Regulations to make the Constables who make them take into account more things. Why do I want to do this? Well, there are 3 downsides to more shops opening on Sundays; one is that the shop loses because they have to spread their trade over 7 days instead of 6. They may gain first mover advantage, but only for a short while until other shops in their sector are forced to follow suit and that is what the Constables would have to bear in mind. Then because 2 or 3 shops in the sector are open they would all end up open. The domino effect would have happened and everybody then loses because 6 days' trade is spread over 7. The customers lose when the prices rise, as they must, to cover the increased costs of opening for longer and the workers lose because they come under insidious pressure to work on Sunday whether they want to or not, and of course we discussed that in the debate. There are some workers who wish to work on Sunday but the issue is whether undue pressure might be brought to bear in a situation where whole sectors have been made to open because somebody started the process. That is the point, is it not? That the present Regulations treat each application as a single event: "This shop, in my Parish, wishes to open, the only grounds for refusal are the effect on the immediate residents." The effect on the wider community of Jersey is excluded. We are suggesting that there are no effects on the system as a whole and that is clearly untrue. Now, I want to compare what was said in the debate by the Assistant Minister to the media coverage that followed immediately on the States passing these Regulations. The Assistant Minister, who I think is not with us today unfortunately, so I do not quite know who the rapporteur is going to be, but the Assistant Minister said in his summing-up in that debate: "There is no intention of increasing the incidence of Sunday trading and there should be no assumption that the Law and these Regulations will increase Sunday trading." So, we were all happily reassured, were we not? He said it again: "I repeat, this is not about encouraging additional commercial activity on a Sunday but rather controlling it and keeping it sensible." Well, it was intriguing to see that the *J.E.P.* headlined the outcome next day: "New law means shops can open on Sunday." The sub-headline said: "Only larger stores face restrictions as States reject pleas to keep Jersey special." Now, as I say in my report the *J.E.P.* can be a law unto themselves, they can invent headlines, they can have headlines that bear little relation to the story but on this occasion the story backed up the headline and carried on: "The most far-reaching reforms of Sunday trading laws for 50 years were agreed yesterday and could soon mean all but the Island's biggest 36 stores being allowed to open." Then they recap on the objections that I have just outlined and they point out that only 3 dozen stores would be prevented from opening. So, there is a gulf, is there not, between what we thought we were approving, which was something that would have no effect at all on the commercial activity on a Sunday. I have watched the *J.E.P.* very carefully and I know that they are very closely-linked to the Chamber of Commerce for obvious reasons and there we have: "Look, Bonanza, everything free for all." The next point I wish to make is what do the public think? Well, I think we have just shown in the previous debate that we do not think much of what the public thinks but never mind. There was a public consultation on the Sunday Trading issue and the consultation was quite clear on what the public think about Sunday trading. Quite clear, although it was a limited sample, I have to say, of 237 people. So, with that rider, which is always problematic with States consultations that are done on a "those who wish to answer" basis, but nevertheless that is all we have. The first question was: "Are you in favour of Sunday trading?" "No," 43 per cent, "Yes, but with restrictions," 41 per cent. I make that 84 per cent. This was presented to us as over half of respondents were in favour of Sunday trading, which is an astonishing piece of spin but I will let that pass. The fact is 84 per cent are not in favour of Sunday trading or in favour of it with restrictions.

Connétable A.S. Crowcroft of St. Helier:

Could I just ask whether this is a rescindment debate we are having about Sunday Trading, or whether the Deputy is going to move on to the changes he would like to make? Because at the moment we seem to be re-running the previous debate.

The Deputy of St. Mary:

Not at all. I am making the case for enhancing the ability of the Constables to refuse permission. At the moment they have virtually no grounds for refusing a general permit. That is the point.

The Bailiff:

You will come on to that, Deputy?

The Deputy of St. Mary:

Yes, sir. I am only going to quote 2 instances of what the public think. Then Question 4: “Should only certain size shops be allowed to open on Sunday?” “Small and medium shops only?” 25 per cent, “Small shops only,” 52 per cent: 78 per cent only want smaller shops to open. I think we all know that. We all know what the public’s view on this is, or the majority of the public, and yet we passed Regulations which, as I have said, give virtually no leeway to a Constable to refuse an application and the results of that would progress to other shops in the same sector. So, moving on to the comments of the Minister for Economic Development. What fun, what fun. He points out that the Constables do not know everything. Well, yes, the Constables do not know everything and how can they possibly do the work that I am asking for? Well, it is not as difficult as he makes out.

[11:30]

Let us take 2 examples: a Constable gets an application to open on a Sunday from a family-owned small business. In fact, they are so relaxed about it that they have a little notice on the door saying: “Push the button and we will come and attend to you.” They will not affect the trade of other shops in the same sector, they are not poaching, people are not going to drive from St. Brelade to St. Martin to get a screwdriver from this shop where you push the button and somebody appears. Other shops will not feel pressured to open, there will not be any inefficiency because of 6 days moving to 7, there will not be any effect on prices which is what I am asking the Constables to look at, there will not be an effect on labour demand and so the Constable is free to grant the application. Another case, largish shop – furniture - yes, they want to increase their own costs. Why do they want to do that? Because they think they will get a marginal increase in turnover. They will just get that bit extra. That bit extra will come from other shops. The intention might even be, if they have deep pockets, to drive other shops to the wall. It might be that if they think they get another shop, force them to open in order to maintain their market share, that that will push them past the tipping point and that point was made in an email comment to the *This is Jersey* site. If other shops open, then more shops will be pressurised to open and that will have an impact on prices, it will have an impact on the sector as a whole, on labour demand, and that is simply what I am asking the Constables to bear in mind. It is not rocket science and it allows the Constables - in fact it asks them - to consider wider issues than just the one shop coming into them saying: “Can I have a permit?” My closing point is the comments of the Minister saying at the end in the last sentence: “...at a time when we are trying to reduce regulation and create economic growth.” Well, in fact, the Regulations, as they stand, will damage the retail sector. They will have a negative impact on economic growth and it is not about reducing regulation, it is about changing it so that it can be applied in a better way and more in keeping with the wishes of the public. I think we made a mistake and I am asking the States to change that to give the Constables a little bit more power in this regard, to have regard to the wider interests of the Island as a whole.

The Bailiff:

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

3.1.1 Deputy R.G. Le Hérissier:

This is not an area where I have got off the fence but I went along with the last session because I thought it is an area that divides the population and we came to what might be termed a pragmatic solution, extended somewhat by the peculiar circumstances of Millbrook, an area which I did find a

bit hard to take. But I have to say, with due respect to the much respected and lamented in almost the past sense Deputy of St. Mary, this is remarkable because we talked about Constables' offices but it now appears that they are going to have an office for their resident economist, their resident retail advisory group and various other people who are going to join the Parish team, price regulatory experts and so forth. What the Deputy has done - and good luck to him, but it needs to be exposed for what it is - is tried to put a whole Trojan horse into the proposition that was very tortuously agreed upon a month or 2 ago. It is quite ridiculous in my view other than asking Constables to take practical issues like parking, possible inconvenience to surrounding residents... It is quite ridiculous to ask them to take into account issues which are of immense deep policy relevance and where, if they were taken to court and there were a judicial review of their decision, all sorts, as I said, of experts would doubtless be called upon - retail economy experts, price regulation experts, experts who look at the interconnectedness of retail units in a wider area - to comment upon their decision. It is just inconceivable that that should happen and, as the Constable of St. Helier intimated in his remarks when he tried to reorient the debate, it would have been better had the Deputy gone for a straight rescindment because this just does not make any sense. **[Approbation]**

3.1.2 Senator A.J.H. Maclean:

I am going to miss the Deputy of St. Mary. **[Laughter]** I think the Deputy is seeking to reopen the Sunday Trading Law debate here and this is simply a means by which to do that. The proposition asks the Constables to consider a much wider range of additional factors before granting a Sunday trading permit. I do not rather disappointedly believe that the Deputy consulted, for example, with the Constables on this matter and the impact ... they are all shaking their heads almost to the last man so I assume that is correct. Quite clearly, there would be significant cost and from a practical point of view, other considerations, many of which my learned friend, Deputy Le Hérissier, has alluded to himself. He certainly did not seek to speak to my department, myself, my officers or, indeed, for that matter, another individual who would have given some valuable advice in the preparation of this proposition and that is, of course, the Economic Adviser for the States. Of course, it would be incumbent upon each of the Parishes to employ, as Deputy Le Hérissier has rightly pointed out, a whole raft of additional personnel or at least bring in on a temporary basis the likes of economists and so on and I think the pure practicalities of this do rather suggest that it is completely unworkable. I should say to the Deputy - it is almost his swan song - I do not wish to be overly negative at this stage but I have given it careful consideration as he might well expect. I should point out, and he has probably picked up on this in my written comments, I have stopped short of describing the proposition as impossible. Instead I think I have used the phrase "is not realistically achievable". I think States Members may well interpret that to be much the same thing. I think it is probably fair just briefly to go through some of the specifics of the proposition and highlight concerns in that regard. Firstly, under (a), the proposition asks the Constables to have regard when considering a request for a general Sunday Trading Permit to other retail enterprises which are likely competitors. That is fair enough, of course, in isolation, but the following bullet points in the proposition go much further and required the detailed assessments that I was briefly alluding to. The first bullet point in the proposition specifically asks the Constable to consider, and I quote: "the effect on the overall efficiency and resilience of the enterprises seen as a group". Presumably, this refers to the effects on the profitability of a business and its chance of failing because of Sunday trading. If the law had given - which it does not incidentally - the Constables the right to look into the accounts of each business, not only those applying for a Sunday Trading Permit, of course, but also competition as well that is in the existing market, then those accounts would have to be analysed by the Constables and, indeed, their Parish staff. Not only that, but the Constable would have to predict the likelihood of negative effects resulting from the granting of a permit to the business or, indeed, its competitors. I am not sure that there are many Constables who would want to attempt such analysis, let alone approve or reject a Sunday Trading application based on that outcome. They could, of course, make an educated guess but that is no basis, in my

opinion, for issuing a permit. The next bullet point asks about the effect on prices. Now, how can a Constable, perhaps with the assistance of his Parish staff, predict what, for example, a supermarket and other retailers in the same industry will do with their prices if they trade on a Sunday? They may lower their prices to attract more business. They may indeed raise their prices to pay for higher Sunday wages or they may not change them at all but how is the Constable supposed to ascertain that when considering a permit? The likelihood is that the shops themselves will not know at the time that they make the application. To meet this requirement in the proposition, the Constable would have to have access to better information than I suspect the businesses themselves who are trading in the market have. The next bullet point asks the effect on the freedom of workers not to work on Sunday if they do not wish to do so. Now, this point might be theoretically possible as in theory the more Sunday Trading Permits that are granted, the higher the chance that one or more persons may be forced to work on a Sunday. Working out what this means in practice and applying it to a permit consideration is, of course, a wholly different matter. The Constable could perhaps demand annual work plans from applicants and randomly survey workers to check compliance after the permit was granted but how could true responses be guaranteed? If a shop does not yet have a detailed plan 52 weeks in advance covering which of its staff will work, how could it properly report its intentions to the Constable at the time of an application? If a shop is offering time and a half on Sunday and only employing volunteers, do these employees want to work or are financial considerations pushing them to get the most profitable work available? What about the workers who would appreciate time and a half or even just some additional hours but cannot get that because the Constable has refused a permit? Lastly, why is this just to do with retail? Pubs, hotels, tourist attractions and a host of other businesses employ staff on Sundays. Where is consideration from them in this particular proposition? Surely, the Employment Law is the natural home for these considerations, as it would provide equal rights to all workers. The final bullet point in the proposition asks about the effect on the demand for labour. Again, the Constables must consider Island-wide economic factors and be in a position to predict the future. Our Constables are, without doubt, a very talented lot but, as Members will have noticed, adopting this proposition will give them a significant and complex additional workload. If Sunday trading increases, presumably the number of people working on Sundays will also increase. How should the Constables evaluate if this will result in more jobs or existing workers taking the opportunity to work more hours? Applicants could be asked the question but what if they do not know? What if businesses are not honest? I am sure this would not be the case but it is always possible. Perhaps the Constables could conduct random checks but at what cost and how accurate would these be? In summary, the Constables have no reasonable or, indeed, cost-effective way to get the necessary data. Even with the relevant information available, the Constables would have to undertake a detailed economic analysis of each permit to try and establish actual outcomes. Given the notorious and unpredictable nature of complex economic models, this would be almost impossible, even for an economist, I might add. The current Parish responsibilities contain nothing like these requirements and they are not equipped to carry out such an economic analysis. Even if robust analysis were possible and was broadly accurate, it would still be a mammoth undertaking for the Parishes to consider and, I might add, to fund out of a £50 Sunday Trading Permit fee. Arguably, the requirements set out in this proposition could be met by just guessing but that does not seem to me to be a particularly practical or sensible outcome to encourage by law. I would urge Members to reject this proposition and consider that our new Sunday Trading legislation is only a few months old and to give it a reasonable chance to bed-in.

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

I would firstly like to thank the Minister for E.D.D. (Economic Development Department) for, I think, answering to this proposition particularly well and certainly on behalf of the Connétables. I would also like to stress that he is quite correct in his assumption that the proposer has at no time come to the Comité des Connétables to consult on this proposition. As the Minister said, the law which we have in place now is only a matter of a couple of months old and I would say that it has

not made a great deal of difference to what was happening before. The one difference it has done is that it has legalised some of the practices that were being overlooked before. What this proposition would do would be adding an enormous amount of red tape, not only to the Connétable's office but also to many of the small traders who wish to trade on a Sunday.

[11:45]

I really only have one thing to say on this proposition. The system works, it is not broken, why are we trying to repair it?

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

The proposer has not consulted me. The simple reason is that this might be my penultimate speech also and before I had a previous life, I had a previous life before that. At the age of 18, I was a fully qualified grocery manager for international stores that had 1,500 branches, sometime in the middle of the 1960s, and we covered most of these areas, even in those days. Not quite the same. People have been asking what I shall be doing in my retirement from the States and when I read this, I thought: "Well, there you are, I could be a consultant for the Constables." [Laughter] So there we are. Having read the detail, though, and listening to the comments today and the excellent speech from the Minister for Economic Development, I think I would be much better suited to advise the Economic Development Department in my retirement, if they so wish, on an honorary basis. [Laughter]

3.1.5 Deputy M. Tadier:

There is a very good reason to reject this proposition but I will save that reason to the end. Now, we have heard some very strange arguments here. What we have heard initially, if we take the *status quo*, is that the Constables already have power to determine whether or not permits can be granted on 2 different areas, which we can see on page 3 of the report. First of all, they can determine not to grant a permit or to grant a permit as well, taking into regard the peace and tranquillity of the neighbourhood and the avoidance of nuisance to residents. The second part is that the Constables should have particular regard to the kind of size of a shop which the permit will apply to, the noise, the traffic, litter and likely results opening from this. Now, one of the main arguments we have seen to reject this proposition today is that the Constables do not have first of all the wherewithal or necessarily the expertise and the staff to be able to handle these extra burdens. So what we are saying is essentially they do have the expertise to determine the first 2 issues. They have got the wherewithal to be able to determine whether or not a particular application for a shop trading on a Sunday will affect the peace and tranquillity of a neighbourhood and the avoidance of nuisance to residents; times of day, so they have got to be experts in traffic measures; they have got to be experts in a whole series of demographic expertise. Then they also have to be aware of the size of the shop and the way it will apply. Now, strangely, in taking into account the size of the shop, presumably part of the reason for doing that is to address exactly the same issues which the Deputy of St. Mary is proposing here because we take into account the size of the shop because it may have a perverse impact on the economics of smaller shops, it may have a perverse impact on the traffic in the area and it may be just generally undesirable. Now, in reality, how would the *status quo* be determined? It would be determined not by experts because the Constables have told us they do not have sufficient experts. It is determined by their own expertise because they do have knowledge in various areas but also the test which one uses in the Parish is to hold a Parish Assembly so I am sure that any good Constable would be consulting with parishioners anyway to determine what effects a Sunday trading permit would have. If enough members of the Parish came up and said: "Well, look, we do not want this shop in our area because it is going to be causing a traffic nuisance" *et cetera*, or it is too big for the area and there is going to be littering problems around it, that is the actual expertise which we are talking about, that any reasonable Constable should take into account. So we can apply the exact same arguments to what

the Deputy of St. Mary is proposing. So to say that we do not have the expertise within the Parish, to say we do not know if this is going to have a perverse effect on the shops around it, we do not know if this is going to have a perverse effect on prices, we do not know if this is going to affect the freedom of workers not to work on a Sunday, what the Constable would do is take representations and they would only refuse to grant the permit in the case when there has been sufficient and plausible representations from people who are in the know. So, for example, if workers come to the Parish hall and say: "Look, we are all Christians here, we are all whatever denomination, we have been told that they will not employ us if we do not work on a Sunday. We do not want them to have a Sunday permit to work here because we will lose our jobs, we will be forced not to stay on because they will choose other people." That is an absolutely valid way for the Constable of the Parish to make that decision. You do not need expertise and I think these arguments can be extended for the whole thing. It is just giving more power to the Constables to use their discernment and judgment as to whether or not a particular trading permit would be viable or not. Now, the Minister for Economic Development said: "Why is it only limited to Sunday Trading?" because he said, quite rightly, there were other establishments like pubs which can also trade on a Sunday but there are already mechanisms which, for example, control pubs opening. They have to receive a licence from the Parish Hall. Again, it is up to the Parish Assembly to give guidance, although I understand that ultimately the final decision about liquor licences is made in the Royal Court by the Licensing Bench but nonetheless it still comes to the Parish Hall for opinion from the parishioners, and we had one in our own Parish. So it is taken into account. The question I would be asking is that would there not be a possibility for a Parish Assembly to veto something anyway? So if a Parish Assembly said to the Constable: "We do not want you to issue this Sunday Trading Licence" for whatever reason, is it up to the Constable to do that or is it up to the Parish Hall. Then if the Parish Assembly is asking for something illegitimate to be done, then do they have any valid legal basis for that decision to be withheld? So, for example, the Parish Assembly might say: "We do not want you to give a licence to this shop to open on a Sunday because we think that the peace and tranquillity of the neighbourhood would be hindered." If it was extended to what the Deputy of St. Mary is asking, we say: "We do not want you to give a licence to this shop because they are forcing people to work on Sundays or because it is going to affect the prices or the resilience of other businesses in the group", could a Parish Assembly veto that and then would there be a system for an appeal afterwards because the lawyers of the company would get involved and say: "This is not a reasonable decision to have been taken." That is perhaps a question for ...

The Connétable of St. Brelade:

If the Deputy would just give way on a point of clarity, with regard to the point he is making, I think it needs to be understood that the Parish Assembly makes a recommendation to the Licensing Bench which is the body which grants the licence.

Deputy M. Tadier:

Exactly, that is the example of the Licensing Committee but I understand that with Sunday Trading laws, the ultimate decision would be made by the Constable of the Parish. It does not go to the Royal Court so there is a difference there. So what I am saying is that obviously it is incumbent upon the Constable to take into account the feelings of parishioners and if the parishioners, who are not experts either and who sometimes might make their decisions on prejudice rather than on objective facts - not simply for the Parish but for the whole Island - come and say: "We want you to refuse this licence, this permit for Sunday trading, on this particular basis", the Constable, and if I were a Constable, he surely would have to go with the majority of the Parish. Now, it is really a question for the Attorney General, I think, or Solicitor General, which maybe he can answer later on is that what is the power of veto for the Parish Hall because I think I have made the point already if the public are legally making a request which is illegitimate and it is later found to be illegitimate because it is not a reasonable request, and then that is overturned by the Royal Court on

appeal, it does put lots of questions into account. But coming to the reason and these all sound like reasons to support this proposition, which I think they are, because I think we are trying to suggest that enforcing these additional requests on top of what the Constables have already got in terms of power is a lot harder than it would be in reality. It would be very simple to do these things because if these areas are subject to appeal, which is what is being suggested, then surely the 2 other areas to do with noise, to do with location, to do with traffic, to do with litter, these must also be subject to appeal. So we have to make sure that we are arguing in an even-handed way. But the reason we should reject this proposition is because it gives more power to the Constables. **[Laughter]** The fundamental problem is that these powers which the Constables have in this instance are illegitimate, not illegitimate *per se*, they are illegitimate on the basis that we do not have a proper separation of powers so we have created a law here which has been voted for by the Constables and by other States Members and they are also not just the legislative in this instance, they are the ones that are executing the law deciding on who should be given permits and why and that is completely at odds with human rights. Possibly that is another question for the Attorney General but also more fundamentally it is at odds with good governance. The people who make the laws should not be the ones enforcing the laws and therefore I cannot give more power for the Constables to be enforcing laws which I do not think they should be having in the first place. They should either be not making the laws and enforcing those as an Executive or they should be making the laws but not enforcing them. So I certainly cannot be voting for a proposition which gives more power, which I think is illegitimate.

3.1.6 The Deputy of St. Mary:

May I say something that might bring pleasure to many people’s ears in the sense of I am going to say that I am going seek leave to withdraw but I have listened especially to the speeches of the Minister and Deputy Le Hérissier with his legal challenge argument which is extremely pertinent and even Deputy Tadier with the real point is that this will be giving people who have legislated more power to implement. The basic issue is the Island is 12 fiefdoms and I was trying to see the Island more as a whole but the practical difficulties are too big and this proposition falls foul of my own views on consultation. The only thing I can say in my defence is that the last 6 weeks before the summer recess were busy in here. I seem to remember that we were sitting virtually continuously. A more common-sense approach is needed and I seek leave to withdraw this now.

[Approbation]

The Bailiff:

Does the Assembly agree to give leave?

The Connétable of St. Helier:

Can I just say, I was going to tackle the Deputy and I think the way he has treated the Assembly with this proposition is extremely poor and I want him to say why and it is frustrating that I will not be able to if we allow him to withdraw it.

The Bailiff:

Well, that is a matter for Members. He needs the permission of the Assembly to withdraw but it is traditionally given, but it is a matter entirely for Members. The appel is called for, then, in relation to the request of the Deputy of St. Mary that he be allowed to withdraw this proposition. I invite Members to return to their seats. If you wish him to withdraw, you vote pour; if you do not, you vote contre, and the Greffier will open the voting.

POUR: 25		CONTRE: 9		ABSTAIN: 0
Senator T.A. Le Sueur		Senator P.F. Routier		
Senator T.J. Le Main		Senator S.C. Ferguson		
Senator J.L. Perchard		Senator A.J.H. Maclean		
Senator A. Breckon		Connétable of St. Ouen		

Senator F.du H. Le Gresley		Connétable of St. Helier		
Connétable of St. Lawrence		Connétable of Trinity		
Deputy R.C. Duhamel (S)		Connétable of St. Brelade		
Deputy of St. Martin		Connétable of St. Peter		
Deputy R.G. Le Hérissier (S)		Connétable of St. Mary		
Deputy J.B. Fox (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

4. Public Employees Contributory Retirement Scheme: Committee of Management - Membership (P.151/2011)

The Bailiff:

Very well. Then we move on to Projet 151, Public Employees Contributory Retirement Scheme: Committee of Management - Membership lodged by the Chief Minister. I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to approve, in accordance with Regulation 3(5) the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989, the appointment of Mr. Stuart Alan Lusby, as an employer representative on the Committee of Management, for the period ending 31st December 2012.

4.1 Senator T.A. Le Sueur (The Chief Minister):

This proposition arises out of the retirement of Mr. Rod Bryans who was previously a member of this body and has now moved on to pastures new. Having advertised for expressions of interest in this role, we were fortunate that Mr. Stuart Lusby who previously worked in the Treasury, put his name forward and I am pleased to propose him to replace Mr. Bryans for the remainder of his term of office which would expire in just over a year's time. I make the proposition.

The Bailiff:

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

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

Just very quickly. I know in the report that it states that the candidate proposed is a double-qualified accountant. If the Chief Minister could just explain what exactly a double-qualified accountant is, I would be most grateful.

The Bailiff:

I assume it does not mean he had to take the exams twice. **[Laughter]** Does any other Member wish to speak? Very well, I call upon the Chief Minister to reply.

4.1.2 Senator T.A. Le Sueur:

I think it just means that he is obviously one of those people who likes doing qualifications because he also possesses a Masters Degree in Business Administration. I am not aware of the 2 qualifications that he acquired but I am very pleased that we have someone of that ability to do the job. I maintain the proposition.

[12:00]

The Bailiff:

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

5. Draft Decimal Currency (Amendment No. 7) (Jersey) Law 201- (P.152/2011)

The Bailiff:

We then come to the Draft Decimal Currency (Amendment No. 7) (Jersey) Law 201-, Projet 152, lodged by the Minister for Treasury and Resources. I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Decimal Currency (Amendment No. 7) (Jersey) Law 201-. A Law to amend further the Decimal Currency (Jersey) Law 1971. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

The Bailiff:

Assistant Minister, are you presenting this on behalf of the Minister?

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

I am. H.M. Treasury has approved the Royal Mint's proposal to convert the 5 and 10 pence coins from cupro-nickel to nickel-plated steel. The diameter and weight of the 5 and 10 pence coins will remain unchanged but they will be magnetic and approximately 10 per cent thicker than the cupro-nickel versions. This amendment would add nickel-plated steel coins to the list of coins that are legal tender in Jersey. The Minister specified by Order the coins issued under the U.K. (United Kingdom) and Jersey legislation, that they are legal tender in Jersey. As a result of rising metal prices over the recent years, solid coins and blanks are becoming increasingly expensive for their customers to produce and this is the main driving factor behind the U.K. change. This is a very straightforward matter. It is to allow U.K. coins to continue to be legal tender in Jersey and for our own Treasury to be able to issue in the future coins of this nature. I urge Members to approve this proposition.

The Bailiff:

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

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

Just 2 minor points. I would like the proposer to inform the House as to whether or not any work has been undertaken to ensure that the working of any vending machine that relies on coin operation will not have to be amended due to the fact that these coins are now magnetic. I note that the weights and the diameters are suggested to be the same as part of the mechanism but I am just raising a query as to whether or not the fact that these coins will be magnetic will have a bad effect on such machines. The second point I would like to raise is in the explanatory note, there is a suggestion that these coins will only be legal tender for payment of any amount that is £5 or less. Now, I would like a further explanation on that. Does this mean that people's coin collections will not be able to be taken to a bank or made as part of a payment for any service or anything else?

5.1.2 Senator S.C. Ferguson:

Yes, just to follow that. The Assistant Minister has made considerable play of fact that the coins will be magnetic. Is this to aid those of us who want to find the coins that have fallen down the back of the sofa? **[Laughter]** I would appreciate an explanation of why this is significant.

5.1.3 The Connétable of St. Brelade:

I do not know if the Assistant Minister could just confirm, but it strikes me that in time the plating may wear out and there is a risk that when they get wet, the coins may become rusty. The point is that I just wonder what their long-term life is and what the long-term financial plan of this is. Is it, in fact, going to be a long-term cost saving or not?

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

My question really follows on from the Connétable of St. Brelade because he spoke about the long-term cost and I wonder if the Assistant Minister can advise the House when we will be likely to issue these new coins and what sort of savings they are likely to produce for us? We heard, when we were discussing the £100 note, paper currency is usually produced in lots of I think it was 28 million and I really just want to know how much is in circulation at the moment and, as I say, when it is likely that we will issue these new coins.

5.1.5 Senator A. Breckon:

Just an observation. It may be a coincidence but when we were discussing yesterday the £100, the Minister for Treasury and Resources did it himself and today when we are discussing 5p and 10p pieces, he has delegated it to the Assistant Minister. But there are some savings in there in the actual production of £18 per 100 on 5p and £35 per 100 on 10p but something the Constable of St. Brelade has touched on is how long will these things last for? Are we going to have to produce more of them because they will not stand the wear and tear? The final thing is will these savings be offset to pay for the £100 note?

The Bailiff:

Does any other Member wish to speak on the principles? Then, I invite the Assistant Minister to reply.

5.1.6 Deputy E.J. Noel:

To deal with Senator Ferguson's question, there is no reason other than it is a less expensive manufacturing process to make the coins magnetic. That is not necessarily ... although it might be an add-on benefit to be able to use a magnet to retrieve them from the back of the sofa, that is not the driving force behind this. In terms of the life of the coins, the U.K. Royal Mint expect the coins to last between 25 to 30 years which is longer than the existing coins are expected to last. So that answers the question from the Connétable of St. Lawrence. I have forgotten the point that Deputy Duhamel raised.

Deputy R.C. Duhamel:

There were 2 points. One was could he assure the House that there would be no problem with coin-operated vending machines and, secondly, to explain why the designation of these coins as legal tender would only be for any amount that is payable of £5 or less and what would happen to people's coin collections when they wanted to pay them into a bank or pay for any other services.

Deputy E.J. Noel:

With regard to the first part of that, yes, the vending machine industry will have to make some changes to some of their machines but I believe that that has been notified to the vending machine industry in the U.K. for some time now. With regard to the £5 limit, I do not know to be honest. I assume that it is something that is currently in place but I do believe that there will be no problems for people to take their coin collections to the bank and have them deposited into their account or

notes to be issued to their value. So I hope that answers Members' questions and I maintain the proposition.

The Bailiff:

Very well. All those in favour of adopting the principles, kindly show? Those against? The principles are adopted. Senator Ferguson, do you wish this matter referred to your scrutiny panel?

Senator S.C. Ferguson:

I do not think so, Sir.

The Bailiff:

Very well. Assistant Minister, do you wish to propose Articles 1 and 2 together?

Deputy E.J. Noel:

Yes, thank you, Sir.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on either of the Articles? All those in favour of adopting Articles 1 and 2, kindly show? Those against? They are adopted. Do you propose the Bill in Third Reading, Assistant Minister?

Deputy E.J. Noel:

I do, Sir.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Bill in Third Reading please show? Those against? The Bill is adopted in Third Reading.

6. Draft Veterinary Surgeons (Amendment) (Jersey) Law 201- (P.154/2011)

The Bailiff:

We come next to the Draft Veterinary Surgeons (Amendment) (Jersey) Law 201-, Projet 154, lodged by the Minister for Economic Development. I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Veterinary Surgeons (Amendment) (Jersey) Law 201-. A Law to amend further the Veterinary Surgeons (Jersey) Law 1999. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

6.1 Senator A.J.H. Maclean (The Minister for Economic Development):

The Veterinary Surgeons (Jersey) Law 1999 is the legislation in Jersey which determines the ability of individuals to practise veterinary surgery. Veterinary surgery is defined as (a) the diagnosis of diseases in animals and injuries to animals; (b) the performing of tests on animals for diagnostic purposes; (c) the giving of advice based on any such diagnosis; (d) the medical or surgical treatment of animals; and (e) the performing of surgical operations on animals. The law includes a few specific exemptions. Under the law, individuals who have gained membership of the Royal College of Veterinary Surgeons can make an application to the Royal Court for recognition which, if granted, means their name is placed on the list of recognised veterinary surgeons. The list is maintained by the Judicial Greffier. The Royal College of Veterinary Surgeons regulates veterinary surgeons' education, ethical and clinical standards in the U.K. and in the Channel Islands. The 1999 Law makes it an offence for a person to practise veterinary surgery in Jersey

unless they are recognised and designated penalties are identified for unlawfully practising if convicted. These controls are necessary to ensure only those appropriately qualified and competent are permitted to practise, consequently protecting animals and, of course, the public. The reasons for bringing forward the amendments are that the Veterinary Surgeons (Jersey) Law stipulates the condition for recognition by the Royal Court. The condition is the applicant must provide evidence they are registered in the Register of Veterinary Surgeons published by the Council of the Royal College of Veterinary Surgeons of the United Kingdom. The amendment provides 3 main changes. Firstly, it removes the requirements to be fulfilled for recognition from the face of the law and enables them to be set by Ministerial Order. This will allow any changes to the U.K. Veterinary Surgeons Act to be reflected in Jersey legislation quickly and easily. Secondly, the amendment provides a process currently not available to remove the name of a deceased veterinary surgeon and thirdly, to assist with administration of the law and with agreement of the Minister for Planning and Environment, the powers for Order making will be vested in the Minister for Planning and Environment. In accordance with the Diseases of Animals (Jersey) Law 1956, the Minister for Planning and Environment appoints the Veterinary Officer. Therefore placing all veterinary matters in the Environment Department enables improved administration and makes clear sense. The amendment enables recognition of veterinary surgeons to practise in Jersey to be aligned with other professions in the Island. I propose the principles.

The Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? Very well, all those in favour of adopting the principles, kindly show? Those against? The principles are adopted. Deputy of Grouville, do you wish this matter to be referred to your scrutiny panel?

Deputy C.F. Labey of Grouville:

No, Sir.

The Bailiff:

Do you wish to propose the Articles *en bloc*, Minister?

Senator A.J.H. Maclean:

Yes, Sir, there are 10 Articles, 1 to 10, and I would have proposed them *en bloc*. If there are any questions, I am happy to answer them.

The Bailiff:

Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Articles? Very well. All those in favour of adopting Articles 1 to 10, kindly show? Those against? They are adopted. Do you propose them in the Third Reading, Minister? Are they seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Bill in Third Reading, kindly show? The appel is called for in relation to the Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 30		CONTRE: 0		ABSTAIN: 0
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				

Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

7. Driving Licences: Theory Test (P.155/2011)

The Bailiff:

Then we come next to Projet 155 - Driving Licences: Theory Test - lodged by the Comité des Connétables and I will ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to agree that a person must have passed a theory test before being granted permission to drive on the road as set out in the Appendix to the report of the Comité des Connétables dated 5th September 2011; and to request the Minister for Transport and Technical Services to bring forward for approval amendments to the legislation to provide for these changes to take effect.

7.1 The Connétable of St. Ouen (Chairman, Comité des Connétables):

The proposition is very simply to ask the Minister for Transport and Technical Services to bring forward for approval by the States the changes in legislation to bring into effect the need for first-time applicants to have passed a theory test prior to being granted their first provisional driving licence.

[12:15]

The Comité des Connétables are keen to ensure that young persons attempting to become road users are in no way penalised by this proposition and have therefore also asked that the Minister also includes the ability to undertake a theory test at least 12 months before their ability to receive the provisional driving licence. Although a person applying for any category of licence is required to undertake a theory test for that particular category, the adoption of this proposition would have no effect other than to seek applicants to have the relevant theory test prior to being issued with a provisional driving licence for that group. This proposition will therefore ensure that persons allowed to drive on the Island's roads will have the required knowledge of the Highway Code needed to pass a theory test. Although this is not a requirement in the British Isles or Europe, it is so in most of the States of Canada and Australia and the Comité des Connétables feel that this will have a positive effect on road safety in the Island. In consultation with the Road Safety Panel, the

Driving Instructors' Association and the Jersey School of Motorcycling, who have all given support to this proposition, it is generally agreed that this will assist with road safety. If I can be permitted, I would like to just quote from the responses from those 3 groups. The Road Safety Panel responded that: "Members of the panel are fully supportive of this initiative and believe that this would be a real step forward in terms of improving road safety." The Jersey Driving Instructors' Association considered it a very good idea for potential learners to take the theory test at 15 or 16 before they are old enough to drive on the road and the Jersey School of Motorcycling: "We have for many years suggested to D.V.S. (Driver and Vehicle Standards) that learner motorcyclists pass a theory test before being granted a provisional driving licence." Adoption of this proposition would also ease the problem faced by licensing authorities as well as applicants when issuing first-time provisional licences. A proviso in the law at the moment allows for refusal of a subsequent provisional driving licence to the first one issued should a theory test not have been undertaken. This has led to what appears to be inconsistency in the approach taken by Parish officers although, in practice, each case has to be considered on its own merits and Connétables have done everything in their power to assist first-time applicants. Nevertheless, where applicants have made no effort whatsoever to undertake a C.B.T. (Compulsory Basic Training) or theory test during the 6 months of the first provisional driving licence, refusal has occasionally been made. It must be remembered that adoption of this proposition will, at the moment, only refer the matter to the Minister for Transport and Technical Services for the necessary amendments to legislation to be undertaken and that this matter will therefore return to the Assembly for final adoption. I make the proposition.

The Bailiff:

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

7.2 Driving Licences: Theory Test (P.155/2011) - Amendment (P.155/2011 Amd)

The Bailiff:

Now, there is an amendment lodged by the Minister for Transport and Technical Services and therefore I will ask the Greffier to read the amendment.

The Greffier of the States:

(1) Page 2. After the words "to agree", insert the words "in accordance with (1) of Proposition 104/2010, the Sustainable Transport Policy approved by the States in December 2010, to re-establish a reducing trend in road injury rates, the Minister for Transport and Technical Services is requested to ensure that the task force set up to establish a Road Safety Strategy specifically considers the proposal from the Comité des Connétables. (2) Page 2. Replace the words "to request the Minister for Transport and Technical Services" with the words "if considered effective then".

The Connétable of St. Brelade:

May I ask the Assistant Minister with responsibilities for D.V.S., Deputy Lewis, to act as rapporteur?

7.2.1 Deputy K.C. Lewis of St. Saviour (Assistant Minister for Transport and Technical Services - rapporteur):

In December 2010, the States of Jersey approved its Sustainable Transport Policy. An important part of this policy is that we establish a multi-agency taskforce in conjunction with the Minister for Home Affairs and the Honorary Police to develop a road safety strategy to re-establish a reducing trend in road injury rates in Jersey. We have now formed that taskforce composed of experienced police officers, traffic engineers, road safety professionals and educationalists. Work has started to investigate the root causes of accidents on the Island's roads. Once this work has been completed, the taskforce will bring forward a comprehensive set of proposals to re-establish a reducing trend in road injury rates and set the road safety targets to be achieved. The Comité des Connétables has put forward a proposition with the intent to improve road safety, which is most welcome. The

focus of it, I note, is on 16 year-old motorcycle riders. However, there is no evidence of why the change proposed will result in accident reduction. Indeed, other measures to achieve the same end are available. One option may be to enhance the theory components of the motorcycle compulsory bike training, the C.B.T., for first-time licence holders. This holds the advantage of combining experiential learning with theoretical learning and this may be more effective in improving the road craft of young riders than any straight exercises in memory and recital. There are other options touched upon by the body of my amendment which you may wish to refer to. The important point I am making is that it is essential that the road safety strategy taskforce be allowed the freedom to fully investigate and assess all the options to reduce road accidents to consider effectiveness, costs and benefits of these measures before reporting to the States and with joined-up packages of proposals which will make a difference and reduce injuries. In undertaking this work, the taskforce should not be constrained by what I believe is a premature proposition to implement a single yet to be substantiated measure in isolation. My amendment will require the taskforce to specifically consider the Comité des Connétables proposals as part of its work and then if they are considered to be effective, to bring forward the necessary amendments to the legislation as part of the integrated package of measures to reduce road accidents. I again reiterate that I am not against the intention of the proposition but solely contend that it should be considered by the road safety taskforce which the States have mandated. I believe that this amendment is important to ensure that any new safety measures are effective and properly co-ordinated so that the real reduction in Jersey's road injury rate can be achieved. I make the amendment.

The Bailiff:

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

7.2.2 The Connétable of St. Ouen:

I think, in one word, this amendment is totally unnecessary because as I said in my proposition, the Connétables have consulted with a number of groups, some of who are on the taskforce. This taskforce is now 12 months old and I think that we will still be waiting in a year's time to hear anything from it. I have to admit that in our consultation with D.V.S., which the Connétables have done over the last 18 months or so on this proposition, D.V.S. have consistently tried to avoid getting involved in this. The Connétables get the feeling that D.V.S. do not want to go here because it is not what is done in the U.K. or what is done in Europe. It is our opinion that it should be done in Jersey for a matter of road safety and that we should not be looking to the U.K. or Europe for their actual failing. I would if I could again just quote from the response from the Road Safety Panel and one of the members of the Road Safety Panel in the response said, and this particular member is an advanced driving instructor: "I have found that it is only when applicants have studied the theory that they fully understand the responsibility they are taking on by being allowed a provisional driving licence, not to mention the fact that the basic understanding of the Highway Code is essential, in my opinion, before they hit the road, not afterwards."

7.2.3 The Connétable of St. Lawrence:

Very briefly, and I am pleased to follow the Connétable of St. Ouen because he touched on the point I was going to make to the Assistant Minister because this taskforce has been in place for one year, and I would like the Assistant Minister to advise us whether there was a date agreed for this task to be brought back to the House. It seems to me that what they are requiring here is duplication. We have heard from the Connétable of St. Ouen that there are other organisations that support this wholeheartedly and it seems to me that we should be able to pass this without this amendment so that we can get on with effecting further road safety within the Island. I would like the Assistant Minister just to come back to advise when this report will be produced and whether there was an end date to it.

7.2.4 The Connétable of St. Mary:

I rise just to urge Members not to adopt this amendment for a slightly different reason to the ones already given. Members will know that I was a Parish Secretary responsible for the issuing of driving licences. For a long time I have wanted to divorce the theory test from the practical test. The issues of road safety, which this amendment touches on, are very laudable. Obviously, anything that increases road safety and reduces accident risk must be beneficial but I am looking at the main proposition from a different angle. It is the ability for all people but especially the youngsters - people who are going for their first driving licences - to take that theory test early because they only get 6 months on the provisional because we need to ensure that they are progressing towards taking a test. That is the whole point of a provisional. There is a lot happening in their lives at 16. They have got their G.C.S.E.s (General Certificate in Secondary Education), they have got lots of things they need to be doing. I have seen time and time again them attempting theory tests under pressure and then failing, adding to the costs to their parents or even the youngsters themselves. I have seen repeated attempts to get that theory test. By letting them take it a year in advance when there is much less pressure, get it out of the way, hopefully cost their parents less and then free-up the 6 months they get for the actual business of learning to drive and passing that test which is what it is all about. So road safety is good but it is not the reason I am eager to get the main proposition through, so please let us not delay it by this amendment.

7.2.5 Connétable D.J. Murphy of Grouville:

I would like to speak against this amendment. I was looking through the actual amendment itself and if I can draw Members' attention to page 3, 2.3: "Between January 2009 and December 2010, 31 16 year-old moped riders were injured in an R.T.C (Road Traffic Collision) and 64 17 to 25 year-old drivers were involved in an R.T.C." Well, surely it is worth having this proposition in just to avoid 31 16 year-olds being injured and if you want to call for comparisons on this, that is a one-year period for 16 year-olds and if you make the equivalent for 8 years which is 17-25 years, you would be talking about 248. The other point I would like to make is taking you over to page 4, 2.11: "Perhaps there should be a requirement that anybody applying for a licence should have a certain knowledge of the Highway Code before being granted a licence by a Parish." Well, surely you are again duplicating things because if they do the theory test, bring that in, then that has met that requirement. So I really suspect that there is another agenda going on here but the whole intention of this is to avoid accidents in youngsters and I think we must resist this amendment and vote for the proposition.

7.2.6 Senator F. du H. Le Gresley:

I would be grateful if the Assistant Minister, when he sums up, could explain to me what is meant by the paragraph 2.8 of the amendment. I am confused by the statement, which I will just read: "I am also concerned that there is no information on what options were considered. Indeed, if the proposal as submitted goes forward, it will soon become known that it would be possible to take the car theory test at 15 as it is the same test for an agricultural tractor so all 15 year-olds will take the car test as that is their ultimate goal and it will also allow them to ride a moped at 16 without taking any further tests."

[12:30]

I understand the last part of that but I do not see the significance of "as it is the same test for an agricultural tractor" and the reason I mention that, although it might be going a little bit away from the amendment, is my understanding is that it is possible for a 16 year-old with a provisional driving licence to drive a tractor and trailer under our current rules and it would, I think, be absolutely essential that a person in charge of a large tractor and trailer, with all the weight that that involves, should at least have taken the theory test. So I would be grateful if, as I say, the Assistant

Minister could explain why that has been thrown in under 2.8 but I am also concerned about young drivers driving tractors and trailers without having taken a theory test.

7.2.7 Deputy T.A. Vallois of St. Saviour:

I am going to speak differently to everyone else because I am going to support this amendment and that is purely because I am probably one of the only ones in here that has had to take a theory for a car test, and I can tell you now that it does not really give you any more knowledge than driving on the roads, and this is purely a money-saving exercise for the Parishes. It is. I am sorry, but if we were really worried about the Highway Code and thinking that it will give people more knowledge, in my view, maybe we should ask everybody who has a driving licence to take a theory test every 10 years to make sure that they are up to date with the Highway Code, they know exactly what each different sign means and all those various areas. Maybe we should consider that and ask the steering group to consider that. Every 10 years, every single person who drives in the Island should take a theory test, if it really proves to do the job, if it really proves that taking a multiple-choice questionnaire will give people more knowledge than practically working and seeing how it works in a car or in another area. I am supporting this amendment because I think it can be looked at, and I do not think that we should just momentarily agree that a theory test means you know everything about a Highway Code, because I can assure you it does not.

The Connétable of St. Mary:

Could I ask the previous speaker just to clarify? I did not understand what she meant by: “This would save money for the Parishes”. Could she explain how that would work?

Deputy T.A. Vallois:

I have been incorrect in that area. **[Interruption]** No, it is not misleading.

The Bailiff:

If every time a Member made an error, he or she was accused of misleading, where would we be? **[Laughter]**

Deputy G.P. Southern:

Will the Member withdraw that statement, Sir?

The Bailiff:

Yes. Connétable, it is quite clear ...

The Connétable of Grouville:

The word “misleading” had a question mark after it, Sir.

The Bailiff:

Do you make it clear that you are not accusing her of deliberately misleading?

The Connétable of Grouville:

I am not accusing her of misleading, Sir.

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

While I support the main proposition, I would like to pick up on what was highlighted by the Connétable of Grouville in relation to 2.3 on page 3 of the report. It states that 31 16 year-olds were injured. I think we ought to be very careful about how we interpret these sorts of things, because a great number of those 16 year-olds will have had an accident, not through their own fault, but through the fault of other drivers, and usually car drivers.

7.2.9 Deputy J.A. Martin:

I think Deputy Vallois meant to say that this is a money-making scheme. I am not going to support this amendment. I am not going to support the proposition. We are out of step with the U.K. already. There you apply for your provisional licence 2 months before your 17th birthday, and you can apply for your driving lessons. You cannot drive until you are 17, with your L-plates. You have that until you are 70. We are money-making, we have to apply, we are pressurising our kids to do a test within 6 months; more money for the Parish. It is lovely for the driving instructors. I am very sorry. We are going so out of step. They do it somewhere in Canada, so it is a good idea that we should be making our kids pay more money and pressuring them that, in the 6 months, they must take either the theory or the driving test. The Connétable of St. Mary told me yesterday that, if a driving instructor writes to her and says: "This person is not ready to take their test", she will probably issue another 6 months' licence. That is not very good for the business, I would say. The Connétable knows where I am coming from here. This whole thing does need to be looked at. We have 12 issuing authorities. The money goes to T.T.S. (Transport and Technical Services); some goes to the Parish. We are an Island 9 miles by 5. This should be issued in one place. You should not have to keep informing people when you are moving around.

The Bailiff:

Can we come back to the ...

Deputy J.A. Martin:

Yes. Sorry, Sir. I will not be supporting it. To me, it is money-making. It puts pressure on our kids. As Deputy Vallois says, taking your theory - multiple choice - if you have a good memory, you will pass it. It does not make you a better driver out there, and it is especially as Deputy Jeune said, who knocked these kids off their bikes? Probably a speeding 45 year-old motorist. Sorry, Sir. Thank you.

7.2.10 Deputy G.P. Southern:

Sometimes you wonder why you volunteer to do this job. It is another first, I think, standing to support the Constables against a Minister. It will be interesting to see how the Minister himself votes on this particular issue. I am reminded of early days, years ago, getting involved with T.T.S. Some old hand took me to one side and said: "There is a simple stock phrase that you are going to get from T.T.S, and it goes something like, 'You canna' have it'". That has been the attitude, I think, that is being demonstrated, and the Constables will know what I am referring to there. It is being demonstrated today by the department. As I was listening to the speech by the proposer of this amendment, I came up with the 3 words: "Delay, defer and dodge", and how often do we get that from Ministers when Back-Benchers bring material? No, I am convinced that the Constables, for once, have done their research - I do not suggest that that is in any way unique, but perhaps they have my agreement - and it seems to me that the relevant bodies have been consulted, we could act now, this is a sensible way forward, and we do not have to suffer delay, deferment or dodging, which I think I am getting from my rear.

7.2.11 Connétable J.LeS. Gallichan of St. Trinity:

It is amazing how things move on. This was brought to the Connétables because the main problem is that, in a larger Parish such as St. Saviour, when you get some child who has made no attempt to take the theory in the first 6 months of their provisional driving licence, you will find ... I know there are certain parents who say suddenly put a bit pressure: "Oh my little boy, unfortunately he was taking his G.C.S.E.s and doing all these sorts of things". All we are trying to do is make it slightly easier for a youngster to take their theory test before they get their original provisional. If they have passed their theory test, there is no problem having another provisional test. By the way, obviously we get paid for every provisional test we hand out, but it is very difficult to have a consistent line for Connétables to say: "I am sorry. You have not attempted a theory test, so you do not get another provisional driving licence". If you are 16, you have to wait until you are 17 to get

another provisional, so you might have 6 months between your first and then - if you are on a motorcycle, that is - applying for a provisional for a car. All we were trying to sort out with this was to alleviate a problem: if everyone has taken their theory test, there would be no reason to stop them having another provisional if they had not passed their driving test. To me, it is a commonsense way forward. I am not going to support the amendment. I think this is quite correct. It is not rocket science. If they cannot work it out down at D.V.S., it is a sad day. I am sorry, Sir.

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

I am glad to follow the Connétable of Trinity. He is quite right. Because we have a larger population, we do have a problem with this. I would think it relates 95 per cent of the time to youngsters with mopeds and small motorbikes, and I really do not want to see this delayed. These youngsters are taking their theory test, or are required to take their theory test, at a time when they are busy with exams. We get constant problems with it, and if we have to refuse them, which I have had to do, possibly at a rate of about one a week, it does cause distress. It causes problems for the family, and it causes problems for the youngsters involved. Having to refuse them and then have them take another provisional later on does not make any difference in terms of cost to them, the only increase in cost itself is when they take the exam itself, and they have to do that at some stage before they can get a licence. This is not a money-making issue for the Parishes. It will make no difference whatsoever. In fact, because the youngsters are likely to be able to take it when they are not sitting exams or under pressure, I suspect they are more likely to pass it then, and, therefore, they are less likely to have to take the test a second time. Therefore, they will be saving money. It is merely a case of simplifying things. Let us get this right. It is not rocket science. I am quite sure that we can get the law created to do this. Just delaying it is a nonsense and it is something that we are awfully good at, and I do not want to see it continue.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

I was just going whether there are any other Members who want to speak on the amendment. Yes, there are. Very well. The adjournment is proposed.

The Connétable of St. Mary:

Just before we agree to adjourn or otherwise, could I bring to the Members' attention that, miraculously, we do seem to be within sight of the finishing line of the business that is on the agenda for this week, and I wondered if Members would like to give consideration either to agreeing now, so we have time to make some arrangements, to stay late until we finish, or, if they do not want to do that - which I think is probably the most sensible option - to agree that we will finish tonight and either not do the other business or agree that we will take it, perhaps, at next week's sitting, once the budget is done. However, I do seem to remember that we did make a decision that next week would be only for budget items, but I am not sure on that. I leave it up to Members. I think it would be eminently sensible to try to finish the agenda today, if we can.

The Bailiff:

You have raised the point. Members probably do not want to decide this now, do they? It will depend how things go this afternoon, I expect, but it will be an option for Members. At 5.30 p.m., clearly, if we are still going strong, we will take the sounding of Members.

The Connétable of St. Mary:

I do agree with that, but I just think it is very important that we seem to have drifted, in the last weeks, from the concept we had 3 years ago when we set this up. Members need to know what is happening. Now we have all these continuation days built-in, we need to make early decisions if we are going to make arrangements for continuing, so I would just like Members to speak on it.

The Bailiff:

Members could decide whether they definitely do not want to sit tomorrow. In other words, if we do not finish today, is the business then added to 8th November? That would be something, for Members to know that tomorrow they are not going to sit. Do you want to propose that, Connétable?

The Connétable of St. Mary:

I would be happy to, but I am confused within my own mind. Without checking Hansard, I think we may have made a decision in the last sitting that next week would be a continuation just for the budget, but I may be wrong on that.

The Bailiff:

It has some other business on. It has nurses' pay and procedure of the States' misleading information and selection of scrutiny, so it has 2 other matters on. It is a matter for Members. We will leave it for the moment, shall we? Very well, the Assembly will reconvene at 2.15 p.m.

[12:45]

LUNCHEON ADJOURNMENT

[14:15]

The Bailiff:

Very well, we are now quorate. We are debating the amendment by the Minister. Connétable of St. Brelade.

7.2.13 The Connétable of St. Brelade:

I would like to remind Members that road traffic accidents costs to our small community are estimated to be in excess of £18 million per year. The opportunity to reduce this figure is one of the reasons that I was heartened when the House adopted the Sustainable Transport Policy in November last year, with its mandate for T.T.S. to establish a road safety taskforce to re-establish a reducing trend in road traffic injury accidents. I support the intention as a proposition, but it is our feeling in the department that its consideration by a taskforce to establish its efficacy would improve it. It will then be shown to have the potential to reduce accidents and we would, obviously, like legislation to come forward as part of an integrated package of proposals to reduce accidents. I am concerned that 15 year-olds, who, as any parent knows, are adept at learning by rote, might take and pass their theory test 12 months before taking to the road, without any real understanding of the knowledge that they have acquired. Indeed, hypothetically, there is a theory test for agricultural tractors, that can be driven at 16 years-old, which is the same as for cars. It would be possible for a 15 year-old to take his theory test 24 months before sitting at a steering wheel or receiving any tuition in road-craft. It is not the passing of tests that provides and improves driving skills. It is rather the process that is gone through and the experience that is gained. That is why all options must be considered as to how knowledge of the Highway Code should be gained, and at what time of life, and not merely extend an academic exercise remote from any life experience to 15 years-old for bureaucratic expediency. I am of the view that novice drivers and riders are more likely to be involved in accidents because of general inexperience, rather than solely a lack of knowledge. Indeed, I would not be surprised if many of our young, new drivers could score higher than most of our new drivers when it comes to knowledge of the Highway Code. I believe that road-craft is a life-skill that should be taught as early as possible to allow experience to be built. There is evidence that "On 2 Wheels" and "First Steps to Driving" courses available to some secondary school students, and at Highlands, are beneficial by raising awareness of the skills required to be a driving licence holder. Importantly, they are designed and appropriate for the age groups at which they are aimed, giving both the experience to make the right judgments as well as the knowledge, or, pertinently to the case in hand, as mentioned earlier, it would also be possible to enhance the theory section of the extant compulsory bike training, the C.B.T. for 16 year-olds,

already required for new motorcycle licence-holders, among other solutions. It is these types of proposals which bring knowledge and experience together in a way that is appropriate to a young person's needs that I would like to see considered when looking at this problem. The important thing is that the conclusions drawn and the recommendations made do not just tick the bureaucratic boxes of licensing, but they also make a real difference to improving road safety. Research suggests that those jurisdictions that require new applicants to complete a theory driving test before taking to the road have a package of other measures in place to reduce the likelihood of novice drivers being early victims of accidents. For example, each appear to have a 2-stage practical driving test, passing the first test, which is at 16 in Canada, restricting drivers to limited hours, speeds and numbers of passengers, and even zero alcohol limits, *et cetera*, for the first 2 years, after which a further test is taken that will give unrestricted driving. To allow these to be fully explored and not make changes to our licensing legislation may be difficult, but I think are surmountable. My department has been looking at the wider picture, and was keen to incorporate all these matters to, as I have said earlier, give an improved situation, but I am conscious of the mood of the House and will conclude by asking the leave of the House to withdraw the amendment.

The Bailiff:

Does the Assembly agree to give leave to the Minister's amendment to be withdrawn? Those in favour? Anyone against? Very well, leave is given to withdraw, so we return to the debate upon the proposition of the Committee. Does anyone wish to speak on that? The Deputy of St. John.

7.3 Driving Licences: Theory Test (P.155/2011)

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

Yes, I am supporting the proposition, but I was hoping that, when I saw these laws coming in for amendment and the like, we could have done considerably more. When I say "considerably more", I am given to understand that the Committee of Constables is looking at tractors and the like. It would have been useful if they had brought them all together at once, because we have an awful lot of foreign nationals working over here, driving on our roads, and some of the antics I see in the country, such as large tractors passing each other in lanes, with both of them having 2 wheels each (they are 4-wheel drive tractors), one over one hedge, one on the other, and they still cannot get through because the cabs meet in the middle. There are all sorts of antics, such as towing large loads of potatoes on extended platforms on the back. Really I was hoping ...

The Bailiff:

The proposition is concerned with theory ...

The Deputy of St. John:

I know it is a tight proposition, but I was hoping that we would have captured a number of other things, because I believe that not only do the youngsters need a proper driving test, but some of our foreign nationals should pass the theory test before they get on our roads. I will be supporting this.

7.3.2 Deputy M. Tadier:

Thank you. I have mixed feeling about this proposition because I think that, in some ways, you could argue that it is academic whether you pass the theory test before being able to start to drive, or if you do it afterwards. The real issue I have is what I consider the disparity between motorcyclists and car-users. As we know, you can drive or ride a motorcycle up to 50cc from the age of 16, which is something that I did and I think it is something that a lot of young people take advantage of. One of the consequences of this is it gives students or young people an element of freedom that they did not have before. It allows them to start to stand on their own 2 feet. From my experience, what happened in the past, one of the indirect or unforeseen consequences was that the introduction of the C.B.T., while very sensible, put people off using motorcycles, I believe, for 2 reasons. First of all, it is quite an expensive test to register for. I think it is roughly £150 (it was when I did it) to pass a bike test for C.B.T., so that puts young people off doing it. They do not

have a lot of money lying around. On top of that, to be taking a theory test, it seems that it will put people off using motorcycles, which I think should be something that we are looking to encourage as a society, because, as we know, although there is perhaps a danger linked with motorcycles, it is preferable that people are riding around on motorcycles wherever possible and not clogging up the roads. It also is more environmentally friendly, I would say, compared to car usage, because they use less petrol. I think advantages of bike usage do not need to be expounded here. It does seem that we have belt and braces, because those who want to use the motorcycle, let us say at the age of 16 - but at any age - first of all have to do a C.B.T. test, which I think is inherently much more valuable when it comes to being able to go on the road than a theory test would ever be. I think somebody said - I think it was Deputy Vallois; I was listening from outside before - that a theory test is of limited value. What is actually important, especially when it comes to danger reduction and risk reduction, is practical experience. It is one of these conundrums that you only get practical experience by doing the driving or the riding on the roads, and if you are a car driver, that would be accompanied. I would question: why are we not promoting something like the C.B.T., the compulsory basic training, for car drivers? It is all well and good to say that a car driver is going to be accompanied by somebody, but that person could be your mother, father, brother, sister, somebody with no particular expertise when it comes to driving. Ironically, it could well be that the father, mother or grandmother who is teaching you how to drive did not have to take much of a test in those days, anyway. It could have just been: "Drive up and down the road, please. There you go; there is your licence", because that is how things worked in the past. I know that my father got his motorcycle licence by driving up and down the road, and that was it. "Thank you. You can have a 500cc now" and so could go around the Island without a helmet at 100 miles per hour. Luckily, he survived. Some of his friends did not, unfortunately, but things have moved on from there. What I would have liked to have seen come out from the Comité des Connétables was for them to say that the compulsory basic training should be extended to car drivers, because I feel that we are going to put up another barrier for those who want to start using motorcycles, and we will see that those youngsters who want to use a motorcycle for a year or perhaps longer will be put off at the very time when they are most likely to take that opportunity up, and we will see motorcycle usage going down. That will be one of the unforeseen circumstances. What I would like to have seen is that the theory test should not be necessary for bike users because they already have a C.B.T., but it should be necessary for car drivers, and C.B.T. should be extended to car drivers because it makes more sense. If the bar is set higher for bike drivers, that should also be extended to car drivers too. As I think Deputy Jeune quite rightly pointed out, when motorcyclists have an accident, it is often because they are not seen by the car driver, and it is car drivers who often need to be better-educated about the dangers of motorcycles, using roads and being more vigilant than the motorcyclists themselves, who of course also have to take relevant precautions. I will not be supporting this proposition in its current format, but I would hope that it does come back with a more rounded and sensible approach so that we can put something like a C.B.T. in for all road-users, or have no C.B.T. at all and just have a theory test that is needed to be passed by all riders and all drivers.

7.3.3 Connétable J.M. Refault of St. Peter:

Certainly in my role on the Comité des Connétables, I was very supportive of bringing this forward, of theory tests before people get out on to the roads. Although I accept some of Deputy Tadier's earlier remarks about people who have never had a driving test sitting alongside a car driver, they have over many years learned good road-craft. The difference with a 16 year-old is that they have nobody. They may well have had a C.B.T. test that is about bike-handling down in Bellozanne Valley, where they do most of the work down there, and also following me around the roads as an introduction to it. But it is important, from my point of view, that we try to reduce by education as far as possible the amount of injuries that are being caused to 16 year-olds.

[14:30]

Using the extrapolation of the Constable of Grouville, we are looking at about 300 accidents per year. If we reduce this only by one, is not this worth doing to a 16 year-old child? It is about making them safe and making them understand. One of the difficulties we have in the Parish Hall is that there is strong evidence that the youngsters coming in with 50ccs do not really want a motorbike. They have a motorbike while they are waiting to get a car. They have no intention of doing the theory test. We felt that, when they were in a car, where they had somebody helping them, instructing them and going to the theory test, there was at least some guidance with them at that time, but a 16 year-old can get out on the road, on his own, on his bike and drive in whichever way he feels fit, without the guidance of a theory test. It is about accident prevention. It is about ensuring they have the right skills and they understand the rules of the road. Perhaps other people do not. I pick up Deputy Jeune's point, that a lot of them may be knocked off their bikes by 45 year-old car drivers. They may well be, but if they understand the roads a little bit more, they may well be better prepared to manoeuvre around them; I do not know, that is all supposition. From my point of view, if you look at it from a pure health and safety point of view, you take every reasonable measure to mitigate the potential for an accident, and that is why I shall be supporting the proposition.

7.3.4 Deputy G.P. Southern:

May I remind Members this is not about foreigners driving tractors, this is not about car driving and taking a theory test in car driving. It addresses one aspect of the issue: the safety issue, in terms of letting 16 year-olds on to the road, and it addresses it, I believe, fairly and with the right approach. We have lost an amendment but please do not argue against this particular proposal because it does not do everything. Okay, let us pass this and let Transport and Technical Services build on this to, in the long term, make sure that some of these measures that are equally, perhaps, valid, got in place, but let us start somewhere. The Constables are asking us to make a start. Here, let us not worry that it is not everything, that it is not something else. Let us vote for what it is: a jolly good move to improve safety on our roads.

Deputy M. Tadier:

Can I ask for clarification? I think the last speaker said it is not about car drivers, but I understand it is about any users of the road, whether it is car ... and I have read it, and that is why I am asking the previous speaker if he is actually correct in his supposition.

Deputy G.P. Southern:

If that is the case, then that is the case. But it is nonetheless a sensible move to improve safety on our roads.

7.3.5 The Connétable of St. Saviour:

Yes, I am pleased to follow Deputy Southern on that, because he is absolutely correct; it is a start. We could all think of things that could be improvements, but it is a step in the right direction. I have had communication from the Jersey Driving Instructor's Association who have asked me to mention a couple of things. They feel that a 17 year-old, if they have taken the test and failed, they should be able to get a provisional because they would have somebody with them in the car - an instructor. I am afraid they fail to understand that if you are on a motorbike or on a moped, you do not have somebody with you and therefore, as this applies to everybody, it is not the case. They go on to say that they think foreign drivers should be required to do it. Again, we have to start somewhere, and I think this does do so. I make the point, once again, that this really is to simplify things for those wishing to have a provisional licence. Time after time we get heart-rending tales because the boy or girl has forgotten because of school exams, school pressure, whatever it is, family problems, they have forgotten to book their theory test in time. Given that they may have to book it 4 or 5 or even 6 weeks before their licence runs out, they fail to do so. What we are saying is that if there is a simple rule whereby they know they have to have passed their test before they

can apply for their provisional licence, it makes things obvious even, dare I say it, to some of our younger generation, whose minds are on other things. It just clears up a problem; that they can take their time, they can pass the theory, get it out of the way before they then do their practical. If they are in a car, they will have an experienced driver with them, or an instructor. But when they are on a motorbike or on a moped, they will not, and it has to be safer for them to have this knowledge before they get their provisional licence and go on the road.

7.3.6 Deputy J.A. Martin:

I will be brief. I think all of the Constables are missing my point. He hears and I have heard, and other Constables have heard, heart-rending tales that somebody missed the 6 months deadline. I will be coming back, and I want this deadline moved. I do not think we should be shoving people to do tests before they are ready. There are 12 different decisions in the House, because I know one Constable who might give a driving licence if the story is okay; another Constable will absolutely refuse, and that youngster has to wait a year before they can get another provisional, it may stop them getting work. So, it is a year to get the other provisional - well, that is what I was told - and I have done this for lots of youngsters, and the first time that I was approached, I said: "You are reading that wrong, that is a stupid law." So now we are saying because we have 6 months, and they are taking exams or something, we must give them a theory test before, which Deputy Vallois tells me that is not even relevant to Jersey roads; it is imported from the U.K. If you want to import something from the U.K., import that you can have a provisional licence, you will take your driving lessons when you can, and can afford them if you are parents, and you will take your test when you are ready, not shoved by the Constables that you take it within 6 months. I think the whole thing is a joke. I will not be supporting this, and I give them notice: I will be back in the new House and I will bring a proposition. I do not actually think that, as I said before, the Parishes ... why do we have 12 issuing authorities, and then T.T.S. as well, involved? It just does not stack-up. I cannot pass this, because the whole law is a nonsense to me.

7.3.7 Deputy A.E. Jeune:

I would just like to stand to ask that when the Constable of St. Ouen does his summing-up, can he just clarify that this is about all people who are requesting a licence will have to have the theory first? It is not just about our youngsters, it is not just about if they are on a motorbike; this is for anybody. I would also be interested to know whether the tractor licence, they will have to have the theory test done first if it is an even younger age group? So, just to make sure it does encompass everything.

The Bailiff:

Does anybody wish to speak? Then I call upon the Constable to reply.

7.3.8 The Connétable of St. Ouen:

I think, before I start, I should destroy one or 2 myths that have been cast around the Chamber. Firstly Deputy Martin, when talking about the amendment, said that this was a money-making scheme for the Parishes, in fact, the Parishes do not come out of this any worse or any better than they are now. It is totally cost-negative. **[Interruption]** It is cost-negative to us. Neutral, whichever. **[Laughter]** She also raised the topic of not liking the Connétables or what the Parishes do, and wanting it centralised. Now, I will say to Deputy Martin through the Chair, that if this, as is now, were centralised far more youngsters would not get a second provisional driving licence. At least the Connétables at the moment use a lot of discretion in the issuing of a second provisional driving licence. I will not take them in the order they spoke, I will try and answer the main points first. Deputy Jeune raised the question of all people. Yes, it is everyone who comes for a first provisional driving licence, at whatever age. I would also point out that the Minister was actually incorrect when he said that you could take a theory test and 2 years later take a driving test, because in fact the law now states that you have to take a theory test for each successive group that you add

on to your driving licence. So, in fact, the youngster taking a theory test in order to get a motorcycle will need a further theory test to get a car and a further theory test to get a heavy goods vehicle, and so on. The Deputy of St. John mentioned tractors, and yes, the Connétables have been looking at the use of tractors and the age that is permitted for driving a tractor, for quite some time, and have been discussing this with D.V.S. I have to say up until now we do not seem to have found a way forward which is acceptable to everyone, but the Connétables are still continuing looking at it, and I hope that the Connétable Elect of St. John will now have his input in this problem. Deputy Tadier mentioned that he thought this would stop motorcyclists from going on to the road. I do not believe it will. I believe that the fact that you can get your theory test up to 12 months before your 16th birthday will mean that you will go on the road with a lot more confidence when you finally get to age 16. I do not believe that the cost of the test is what is stopping people. We are never told: "I cannot afford the test". We are always told: "I was at college and I did not get a chance to come back to take it" or: "I was too busy at school" or: "Too busy with girlfriends" or whatever. I certainly have never been told that it was a cost issue. Furthermore, he questioned the need for a theory test, and yet the professionals themselves in their response to the consultation undertaken by the Connétables pointed out that people who were less conversant with a theory test proved to need more tuition before they got a driving licence.

Deputy M. Tadier:

Can I just clarify on that? I was not questioning the need for a theory test. What I was doing was, specifically in the case of motorcyclists who have already undergone a C.B.T., I have said that they do not necessarily need a theory test and a C.B.T. I completely agree that, obviously, car drivers should have a theory test at some point before they get their full licence.

The Connétable of St. Ouen:

The Deputy is quite entitled to his opinion. The other 3 speakers, the Connétable of St. Peter, the Connétable of St. Saviour, and Deputy Southern, were all very supportive and I thank them for their support. I think that sums it up, so I maintain the proposition.

The Bailiff:

The appel is asked for then, in relation to the proposition of the Comité des Connétables. I invite Members to return to their seats and the Deputy will open the voting.

POUR: 29		CONTRE: 8		ABSTAIN: 0
Senator J.L. Perchard		Deputy of St. Martin		
Senator A. Breckon		Deputy J.A. Martin (H)		
Senator S.C. Ferguson		Deputy S. Pitman (H)		
Senator A.J.H. Maclean		Deputy K.C. Lewis (S)		
Senator B.I. Le Marquand		Deputy M. Tadier (B)		
Senator F.du H. Le Gresley		Deputy T.M. Pitman (H)		
Connétable of St. Ouen		Deputy T.A. Vallois (S)		
Connétable of St. Helier		Deputy M.R. Higgins (H)		
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				

Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

8. Bus Service Contract: Hoppa (P.156/2011)

The Bailiff:

Very well, then we come next to Projet 156 - Bus Service Contract Hoppa - lodged by Deputy Southern. I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion (a) to request the Minister for Transport and Technical Services to ensure that the provision of a Hoppa bus service in the town and its environs is prioritised for inclusion in the tendering process to be undertaken over the coming months for the new bus service contract, and that this service should (i) be provided free of charge or at a low fixed cost rate, and (ii) use zero- or low-emission vehicles; (b) to request the Council of Ministers to make provision for the additional cost of the Hoppa bus service in the draft expenditure proposals for 2013 for approval by the States in 2012.

[14:45]

8.1 Deputy G.P. Southern:

In proposing this proposition I am mindful of the comments produced by the Transport and Technical Services Department and the Minister, and what I think is happening here is something I cannot really understand, because from reading their comments this proposition and their intentions are so very close together that I do not believe the negative comments in which the Minister says: "For these reasons the Minister for Transport and Technical Services cannot support the proposition as currently framed" and I intend to show how we are barely a cigarette paper apart, and yet I have got opposition here. What I would like to start with is the Sustrans comments or contribution to the development of a sustainable transport plan for the Island, which this House adopted, as we have been reminded. The Minister for Transport and Technical Services was heartened when this House adopted the sustainable transport policy last year, heartened we adopted it, but the Sustrans contribution was and just one paragraph of it to start us off: "Of course the real challenge is not in producing a policy, which we did a year ago, but is in delivering its recommendations, aims and vision. The greatest challenges lay ahead for the States of Jersey and the people of Jersey in providing opportunities for and choosing to use sustainable transport modes for at least some of their journeys. If Jersey gets this right then the benefits will be seen in people choosing to use transport modes, other than the car, at all times of the day and not just peak times, which is critical to improving the health, wealth and quality of life on Jersey." That is quite an encompassing aim and one which we have adopted and we will put into policy if we accept this proposition, I believe. I will just remind Members of what the proposition says, because it is always important to look at the proposition and not the guff that is around it: "To request the Minister for Transport and Technical Services to ensure that the provision of a Hoppa bus service in the town and its environs", and its environs ... We could go out and we ought to go out to St. Saviour where there are tremendous traffic problems. We ought, equally, if we can, to go out to the borders of St. Lawrence where we have traffic problems too. If we can provide a good alternative to getting in your car, each and every time we want to go somewhere, then so much the better. It goes on: "A

Hoppa bus service in the town and its environs is prioritised for inclusion in the tendering process.” We are told the tendering process is going on now, it started in October and plans will be developed. Key to those developments of those plans are 5 points arising out of the Sustainable Transport Plan which have to be in the future plans for ready to start in 2013. The words are: “This service [the Hoppa service] is prioritised for inclusion in the tendering process.” Prioritised not above other improvements; prioritised for inclusion. It is included. It is one of the 5 points and I will just go through them on page 3 of my proposition and remember this is the essential for the acceptable tender that we are going to accept. The thrust of the whole tendering process is improvement to what we have got already. If somebody comes and says: “We are going to give you what we have got” that will not be good enough. It has got to be improved; improved in one, 2, 3, 4, 5 ways: “A new high frequency 7-day a week southern route.” Fair enough. “A regular timetable to rationalise and increase coverage; improved Sunday winter service to rural areas; all year round Island circular service.” Now some of those are already in existence, partially or otherwise and then finally: “A town Hoppa service” and I just want to read what that says: “A town Hoppa service: a service should be provided to link Liberation Station with areas such as the hospital, Elizabeth Harbour, the central market and other key town destinations.” Again, my proposition goes wider than that and its environs. What we have got here is strictly only town, so we will take it wider because that could be much more useful to everybody: “This service will be low cost or possibly no cost at all as many users will be pensioners and therefore travel free in any case and the reductions in boarding time and administration would partly compensate for lost revenue.” That, in my proposition, low cost or no cost meets what is already there in the Sustainable Transport Plan: “Some income could be gained through sponsorship or advertising vehicles. Vehicles would ideally be low or zero emissions, subject to availability.” Again, that is in my proposition, to be provided free of charge or at a low fixed cost rate because that is the way you just get people through and to use zero or low emission vehicles. That is all in the Sustainable Transport Policy. What we are talking about here is delivering that policy and that policy only. Why the Minister can come out and say: “Although the principle of the low zero-fare town service is an aspiration of the Sustainable Transport Policy, the fare structure for the town service will need to be considered in the view of the level of integration the town service may have with the wider network.” This is the opportunity to get it right by making improvements to the wider network and let us make it connect to the town Hoppa service, *et cetera*. We have got that opportunity. Once in what is almost a decade to make sure that we produce something that is joined-up, that fits together and can be made to work and yet they say that is only an aspiration and we need to link it in. Of course we do, that is part of the tendering process. What does your package look overall? Key test, how does it fit with the Hoppa service? Not a problem: “T.T.S. therefore considers part (a) the proposition to be unnecessary as the town service will be part of the tender process.” So why are they objecting? They cannot have it. It is unnecessary but we are against it because it closely fits with what we are going to do, surely: “T.T.S. is working to deliver all the aspects of an improved service as detailed in the Sustainable Transport Policy and would therefore advise against such prioritisation.” The prioritisation - read the proposition - is not to prioritise a Hoppa service above anything else but to prioritise it so that it is part of the tender process and it will be. There is very little difference between what is in here and what is going to be delivered. They then go on to say: “The proposition, if accepted, could result in an annual commitment of £500,000 of States funding for a town Hoppa service commencing in 2013.” Did anybody ever say the provision of suitable alternative transportation, effective public transport in town, would cost nothing? This estimate comes directly from T.T.S.’s own figures scaling-up from previous experiments that we have had and, whether we like it or not, if we want that sort of service and the Sustainable Transport Plan says we should have that sort of service, that is the sort of order of magnitude we are looking at. Now, why I brought this? I brought this because it has been 10 years since I got into the States and said: “I will bring a town Hoppa service”. We were all pro-Hoppa back then, we are pro-Hoppa still. I go back and perhaps this time we can make it happen and I notice Deputy Le Hérissier is chuckling away because he too has been there in his own time. I will not go back to 1999 and 2002

because we want to get finished tonight but I will start with the integrated Travel and Transport Plan for Jersey, the plan that we never saw. If we have got a new one this is the old one; 2006, an action plan for 2007 to 2011. It is the Deputy de Faye-version of a Sustainable Transport Plan and what it said was: "Recommendation, 2.1.5 town Hoppa service recommendation: explore the potential for improved town services prior to preparation of tender documentation for new bus contracts which commence in October 2009." Cross out October 2009 and we are here, which have commenced in October 2011 and can deliver this service by 2013. Which one is this one? We have got a lot of policy documents that sometimes are ... like today; Island Plan Review, Strategic Options Paper, Green Paper, July 2008. Island Plan, we have passed that as amended or as not amended; section 10, Travel and Transport, here it is: "The States Strategic Plan sets out a vision for a thriving Island community that is underpinned by sustained economic growth. The ability to travel to, from and around Jersey and the availability of efficient transport is critical to the economic success of the Island but the way that people travel has an effect on the environment, people's health and the overall quality of life." For whatever reason you choose, think about the economics. Economically we need a proper public transport service; 10.1.2: "The Strategic Plan recognises that if the economy is to be maintained and grown without adversely affecting the quality of life there is a need to adopt more sustainable ways of travelling. Specifically, the Strategic Plan seeks to shift attitudes towards the ownership and use of the private car." Quality of life; so economically we need it, socially we need it, quality of life, we need it, no doubt about it. I then turn to another policy document - a plan document - which is this one which is the north of St. Helier Masterplan or, as the Constable calls it, not the masterplan. If you punctuate that it makes sense and it says there on page 29, if you bear with me: "St. Helier suffers from an unacceptable level of traffic congestion along key routes and throughout the town centre, particularly at peak periods. The integrated Travel and Transport Plan for Jersey 2008/2012 set a target of reduction of traffic congestion of 15 per cent. The scale of this reduction has been reached on the basis that when the schools are on holiday the drop in traffic, measured as 15 per cent, results in acceptable levels of congestion." It is a limited target. It is what the traffic is when the schools are not in operation and that is an acceptable - we are saying - level of congestion. How do we do that? We do it, I think, by providing suitable alternatives to the car. We do not do it the other way which is: "Although there was in principle public support for reductions in pollution, congestion and road injuries, there historically has not been the public will evident to increase taxes to pay for measures to tackle it and to reduce the dependence on the car. T.T.S. have proposed setting up of a multi-agency task group to carry out annual public awareness campaigns which will communicate the benefits of less a car-dependent lifestyle." It goes on: "The 15 per cent reduction in traffic forms the essence of the short to medium-term strategy soon to be published. The most effective solution to reduce vehicular use is through a combination of re-education and the provision of improved alternative ways to travel." It then goes on to look at the peak travel in and around town on a map which is very interesting and we are talking about current levels for the morning rush hour. We are talking about figures of 1,300, 1,600 down on the Esplanade compared to - and I just look in particular, I am so proud of our new Town Park - the areas around that Town Park.

[15.00]

We have got, okay, half that level coming down a much narrower road into the junction at the bottom of Wellington Road. We have got 806 going up St. Saviour's Hill. We have got a figure of, I think, 1,200 alongside 2 roads alongside the ring road right close to that park, where Wellington Road and St. Saviour's Hill come down; significant volumes of traffic. Bath Street; on the Saturday we opened the Town Park, I stood right in the middle of it and turned all the sound down on what was happening around me and just listened. The middle of Saturday in the middle of the park you could not hear the traffic. Would I have been able to do that at peak time? I doubt it because we have got figures up and down Bath Street, David Place, of 553, 640; significant volumes of traffic going right down there. I looked at one other area which obviously would be on

a Hoppa circuit which is the hospital, and what have we got on Gloucester Street at peak times? 1,123; significant numbers of car movements, in particular, on Gloucester Street next to the hospital. Where do people want to get to? Right, let us try and reduce that level of congestion via providing an alternative to the car, that we seem to get into without even thinking. I want to return, just briefly now, to the Sustrans' contribution to the development of the Sustainable Transport Plan and they say, in a little more length: "Sustrans is pleased to be able to support the vision, aims and recommendations of the Sustainable Transport Policy. There are many benefits to a society and population that works within a sustainable transport system; benefits that are environmental, economic, social and which promote health and wellbeing. In providing a clear aim to reduce peak-hour traffic by 15 per cent by 2015 the policy demonstrates a commitment towards a shift to sustainable transport modes. This is very much in line with best practice and policy across the U.K. and Western Europe where the shift to public transport, walking and cycling from the private car has been the focus of transport policy in recent years. The policy has been most successful in Scandinavian countries, Germany and the Netherlands and Jersey could, in time, deliver a transport system to rival many towns and cities in these countries. It should also be noted that Jersey has, in some ways, taken a clearer position in stating that it aims to reduce car trips by 15 per cent in peak hours, as Sustrans is not aware of any U.K. example where an authority has taken such a clear position." I remind you, they go on to say: "Of course the real challenge is not in producing a policy but in delivering its recommendations, aims and vision." Let us do that today. Thank you.

The Bailiff:

Is the proposition seconded? **[Seconded]** Then there is an amendment lodged by Deputy Le Hérissier and I will ask the Greffier to read the amendment.

8.2 Bus Service Contract: Hoppa (P.156/2011) - Amendment (P.156/2011 Amd)

The Deputy Greffier of the States:

Page 2, paragraph (a): after paragraph (a)(ii) insert the words "provided that the service shall only be introduced following community consultation in the proposed catchment area".

8.2.1 Deputy R.G. Le Hérissier:

Very briefly. I was pleased to see this. I have known it is coming in the bus contract and I thought it should be made explicit. The reason is people have got quite an emotional attachment to the Hoppa bus, as we know, even though it is some time ago. Interestingly enough, of course, the first service was run with electric buses, which sadly did not brake terribly well. All I want to say is there has been a lot of discussion about Hoppa buses in relation to planning obligations and money has been brought forward by the developer of the Jersey Dairy site and now I wrote in a tentative fashion that it is now confirmed, and the Minister for Planning and Environment cannot be with us but I know that money has also been allocated for that purpose to the Chasse Brunet site also. All I am saying is let us move ahead in a co-ordinated way. People are very attached to the concept of a Hoppa bus. I have got constituents who want to feed-in their ideas. I have got people - and we know one of them but I have got another one also - who are almost professional transport schedulers and can whip-up whole timetables at the drop of a hat and I want these people involved. There are issues with how the service is fed-in from St. Saviour to the wider environs, as the phrase has it, and all I am saying is let us get everybody involved because people are behind it. I know it is part of the plan and I will wait to hear the Minister for Transport and Technical Services' way in which it is going to be integrated. Thank you.

The Bailiff:

Is the amendment seconded? **[Seconded]** Then we will hear from the Constable of St. Brelade or do you wish to speak as seconder?

8.2.2 Deputy G.P. Southern:

Just briefly to say that I think it is absolutely essential that we do consult with the public as part of the plan and I have no objection at all for doing that. It seems to me the timescale is perfectly adequate to do that and to do it properly; for once we can have effective consultation.

8.2.3 The Connétable of St. Brelade:

I see nothing wrong intrinsically with this amendment but, like the proposition, it is slightly ahead of schedule. The new contract tendering process is underway and the Deputy is, among others, part of a political steering group looking at that process. I believe a planning gain from the Five Oaks development was the provision of an independent Hoppa service from that area. I do not agree with that concept and believe the proper way is to put planning gains towards a service which will properly integrate the areas of development into the whole network. Thank you.

The Bailiff:

Very well. Does any Member wish to speak on this short amendment? It seems to be agreed by the 3 main protagonists. **[Laughter]**

8.2.4 The Connétable of St. Mary:

I would just like to ask the proposer, could he clarify something I am not quite sure about? The proposed catchment area will be the place for community consultation, however, this must affect everybody. We are talking about a Hoppa bus that will serve in the areas surrounding St. Helier and I can see at no time like the present do we need that for all Island users because there is simply nowhere to park in whole sections of St. Helier; I am talking about Rouge Bouillon. We have talked about the police station moving and there has been social housing going up in that area on that large site. There is already no public car park nearby that area and the ideal way, if you cannot build a car park in the area, is to have it almost like a park-and-ride. Please, make the consultation Island-wide because I think it affects all of us. Thank you.

The Bailiff:

Does any other Member wish to speak on this amendment? Yes, Senator Le Sueur.

8.2.5 Senator T.A. Le Sueur:

I am not sure it is relating to this amendment or the proposition but in the report the Deputy refers to the Jersey Dairy site and the Chasse Brunet site and I just wonder what we mean by the town and its environs. It strikes me that by the time you get to the Jersey Dairy site in Five Oaks one is stretching it a little bit to fall into town environments. If that is to be a town environment and presumably places like Millbrook and Bel Royal or St. Clement and Le Squez would also be town environment but where does one draw the line? I think one has to be clear what we mean by this because the cost estimate is certainly going to vary according to what one calls a catchment area.

The Bailiff:

I think, Senator, that is probably more closely related to the proposition; it is not affected by the wording of the amendment, I do not think. Does any other Member wish to speak on the amendment? Very well, I call upon Deputy Le Hérissier to reply.

8.2.6 Deputy R.G. Le Hérissier:

Very briefly, I thank people. In regard to the Constable of St. Mary's comments, my view would be the proposal would be put forward as one to deal with the town and its environs and the environs, as I see it, are the contiguous housing developments that emanate from town. I know that sounds a bit pompous but that is how I would see it. Certainly, if it was part of the Transport Plan, as it must be, to deal with the parking situation in town I would expect the consultation of T.T.S. to be all-Island on that area and I thank the Minister for Transport and Technical Services for his support.

The Bailiff:

All those in favour of adopting the amendment, kindly show? Those against? The amendment is adopted. We then return to the debate on Deputy Southern's proposition as amended and I have seen Deputy Fox.

8.3 Bus Service Contract: Hoppa (P.156/2011) - as amended**8.3.1 Deputy J.B. Fox:**

As a town Deputy for 12 years I do not think the subject has ever gone away. It is probably one of the most prolific discussion points that will ever occur. The time when people most got excited was when there was a project by the late Mick Eden of a Shamrock scheme that was a Shamrock round to the wider St. Helier and urban areas and I hope that that will be included in digging out the cobwebs because clearly that had merit, among others. If we want to improve the quality of life, which is what we speak about all the time, for our residents we might also have to think about the little Binny bus, which was in places like Mont Cochon, for arguments sake. We cannot even go to Hospice without having our own transport or have a taxi and if we go up the hill a bit further there is a whole load of people that live up there, many of whom do not have their own cars and if they do have their own cars the only reason they have got them is if they drive down to the car park at First Tower to walk the few paces to the bus stop to come into town and it is things like that. The residents at Clos du Paradis tell me that the number 19 bus service is absolutely fantastic: "But could we please have it on a Sunday; we cannot even go to church?" and that is the sort of thing. The discussion point in a broader scale, please; let us not just call it a Hoppa bus service in town, let us call it a community service. I am retiring but I am sure that someone from this Assembly would be very much delighted to go to somewhere like New Zealand where there have got some excellent examples, some of which are free and some of which are co-ordinated into a cost factor but you do not need a car and that is the point. Thank you.

8.3.2 The Connétable of St. Brelade:

I do not disagree with much of what the Deputy has said but I am afraid his proposition is somewhat premature and a bit too prescriptive at this stage, in view of the tendering process. I am afraid I cannot support it, despite the fact it would give me more budget to work with. The contract for the next public bus service operator is currently out to tender with the new contract due to start on 1st January 2013. To get the best out of this tender process it is being done in 2 stages. The first stage is designed to establish which of the tenders potentially offers the best quality and value against the standardised bus network, referred to as a model network, and from this assessment the best tenderers will proceed to the second stage starting in December, next month. But this time the tenderers will be given the opportunity to demonstrate their public transport planning expertise and commercial innovation by bringing forward proposals as to how they would develop and grow the bus service to achieve the key requirements of the Sustainable Transport Policy by 2015, which will include the high frequency southern route between the airport and Gorey, a regular timetable to optimise rural routes and improve peak-hour frequency, improved Sunday and evening services, an all year round circular service to link communities outside St. Helier, and pertinent to this debate a town service. The second stage tender process will be completed by May 2012 and then the bus operator for the 2013 contract will be finally appointed. The town bus service is integral to the Sustainable Transport Policy to reduce cross-town traffic and improve mobility for shoppers, students, the elderly and people with mobility problems. It is also integral to the tender process and the bus network as a whole. To be successful, sustainable and avoid the pitfalls of the previous experimental Hoppa bus, which did not work, the town bus service must not be considered in isolation. It must be fully integrated into the wider bus network and also provide services to key destinations outside the immediate town centre, such as I mentioned earlier as Highlands, the schools, sheltered housing sites. While the principle of a low or zero-fare town service is an aspiration of the Sustainable Transport Policy, the fare structure for the town service will need to be

considered in view of the level of integration the town service will need to have with a wider bus network to be both successful and sustainable.

[15:15]

Again, while low emissions or hybrid or zero-emission electric buses would be beneficial in the town centre, a commitment to this needs to be mindful of the overall financial implications, which are largely unknown at this stage but are likely to be significant. Also, expensive zero-emission technology is very much in its infancy for large passenger vehicles and a balance is required not to risk reliability for unproven new technology. Both of these matters will be considered in depth at the second stage of the tender process as a fundamental part of the bus service as a whole. Therefore, given the town service is already an important part of the bus tender, I consider parts (a)(i) and (ii) of the proposition to be an unnecessary and artificial constraint on the tender team for the second stage commercial negotiations. Although the cost of the new bus contract will not be known until the tender process is completed, a detailed review of the existing service has identified that efficiencies are possible, enabling improvements to be provided at little or no cost. The final costs of providing an improved comprehensive Island-wide service, including town buses, will not be known until the end of the tender process in May 2012 when the preferred bidder has had an opportunity to put forward their proposals for the entire service. I also have a problem with the word "prioritise" as this infers that a lower priority will be given to all the other elements of an improved bus service as against the Hoppa town service and this would not be a balanced approach. Clearly, we would always welcome additional funding to ensure the town service is a success but it is premature to say how much, although circa £500,000 would be in the right ballpark. This would prepare the way for the matter to be revisited as tender negotiations progress. It is not that I would wish to argue against extra funding and I would almost welcome this but I think that this proposition is premature and, to take the corporate view, should not be taken in isolation from other States investment decisions. To do so in times of budgetary constraint would risk disadvantaging other projects regardless of their merit. The correct time for these decisions is when the budget is set and for this reason, I cannot support Part (b) of the proposition. T.T.S. is working to deliver all the aspects of an improved bus service for the Island as a whole and I would strongly advise against arbitrary prioritisation of the resources contained within this proposition. I would suggest that the Deputy focuses on this area once again in June or July of next year to comply with the process so that his views can be taken into account in the tendering and in the remodelling of the network. For the reasons stated above, I regret I cannot support the proposition as framed.

8.3.3 The Connétable of St. Helier:

I know some Members have got nothing else to do and they would like to spend not only the whole of this week but also the whole of next week in the Chamber. Some Members do not have departments to run, they do not have Parishes to run, may not even have jobs to go to but I fall into a couple of those categories and I do urge Members just to accept this proposition. It is uncontentious. I would go so far as to say it is unnecessary. I agree with the previous speaker to that extent but it is a matter for another day what we do as a Chamber about unnecessary propositions. We had one this morning that could barely find a seconder. The fact is there is nothing contentious here. It merely restates the sustainable transport policy. It does not say any cost. It does not even, indeed, fix the fare structure. It says they have to be low or free. Well, is the Minister suggesting we have to have a high cost bus service, high emissions vehicle? I think not. It is an entirely reasonable proposition. I know the Minister does not like it because it purports, as many Back-Bencher propositions do, to in a way take away the initiative from the Minister and from the department but the Minister need have no fear. There is a good transport policy which has made the case for a town Hoppa bus service. Part (b) does not even put a figure on it. It was the department that came up with the £500,000 figure in their comments. Here we are simply asking the Council of Ministers to have it on the radar, that this may need some funding

depending on what the tender process comes up with. I have already been approached by a number of people who are taking part in the tender to get my views on what kind of Hoppa service the Parish would benefit from so there is no question, it is happening, and the tender process will provide a number of different ways of delivering a Hoppa service. I urge the Minister to stop in a way trying to find reasons to refuse this. I urge him to accept it and to allow us to get on with the remaining business so that some of us can do other things with our Friday rather than coming back in here tomorrow. [Approbation]

8.3.4 The Deputy of St. John:

It is quite interesting how things have changed. Having been Vice-President of a Public Services Committee under the former speaker when he was President and, in fact, we put in place a ... and given a contract if I remember correctly for a Hoppa service in St. Helier and it was pulled solely by the President of the day, which, in fact, caused me to resign from the committee of the day because of what happened after a lot of work had been done by that committee. Then we had some other type of Hoppa service for a season or so and nothing since and I think I can see Senator Routier smiling at the back. He probably remembers a bit of the fiasco that was going on. Really, I think the Minister for T.T.S. is giving us some wise words. We need to do this as one. My own scrutiny panel has been keeping a check on things at T.T.S., as we have with Planning and Environment, and we have been in the loop on a number of occasions. Yes, there is a process going on and I think shall we say buyer beware, let the process go through and let T.T.S. do the job that this House have asked them to do because otherwise ... and I am not saying that this proposition is wrong, I am saying it is at the wrong time. This needs to be all done within the tender process and I am not saying more than that but I think commonsense needs to prevail and let us do the job properly.

8.3.5 Deputy K.C. Lewis:

I am happy to follow the previous speaker who said much of what I wanted to say. While I fully appreciate the sentiments expressed by Deputy Southern, I cannot support this at all. We have just completed the first stage of the tendering process. We are now in the second stage of a very delicate process of tendering and I feel, as the previous speaker said, leave it to T.T.S. to continue its negotiations and if need be, bring this back later. We would dearly love an extra £500,000 but this would be tying their hands to some extent.

8.3.6 The Deputy of St. Mary:

Yes, it is another case of the Minister and the department saying: "We are in the process of doing this so please do not interrupt, please do not try to give us a steer on how to do it." That bothers me a little bit. I think the proposer said there is very little difference between the position of the department and the proposer's position. I want to just mention the financial implications because others seem to be missing the point. There really is an issue here about transport policy that seems to be neglected and when the Minister spoke about the negotiations with the bus companies, I was a bit troubled that the first stage was ... okay, he has got to have a process, the first stage is based on a model network. How would you deal with that, how much would that cost, how would you implement and then the second stage is a more okay, so how are you going to improve matters but what is being left out of that is the policy context. If I am a bus operator, I want to know if I am taking some of the risk ... and he did not mention the word "risk" but how are we going to allocate this? If the States takes all the risk, then we will be back in the old position we are in now, shelling out £3 million or £4 million a year. Every time I go on the bus, it costs the taxpayer £1. That is crazy; it is completely absurd. Now, if we have a different situation where the bus operator is actively going out to get customers, then they need to know what this House believes about transport, about whether we agree with what Deputy Southern said that there should be fewer cars in Bath Street and fewer cars pouring down Gloucester Street past the hospital. What is our policy on car parking? Do we want to use those car parks for other uses like a town park or like housing

or like other things that are more perhaps profitable to the community than acres of car park? So what is our position on that and that influences directly how much we will end up paying for the bus service and that seems to be missing out of this debate. The Constable of St. Helier, I think, recently sold and then I think unsold a parcel of land near the Magistrates Court for well over £2 million and it was, I think, a car park for 30 or 40 cars. I remember some figure around the 30 mark. That is the sort of money we are talking about saving if we have a proper service for residents of the urban areas and, indeed, as I think my Constable pointed out, for people beyond the urban areas too. Parking is a big issue in the town so I think we are, to some extent, missing the point on this financial implications. We have heard the figure of £500,000. The savings are vastly in excess of £500,000 and that does not seem to be in the equation somehow. It is not in the proposer's equation and I fear that it is left out and it should not be. Maybe when the Council of Ministers are asked, I think, in the proposition to make provision, maybe they could make provision out of the growth pot, out of the good ideas pot. This is invest to save. That is what it is and if we have a good Hoppa service or whatever you want to call it, a proper urban service that meets the needs of people in the urban areas, encourages them out of their cars and frees-up land space, frees-up our streets, makes them more liveable, I cannot see that we should not be going in this direction and saving money as we do so, as well as saving the environment and saving our health.

8.3.7 The Connétable of St. Saviour:

We want to make a reduction in the number of cars entering town. It causes problems all the way round the edges of town. It causes problems in town itself. We all want to reduce the numbers and a Hoppa bus service has got to be one of the best ways of reducing car use. The transport policy has wanted to use a carrot and stick method of reducing car usage. The problem is they have tried using the stick. They have made parking difficult. They have tried to reduce the number of parking places. They are making it more expensive and it is not working. We need to use the carrot. If people see that the service works and they develop the confidence to know that they will be able to get on to a bus and to use the bus service to get back home again, they will have the confidence to leave their cars behind. With respect to the Minister, his tendering process is, I think, the wrong way of doing things, as has been pointed out. If somebody is tendering for a service that should include a Hoppa service, they need to know that from day one. People do want to use it. I have constantly had people saying: "Why have we not got a Hoppa service?" When he says it will not work, what he means is there is a cost to T.T.S. of having a Hoppa service and that is a cost they do not want to pay. Now, this has got to be costed into tender process. If we leave it to T.T.S., as we have done before, we will not have a Hoppa service in the foreseeable future. It will be negotiated, yes, we may get it, but they will want to get something else instead. There will be a higher priority on having bigger buses going to the airport. We will not see a Hoppa service running around town because that costs money. It has got to be costed into the tender process from day one. If we do not do that, we will not have it. All that T.T.S. are going to do with us is put it back. Let us have our Hoppa service as soon as possible.

[15:30]

8.3.8 Deputy M. Tadier:

I do not need to reiterate that last speech because I think that sums it up very well. What this does is it brings it forward. It is going to prioritise it. The proposition itself says that it is looking for this to be prioritised for inclusion and absolutely right and anyone tendering for the process needs to know exactly what they are being asked to provide for so that the service level agreement can be set in a meaningful way. The other good piece of work that we have already done today with the amendment, of course, is that we have said that we want a consultation process. That is the way we should be doing business anyway and it is good that that has been accepted without any controversy and, of course, that takes time as well. So it is good that we need to start this as soon as possible to get the consultation process in place to decide what kind of service we are going to have. It is not

the place to decide this today but I would like to see something like more of a minibus service that I think was mentioned by Deputy Fox. The big problem is that Hoppa buses can be quite large anyway and they are on the roads and some of the roads are not going to be suitable so these kinds of things can already start to be thought about if we are doing these things quickly via the consultation and that can then be passed on to those companies who are tendering for that particular bid. So I think it is commonsense; it is straightforward; it should hopefully speed things up. There is no reason for resistance from Transport and Technical Services because we are essentially singing off the same hymn sheet. It is about prioritising this, bringing it forward. It seems to be consistent with the Island Plan, with the Strategic Plan, and the basic values that we are promoting. So I do not see the problem here and I am happy to see that there has been some consensus on this and I hope it does go through.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? Very well, I call on Deputy Southern to reply.

8.3.9 Deputy G.P. Southern:

Questions have been asked about how far the environs of town stretch and the answer is the environs of town will stretch for as far as the package negotiated and bid for will stretch it. Deputy Fox pointed out that we should not just think about the horrible traffic problem up and down St. Saviour's Road and into St. Saviour but we should also look at the west of town where there are problems about getting people about to and fro. It has been pointed out that in the tendering process, we need a clear direction. This proposition gives that clear direction and puts it into the melting pot for the tender process so that in 6 months' time when they come back with: "This is the package which we think is the best tender and the best package we can offer" then that has been clearly worked on from now. It seems to me there is no danger and still, after hearing the arguments read out, I still cannot understand why T.T.S. is objecting to it, still seems to be saying: "We want exactly the same things." Now, the Minister for Transport and Technical Services has misread, and is persisting with his misreading of, the proposition. Prioritised for inclusion, not prioritised on the list but make sure it is in there on the list and that is exactly what it is. As the Minister says himself, it is already there, we are doing it but he confuses what this says with what he is already on the way to doing. I did not want to use this again but I will, I fear we are resorting to that 4-word phrase that I said earlier: "You canna' have it" because somebody else is bringing it. You canna' have it. You can have it. This does not take a Hoppa bus in isolation. It says: "As the result of the tender process and the negotiations going on and the price considerations." This is something that you are asking people, tenderers, to deliver and will form part of the judgment as to which we consider we go with. The Constable of St. Helier said: "Why do you not just withdraw your objections and let us get on with it because we want to go home today." I could not agree more. The Deputy of St. John said something: "We need to do this as one" and sorry, I do not understand that. We do it as one as an Assembly saying we pass this proposition and that is a clear steer for the tender process and for bidders. The Deputy of St. Mary gives a steer, policy context. This is an invest to save. We have to go down this way. It has passed policy after policy after policy. The Constable of St. Saviour correctly pointed out that the danger is if we do not use the carrot - which is provide the alternatives - we will have to use the stick again and that is the least valuable way of doing it. Let us provide the alternative and let us give people fewer and fewer excuses for not getting out of their cars if they want to go to town. Let us liberate some people to be able to go and visit their friends, to be able to go shopping conveniently in the town so they can make this work. Deputy Tadier again said: "Let us do this as soon as possible." So let us not delay, let us not wait until 6 months' time and then discuss it because it will be too late then. Let us vote now, pass this proposition, and let us get on with it. I will remind Members again of that vital phrase, of course the real challenge is not introducing a policy - we have got tons of those - but it is in delivering its recommendations, aims and vision. This has vision, this has aims, and this is a positive recommendation. Let us get on with it.

Deputy R.G. Le Hérisier:

Is the proposer going to separate out the 2 elements?

Deputy G.P. Southern:

The 2 elements being (a) and (b), (a) would do it for me. There is bound to be a cost to it and it is part of the tendering process so (b), even if you did not get (b), I think it is going to work anyway. So, okay, I will separate the 2.

The Greffier of the States (in the Chair):

The appel is called for on paragraph (a) and (b). The first vote is on paragraph (a) of Deputy Southern's proposition as amended by the amendment of Deputy Le Hérisier and the Members are in their seats. The Greffier will open the voting.

POUR: 35		CONTRE: 7		ABSTAIN: 0
Senator P.F. Routier		Senator T.A. Le Sueur		
Senator J.L. Perchard		Senator B.I. Le Marquand		
Senator A. Breckon		Connétable of St. Brelade		
Senator S.C. Ferguson		Deputy of St. Ouen		
Senator A.J.H. Maclean		Deputy of Trinity		
Senator F.du H. Le Gresley		Deputy of St. John		
Connétable of St. Ouen		Deputy A.K.F. Green (H)		
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

The Greffier of the States (in the Chair):

Very well so I will ask the Greffier to reset the voting system and the second vote will be on paragraph (b) of the proposition and the Greffier will open the voting.

POUR: 25		CONTRE: 17		ABSTAIN: 0
Senator J.L. Perchard		Senator T.A. Le Sueur		
Senator A. Breckon		Senator P.F. Routier		
Senator F. du H. Le Gresley		Senator S.C. Ferguson		
Connétable of St. Ouen		Senator A.J.H. Maclean		
Connétable of St. Helier		Senator B.I. Le Marquand		
Connétable of Grouville		Connétable of Trinity		
Connétable of St. Martin		Connétable of St. Brelade		
Connétable of St. Saviour		Connétable of St. Peter		
Connétable of St. Lawrence		Connétable of St. Mary		
Deputy R.C. Duhamel (S)		Deputy of St. Ouen		
Deputy of St. Martin		Deputy K.C. Lewis (S)		
Deputy R.G. Le Hérisier (S)		Deputy I.J. Gorst (C)		
Deputy J.B. Fox (H)		Deputy of St. John		
Deputy J.A. Martin (H)		Deputy A.E. Jeune (B)		
Deputy G.P. Southern (H)		Deputy A.T. Dupré (C)		
Deputy of Grouville		Deputy E.J. Noel (L)		
Deputy J.A. Hilton (H)		Deputy A.K.F. Green (H)		
Deputy P.V.F. Le Claire (H)				
Deputy S. Pitman (H)				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

9. Draft Trusts (Amendment No. 5) (Jersey) Law 201- (P.157/2011)

The Greffier of the States (in the Chair):

Very well. We come to the Draft Trusts (Amendment No. 5) (Jersey) Law 201-, Projet 157. I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft Trusts (Amendment No. 5) (Jersey) Law 201-. A Law to amend further the Trust (Jersey) Law 1984. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

9.1 Senator A.J.H. Maclean (The Minister of Economic Affairs):

The Draft Trusts (Amendment No. 5) (Jersey) Law 2011. The amendment incorporates a number of revisions to the Trust (Jersey) Law 1984. Jersey is considered one of the finest trust jurisdictions in the world. Our trust industry is firmly established as a market leader offering a sophisticated and established product backed-up by a strong body of case law. This is coupled with high quality of professional services offered by Jersey's trust company businesses to their clients on a world-wide basis. The backbone of this success story is the Trusts (Jersey) Law, the law which came into force in 1984. It has been amended 4 times, most recently in 2006, and was, incidentally, praised recently by the Scottish Law Commission earlier this year. Being half Scottish, I thought it was relevant to mention that point. A trust working group comprising respected representatives from the industry has met on a regular basis to consider these issues and recommends a number of changes. The main changes incorporated in the draft amendment are as follows. There is a clarification of the law to be applied in relation to Jersey trusts. There is a clarification that holding assets may constitute a valid purpose. There is a provision for reasonable remuneration for professional trustees in the absence of any specified terms in the trust. There is an allowance for outgoing trustees to enforce a term of a contract to which they are not party. There is a clarification

that trustees may contract with themselves in their capacity as a trustee of one or more trusts and also ensuring that there is an appropriate long-stop provision concerning limitation of causes of action. The proposed amendments are to ensure that Jersey's Trust Law remains competitive in this important area of our financial services industry. I therefore propose the principles.

The Greffier of the States (in the Chair):

Are the principles seconded? **[Seconded]** Does anyone wish to speak on the principles? All those in favour of adopting the principles, kindly show? Those against? The principles are adopted. Deputy of Grouville, this falls within your ...

The Deputy of Grouville:

No, thank you, Sir.

The Greffier of the States (in the Chair):

How do you wish to propose the Articles, Minister?

9.2 Draft Trusts (Amendment No. 5) (Jersey) Law 201- (P.157/2011) - Articles 1, 2 and 4

9.2.1 Senator A.J.H. Maclean:

I propose to take the provisions and the Articles in groups, if I may. I would just like to say a few words (I think it is appropriate) on the Articles. I would like to start, if I may, with Articles 1, 2 and 4. Articles 1, 2 and 4 are providing additional definitions. Article 2 defines "professional trustee" as someone who is registered or exempted from the Financial Services (Jersey) Law. Article 2 also defines "purpose" to include any purpose whatsoever. The relevance of the definition of purpose is to ensure that a purpose trust can include simply holding assets. Previously, this point was not entirely clear due to a technical legal argument. The change brings us into line with recent changes in Guernsey and ensures that Jersey's product remains competitive. Article 4 expands Article 9(2)(a)(e) of the Trust Law, which concerns when powers can be reserved without invalidating a trust. This change has the effect of defining a protector by replacing that word with a definition of "other persons who hold rights or powers in connection with a trust". If I may, I propose Articles 1, 2 and 4.

The Greffier of the States (in the Chair):

Are Articles 1, 2 and 4 seconded? **[Seconded]** Does any Member wish to speak? All those in favour of adopting Articles 1, 2 and 4, kindly show? Those against? Those Articles are adopted. How do you wish to proceed next, Minister?

9.3 Draft Trusts (Amendment No. 5) (Jersey) Law 201- (P.157/2011) - Article 3

9.3.1 Senator A.J.H. Maclean:

I would like to take Article 3 next, please, in isolation. Article 3 amends Article 9 of the Trust Law. While retaining much of the existing provision, Article 9 was enacted to give Jersey trusts protection from foreign interference equivalent to that available in other offshore financial centres. I would like to draw Members' attention to the principal changes. Article 9(1) is amended by clarifying the situations where a foreign court must apply Jersey law in relation to Jersey trusts. These include where a foreign court may wish to exercise powers to vary the terms of a trust and where it may wish to state the nature and extent of beneficial rights of interest. Article 3(2) and (6) amend Article 9(2)(b) of the Trust Law by deleting the words "to the settlor" and changing the definition of personal relationship. This provision aims to ensure that the Jersey Trust Law is followed and not ignored by foreign courts by stating the question that they are deciding is not a matter for Jersey Trust Law but rather a matter of another law such as property or matrimonial law.

[15:45]

By way of contrast, Article 3(3) adds in certain exemptions to the general rule where it is appropriate that a foreign court applies a foreign law. This includes decisions in relation to property which is held by the trustee of the trust. If land is based, let us say, in England, then the amendment ensures that Jersey law and English law agree that the English rules concerning the land must apply to that property. Article 4 of Article 3 clarifies a point highlighted by the court in *Mubarak v Mubarak* in 2008. The lack of clarity of the provision was raised as an issue of concern and amendments to Article 9 paragraphs 3 and 4 deal with the issues raised by the court in that particular case. Article 9(4) clarifies that no foreign judgment or decision by a foreign tribunal with respect to a trust shall be enforceable or given effect to the extent that it is inconsistent with Article 9, irrespective of any applicable law relating to conflicts of law. Article 9(3) clarifies that Article 9(4) applies to the laws relating to conflicts of law other than the provisions set out in Article 9(4). I propose Article 3.

The Greffier of the States (in the Chair):

Is that Article seconded? [**Seconded**] Does any Member wish to speak?

9.3.2 Deputy R.G. Le Hérisier:

Yes, I wonder, for the purposes of clarifying matters, could the proposer outline where a foreign court has the right to interfere with the Jersey Trust and does that right include the right of enforcement of its judgments?

Senator A.J.H. Maclean:

I think the Deputy's question would relate to where the assets of the trust are held and if they were held and relevant to the jurisdiction in question then of course their law would apply and of course they could then enforce under their own jurisdiction's law.

9.3.3 Deputy R.G. Le Hérisier:

The Minister noted that *Mubarak v Mubarak* applied. How did it apply to this situation?

Senator A.J.H. Maclean:

I think the Deputy is being more than difficult over this question. I would not want to go into the detail [**Laughter**] it was a very complex case and I think we would be here for the rest of the afternoon but if the Deputy has a particular interest in the case of *Mubarak v Mubarak*, which is in 2008, I am more than happy to ensure that he has all the case law relating to that.

The Greffier of the States (in the Chair):

All those in favour of adopting Article 3 kindly show; against, the article is adopted. Minister, how do you wish to do it?

9.4 Draft Trusts (Amendment No. 5) (Jersey) Law 201- (P.157/2011) - Article 5

9.4.1 Senator A.J.H. Maclean:

Following the last question I am tempted to take the rest *en bloc* but I would like to take Article 5 next if I may. In all seriousness though I do think it is important just to clarify for the benefit of Members the various points. Article 5 amends Article 26 of the law which currently states that unless a trustee is authorised by the terms of the trust, the consent of the beneficiaries or an order of the court, the trustee shall not be entitled to remuneration for his or her services. Historically the office of trustee was effectively a free post. Often the trustees would be family or friends of the settlor, however, it is becoming more and more common to have professional trustees. It is the nature of a professional trustee that he or she requires to be paid a reasonable fee. The amendment rectifies the problem if, through an omission in drafting, the trustee makes no provision for the payment of trustee's fees. It avoids an application to court which is time consuming, expensive and cumbersome. I propose Article 5.

The Greffier of the States (in the Chair):

Is Article 5 seconded? [**Seconded**] Does any Member wish to speak on Article 5?

9.4.2 The Deputy of Grouville:

Could I just ask; for a non-professional trustee - in other words one that is not registered by the Commission - are they still able to charge fees?

Senator A.J.H. Maclean:

The question about fees for a non-professional trustee, no, that was the problem; unless there was an arrangement that was entered into which formed part of the trust arrangement then there would be no fee to a private individual.

The Greffier of the States (in the Chair):

All those in favour of adopting Article 5 kindly show; those against, the Article is adopted.

9.5 Draft Trusts (Amendment No. 5) (Jersey) Law 201- (P.157/2011) - Article 6 to 9

Senator A.J.H. Maclean:

I would like to take Articles 6 to 9 together inclusive, if I may.

The Greffier of the States (in the Chair):

The remaining Articles, that is fine.

9.5.1 Senator A.J.H. Maclean:

Article 6 amends Article 31(2) of the Trust Law to clarify that a trustee can contract with himself in relation to 2 separate trusts when he is the trustee of both trusts. An issue that repeatedly raises its head is change of indemnities; when a trustee retires he wants to have sufficient protection against action being taken against him in respect of the time when he was a trustee. There are 2 steps being taken to reduce the need for long chains of indemnities whereby new trustees give indemnities to all retiring trustees. The first is Article 7 and the second is granting a lien over trust property to a retired trustee. The second change will feature in the next trust amendment. Article 7 amends Article 34 of the Trust Law to enable former trustees to rely on rights without having to sign an actual agreement. This clause grants third party rights where security is renewed or extended by contract. This enables a former trustee in his or her own right to enforce a term of a contract, notwithstanding that he or she is not party to the contract. The simplicity of this approach could help reduce the cost of having a trust in Jersey and make Jersey more competitive as a result. Article 8 amends Article 57 of the Trust Law which deals with limitation periods. The limitation period for present purposes is the length of time in which claims can be brought against the negligent trustee by beneficiaries. At present there is a quirk in the law so that under Article 57(3)(a) a claim that had prescribed could be revived by dismissing the old trustee and then bringing an action against him. There is also no longstop provision, unlike in Guernsey where the longstop is currently 18 years. This amendment creates a longstop period. When a beneficiary is a minor or suffering from a disability from some sort trustees can draw a line under actions taken 3 years after a minor reaches the age of majority; or 3 years after the person stops being subject to the disability. It also sets the longstop at 21 years; this gives beneficiaries who are born at the time of the incident 3 years from attaining the age of majority to bring an action. This is a reasonable and sensible provision creating certainty for trustees and bringing the Jersey law more into line with Guernsey. It allows trustees to draw a line under ancient events in relation to which evidence is likely to be sparse. I propose Articles 6 to 9.

The Greffier of the States (in the Chair):

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

9.5.2 Deputy R.G. Le Hérissier:

I wonder in regard to Article 6, could the proposer identify where a trustee could make a contract with him or herself because it strikes me that that could well lead to a loss of independence if this person is making contracts around several trusts with him or herself. Could he outline situations where it would seem perfectly correct and reasonable to do that?

Senator A.J.H. Maclean:

The Deputy raises, yes, another interesting question. In fact you could have a scenario where there is a trustee who is a trustee on 2 separate trusts and it may be, for example, that one trust wishes to borrow some money and it would be most sensible and cost effective to borrow from the other trust; so under the terms of Article 6 that would then be allowed. The individual, as a trustee on both, could then transact between themselves in a most cost effective manner. That is probably the best example I could use.

Deputy R.G. Le Hérisier:

I wonder if I may ask for clarification; that does sound very odd, why would an individual wish to do that?

Senator A.J.H. Maclean:

Because it might be more cost effective, for example, borrowing from the other trust of which he is a trustee; it may be more cost effective with better terms than he would get from borrowing from another area; and if he is a trustee for both and it is the interest of those trust bodies then it makes perfect sense to have that flexibility.

The Greffier of the States (in the Chair):

Very well. I put Articles 6 to 9, all those in favour of adopting kindly show, and against. They are adopted. The Bill is adopted in second reading; do you propose the Bill in Third Reading?

Senator A.J.H. Maclean:

Thank you, Sir.

The Greffier of the States (in the Chair):

Is that seconded? [**Seconded**] All those in favour of adopting the Bill in Third Reading kindly show, and against; the Bill is adopted in Third Reading.

10. P.158/2011 Draft Amendment (No. 17) of the Standing Orders of the States of Jersey

The Greffier of the States (in the Chair):

We come now to the draft amendment 17 of the Standing Orders of the States of Jersey and I will ask the Greffier to read the citation.

The Deputy Greffier of the States:

Draft amendment 17 of the Standing Orders of the States of Jersey. The States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendments to Standing Orders.

The Connétable of St. Mary:

I would like to ask the Assembly to accept Deputy Trevor Pitman as rapporteur for this item of business.

The Greffier of the States (in the Chair):

Very well, Deputy Pitman, member of P.P.C. (Privileges and Procedures Committee).

10.1 Deputy T.M. Pitman (Rapporteur):

You have got to worry when I get volunteered for something. I thank my Chairman for kindly offering me the chance to do this, perhaps she is being kind, she thought it might be the last thing I ever got to do but I know you are all very happy, I will still be here in the new house. As this does impact on only 4 Standing Orders if it is acceptable I will propose the 4 Standing Order amendments *en bloc* and explain each in turn. If that is acceptable all it needs me to do really is remind Members that hopefully this should be something of a formality as the principle of an open ballot for Chief Minister was agreed by the majority of the House back on 15th September. A very historic day because it was the only day in 3 years where Deputy Eddie Noel voted for me so it is in my diary. I am hoping he is going to double his hit rate today. As I say, I do not think we need to spend hours on this - I hope we do not - but I obviously may well be proven wrong. In saying that, I do think it is right that before going through the Standing Orders one by one I do say a little about why I think it was a good decision and obviously Members can agree with that or disagree as they see fit. This was agreed, as I have said, on 15th September; it was, in my view, the right decision. It was obviously made before an election and I do have to say I think it would be very strange to the public if we were now to backtrack on a decision that was taken. As someone I think wrote to the paper the other day; the impression was a few weeks ago that the people were in control and being listened to and I think if we do go back on it, and we could, I think the impression given may be that now that we are all safely ensconced for another 3 years we are not going to listen to the public on this key issue of openness; because that is what this issue is about. Openness I believe is something we talk an awful lot about in Government; we pledge our commitment to it and accountability all the time and I think this was a great step forward. I certainly felt that. What this decision of course - if it is confirmed - allows the public to see is that what they have been told, whether it is at hustings or on the doorstep by candidates, will be followed through; and I think that has got to be a good thing. I believe the public have every right to know that the Members they have decided to entrust with their vote will act in the way that they said they would and I really would that no one disagrees with that. I do not really want to say any more than that on the reasons for supporting the openness. The main reason given against supporting this move to an open ballot was that, well, the candidates for Chief Minister would much rather not know who was not their friend and who was; who had voted for them and who had not. Well, I think I can really sum-up how little substance that argument does have by ... I think it is Deputy Martin who really summed it up when she pointed out that we are not jelly babies, we are all grown men and women. We have to stand in this House week in, week out, those of who bring propositions - sometimes we are supported, sometimes we are not. We all know who votes for the proposition, who does not, and we all have to take it on the chin. There is no other option; and we all keep coming back so I would assume that we are all men and women enough to deal with that. So before just going through the Standing Orders very quickly I would just like to appeal to the following Members because I think this issue of confirming this openness and transparency is very important and there was only 19 who voted against and I know they are not all here but if I could just read out those names and appeal to them to consider changing their mind. It was Senators Le Sueur, Routier, Ozouf, Le Main, Ferguson, Maclean, Le Marquand; the Connétables of Trinity, St. Brelade, St. Martin, St. Clement and St. Mary; and the Deputies of St. Ouen, Deputy Le Fondré, the Deputy of Trinity, Deputy Power, Deputy Lewis, Deputy Dupre and Deputy Green.

[16:00]

Now, I only highlight those because I really would hope that having just gone beyond an election we can send out that message to the public that we are consistent in what we said we would do. We have committed to openness, we might have our own interpretations of how that should operate but we have made that decision, let us confirm. That is it, I will just go through what the actual amendments do and then we can take it from there. Standing Order 1 amends current Standing Order 92(1). At present Standing Orders state that a recorded vote will be taken using an electronic

voting system unless it is unavailable. But as an open ballot for Chief Minister will also be a form of recorded vote this amendment just adds words to make it clear that an open ballot will be used to record a vote when Standing Orders require an open ballot to be used; as will obviously be the case for Chief Minister. Standing Order 2 amends current Standing Order 94 and sets out how the open ballot process will work. An open ballot will be able to be used in the States in one of 2 ways on the amending of the Standing Order. Standing Order 94 already allows an open ballot to be used for any normal vote on a proposition if the electronic voting system is not working; which I do not think it have has not in my time.

The Greffier of the States (in the Chair):

Do not tempt fate, Deputy.

Deputy T.M. Pitman:

Touch wood. In those circumstances Members write pour, contre or abstain on a piece of paper together with their own name and once the vote have been collated any Member can ask for the results to be read out by the Greffier; as happens with the electronic vote. This amendment extends the open ballot procedure to cover an open ballot for Chief Minister; it is quite simple. When an open ballot is held for Chief Minister Members will write their own name on a piece of paper together with the name of their preferred candidate. Once the votes have been counted the presiding officer will announce the number of votes for each candidate and the number of spoilt papers, if there are any. It will then be open to any States Member to ask for the way in which individual Members voted to be read out by the Greffier; as P.P.C. has stated in our accompanying report for this proposition: "It is almost inconceivable to imagine that no one would ask for this." So the names of Members supporting different candidates will in practice be read out on every occasion. If a Member spoils his or her paper after writing his or her own name that will also be read out, so for those like me who at the moment are considering writing Hugo Chavez I will be found out and that will be read out and I think that is right, it should be, because we are talking openness at the end of the day. Standing Order 3 simply takes the word "secret" out of Standing Order 116 which refers to the ballots that are necessary to choose a Chief Minister. The removal of the word "secret" means that the ballot will become an open process. Standing Order 4 is a normal citation provision and if there is no specific commencement provision the change will come into immediate effect and, therefore, will be in place for the election of the new Chief Minister on 14th November. With that I hope I have made sense and I thank you for your help in helping me to make sense and I commend the amendments to Members and propose Standing Orders 1 to 4.

The Greffier of the States (in the Chair):

Very well, with Standing Orders we simply - as the Deputy has done - propose the Standing Orders; so Standing Orders 1 to 4 are proposed, are they seconded? [**Seconded**]

10.1.1 The Connétable of St. Mary:

Firstly I would just like to explain why I particularly requested Deputy Pitman to act as rapporteur rather than presenting this myself. The answer is quite simple; I believe in democracy, I believe that once we make a decision we move forward on it. I, however, also believe I must act on my conscience. I could not vote for the proposition when we agreed to go to the secret ballot and I will not support it now and I will go on to explain why. However, I did not want it to be said in any way, shape or form that I had presented the proposition that the States had requested in a half-hearted manner. It is up to this Assembly to decide how they vote on this and I will not be influencing them through my presentation of the amendment. I certainly hope to influence by my own personal speech, whether or not of course I have any success is another matter. I cannot support this because I believe that the secret ballot is a key aspect of democracy; it has been since the very beginning and it continues to be so. The key aim is to ensure that the voter records their sincere, heartfelt choice and there can be no attempts to influence that choice by intimidation or

bribery or things of that nature. Now of course I am not going to suggest in any shape or form that bribery would be a factor in the election of our Chief Minister, however, intimidation - it is a very strong word - but there are lots of nuances; you can intimidate someone just by reading out the way they voted, for example. Intimidation, too strong; the nuances, let us have a look at them. By necessity there is going to be political game-playing in the next few weeks and jockeying for position by whoever is elected our Chief Minister and this is not bad, it is not unusual, it plays a part in every kind of political election. With the promise of multiple candidates, which we have for the first time since the post of Chief Minister was introduced, there is a real chance that the choice of Members will change as the stages of ballots progresses. Again, that is not unusual and it is not a bad thing. A letter in the media recently said that a secret ballot was the only way to be able to vote without fear or favour and I think that is right, it is the only way that you can ensure that you put your heartfelt choice down without any other influencing factor. Deputy Pitman asked me in the coffee room a couple of weeks ago about why I could not support and I said: "Bullying exists; it exists in all sorts of scenarios; it certainly has existed in my experience in this Chamber in one form or another." It is not something I give in to, it is not something I will give in to even with an open ballot. But there is not any need for it; that is the whole point of the secret ballot. The secret ballot must surely be a key means of ensuring your political privacy when that is necessary. It originated in ancient Greece in the very cradle of democracy and in modern times the secret ballot has become so universally used that in most countries it could not be conceived of that votes would be taken in any other way. Let me just state one more point on that; our nearest neighbour, Guernsey, its rules of procedure, Article 22(a), say that voting shall be carried out by secret ballot - unambiguous. Let us be clear about that, that includes specifically the election of the Chief Minister. So why suddenly are things so very different in the election for our Chief Minister here? We have to remember something here, we are not just electing one person to a post, we are setting the cornerstone of our entire next Government. It is absolutely vital that the right choice is made for the right reasons. What could be more important than that? But I will go on to say something else because there has been a lot of talk and there was a lot of talk during the elections of how Ministerial government is failing, of divisiveness. Whoever is elected our Chief Minister this Assembly - the next Assembly, that is - must be able to stand behind them. If we are ever going to get over this ridiculous feeling of 'them and us' that has increased dramatically in the last 3 years in my experience... because I did not feel it in my first 3 years in this Chamber, and I really do feel that the secret ballot for Chief Minister is the first step to making sure we get the right person for the right reasons and no matter who we vote for. Once we have made that decision we put up and we shut up and we get behind them and we make this Assembly work the way it is jolly well supposed to work. Because there is only one way that can happen and that is if the Members of this Assembly make that happen. That is for the greater good of our Island as a whole and goes far beyond any pettiness that could come from this Chamber. I feel incredibly strongly about this; anybody who feels strongly about it, get behind me, maintain the secret ballot. [Approbation]

10.1.2 Deputy M. Tadier:

I will not necessarily be able to compete with that speech in terms of passion. What I will say is that I am disappointed that we have already had this debate; this is not the place to be rehashing a debate which we had only a matter of months ago. This is a very technical issue here, we have made a democratic decision, it is exactly the same House which is sitting, it is not the new House and we should be just treating this as a bit of housekeeping to put through the work that P.P.C. have done in order to enact the democratic will of the States which was nonetheless a controversial decision, that is noted. But seeing as the issue has been highlighted; first of all it is a complete *non sequitur*, the 2 issues are unrelated. There is a perception which has been highlighted by the Constable of St. Mary that there are divisions in this House which were not here 3 years ago. That may or may not be the case and those divisions may be valid divisions and that is another debate for another day. To say that just by having a secret ballot it is going to be a magic wand and as long as we have a secret ballot that we are all going to be getting along as best buddies is absolute

nonsense; it has absolutely no relevance to this debate. So that is the first point. I would like to know who the Members are in this Assembly who will vote differently under a secret ballot than in an open ballot; could those Members put their hands up and maybe indicate, and could also those Members which feel that they are likely to be bullied under an open ballot; could they put their hands up? Because when you vote for this proposition if you change your mind or if you vote in the same way that you did last time you are essentially saying: "I have not got the backbone to stand up and represent and explain to the people how I wanted to vote". Now, if you are voting in a public election of course it is absolutely right that the public have secrecy if they want it and they do not tell you how they are going to vote because there must not be any perception of the fear of corruption or coercion; that is absolutely correct. In the States we are voting on policy direction here; we are voting on policy even though we are voting for a Chief Minister and that is why all of the Chief Minister candidates have to provide a policy statement before - which may be short, may be long - and says: "This is the policy direction in which I wish to take the Island in the next 3 years." So we are voting on policy, not on personalities hopefully. Of course there is an element of personality in it because we want to make sure that the person who is elected can work with others and that they can carry through those propositions. So what I would say is if you are worried about being bullied, if you are worried about being coerced, simply do not vote for that candidate if they are a bully or they are likely to coerce you. Also I just reiterate, I think similar things were said in the last debate - it is unfortunate that we are having to rehash the debate - if you think that you are one of those candidates who is likely to be coerced or bullied first of all grow a backbone and, secondly, if you do not grow a backbone get out of politics.

10.1.3 Deputy P.V.F. Le Claire:

There is obviously a growing change to the way that debates occur in this Assembly and that has been happening gradually since I first came, it is now over 12 years as I said before. When I first came there was little in the way of challenge, we were all getting threatened to be sued for speaking out about anything by our first Chief Minister who was always warning us that the lawyers for the companies had been informed and we should be watchful for what we say. We were controlled and led by that kind of dogma until it was pointed out that we had parliamentary privilege and we could say what we wanted with impunity, as long as we did not take advantage of that and do it in a way which was abusive of that privilege. Ever since then the questions have been increasing much to the chagrin of those people who would like to have Jersey run like an old boys' club. Unfortunately the society that we live in has experienced some dramatic changes in the last 12 years and it has put into this Assembly some representatives that represent those people in the community that are not jolly well happy about the fact that they cannot jolly well afford a jolly well house at £450,000 per jolly well house, pip, pip. The fact that they are starting to send representatives into this Assembly means that there is going to be some acrimony and there is going to be some challenging. If we think we are going to start to tackle the woes of this Island by adopting a higher decorum and dismissing things such as a land tax that we did today; then we are just not going to achieve anything in terms of faith for the public. The Constable of St. Mary's speech was passionate but I am afraid to say disappointing. Put up or shut up; that is not in itself unchallenging, is it, that is not in itself of a higher decorum, is it? What we did do - and she wanted to know where all of a sudden this change has come from that has demanded us to have more openness - I would remind her respectfully, and also other Members of the Assembly, that when we adopted the States Strategic Plan, which is the Island's most important public document, we included an amendment by me which was approved by this House unanimously to have a progressive culture of openness, transparency and accountability.

[16:15]

10.1.4 Deputy S. Pitman:

Just basically reiterating what Deputy Tadier said; and I think we as States Members are here to represent and if we let ourselves be bullied then we should not be in here. I am one States Member who has been through bullying and that was done in secret, so the argument that we may be bullied if we have an open ballot it just does not fit. I think if the Constable of St. Mary thinks secrecy is part of a democratic government then I think she needs some tuition in what democracy means.

10.1.5 Deputy A.E. Jeune:

I like to think I have always been open with my parishioners on how I voted and I am always happy to answer as to why I vote the way I do. But Deputy Tadier says it was a democratically-made decision when we had this debate. Pity that is not considered when it comes to other democratically-decided matters in this Assembly, which often keep coming back. Unfortunately, it has appeared to me that a number of untruths are frequently given to electorates, particularly around election time. In respect of how people have said they would consider their future Chief Minister, if this amendment is accepted, all Members will be able to share quite transparently with their parishioners how they make their vote.

10.1.6 Deputy J.A.N. Le Fondré:

I think it is one of the few times I am going to be coming up and disagreeing with Deputy Jeune. I listened quite carefully to the Constable of St. Mary's speech and I thought it was very passionate. Deputy Pitman is already aware of my position. I have said I am going to be consistent with the way I voted last time round and last time round I did not support the proposition. I am afraid I am just going to be consistent on that basis. It is a balance of judgment. I fully accept the arguments about openness and transparency but equally I still consider the argument about the importance of the secret ballot to be valid. I am certainly swayed most particularly - and that has always been my stance - about the risk of political pressure being applied to what is a very, very fundamental vote, which as far as I am concerned should be a matter of privacy and this is a case of strengthening democracy as well. I appreciate those who are very much in favour of transparency - and in certain areas I am - but on this type of thing I very much lean towards the secret ballot for the vote for Chief Minister. On that basis I will be maintaining my position and not supporting the proposition.

10.1.7 Deputy G.P. Southern:

It is my understanding from reading the list of who voted which way, that Deputy Jeune voted for the proposition to have a public vote and I hope she maintains her consistency. She has already said that? Well, fine, she gets a second chance to maintain her consistency and to vote again for seeing that through. Remember, it is all about delivering what you voted for in policy. I think it has not yet been pointed out that this is a very different type of vote to the vote that our voters get when they have secret ballots and it is absolutely correct that their ballot should be secret. But they are voting for us at least partially to be their representative in deciding how we do things and which direction we are going in. So, in the same way they might ask us how you are going to vote on G.S.T. (Goods and Services Tax) on food and essentials. You would give them answer, knowing full well that your vote will be recorded and they can see how you voted and if, whether or not, it coincides with your promise. Of course some people fail to meet that promise and some of them have been duly punished by the voters. Equally, having voted once already - this Chamber has voted for a public vote on who is to be Chief Minister - people out there have been asking the question of candidates that will not be here now but it is still the same principle. Which way are you going to vote? Who do you want for Chief Minister? Because they know that from the statements of the candidates that have been made if they have stood for election recently, they know what sort of general direction we are likely to get from those candidates. So, it is a perfectly valid question to ask your representative in the States: "Which way are you going to vote? Who are you voting for?" because that gives them a clear steer as to which direction we are going in. They would like to know how their representatives are voting and we know, I think, exactly where we are going in deciding between one candidate and another. So, it is one thing about promises, it is one

thing about expectation, and the public are expecting, given our previous decision, a public vote. There is no doubt about that. But the critical difference is that for most people in a democracy, they get to vote for their Chief Minister, their leader. Either they vote for the President, American-style, or they vote for a party who has a leader, knowing full well that indirectly they are voting for that leader. That is the reality of most democracies; they have a say in voting for the most important person, the person who directs which direction we are going in, and controls his Ministers to deliver a certain package, one package or another (and that is not coincidental that I use my right hand, my left hand because people vote for that package or that one). In our case we are saying you will not know who we pick for our Chief Minister and so you will not know what package we are voting for, because you will never know. That is a very different kind of democracy than what runs elsewhere. We have had talk today of bullying and of possibly corruption even within the House. Well, I would just like to briefly point out that most corruption takes place in secret and most bullying takes place in secret, and it matters not whether we have a public vote or a private vote; if people want to bully they may well try it. It makes no difference. If they want to act corruptly, then they will do it. It makes no difference. But the link that we need to establish is between each individual vote out there in the public and what happens in this Chamber. There is precious little link between what a person votes out there and what happens here. If we vote for a public vote on the Chief Minister, with the implication this is the direction we are going in, then at least we form, however tenuous, a reason why anybody out there in the public should even bother to vote. Without that there is absolutely no connection – zilch - between what people vote for out there and what happens in this Chamber. The connection is tenuous at best, if we do not openly vote it is non-existent and no wonder we have got apathy levels and non-turn-out at the level we have, if that is the case, and it will remain the case. But the electorate are expecting us to have a public vote and will be disappointed if we do not. Do not change your minds, vote for a public vote.

10.1.8 Deputy E.J. Noel:

I would just like to say that I do intend to maintain my voting record on this proposition. I do believe with the open vote, however, Deputy Pitman does have the ability sometimes to be able to change my mind. **[Approbation]**

10.1.9 The Connétable of St. Lawrence:

I think it was almost 3 years ago that the Deputy to my left put his name forward as a candidate for Minister for Health and Social Services and at that time he was proposed and seconded by 2 Members of the House and when the results were announced I believe he had only one vote and he tells me that he voted for himself. **[Laughter]** So, therefore, his proposer and seconder did not vote for him. Looking at Standing Order 115 which covers the nomination for Chief Minister, it is interesting that any candidate is obliged to have the signature of 6 elected Members before they are able to stand for nomination. It seems to me that for something in the order of the election of Chief Minister, any candidate would expect and should receive the vote of those 6 Members who have signed that candidate's nomination paper. So, the way I look at it is we are some way towards an open vote anyway, because 6 Members must be endorsing that candidate before they stand for election. So 6 Members of the House and presumably the candidate we know will be voting for the Chief Minister and, as I am being told, of course, 6 and 7 with the other candidate for the opposition. So, that is 14 votes then that we will know immediately that we should expect immediately will be votes that will be honoured. So, therefore, I have no problem in saying who I voted for for the last 2 Chief Ministers and it seems to me that as we are already on the way, under Standing Order 115, towards that open vote that although I was absent from the House when this was debated, I will be supporting the regulations today.

10.1.10 Deputy J.A. Martin:

I will be brief because the Constable of St. Lawrence ... surprising, we think exactly alike. I was sitting here writing down about the health vote and I was very, very disappointed in the Constable

of St. Mary's speech. It was very passionate but she said, I think, only in a secret ballot could people sincerely and heartfelt vote for the right person that they wanted. I think it is a very sad, sad, statement. In secret ... now I respect the Constable of St. Mary, who does not roll over and ... but her political views and mine differ quite widely sometimes but we work quite well on P.P.C., in fact, I think we work very well on P.P.C. together. But I could tell by the passion in her voice that... I do not know why she feels that this is the only way for herself and some others that will be sincere and heartfelt if it is in secret. I was asked, the people out there do want to know, it was asked at every hustings, if it could be, who would you vote for out of who was there. We have 3 candidates at the moment; I do not intend to spoil my paper, I will make a decision. I will make a decision and I will vote and even if it is not open anyone who wants to know, I will be writing my name on my ballot paper. It is because of what the Constable of St. Lawrence says; I find (I think it was Senator Breckon who said to me before) everyone comes up to you after and you were one of the 17. When he has added them up, he has had 23 people tell him they were one of the 17 who voted for him.

[16:30]

Well, it happens and this is what will happen, because, you have got to be man enough - and I am a woman but I have got to be man enough - about this; I am quite willing to have this open and it will be a vote sincerely and heartfelt and I do not have a problem with that. As I say, either way this goes, I really hope the people do see that we have a very, very strange situation in Jersey and the next 3 years are going to be very hard and if I vote for somebody and they are not the Chief Minister, if that Chief Minister still wants me to work with them, I am man enough to do that to and I hope they are. That is what it is about. I do not think there is anything to fear in openness; much, much more to fear in secrecy. So, even if we can maintain and gain a few votes on the openness, I think it will be a very good day for the House and a real step forward for what Deputy Le Claire said to a more open, transparent ... if we cannot do this in the open, we might as well forget the Strategic Plan; it might just as well be forgotten.

10.1.11 Senator A. Breckon:

I am pleased to follow Deputy Martin because I remember attending the hustings for St. Helier No. 1 and somebody proposed that she be a suitable candidate for Chief Minister because we had had 2 blokes and perhaps a woman could make a better job. There was a certain amount of crowd reaction to that, I can say. It was fairly supportive. Anyway, I was a little bit disappointed with the Constable of St. Mary because I think she got a number of things confused. She talked about the secrecy and then getting behind whoever is the successful Chief Minister and Council of Ministers. Then she said that the last 3 years have got worse. Well, was that because we had a secret ballot for Chief Minister? The answer to that is probably it was not. It is to do with Ministerial government and she and I both know because we worked on changes over the summer which a strange combination of this House came together to defeat and that is really where we are. But it is not about secrecy. If it is about secrecy, it is about secrecy of the Council of Ministers, nothing to do with the voting and it is about a concentration of power and it is about inappropriate checks and balances. So, it is nothing to do with who gets voted for and how. If we come back to that, others have mentioned - I think Senator Le Sueur might remember - but I think we each of us had 9 or 10 people who signed our papers. Now, as somebody said, there would be a level of expectation that that would be about where the base vote is. Now, those people were entering a secret ballot but then they could vote how they want but then, as somebody said - I think it was the Constable of St. Lawrence - that is a matter also of public record. If Members went and looked back to the minutes of 2008, December around about the 8th or 9th, the papers there will show who they were. It will not show the others who did not sign a paper and people who could have signed either paper and voted the other way but that is a matter of public record. So, we are heading towards 20 of the then 53 who were willing to nail their colours to the mast. So, what is wrong with the rest of us? I

remember the time when the Deputy of St. Martin signed my nomination paper and when he did so he reminded me that I had proposed the Constable of St. Lawrence against him for one of the scrutiny panels. That is politics; you move on and that is what we must do, but we must be man and woman enough to accept that that is the decision and whoever is the Chief Minister will be very fortunate indeed if they have the full support of this House all the time. It just will not happen. There will be differences and there will be reasons why people might vote one way or another but then, if that is in the open, if somebody asks me: "Why did you vote for so and so?" I can say. I can say why I did that but as Deputy Martin said: "If 17 people voted for me last time and then people said to me, 'Oh, I voted for you'" ... that is more than 17, how does that work then? So that is about where it was. So, okay, people there they said what they said, they did what they did, we moved on, and that is what we must do here. But, as I say, we must be man and woman enough to accept that because for me it is not a problem identifying with one candidate or another. If I propose somebody to be Minister for Social Security, I will stand up here and say that I will propose somebody to be Minister for Social Security. When it comes to a vote there will be an expectation, unlike Deputy Le Claire I would vote for them. I am not saying I would not vote for him for Minister for Social Security but that is where it will be and that is the other part of the election. Then the person who does that, if they stand up and nominate somebody or second somebody, then they are identified. Perhaps that should flow through the whole thing. There was a considerable number of Members absent for the vote - about 13, I think - and that is a bit disappointing so it is not a given that this will go through because I am not sure - Deputy Pitman wrote the names out and maybe the Constable of St. Lawrence mentioned that she was not here last time. There might be others who were here or were not who voted one way or another. Generally now I think the public have an expectation that this will be an open ballot but it is up to Members to decide and again, I do not have a problem either way but I would like to think that if we are going to get more transparent, again Deputy Le Claire quoted something from the Strategic Plan and I think if we need to be open, more transparent, then it is a good place to start. Now, that well could be a problem for whoever gets elected Chief Minister, because they might think somebody will be supporting them, there might be 2 of us supporting them and then they might vote the other way but that is between those Members and how they deal with that. But again we have to be big enough and brave enough and then whoever is Chief Minister comes forward with candidates and again it is for this House to decide and again that is another process. But, as I say, it must be the best people who we think to do their jobs, not necessarily on a grace and favour thing; let us not go there, let us do the right thing, not for us but to serve the people.

10.1.12 Senator T.A. Le Sueur:

I suspect that most of us came to the Assembly this week already knowing which way we were going to vote and nothing which I say or any other Member says is likely to change things very much, but I would just make a couple of observations. Firstly, that I deplore the fact that there seems to have been so much highlighted in the course of the recent general election process, because all sorts of issues were being raised with the public in a situation where they did not know who was going to be Chief Minister but in many cases were trying to use their vote as a proxy for the public themselves deciding who the Chief Minister should be. I think approving this measure here simply gives fuel to the suggestion that it is the public who should decide who the Chief Minister should be. I know there are some Members in this House who believe that that is the way that we should be doing things but I think for all the reasons that have been rehearsed, I would say that that is not a suitable situation. I just contrast, maybe, the forthcoming election for Chief Minister with what happened in my case with Senator Breckon 3 years ago. I still do not know who the candidates for the election in 2 weeks' time are going to be. Although some names have been mentioned it may well be that people have signed a nomination paper for one or other of those people, honestly believing at that time that they were a suitable candidate for the job and will, no doubt, still believe that at the date of the election. But it may well be that in the course of that election process, during the course of those speeches on that day, another candidate may make such

a passionate, intelligent and compelling speech that the person who signed a nomination paper will be saying: "On reflection, that person would be a better person for the job." Quite rightly, he may feel a little bit embarrassed. I do not see why, in this case, a person should have to compromise and maybe make a wrong decision simply because he felt under a public obligation. I think there are many cases when it is right that there is an open ballot but there are also many cases when it is even more correct that there should be a secret ballot. Some people this afternoon have criticised the speech of the Constable of St. Mary's. I thought not only was it a passionate speech but it was also a very sensible and clear speech as, indeed, she normally makes. **[Approbation]** I do think that just as both in ancient times in Greece and Rome, and in recent times in Guernsey, the tradition of or the principle of a secret ballot in these sorts of cases is one which is important for democracy and one which we should not dispense with lightly. So, Members may well have gathered by now that I am not going to change my mind and I am still going to oppose this particular suggestion.

The Greffier of the States (in the Chair):

Does any other Member wish to speak?

10.1.13 The Deputy of St. Ouen:

I have been very disappointed at some of the speeches that have been made today, because Members seem to forget that people fought for the right to use a secret ballot. That is the basis of any democracy. That sets us apart from any other undemocratic type of country. The trade unions themselves fought for that right. The trade unions themselves equally stand up now and protect their right to determine and make use of the secret ballot because they want to avoid being faced with fear or favour. It is important that we maintain that right. Any erosion of it, I believe, would be a detrimental step for this House and I certainly will not be supporting it.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? Very well I call upon the rapporteur for P.P.C. to reply.

10.1.14 Deputy T.M. Pitman:

I am not sure I can match that passion there from the Deputy of St. Ouen. I will be as quick as I can. I would like to thank everyone who spoke. I know opinions are firmly held and genuinely held. I was disappointed with the Constable of St. Mary's speech but I fully respect her right to hold those views. I did have to take issue with what she said about ancient Greece, because although it is often said it is the cradle of democracy, certainly initially, I think there are elements within their community who could not vote - slaves, peasants, *et cetera* - so ancient Greece was certainly not perfect, although we can, of course, learn a lot from them. The Constable mentioned about the bullying and as was pointed out by Deputy Pitman, Southern and someone else, I think, and it is certainly my experience - certainly working in education - most bullying happens in secret so I respect her views but I cannot really go along with that from what I have seen. Deputy Tadier; he highlighted how unrealistic it was to suggest that having a secret vote would make things so much better in the House and I think he was quite right. He said quite bluntly that he felt that if Members did not have the backbone, as he put it, to stand up and tell people why they voted, then they should not be in politics. He was blunt but I think he was right to say that. Deputy Le Claire reminded us of how we committed to this move to transparency and I think he was absolutely spot on in highlighting this because for me it will be just sending out a message to the public; we say one thing right on an election when the eyes of the public are on us more than perhaps other times, and then we do something different. Deputy Pitman, as I said, she highlighted the bullying that is experienced in private. Deputy Southern picked up on that as well. Deputy Jeune, she was supporting the proposals again as was made quite clear. Deputy Southern misunderstood her but I thank her for that. She pointed out that if Members do support this and it goes through then in the future those Members will be able to share and discuss that with their representatives. Deputy Le Fondré; well, he has not been persuaded yet but I still hope he will change his mind in the next 90

seconds. I respect his views of course. Deputy Southern; the important thing, I think, he highlighted was how having an open vote for Chief Minister, it does go some considerable way to establishing that link which is missing at present, I think, for a lot of people in seeing how their vote on election day is transferred into action. Deputy Noel; he was still voting for me but obviously having second thoughts so I will be as quick as I can, but I thank him for his support again. I might have 2 votes in 3 years so I may even have to buy him a drink, but this, seriously, is a much more important position. He was really committed to that openness and, as I say, I really thank him for that.

[16:45]

The Constable of St. Lawrence; I really appreciated her speech because she pointed out an angle that I had not considered and that is the issue that, of course, candidates in the election will have to have half a dozen signatures on them and, as she pointed out and Senator Breckon built on that, it really does make a bit of a mockery of then having a secret vote when we are all going to know that at least 14 people are hopefully going to vote a certain way. What justification can there really be for such a sizeable chunk of this Assembly being out in the open as to who they are supporting and then we have to go in secret. Deputy Martin; she was really passionate as always. She did not use her jelly baby joke but again she pointed out how the constituents really do want to know how their representatives are going to vote. She pointed out that she would not spoil her paper whatever the winner of that vote. I am glad she did that because I made a joke about this and of course I may not be happy with the choice that I have got in front of me on 14th November but because I am here to do so I will make a decision. It might be to use that awful phrase “the least worst of the 2 or 3” but I will try and weigh-up all the pros and cons as other Members will, I hope, and will vote accordingly. I would hope nobody would spoil their paper. Again, I touched on Senator Breckon and he also pointed out how we really do have to be man or woman enough to take the vote; if people do not think we are the person for the job, well, we just move on. Senator Le Sueur; well, he did seem quite surprised that so many people were interested at the election and I did find that surprising. Then he made an interesting point because he was saying about that people could make speeches on the day which were so passionate or inspiring that people would change their minds and I suppose that could happen. One example in this area; I remember the vote for Housing and I have got a lot of respect for Deputy Green, I like him a great deal. On the day I thought Deputy Southern’s speech was much better. He did not win, there we go, that is life and Deputy Green has got on and he has done a good job since. Maybe Deputy Southern would have done a better one; we do not know but what is the problem in me telling Deputy Green that. That is what we are coming down to; this openness. The Deputy of St. Ouen; he reminded us about the unions and fighting for the right to have a secret ballot. I think the point I would say, with due respect, that he did miss is that we are representatives. It is slightly different. I think it is so important that the public do see that link; that we have not stood there on the hustings or on the doorstep and misled people. That is all I really want to say. Many of us will not be happy on the day 100 per cent with whoever gets the job, I am sure, but I think we are all big enough to make that decision and compromise and if we do not get what we want, well, if there are only 3 candidates I suppose it could be said: “Well, why did you not put yourself forward?” We could have 51 candidates. It would make a very long day but then we have got a bit of those anyway. So with that I will leave it there and just ask people to please vote for transparency, please send out their message to the people, who are expecting us to have an open vote for Chief Minister. Please let us go this first step to seeing the public can have that link between how they voted for all of us and what happens in the beginning of the shaping of that Government. I know obviously all the candidates who have put themselves forward so far that we think are going to stand and I honestly do not think any of them are such timid characters that if we were all to tell them: “No, sorry, you were not the man for me,” I do not think they are going to be profoundly affected by that. I think they are all big enough

to get on with the job, whatever might be their second choice, but it is not going to ruin them. So, I will leave it there and call for the appel.

The Greffier of the States (in the Chair):

Very well, the appel is called for the 4 amendments to Standing Orders have been proposed therefore the vote is for or against the Draft Amendment Number 17. Members are in their seats. I will ask the Deputy Greffier to open the voting.

POUR: 23	CONTRE: 18	ABSTAIN: 1
Senator A. Breckon	Senator T.A. Le Sueur	Senator B.I. Le Marquand
Senator F. du H. Le Gresley	Senator P.F. Routier	
Connétable of St. Saviour	Senator S.C. Ferguson	
Connétable of St. Lawrence	Senator A.J.H. Maclean	
Deputy R.C. Duhamel (S)	Connétable of St. Ouen	
Deputy of St. Martin	Connétable of Trinity	
Deputy R.G. Le Hérisier (S)	Connétable of Grouville	
Deputy J.B. Fox (H)	Connétable of St. Brelade	
Deputy J.A. Martin (H)	Connétable of St. Martin	
Deputy G.P. Southern (H)	Connétable of St. Peter	
Deputy J.A. Hilton (H)	Connétable of St. Mary	
Deputy P.V.F. Le Claire (H)	Deputy of St. Ouen	
Deputy S. Pitman (H)	Deputy of Grouville	
Deputy I.J. Gorst (C)	Deputy J.A.N. Le Fondré (L)	
Deputy of St. John	Deputy of Trinity	
Deputy M. Tadier (B)	Deputy K.C. Lewis (S)	
Deputy A.E. Jeune (B)	Deputy A.T. Dupré (C)	
Deputy of St. Mary	Deputy A.K.F. Green (H)	
Deputy T.M. Pitman (H)		
Deputy E.J. Noel (L)		
Deputy T.A. Vallois (S)		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		

11. Incinerator Emissions Data: publication on Internet (P.167/2011)

The Greffier of the States (in the Chair):

Very well. The Assembly therefore comes finally to the proposition of the Deputy of St. Mary; Incinerator Emissions Data: Publication on the Internet, and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Transport and Technical Services to publish on the internet in real time or as near as possible to real time if there are substantial cost issues with the real time option data for emissions to air and emissions to sea from the new incinerator at La Collette with the nature of the data that will be published to be selected after properly conducted consultation with published minutes and with the consultation to include at the least Save our Shoreline and an expert from the United Kingdom Without Incineration Network (U.K.W.I.N.).

11.1 The Deputy of St. Mary:

With the goodwill of the House we should be able to finish this by ... I was going to say by 5.00 p.m. but we are already at 4.50 p.m. Nevertheless, I believe this is quite a simple proposition; a very simple issue of principle at the heart of it and I think it is another of those where there is pretty well a cigarette paper between T.T.S. and what I am proposing, so it will be interesting to hear the Minister's response to my opening remarks. There are 2 issues in this proposition and the

first is based on what Deputy Le Claire referred to in the last debate. I will remind Members what it says in the Strategic Plan under the aim “Working Together to Meet the Needs of our Community”, in the fifth bullet point: “Create a responsive Government that provides good and efficient services and sound infrastructure and which embraces a progressive culture of openness, transparency and accountability to the public.” What I am asking in this proposition is that as much data as possible about emissions to air and to sea from the incinerator are published for the public in real time. It is the public’s incinerator, not T.T.S.’s (although we jokingly refer to it as “the Minister’s incinerator” but it is not, it is the public’s incinerator) and the data is the public’s data and the health threat is to the public. So, the public, I believe have a right to that data. Now, there is a qualification and I have written it into the proposition that if there are substantial cost issues with the real time option and the Minister has indicated that there would be, then we get as near as possible to real time. That is the first point; as near as possible to real time. I have also said that the nature of the data that will be published would be selected after consultation. In other words, I am not saying all data, every second, if that is not possible; it may be that only the one minute averages can be published, it may be that 10 minute averages only can be published. It depends on the feasibility. But that feasibility is not to be decided by T.T.S. in a closed room on their own or even by T.T.S. and the regulator on their own but by T.T.S., the regulator and N.G.O.s (Non-Government Organisations) who have expertise in the field, so that there is a degree of challenge so that we know, so that the public knows, that the N.G.O.s who, in a sense, look after their interests with a slightly different angle from T.T.S.’s, in some cases a very different angle, are there to challenge within that forum. That is why I have written in that the consultation should include at least Save Our Shoreline and U.K.W.I.N. (United Kingdom Without Incineration Network). So, that is the proposition. There is a history of suspicion around La Collette and, indeed, around T.T.S. It is sad but true and it can only be dispelled by openness. It can only be dispelled by openness and I am seeing a very good example as we come to the end of our scrutiny review on marine pollution, protection of the marine environment, where we are finding that because of the discussions we have been having with the aquaculture people, with the department, with our expert, that gradually things come together. People understand each other’s positions better, because the data is on the table and we are discussing it openly and that is how it should be and in the end hopefully the process begun by the Scrutiny Panel will lead to a situation where the aquaculture people, the fishermen, Planning and Environment, the regulators, are trusting each other and working together in a proper way. So, that is where I am heading with this proposition, I hope Members support it. I think the issues are quite clear and simple and I move the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] There is an amendment from the Minister for Transport and Technical Services. I will ask the Deputy Greffier to read the amendment.

11.2 Incinerator Emissions Data: publication on Internet (P.167/2011) - amendment (P.167/2011 Amd.)

The Deputy Greffier of the States:

Number one, on page 2, for the words “in real time (or as near as possible to real time if there are substantial cost issues with the ‘real time’ option)” substitute the words “as near as practicable to the real time,” and number 2 on page 2, for the words “(with published minutes) and with the consultation to include, at the least, Save our Shoreline and an expert from the United Kingdom Without Incineration Network (U.K.W.I.N.)” substitute the words “with the Environment Regulator and Island-based N.G.O.s”.

11.2.1 The Connétable of St. Brelade (The Minister for Transport and Technical Services):

As the Deputy points out, I would like to think he will accept this amendment because we are very close and I think singing from the same song sheet. In proposing this amendment, I would like to

make it clear that the Transport and Technical Services Department is by no means against publishing details of the emissions from the new energy from waste plant on the States intranet, and always had every intention to do so. However, information for the public must be presented in a helpful way that they can understand and by a means that is effective, efficient and sustainable. Unfortunately the proposition by the Deputy does not lead to helpful public information being available and it would cost more. The new plant is operated under a waste management licence which has been granted by and is administered by the Environment Department. This licence stipulates what waste the plant is allowed to process and what the emission limits are, particularly when the plant of course is in operation. In order to comply with this licence the plant has been fitted with sophisticated emissions monitoring equipment and reports from this equipment are submitted to the Environment Department on a periodic basis so they can regulate the plant against its licence independently. The department had intended to publish the same information so that members of the public can have assurance that the energy from waste plant is operating to the same standards as other modern U.K. and European waste incineration plants. Unlike the old Bellozanne incinerator the new La Collette plant is operated to the European Waste Incineration Directive - W.I.D. in short. This directive is a set of conditions and emission limits that the plant must comply to and be operated to. Unlike the old plant the new energy from waste plant is to prove that it is operating to or below the specified emission limits and there is a comprehensive reporting schedule required to comply with this waste management licence. The emissions from the plant have taken a step change for the better since the new plant has been in operation and it operates to the same stringent emission controls and licensing as other modern U.K. and European plants. Some of the emission measurements at the plant are online and thus taken on a real-time basis. As an example, substances such as oxides of nitrogen, sulphur dioxide, hydrogen chloride, total organic carbon particular matter and carbon monoxide are measured and reported back to the energy from waste control rooms emission monitoring system. This data is presented in a numerical and graphical format in the control room and if, for any reason, one or more of the measured emission values were to climb above the preset limit the system would go into alarm. If this happens the operators and the control system would respond and take appropriate action.

[17:00]

This response could be anything from adjusting an airflow to shutting the plant down. This has been verified in the testing process and I can assure Members that it works. All of these measurements are summarised on monthly charts and submitted to the Environment Department as part of the emissions reports. To publish this information on a real-time basis will require an interface to be developed between the emissions monitoring system and the internet. There would be significant cost for this development and an ongoing maintenance cost to achieve a reliable and useful data interface. There are many other trace elements which are not required to be monitored continuously. They are measured on a quarterly or biannual basis by accredited experts and the results are reviewed by the Environment Department to verify that the emission levels are within those allowed by the waste management licence. It is not possible to publish these results on a real-time basis. This amendment simply proposes to allow the department to publish the results of the emission monitoring in the same way as the results are collected and submitted to the Environment Department, our regulator. The cost of doing this will be minimal as the reports have to be generated to comply with the licence. Much of the emissions data is highly scientific and quite complicated. The department is happy to discuss the format of any published information with the Environment Department and relevant Island N.G.O.s. It is hoped that this consultation will assist with the development of practical guidance that will help members of the public understand what the emissions figures actually mean. The department is not in favour of consulting with anti-incineration pressure groups and does not see the value to the Jersey public in consulting with organisations such as United Kingdom Without Incineration Network. The Island has committed now to using an energy from waste plant as part of the solid waste strategy and our new plant is

now in operation so little can be gained by consulting with a group such as this, with all due respect to them. I would expect, of course, the Island N.G.O.s to consult with them, should they so wish. For these reasons I would ask Members to support this amendment.

The Greffier of the States (in the Chair):

Are the amendments seconded? **[Seconded]** The Deputy of St. Mary, to assist the Assembly are you able to clarify if you accept the amendments or not? Do you wish to speak at this stage on the amendments?

11.2.2 The Deputy of St. Mary:

I would speak straightaway, that is probably the simplest. The first part of the amendment where we substitute my qualification about substantial cost issues and instead of that we get as near as practicable to the real-time, frankly “practicable”, “substantial cost issues”, I think we are splitting hairs. I would accept that on the basis that it makes no difference. I would be happier with my own words because they talk about cost but frankly it makes very little difference. The second one however, is the nub of the matter, and I do not accept that part of this amendment. I think it brings to light a very important issue about our fundamental approach to these sorts of issues. The Minister said, and I tried to write down exactly what he said, that he was not in favour of consulting with anti-incinerator pressure groups: “Little can be gained in consulting with such organisations.” The fact is that you could say that Greenpeace, for example, is anti-whaling or anti-exploring for oil in the North Sea. But they probably know one heck of a lot about exploring for oil in the North Sea, because they are a pressure group and in fact modern pressure groups have upped and upped the amount they know about things, they know it is no longer enough just to shout. I think that to exclude a group that is avowedly anti-incineration, what they will do, if they are at the table, is challenge T.T.S. (Transport and Technical Services). They will challenge them. They will say: “What do you mean when you say you cannot publish this? Is it really too difficult to develop an interface? Why can we not have the same or better information” and so on. The cost, I might remind Members, of having them at the table is zero. They have offered to do this for nothing on the basis that the meetings are held with them on the end of a conference call. We get expertise, we get challenged - one of our Government departments - by an interested and expert organisation for free. I cannot see how the department can turn that down but they want to turn it down. They want to stay in the silo. They want to have their fingers in their ears, and I am sorry, that is not good Government. Good Government involves listening to people who agree with you and listening to people who disagree with you so that you end up with the best possible answer. On those grounds I would urge Members to reject the second amendment ...

The Greffier of the States (in the Chair):

Sorry, to stop you, Deputy, but the Assembly has become inquorate. I ask the usher to summon Members quickly to the Chamber. Very well, Deputy, you can continue.

The Deputy of St. Mary:

The rejection of the second part of the Minister’s amendment will cost you not a penny and it will add substantially to the value of what I am asking for, so I would urge Members to reject part 2 of this amendment.

11.2.3 Deputy P.V.F. Le Claire:

An interesting letter in the paper the other night about the cost of the incinerator, and it was quite challenging. I wondered if other Members saw it, I certainly did. When I was on the Environment Scrutiny Panel with the Constable-elect and the Deputy of St. Mary I found it very interesting and, I think at the time, the current Minister preceding that challenged the former Minister for Planning and Environment about the new bathing water directive and how under the new bathing water directive signs were going to be posted in real time on the beaches for bathers and people walking on the beaches to inform them as to whether or not there had been any emissions from the

incinerator or any grounding. It was part of the transcript of that meeting which is available, I believe. I do not think it was ... I stand to be corrected. It is certainly within the transcript of that meeting that took place that the now Director for the Environment Section was of the view that this would be published, not only in real time but also on the internet so that people would be able to see how the bathing water and the sand at the various beaches were affected by grounding. When I talk about grounding I am talking about when the chimney ... it is a dual chimney and let us not forget it is also being used by the J.E.C. (Jersey Electric Company) to generate electricity, so it would ground in terms of starting up with the oil and smoke falling on to the beaches and into the community. It certainly has been a problem in the past and what we are seeing this afternoon is an attempt by the Deputy of St. Mary to get us some real information to protect the lives of the people that are living within this incinerator's fallout. I think it would do us well to start to imagine a life in the future without the incinerator. Let us start talking about when that incinerator is no longer in operation and when we have replaced it because we have spent a lot of time talking about when it was coming. There is a great deal of talk being done this afternoon about the emissions and the control of the emissions with the new incinerator, but I would like to ask the Minister for Transport and Technical Services whether or not he is still burning tyres in the old one. [Aside] The old one is finished, I am being told. So no longer will the old one be used at all, unless obviously I would imagine in an emergency. The Minister can answer me, it is a question I am asking him in my speech, he can answer me when summing-up. I am going to support the Deputy of St. Mary but I am also raising the issue about the fact that the licence is issued to them from the Environment Department who have stated in a meeting of Scrutiny that they were giving to give real-time evidence to people in terms of the E.U. (European Union) bathing water regulations on the internet for people to see. If they are licensing this department to operate this machine then surely the money or the arrangement should be such or should have been such at the costing stage that we could have factored-in the cost of telling people when they were about to be poisoned by this thing. It is too expensive to tell them in real time when they should not be leaving their windows open. We have spent £116 million on it but we have not got enough money to put the information about when it is poisoning people on to the internet. Or is it that we just do not want to. I certainly think, from my experience with the practises of Transport and Technical Services in the past, public services, I am sorry to say there has been a very long history of things operational and practical not meeting standards that were satisfactory in my view and a concern to health and a concern to the residents. It is the Minister for Planning and Environment's job, in my view, who has made the commitment through his predecessor to make this information available, to ensure that part of the licence agreement - and I am sure he is going to stand up and tell us whether or not this can be done or not - is such that when they set this thing alight and when it starts to poison the people that live in No. 1 District and down into St. Clement we are told in real time not 3 weeks' later or 3 days' later. Because the people that live in that district want to know immediately if it is going to cause them a health issue, so they can do something about it. I would suggest if we do not do that then we are culpable and the Minister is culpable, and the Minister for Planning and Environment is culpable because if people are going to be subject to emissions that are harmful to health - and now we have an epidemiological study coming along we will be able to determine how many people are contracting illnesses from these kinds of pollutions - then I certainly think these people should be able to press in the future through the States of Jersey for independent prosecution or a civil case against the Ministers. At the moment we only have one prosecution, and it is the Attorney General who is going to be in court defending the Ministers, and I certainly have been arguing for a long time that the practises of the States that cause harm to the population should be able to be brought forward for challenge by a prosecution service that takes these matters a little bit more robustly than they have been doing in the past. Not to say they have not been doing it, because they have, they have been taking these people. In fact Senator Ozouf was taken to the court ...

The Greffier of the States (in the Chair):

Let us keep to the amendments, Deputy. Let us not have a long discussion on civil action.

11.2.4 The Deputy of St. John:

I gave some thought as to whether or not to support the proposition and the amendment, but then over the last few months - going back in fact to 2009 - there was an environmental incident at La Collette. My environment panel have been asking for the result of that incident ever since. In June this year the Attorney General made his findings known, but not to my panel, and ever since then, and in fact I have a draft of my report that will be out hopefully in the next few days on the marine environment, and is of real concern to my panel that we have still not been given the necessary evidence to complete a number of our original reports in full because of this particular incident.

The Greffier of the States (in the Chair):

Let us keep to these amendments.

The Deputy of St. John:

This is very important, Sir, because this is the reason I am supporting the Deputy of St. Mary with this, and I am opposing what the Minister is bringing forward because it is important.

The Greffier of the States (in the Chair):

The Deputy is accepting one of the amendments already.

The Deputy of St. John:

He is not supporting the second part.

The Greffier of the States (in the Chair):

Perhaps you could tell us why you do not think he ...

The Deputy of St. John:

I am trying to explain that I have not been able to get evidence from the Ministers on that pollution. If Scrutiny are being treated with disrespect, and they are being treated with disrespect by not being brought in, even in confidence... My panel have not been given the information of that alleged incident therefore we have no alternative, and quite rightly my vice-chairman has brought a private Member's proposition to this House that we need evidence and if the only way we can get it is to come to this House and ask you, gentlemen and ladies, here to put it in law that this has to be displayed on the internet and wherever else in as near as real time as possible then so be it because I have wasted 3 years on trying to get evidence, and the Connétable of St. Peter is nodding his head, and we have not got that evidence, although it is out there.

[17:15]

We know full well that the Attorney General made a decision in June, we are now in November and it has not been passed and therefore the department is concerned they are going to be criticised and it is the last thing I wanted to do in my final report, which is out, as I say, in the next few days, and therefore I am asking Members to reject this part of the proposition that T.T.S. are bringing forward and go with the proposition of the Deputy of St. Mary.

11.2.5 Senator S.C. Ferguson:

I am glad to speak before the Minister for Planning and Environment or perhaps spur him on to speak. I have not heard of U.K.W.I.N. so I would appreciate if I am going to have to put trust in these people I would like to know what their qualifications are, and I would like to know where they get their funding from. I am in favour of using local N.G.O.s because they have a vested interest but I would, as I say, appreciate finding out a little more about U.K.W.I.N.

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

I will be supporting the first part of the amendment but I will not be supporting the second part. There are 2 things to this. The Minister can change my mind perhaps, but I asked in a previous debate whether the temperature readings from the Bellozanne incinerator, all those records were going to be preserved because I do believe that the way that plant was operated in the past was a definite health hazard for people living in the area and the only way that people would be able to prove that and claim compensation in the States in the future is if all those records are maintained. The Minister gave me an assurance when I asked him about this in the States quite some time ago that those records be handed over to the Jersey archive, and I would like him to give me an assurance that that has happened and none of those records have been destroyed. That is the first part. The second part is what are T.T.S. afraid of? Because if you can be open with your critics all they are going to do is say whether you are telling the truth or not. These are the records, these are the results that we have got from the chimney and if they are, for example, meeting their efficiency levels and safety limits that they say it will do what have they got to fear? If it is not and they do not want the critics to know about it, does that mean they can say they are going to cover it up? The truth of the matter is if the system is as efficient and safe as they say it is they have nothing to fear to share that information with their critics and among other things it might help allay conspiracy theories in the future. I will not support the amendment on part 2 unless those assurances are there.

The Greffier of the States (in the Chair):

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

11.2.7 The Connétable of St. Brelade:

I thank Members who have spoken. Principally to really focus on the second part because the Deputy has indicated acceptance of the first, and I thank him for that. I would say that my only reason to ask the House to accept part 2 of the amendment is that it was felt by the department there was little to be gained in accepting the United Kingdom Without Incineration Network, as part of the consultees. Effectively it seemed to us that the local N.G.O.s will access whoever they wish with regard to advice and I would fully expect them to do so. The feeling was that narrowing it down to U.K.W.I.N. was probably too restrictive and more benefit could be obtained by them spreading their wings slightly further. In answer to Deputy Le Claire with regard to the old incinerator, the old incinerator was last used last Christmas, it has not been used since and I would suggest as a result of the proving trials which are underway at the moment will not be used again and I think I, together with a lot of people, look forward to it coming down. The European Directive and regulator do provide stringent controls and if these change it is for my department to make changes to suit. Emissions from the E.f.W. (Energy from Waste) comply with all directives at present so my feeling is there absolutely no issue at all, but if there were to be changes it will be for my department to make them to comply with any latest regulations. I am not clear quite what Deputy Rondel is talking about with regard to an incident at La Collette. I am happy to talk about it, but really it comes down to the regulator once again to discuss with his department what could be improved or what has to be disclosed. With regard to comments from the U.K.W.I.N. background not being clear, mentioned by Senator Ferguson, I too am not terribly clear on that and so once again would refer to the suggestion that the local N.G.O.s would be far better placed to deal with this and take on board whatever input they wish from whoever in the U.K. or worldwide of course. In answer to Deputy Higgins, records from Bellozanne; I am not sure what has happened there but personally I do not have an issue with those being disclosed and I am sure my successor will be hopefully in the same frame of mind on that. I would ask Members to support both parts of the amendment and I will ask them to be taken separately.

The Deputy of St. John:

If I may enlighten the Minister, it was the pollution incident at La Collette.

The Deputy of St. Mary:

Can I ask for a point of clarification? It is quite important because it might lead to my accepting this amendment because we are hearing 2 different versions from the Minister and one of them I can accept and the other I cannot. In his speech he has said that a locally-based N.G.O., which in this case would probably be Save our Shoreline, may get advice from U.K.W.I.N. and he has said just now they can take on board any input they wish. If that includes the fact that at the consultation meeting, which I have called for, properly minuted and so on, U.K.W.I.N. can have input into that meeting acting as effectively consultants to Save our Shoreline then that is fine. We do not differ anyway, but if he is sticking with what he says in his report, he is not in favour of convening a meeting with U.K.W.I.N. as the department cannot see the value, *et cetera*, then I still urge Members ... I am just asking for clarification. There is a different story coming from ...

The Connétable of St. Brelade:

If I may respond; I would not see any issue with U.K.W.I.N. being brought over by a local N.G.O. and I would expect them maybe to use U.K.W.I.N. or any other and it would seem logical if I were a local N.G.O. to do exactly that, but I think it is for my department to be dealing directly with the N.G.O.s and not spreading its wings throughout the world.

The Greffier of the States (in the Chair):

The vote is in 2 parts. The first part is accepted by the Deputy of St. Mary. All those in favour of the ... do you wish the appel or standing vote?

The Deputy of St. Mary:

On that basis of what the Minister has just said I accept the second part as well, that U.K.W.I.N. can be round the table effectively.

The Greffier of the States (in the Chair):

Both parts are accepted but we will take them separately. All those in favour of adopting amendment number one kindly show. Against. That is adopted. We come to amendment number 2, all those in favour ...

Deputy M. Tadier:

I think it is important to ask for the appel on this one.

The Greffier of the States (in the Chair):

The appel is called for on amendment number 2. All those Members are in their seats, the vote is for or against amendment number 2 and the Greffier will open the voting.

POUR: 32		CONTRE: 6		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy of St. Martin		
Senator P.F. Routier		Deputy J.A. Martin (H)		
Senator A. Breckon		Deputy of Grouville		
Senator S.C. Ferguson		Deputy of St. John		
Senator B.I. Le Marquand		Deputy M. Tadier (B)		
Senator F.du H. Le Gresley		Deputy M.R. Higgins (H)		
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				

Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

11.3 Incinerator Emissions Data: publication on internet (P.1267/2011) - as amended

The Greffier of the States (in the Chair):

The debate resumes on the proposition as amended. Does anyone wish to speak on the proposition as amended?

11.3.1 Deputy P.V.F. Le Claire:

I think the issue is such, and having spoken about this in my speech, obviously I was trying to keep it focused on what was important, but the principle here is real-time information to the public about the emissions from the incinerator and I really urge the Minister for Planning and Environment to talk about whether or not he feels this kind of proposal and amendment this afternoon is going to safeguard the health of the environment and the people - I have not heard anything from Health itself - and in specific relation to the real-time information that was going to be available under the European bathing water directive, which I mentioned earlier, that we did the work on in Scrutiny, he will be aware of it. He was part of that Scrutiny work and he certainly knows what I am talking about. I want to know, if he is licensing this operation, whether or not, as promised by his predecessor, corporate sole, never-dying ever-living entity that moves forward so he is like the Doctor [Laughter] and I can get his sonic screwdriver out and tell us how he is going to exterminate this issue. I ask him, plead with him. I know we have little time but it is a serious issue and he should be telling us how in practice this is going to be available for people who live in that area, who walk on that beach, who swim in that pool, are they going to be able to see, as was promised, real-time signs on the slips, on the beaches, when there is grounding, when there are emissions, when there are problems. The tourists will see it too. Under this new E.U. bathing water directive, which we are going to be part of, all these clean beaches that we have supposedly, it was going to be there, available in real time. How is it now not going to be available in real time? Why has there been no comment about this from him in relation to this and why was it going to be available on the internet and now we are being told it is too expensive? I congratulate the Deputy of St. Mary and I am looking forward to hearing what the Minister for Planning and Environment has to say when his Tardis materialises.

11.3.2 Deputy R.C. Duhamel:

As Minister for Environment I obviously do support as much information as is necessary in order to safeguard the health of the public. There is one small issue, if we look back into past situations in different countries, particularly Japan when there used to be the issuing of smog alerts and everyone had to go out and put on their gas mask, and if we look at a lot of the members of the Japanese public, they still do wear their masks in going to work because the air quality is poor on

occasion. Some of the issues arose yesterday in our discussions over Radon measures, and the desirability or not of panicking the public if something is wrong, while at the same time being in a position to safeguard the overall public health. The provision of real-time data is only of use if there are people who are capable of interpreting it. I went to Guernsey a number of months ago and, as we all know, they do not have as an advanced system to treat their sewage and public signs are placed on certain beaches to warn the bathers that the waters are unsuitable for bathing in due to floating objects that are undesirable. But I think in all of this there has to be a balance, as I say, and while I do support the provision of data in real time I do so on the understanding that it must be capable of being interpreted. Under the waste incineration directive that the incinerator is being operated under, there is a provision for certain gas emissions or whatever, to happen as spikes and if a red light were to go off on the incinerator at the moment, close to the bathing pool, and the public interpreting that red light suddenly were panicked into measures where they are all going to rush off the beach or whatever, I think that is probably not the desired effect. The waste incineration directive does, as I say, allow for certain gas emissions to take place but if the averages over a particular period of time do indicate that they are over and above what the regulator has set as an acceptable limit in order to safeguard the public health then there will be a difference in those 2 datasets.

[17:30]

The real time one will be indicated by a spike, which may go way above the limit set, but the averages for the averaging process may well still be below the limits that have been set. I think if we do get into a situation, I hope we do because I am supporting the Deputy of St. Mary in his bid for real-time monitoring to go ahead. I think we will have to play our part at the Environment Department to educate the public as to what the data means and how to interpret it. I think on that basis I would encourage all Members of this House to support this worthy proposition.

11.3.3 Deputy K.C. Lewis:

I congratulate the Deputy of St. Mary for accepting the 2 parts of the amendment. I think the bottom line is we are all working to the same end and as soon as we get the data interface sorted out it will be on the internet in real time. What I would like to remind Members, the whole of T.T.S. live in Jersey. We eat the same food, drink the same water, breath the same air, swim in the same sea. This is a state-of-the-art establishment and is as good it gets. If we can improve it still further we will do.

11.3.4 Deputy M. Tadier:

I was always under the impression that Japanese wore masks not for pollution purposes but to prevent them from spreading illness, and that is what I understood when I was in Japan. But I am sure there are some who do it for pollution reasons as well. Maybe we should consider doing that over here, certainly if you are a cyclist or motorcyclist at peak times it is necessary. What has concerned me particularly during this debate is that we have heard again from a Scrutiny chairman that they have needed figures so that they can carry out their legitimate and, indeed, their responsibilities for which they have been elected in this House and they have not been given the information, on this occasion it seems to have been withheld by the Attorney General. Is that the case?

The Deputy of St. John:

By the department, not the Attorney General.

Deputy M. Tadier:

This seems to be symptomatic of one of the problems we have had in the States. We have had similar issues on our Scrutiny Panel and it is not the way to do business, so I would hope that first of all the message comes forward, and is quite appropriate that it comes up today when we have

been discussing openness and transparency. We have to find a different way of doing business because it seems to me that nowadays as a Back-Bencher Scrutiny member there is absolutely no advantage to being in this House. We are not in a privileged position when members of the public can gain access to information that we cannot get access to. That must stop completely. I do thank the Deputy for bringing this forward. It is probably his last proposition, I think, and it is hopefully the last one which is ... he has one more, sorry, being slightly pre-emptive there. The other issue that I am concerned about, there seems to be a lot of jockeying about whether or not we can put this information online and what format it should take. In some ways I completely understand that raw data is not going to be of benefit to your average layperson but in some ways it seems to me that it is the raw data which must be put up on the website in its unaltered form primarily because as soon as one tries to interpret that data and make it more perhaps palatable and user-friendly one can inadvertently or even deliberately put spin on there and manipulate the figures or only partially present them in a way. As I say, that does not necessarily have to be done deliberately but as soon as you start to interpret something you present it in a way which a layman can interpret it, it immediately loses something and it would be preferable I think for raw data to be put on the website, perhaps alongside a more user-friendly or an index so that the N.G.O.s, whether they are based in Jersey or in the U.K., can get their experts to interpret that data rather than doing it the other way round. Those are the only comments I have but I am glad to see this is coming forward. We cannot change what has happened in the past. I think it is shocking what has happened around the old incinerator. If I lived around there I would be very concerned about my health, but of course in a small island it is not simply those who are very close to the incinerator because we do have prevailing winds which blow any pollution right across the Island. It is something we should all be concerned about.

11.3.5 Deputy G.P. Southern:

If, as the Assistant Minister for Transport and Technical Services says, we are all working to the same ends, can we please come to a vote on this?

11.3.6 The Constable of St. Brelade:

Just to thank the Deputy for bringing this proposition. I would say if there is anything that gives the public confidence in the operation of the La Collette E.f.W. plant helps my department and must be a good thing. I would just refer Members to the Isle of Man plant, I do not have the website, but I am told their operating is done online and that is the sort of system we propose to emulate.

The Greffier of the States (in the Chair):

Does any Member wish to speak on the proposition as amended? Very well, I call on the Deputy of St. Mary to reply.

11.3.7 The Deputy of St. Mary:

This will be a brief summing-up. There are just 3 things that I think need to be said, and then we can move to the vote. The first is the question about more information about U.K.W.I.N., which Senator Ferguson raised, that has been answered by the amendment. S.O.S. (Save our Shoreline) the local N.G.O. is now free to take advice from any organisation they wish to give them the expertise in order to negotiate and talk with T.T.S., so that is now sorted. Then there were 2 comments, both to the same end really from Deputy Duhamel and Deputy Tadier. I think those are very important comments. Deputy Duhamel rightly said that there is a job of educating the public as to what the data means. We need to see the spikes. We need to see the averages and we need to have a mature debate among more expert people and lay people about what those things mean. Coupled with what Deputy Tadier said, so correctly, raw data is the protection for us all because, yes, there are ways of smoothing; yes, there are ways of averaging; yes, there are ways of doing the statistics and it is only by having the raw data available to all that we can have the mature debate

and the understanding growing. I move the proposition and I hope all Members get behind this matter of simple transparency in Government.

The Greffier of the States (in the Chair):

The appel is called for on the proposition as amended by the 2 amendments. If Members are in their seats the Greffier will open the voting.

POUR: 38		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

The Greffier of the States (in the Chair):

That concludes the business of the Assembly for this week. The continuation on Tuesday is already listed on the Order Paper and the Assembly therefore stands adjourned and will reconvene at 9.30 a.m. on Tuesday for the budget.

ADJOURNMENT
[17:39]