

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 3rd MAY 2011

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[09:30]

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

1. Written Questions

**1.1 THE DEPUTY OF ST. MARY OF THE MINISTER FOR EDUCATION,
SPORT AND CULTURE REGARDING TEACHER/PUPIL RATIOS:**

Question

Can the Minister inform members of the teacher/pupil ratio, with and without teaching assistants, in primary and secondary schools in Jersey, in fee-paying and in non-fee-paying sectors, and give members information on the trends in this ratio over the last 10 years?

Answer

Within their overall budget, each school has some freedom to determine how many teachers, teaching assistants and other staff they employ. This could mean that one school may decide to employ only teachers while another with a similar budget might choose to use some teaching assistants as well in order to meet the needs of all pupils in their care.

Until 2008 this data was not kept centrally or in an easily accessible form. The ratios for 2010, 2009 and 2008 are available and are as follows:

	2010	2010	2009	2009	2008	2008
School	Pupil/teacher ratio	Pupil/Adult ratio	Pupil/teacher ratio	Pupil/Adult ratio	Pupil/teacher ratio	Pupil/Adult ratio
Bel Royal	19.11	15.87	18.33	15.92	19.28	17.14
d'Auvergne	20.58	17.06	18.63	15.19	16.12	13.14
First Tower	20.80	17.24	21.40	17.09	21.04	17.88
Grands Vaux	17.21	12.90	15.79	11.52	20.44	14.89
Grouville	21.94	17.99	22.56	18.46	23.60	19.09
Janvrin	20.69	15.52	20.37	14.96	20.93	16.50
La Moye	19.40	16.03	19.54	15.94	20.57	16.77
Les Landes	19.39	14.93	18.26	13.71	17.08	13.43
Mont Nicolle	19.49	15.31	19.79	16.41	19.79	15.84
Plat Douet	20.00	14.98	16.00	12.63	18.82	14.32
Rouge Bouillon	18.98	15.75	18.54	15.51	19.96	16.35
Samares	17.67	13.72	17.62	13.33	18.55	14.30
Springfield	19.89	14.91	19.56	14.21	19.44	14.13

St Clement	19.62	16.05	18.11	14.07	18.45	15.37
St John	19.29	15.11	17.84	14.39	19.24	15.19
St Lawrence	19.42	16.20	19.65	16.40	17.92	15.22
St Luke	18.28	14.41	18.82	14.83	18.82	14.59
St Martin	22.75	17.67	22.38	17.38	22.00	16.23
St Mary	17.05	12.35	17.05	12.43	17.29	13.54
St Peter	19.77	15.64	19.20	15.01	17.40	12.82
St Saviour	18.19	15.37	16.13	13.87	17.60	15.25
Trinity	18.16	14.95	15.46	12.81	17.47	14.17
Grainville	13.88	10.22	13.23	9.71	12.66	9.46
Haute Vallee	14.55	11.49	15.22	11.99	15.06	11.60
Le Rocquier	15.52	12.33	15.33	11.96	15.66	12.41
Les Quennevais	14.52	12.37	13.94	11.76	14.10	11.80
Hautlieu	12.60	11.16	12.52	11.11	12.62	11.16
JCG Prep	16.97	14.99	17.72	15.57	16.94	14.96
VC Prep	16.80	15.10	17.05	15.39	16.01	14.21
JCG	12.57	11.29	12.04	11.00	11.95	10.64
Victoria College	13.83	12.19	13.41	11.90	13.36	11.83

Pupil teacher ratios include the head teacher, deputy heads and special educational needs teachers

Pupil adult ratios include all teachers, technicians, library assistants and all TAs, but exclude caretakers, lunchtime assistants, office staff and cleaners.

ESC is not responsible for staffing in the private sector.

School nurseries are not included because this is not a statutory provision.

Prior to 2008, the trends are unlikely to have changed significantly however since 2008 the ratios show a small increase due to the need to increase class sizes in key stage 1.

In addition to the above ratios, the schools with units that accommodate children with social, educational, behavioural difficulties have the following additional staffing.

The ratios can vary in these units because the number of children in the unit can fluctuate quite widely and the service has to respond to the individual needs presented.

December 2010

SEBD Provision	Teachers	TAs
CD - Grainville	1.0	6.84
CD - Haute Vallee	1.0	2.38
CD - Rouge Bouillon		9.61
CD - St Saviour		4.08
HI - St Clement		4.55
HI - Le Rocquier		1.34
PI - Bel Royal		3.65
PI - Les Quennevais		2.67
SL - Rouge Bouillon	2.0	2.74

1.2 SENATOR B.E. SHENTON OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING THE ALLOCATION OF BUDGETS TO SCHOOLS:

Question

Would the Minister provide full details regarding how the Education budget has been allocated on a school-by-school basis, including fee paying schools receiving grants, together with details of the average number of students attending each of these schools, ensuring that the cash figures reconcile with the total budget that his department has allocated to Education, and that the pupil numbers reconcile with the average total number of students in full time education during the period (using figures for the educational year September 2010 to August 2011 rather than the financial year if he so wishes)?

Answer

The proportion of the Education, Sport and Culture budget allocated to Education is shown in Appendix A, attached. It shows that over 86% of the total ESC budget is directly related to students, whether in pre-school, primary, secondary, tertiary or fee-paying education establishments.

As can be seen from the details on student numbers, Education, Sport and Culture funds more than 13,000 students in full time education in schools and over 11,000 in

various other areas, such as further and higher education, pre-school provisions, special schools, instrumental music and adult education.

Tables showing the funding to each provided school are shown in Appendix B. Student numbers are based on the September 2010 pupil census which is used to determine the funding for each school for 2011.

Tables showing the allocation to grant funded private schools can be found on the second page of Appendix B.

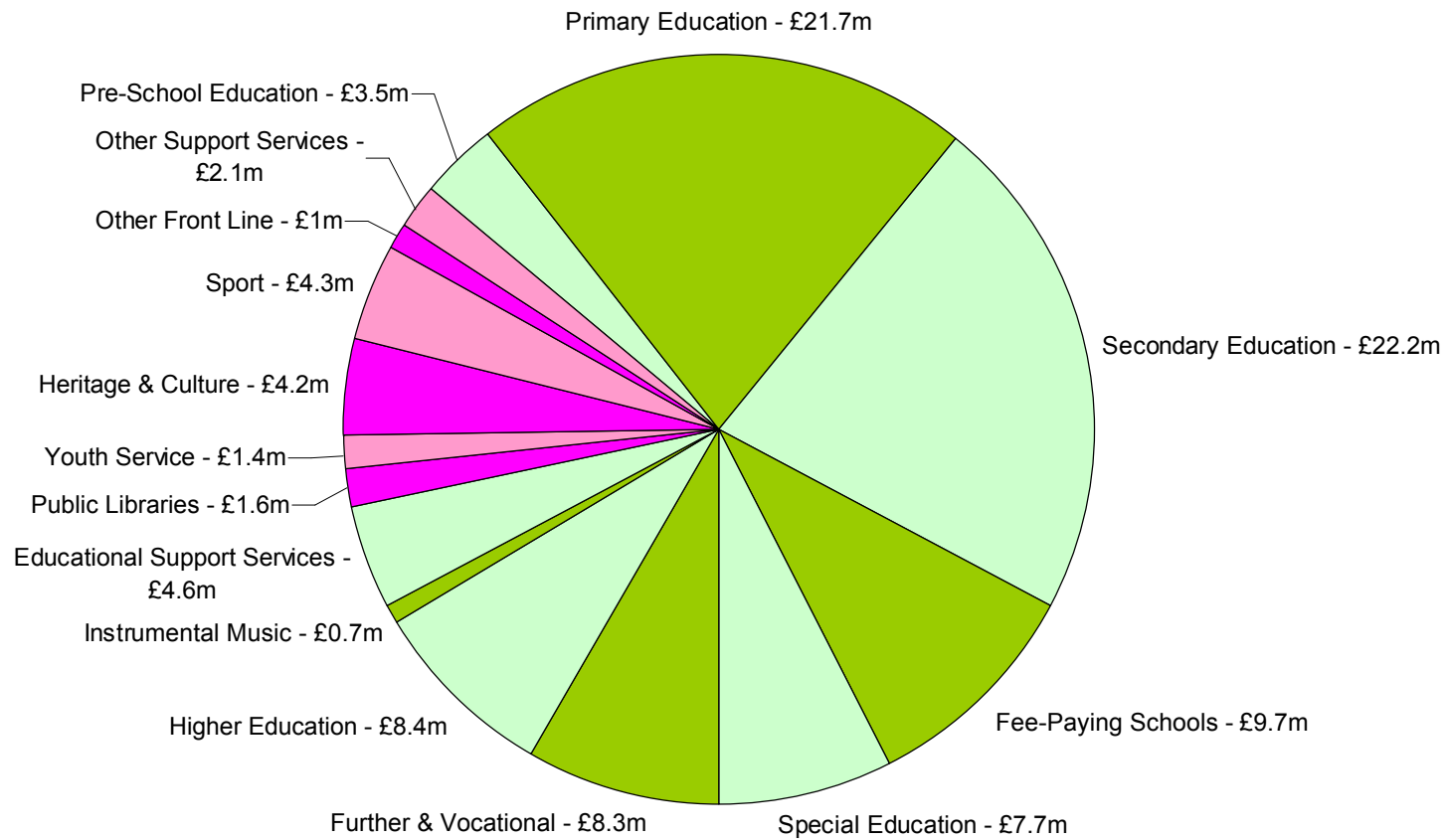
Reconciliations to the figures contained within the 2011 Annual Business Plan are included in Appendix B showing any adjustments for changes in student numbers, staffing terms and conditions and overhead allocations as required for the Business Plan.

Overhead allocations, such as central departmental services, including directorate; finance; insurance; long term sickness and maternity cover; training, development and monitoring; ICT replacement and wide area network costs etc are allocated to schools and other areas of the service based on various factors, including total budget, staff costs, premises areas, financial transactions processed and student numbers. Details of the amount allocated to each area are shown in Appendix A, reconciling the direct budgets provided to each are to the total figures shown in the 2011 Business Plan.

Education, Sport and Culture

Appendix A

Analysis of Budget - 2011



	Direct Costs		Allocation of Overheads		As per 2011 ABP	
	Education	Non-School	Education	Non-School	Education	Non-School
	£	£	£	£	£	£
Schools and Colleges						
Non Fee Paying Provided Schools						
Pre-School Education	3,523,600	-	159,200	-	3,682,800	-
Primary Education	21,677,000	-	1,790,700	-	23,467,700	-
Secondary Education	22,222,500	-	1,844,700	-	24,067,200	-
Fee-Paying Schools						
Provided Schools	4,710,000	-	976,000	-	5,686,000	-
Non-Provided Schools	5,005,000	-	128,500	-	5,133,500	-
Special Educational Needs and Special Schools	7,694,200	-	368,800	-	8,063,000	-
Instrumental Music Service	723,600	-	34,100	-	757,700	-
Culture and Lifelong Learning						
Further, Vocational and Tertiary Education	8,255,400	-	571,600	-	8,827,000	-
Public Libraries	-	1,641,000	-	76,300	-	1,717,300
Youth Service	-	1,405,800	-	71,700	-	1,477,500
Higher Education (Student Finance)	8,385,200	-	290,700	-	8,675,900	-
Careers Jersey	-	678,400	-	10,800	-	689,200

Child Care Support

Day Care Services	-	192,200	-	6,800	-	199,000
Jersey Child Care Trust	-	171,800	-	4,600	-	176,400
Heritage (Grant to the JHT)	-	2,439,200	-	56,500	-	2,495,700
Culture (including the Grant to the JAT)	-	1,754,500	-	43,400	-	1,797,900

Sport

Sports Centres	-	1,179,800	-	748,600	-	1,928,400
Playing Fields and School Sports Facilities	-	1,101,100	-	263,700	-	1,364,800
Sport Development	-	511,900	-	97,000	-	608,900
Grants and Advisory Council	-	316,000	-	12,900	-	328,900
Playschemes and Outdoor Education	-	183,900	-	23,700	-	207,600
Minor Capital Expenditure	-	100,000	-	-	-	100,000

Overheads

Directorate	-	182,400	-	(182,400)	-	-
Support Serv - Schools and Colleges	1,587,400	-	(1,587,400)	-	-	-
Support Serv - Culture and Lifelong Learning	-	181,400	-	(181,400)	-	-
Support Serv - Sport Division	-	950,000	-	(950,000)	-	-
Policy and Planning, including ICT	1,609,300	917,600	(1,609,300)	(917,600)	-	-
Finance, Staff Services and Insurance	300,000	789,700	(300,000)	(789,700)	-	-

Long Term Sickness / Maternity	1,062,500	-	(1,062,500)	-	-	-
Savings to be Identified...		(1,295,000)				(1,295,000)
Grand Total	86,755,700	13,401,700	1,605,100	(1,605,100)	88,360,800	11,796,600
		100,157,400		-		100,157,400
	86.6%	13.4%			88.2%	11.8%

Education, Sport and Culture

School Funding Summary

Actual Funding - 2011 - overheads excluded

States of Jersey Schools

School	Pupil Related Funding	Fixed and Premises Costs	Total Budget Allocation	Funding Ratio	Less : Corporate Savings	States Funding	Total Pupils (exc Nursery)
Primary - Non Fee Paying - Excluding Nursery Classes							
Bel Royal	586,843	241,994	828,837	100%	(8,870)	819,967	159
d'Auvergne	1,017,468	298,739	1,316,206	100%	(14,364)	1,301,843	317
First Tower	1,124,400	303,243	1,427,643	100%	(15,607)	1,412,037	362
Grands Vaux	602,627	230,362	832,989	100%	(8,707)	824,281	148
Grouville	1,129,397	286,395	1,415,793	100%	(15,527)	1,400,265	351
Janvrin	1,149,891	294,517	1,444,408	100%	(15,711)	1,428,697	331
La Moye	1,034,819	274,011	1,308,830	100%	(14,385)	1,294,445	315
Les Landes	539,332	223,106	762,438	100%	(8,370)	754,068	159
Mont Nicolle	568,952	227,864	796,816	100%	(8,702)	788,114	167
Plat Douet	1,101,629	299,462	1,401,091	100%	(15,252)	1,385,839	320

Rouge Bouillon	1,237,142	378,993	1,616,135	100%	(17,668)	1,598,467	353
Samares	794,514	266,445	1,060,959	100%	(11,287)	1,049,672	211
Springfield	622,547	210,865	833,411	100%	(8,983)	824,429	179
St Clement	591,606	228,531	820,137	100%	(8,952)	811,185	175
St John	565,658	223,499	789,157	100%	(8,675)	780,481	169
St Lawrence	563,631	223,578	787,209	100%	(8,638)	778,571	167
St Luke	609,219	220,461	829,680	100%	(8,963)	820,717	170
St Martin	562,784	232,418	795,201	100%	(8,664)	786,538	182
St Mary	569,301	214,589	783,891	100%	(8,586)	775,305	147
St Peter	556,710	237,159	793,870	100%	(8,719)	785,151	174
St Saviour	580,600	231,299	811,899	100%	(8,868)	803,031	171
Trinity	521,699	226,966	748,665	100%	(8,228)	740,437	158
	<u>16,630,770</u>	<u>5,574,496</u>	<u>22,205,266</u>		<u>(241,726)</u>	<u>21,963,540</u>	<u>4,885</u>

	Pupil Related Funding	Fixed and Premises Costs	Total Budget Allocation	Funding Ratio	Less : Corporate Savings	States Funding	Total Pupils
Secondary - Non Fee Paying							
Grainville	3,188,807	720,352	3,909,159	100%	(40,142)	3,909,159	554
Haute Vallee	3,654,256	611,773	4,266,029	100%	(44,287)	4,266,029	712

Hautlieu	3,808,203	663,027	4,471,229	100%	(48,917)	4,471,229		672
Le Rocquier	4,483,821	700,210	5,184,032	100%	(54,013)	5,184,032		900
Les Quennevais	4,007,788	569,140	4,576,927	100%	(48,425)	4,576,927		825
	<u>19,142,874</u>	<u>3,264,502</u>	<u>22,407,377</u>		<u>(235,785)</u>	<u>22,407,377</u>		<u>3,663</u>

	Pupil Related Funding	Fixed and Premises Costs	Total Budget Allocation	Funding Ratio	Less : Corporate Savings	6th Form Bursaries	Net States Funding	Total Pupils
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Fee Paying Provided Schools

JCG Prep	1,272,158	294,023	1,566,181	25%	(9,155)	-	382,390	376
VC Prep	976,215	274,943	1,251,158	25%	(7,221)	-	305,568	294
JCG	3,571,599	683,903	4,255,502	50%	(24,103)	32,428	2,102,871	713
Victoria College	3,505,971	624,170	4,130,141	50%	(23,998)	33,832	2,074,904	730
	<u>9,325,943</u>	<u>1,877,038</u>	<u>11,202,981</u>		<u>(64,477)</u>		<u>4,865,733</u>	<u>2,113</u>

Funding Summary and Reconciliation to ABP

	NFP Primary	NFP Secondary	FPP Schools
Funding provided to schools	21,963,540	22,407,377	4,865,733
add back : CSR Saving - Minor Works	55,000	105,000	-
less : Terms & Conditions - additional funding (TBC)	(500,000)	-	-

less : Pupil Number changes / distribution	210,360	(277,077)	(75,733)
less : Difference in Staff Grading funding	(51,900)	(12,800)	-
less : Property Occupancy Charge	-	-	(80,000)
Funding per 2011 ABP before overheads	<u>21,677,000</u>	<u>22,222,500</u>	<u>4,710,000</u>
"Overhead" allocation	1,790,700	1,844,700	976,000
Funding per 2011 ABP presented to States	<u><u>23,467,700</u></u>	<u><u>24,067,200</u></u>	<u><u>5,686,000</u></u>

Education, Sport and Culture

School Funding Summary

Actual Funding - 2011 - overheads excluded

Private Schools

	Pupil Related Funding	Fixed and Premises Costs	Total Budget Allocation	Funding Ratio	Less : Corporate Savings	Add : "Central Services" funding *	Net States Funding	Total Pupils
Fee Paying Non-Provided Schools								
St George's	517,744	320,536	838,280	25%	(4,191)	-	205,379	177
St Michael's	997,790	382,719	1,380,509	25%+50%	(6,903)	-	413,328	324
Convent FCJ	893,987	280,561	1,174,548	40%	(5,873)	26,460	490,406	294
Beaulieu Prim	583,752	258,145	841,897	25%	(4,209)	17,370	223,635	193
De La Salle Prim	746,976	280,561	1,027,537	25%	(5,138)	22,410	274,156	249
Beaulieu Sec	2,684,354	554,720	3,239,074	50%	(16,195)	49,770	1,653,112	553
De La Salle Sec	2,765,268	569,690	3,334,958	50%	(16,675)	51,030	1,701,834	567
	<u>9,189,871</u>	<u>2,646,933</u>	<u>11,836,804</u>		<u>(59,184)</u>	<u>167,040</u>	<u>4,961,850</u>	<u>2,357</u>

Funding Summary and Reconciliation to ABP

* Central Services funding represents the (pro-rata) additional cost of finance and payroll, building maintenance, insurance, ICT

FP NP
Schools

etc that may be provided to States schools free of charge, but which the Private schools have to make provision for themselves.

Grant Funding provided to schools	4,961,850
Pupil Number changes / distribution	43,150
Funding per 2011 ABP before overheads	<u>5,005,000</u>
"Overhead" allocation	128,500
Funding per 2011 ABP presented to States	<u><u>5,133,500</u></u>

Pupil Numbers Summary (as at September 2010 census date)

	NFP Primary	NFP Secondary	FPP Schools	FP NP Schools	Total
Pupils used for 2011 ABP (estimated March 2010)	4,928	3,624	2,097	2,362	13,011
Actual Pupils in 2011 funding formula	4,885	3,663	2,113	2,357	13,018
Difference in Allocation	(43)	39	16	(5)	7

Additional numbers in Secondary Education (including Fee Paying schools) mainly relate to higher than expected numbers of students continuing in education post 16.

In addition to the above numbers, Education, Sport and Culture also have students in the following sectors :

Pre-School Education	States	514
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	Private (NEF funded)	386	
Primary Non Provided Schools	Non Grant Funded schools	113	
Special Education Schools		131	
			FTE students
Further Education	Full time	896	896
(Highlands)	Part time (*)	2305	479.3
	Higher Education	90	90
	Full Cost Recovery (*)	1194	37.3
	Adult Education (*)	3972	158.4

(*) Full Time Equivalent students represent the pro-rata teaching time compared to a full time student as determined by the funding formula for Highlands

Higher Education (in UK)	1253
Instrumental Music Service	963

1.3 THE DEPUTY OF ST. JOHN OF THE CHIEF MINISTER REGARDING A RECENT VISIT BY A JERSEY DELEGATION TO NORMANDY AND BRITTANY:

Question

1. Will the Chief Minister advise which States members attended the recent trip to Normandy and Brittany over the weekend of 1st to 4th April 2011 to represent Education, Sport and Culture, Economic Development and Planning and Environment, who they met, what subjects were discussed and which civil servants or industry personnel were also part of the delegation?
2. Would the Chief Minister advise what the trip cost and whether the Assistant Chief Minister, External Affairs, was part of the delegation?
3. As both Normandy and Brittany have vital sea routes, was a representative of the Ports of Jersey part of the delegation, if so, would he give details as to who this person was and who they met, and, if not, please explain why?

Answer

1. The Chief Minister and Connétable Vibert, in his capacity as Chairman of the Assemblée Parlementaire de la Francophonie, attended meetings in Caen and Deauville on Friday 1 April.

They met with Mr Alain Tourret, Vice-Président of the region of Basse-Normandie, together with a number of French officials relevant to the matters under discussion, and also with Mr Phillippe Augier, mayor of Deauville.

Topics discussed comprised:

- International relations
- Possible air links with Jersey
- Tourism
- The World Equestrian Games 2014, to be hosted in Normandy.

The Director-General of the Jersey Financial Services Commission gave a presentation on Jersey's international finance industry to elected representatives of the Regional Council.

Officials from Jersey's administration comprised the Director of Tourism, the Assistant Director of Education, Sport and Culture, and the International Relations Officer. They were supported by officials of the Bureau de Jersey and La Maison de Normandie et de la Manche.

In the evening, the Chief Minister and Connétable Vibert met with Mr Laurent Beauvais, Président of the region of Basse-Normandie, over a dinner hosted by Mr Beauvais in honour of the visit to Caen.

On 4 April the Chief Minister and Connétable Vibert, supported by an official from the Bureau de Jersey, met in Rennes with:

- Mr Jean-Yves Le Drian, Président of the region of Bretagne;
- Isabelle Thomas, Vice-Président in charge of sea and coastal protection;
- Maria Vadillo, Vice-Président in charge of tourism and heritage;
- Loig Chesnais-Girard, regional councillor, president of the economic commission, delegate for innovation and social economy;

and a number of French officials relevant to the matters under discussion.

Topics discussed included:

- Jersey's constitutional status and international relations
- Historic links with Brittany
- Further development of relations with the Department of Ile et Vilaine
- Jersey's economy and industries, and potential cooperation with Brittany
- Tourism
- Renewable energy resources.

It was agreed that the exchange of expertise and ideas on matters of shared interest was valuable and was an important step in developing closer links between Jersey and the region of Brittany.

On Tuesday 5 April, following the tragic death of Granville fisherman M. Philippe Lesaulnier, the Chief Minister decided to extend his visit to France in order to attend the funeral which took place in Folligny, Normandy. The Chief Minister joined the official delegation which included the Sous-Préfet de la Manche, the Président of the Conseil général de la Manche Sénateur Le Grand and elected representatives, the Mayor of Granville, high-ranking representatives of the Gendarmerie Nationale and French Navy, and a member of the St. Helier Lifeboat. The presence of the Chief Minister was much appreciated by the family of Mr Lesaulnier and warmly welcomed by the civil authorities.

Answer:

2. The cost of the visit for the whole delegation from Jersey was £1,107.

The Assistant Chief Minister, External Affairs, was not part of the delegation due to attending meetings with MPs in London on Monday 4 April.

Answer:

3. Sea routes are a responsibility of the Economic Development Department, not the Ports of Jersey. However, sea routes were not on the agenda for any of the meetings and no representatives were required for this subject.

1.4 DEPUTY J.M. MAÇON OF ST. SAVIOUR OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING A PELICAN CROSSING AT LONGUEVILLE:

Question

Would the Minister explain what specific legislative barriers exist, if any, which have prevented the establishment of a pelican crossing on Longueville Road next to Miladi Farm Parade?

Answer

There are no specific legislative barriers to providing a pelican type crossing on Longueville Road next to Miladi Parade. Under article 69 of the Road Traffic (Jersey) Law 1956, the Minister for Transport and Technical Services may, after consultation with the Connétable of the Parish in which the road is situated, establish on any road such crossings for pedestrians as the Minister considers necessary.

However, I am advised by my officers that this location is not a suitable location in which to establish a pelican or zebra type crossing. Neither of these two types of crossings are a guarantee

of pedestrian safety. Studies into pedestrian injury accidents that have occurred at such crossings both on the island and in the UK, indicate that a location such as Longueville Road, outside Miladi Parade, has a very high likelihood of pedestrian injury accidents occurring. The reasons for this are:

- The close proximity of a number of vehicular accesses, including that to Miladi Parade itself, resulting in a high likelihood of red light running from drivers exiting these accesses and failing to take account of the crossing and crossing pedestrians.
- The low level of future usage of a crossing at this location, especially for the majority of the day and evening outside peak traffic and pedestrian hours, again leading to red light running with consequent danger to pedestrians.

The Department has therefore advised me that the best option for providing a pedestrian facility at this location is a pedestrian refuge Island. Regrettably, negotiations with a nearby Landlord to acquire the necessary 400mm wide strip of land to widen the road sufficiently to provide an Island, have not been successful.

1.5 SENATOR J.L. PERCHARD OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING G.S.T. ON FOOD AND FUEL:

Question

Would the Minister advise whether Jersey legislation would require amendment should a zero-GST rating for food and fuel to be approved utilizing the UK model and, if so, will the Minister also advise on the likely cost, manpower implications and the scale of the legislative reform required to transcribe UK law into Jersey law in this regard?

Answer

I can confirm that the Jersey GST Legislation will require amendment should supplies of food and fuel be zero-rated. I should add that the current UK VAT system does not zero-rate domestic fuel and power – all supplies are taxed at 5% [if they qualify as domestic] or the standard rate of 20%.

At this stage the scale of legislative reform is difficult to predict but even if we try to mirror the UK it will require significant work on clarification and definitions; drafting instructions to amend and expand Schedule 6 of the Law and the more onerous task for the agencies involved (Taxes Office/Customs) of re-training staff; producing internal guidance, issuing leaflets/notices and re-educating the taxpayer population.

There will also be an unknown but potentially significant amount of work to mirror changes in the UK/EU as and when they occur and from local rulings provided by the Commissioners of Appeal in dispute cases which could be at variance with UK VAT legislation.

A reasonable approximation of the additional Taxes Office administrative costs based on UK and international experience is that 3 additional staff will be required and the extra payroll, social security, IT, accommodation and other costs would be approximately £200,000 to £300,000 a year.

The above are, of course, only the implications for the States. The compliance costs to Island businesses of preparing for and implementing any revised legislation will vary depending on size and type of business but should not be underestimated.

1.6 DEPUTY P.V.F. LE CLAIRE OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING GROUNDWATER POLLUTION AT THE AIRPORT:

Question

Would the Minister provide members with an update on the settlement of claims made by the residents and landowners affected by the groundwater pollution at the Airport Fire Training Ground?

Answer

I advise Members a settlement agreement has been forwarded to residents and their legal representatives, and that there has been ongoing discussion between the parties.

I can confirm that final discussions between the legal representatives of the residents and the States, and other stakeholders, are due to be held in the near future towards bringing this matter to a conclusion at the earliest practicable opportunity thereafter.

1.7 SENATOR B.E. SHENTON OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE RECOMMENDATIONS MADE BY THE COMMITTEE OF INQUIRY INTO REG'S SKIPS:

Question

Can the Minister confirm that he will implement the recommendations contained within the Committee of Inquiry: Reg's Skips - Planning Applications - Second Report (R.38) in a timely manner, including the adoption of a Code of Conduct for the Minister re Planning Decisions, and, if not, why not?

Answer

The Reg's Skips - Planning Applications - Second Report (R.38) contains a variety of recommendations all of which we will endeavour to implement. However the timescales suggested in the report may not be achievable.

Of particular note is the suggestion of a new appeals system. This is not simply the prerogative of the Planning and Environment Minister and the Court will need to be involved in discussions.

I am more than happy to implement a Ministerial Code of Conduct as soon as I receive the report of the Political Steering Group. I established a Political Steering Group comprising my Assistant Ministers, Deputy Duhamel and Deputy Egge, together with Senator Le Gresley and Deputy Le Herissier. This group will report to me and I will pass their report on to the States.

1.8 DEPUTY J.M. MAÇON OF ST. SAVIOUR OF THE CHAIRMAN OF THE CORPORATE SERVICES SCRUTINY PANEL REGARDING THE SCRUTINY OF CIVIL PARTNERSHIP LEGISLATION:

Question

Would the Chairman advise whether her Panel intends to scrutinise the forthcoming Civil Partnerships legislation?

Answer

The Corporate Services Scrutiny Panel is currently undertaking reviews into:

- The Draft Control of Housing and Work (Jersey) Law 201- and Draft Register of Names and Addresses (Jersey) Law 201-;
- The Comprehensive Spending Review and;
- The States of Jersey Development Company: Selection Process

It is noted that during the States debate on Civil Partnerships (P.36/2009) the overwhelming majority of the States Assembly voted for same sex-couples to enter into civil partnerships. Taking this into consideration, and the Panel's heavy workload, it is therefore decided that the Panel will not review this forthcoming legislation.

1.9 DEPUTY J.M. MAÇON OF ST. SAVIOUR OF THE CHIEF MINISTER REGARDING THE LODGING OF CIVIL PARTNERSHIP LEGISLATION:

Question

Can the Chief Minister indicate when the Civil Partnerships legislation will be lodged for debate?

Answer

The Council of Ministers approved a draft Civil Partnerships Law on 24th March 2011 and decided to engage with the Corporate Services Scrutiny Panel before lodging for debate. It is intended that the law will be lodged before 7th June 2011 so that it can be debated before the summer recess. This should allow the Law to be brought into force during the second quarter of 2012.

1.10 DEPUTY P.V.F. LE CLAIRE OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING GREEN WASTE COMPOSTING AT LA COLLETTE:

Question

Would the Minister state what, if anything, is happening at La Collette regarding the development and management of green waste, what new cement laying works are being installed and at what cost?

What work has been completed and what is planned at La Collette in terms of infrastructure and capital expenditure on green waste and at what cost?

What consultation over the issues of green waste, if any, has there been and with whom?

What volumes of green waste are currently being received and what has that volume been over the last 5 years ?

Answer

The Department is undertaking odour improvement works at the Commercial Green Waste Site at La Collette. The works consist of:

- Increasing the processing slab area to enable the shredding and screening to happen off the main composting slab. This will enable the maximum area for windrow turning to be available, preventing the risk of over-height windrows which can be the cause of anaerobic odour generation. It will also enable the separate storage of different green waste materials to facilitate blending of carbon and nitrogen-rich materials.
- Introduction of a straddle windrow turner. This will enable faster and more consistent turning of the composting material improving the efficiency and will also enable more consistent addition of moisture to the compost.
- Introduction of a covered screener that will not issue as much odour during the screening process.
- Introduction of a 3 metre high perimeter bank around the site to minimise air flow off site.
- Introduction of an adjustable height perimeter misting system and mobile misting units to reduce odour and bio aerosol emissions from site.
- Improvements to the existing leachate lagoon to introduce multiple stages which will improve and make more efficient aeration and enable removal of potentially anaerobic silts.

It is estimated that the cost of these works and the purchase of new equipment will be of the order of £1.65m. (Permission for these works are covered under Planning Consent P/2008/0958).

The principal consultation activities for the proposed works have been with the Environmental and Health Regulators. The operation was served with a statutory nuisance abatement notice in 2007 due to frequent complaints about odour. Following this the Department reviewed current best practice in the industry and introduced a programme of improvements which have so far been successful with complaints and odours detected through monitoring reducing as a result. The abatement notice has since been lifted but the works described above will ensure further improvement which can be sustained in the long term.

Total green waste received figures for the period 2006-2010 (tonnes):

2006	12,902
2007	14,997
2008	11,239
2009	13,553
2010	12,038

Aside from the works outlined above the only additional capital works that will be undertaken at the site is to the weighbridge/reception area to allow the Department to introduce a Commercial Green Waste Charge.

1.11 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING I.T. PROJECTS:

Question

Is the Minister satisfied with progress on major IT projects in the Health and Social Services Department? Could the Minister identify these projects for members and give proposed dates of completion, budgets allocated and any overspends to date?

Answer

The Health and Social Services Department (HSSD) is currently working to deliver a major IT initiative known as the Integrated Care Records (ICR) programme. The ICR programme consists of a group of inter-related and inter-dependent projects that will modernise HSSD's current IT and information management systems some of which are approximately 25 years old and which, because of their age, are increasingly difficult to support.

The ICR projects include:

- **Child health care system:** A new child health care system was introduced in January 2009 to support the management of the Island's vaccination, preschool and school health programmes. The project was completed on time and in budget.
- **Electronic x-ray and imaging system:** A new system known as RIS/PACS was introduced in February 2010. RIS/PACS replaces film x-rays with digital images which can be more easily stored, viewed, manipulated and shared amongst different clinicians thereby support diagnosis. Images can also now be shared with UK Centres of Excellence allowing rapid diagnosis of more complex conditions and provision of second opinions when required. The RIS/PACS project was completed on time and in budget.

In 2010 alone HSSD made savings of £260,000 on film processing costs.

- **Replacement patient administration system:** Work is currently underway to replace the old Patient Administration System (PAS) with a new system known as TrakCare. TrakCare will replace aging software and technology with system which delivers multiple benefits including:
 - a Master Patient Index (MPI) providing the basis for screening and other long term care provision which is essential for the management of patient health
 - a full electronic patient record (EPR) for Maternity and Emergency Department admissions with access to that record for all wards and departments
 - "real-time" patient information for bed management
 - well managed waiting lists

The target date for completion of the PAS project was originally October 2010 however due to a number of system developments and changes mutually agreed with supplier the current target "go-live" date is now June 2011. These developments will provide improved functionality and better support HSSD's business processes.

The change of date to June was in part dictated by the need to avoid peak times in hospital activity. For any major IT project the ideal times in the hospital year for "go-live" are either mid-summer or mid-autumn in order to avoid winter pressure on clinical services and spring/summer holiday periods which mean staff may not be available for training.

HSSD and the suppliers are currently in the final stages of negotiating additional clinical functionality which will deliver increased operational benefits. These negotiations, which are being held in response to the delays in implementation, are commercially sensitive and are at a critical stage. It would not therefore be appropriate to disclose details at the moment.

- **Pharmacy system.** A replacement pharmacy stock control system will be implemented alongside the new PAS system. This will support real time stock control and provide a foundation for potential e-prescribing. It is anticipated that it will be delivered in budget.

The elements of the ICR programme that have been implemented to date are making real, tangible improvements to patient care - such as more better management of childhood vaccinations and more rapid diagnosis - as well as delivering efficiencies. The clinical and administrative staff engaged in the project are extremely positive about the benefits that will be delivered by PAS and working to ensure its smooth implementation in June.

	Total budget allocated for ICR project by States (2006 – 2010)	Total ICR project spend from 2006 to end Feb 2011
Childhealth; RIS/PACS; hardware upgrade; wireless technology; PAS; Pharmacy	£12 million	£10,928,686

In addition to the ICR programme, HSSD is working with the States IS Department on a number of other system upgrades/replacements including: pathology; links to private patients; ambulance; server replacement; breast screening and maternity systems.

1.12 SENATOR J.L. PERCHARD OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING FEE INCREASES AT FEE-PAYING SCHOOLS:

Question

Following the statement on 14th April by the Assistant Minister for Education, Sport and Culture that fee-paying schools were going to lose some of their States grants and that the Education, Sport and Culture Department had managed to persuade the Council of Ministers to do this over 5 years, will the Minister inform members –

- what the latest proposal is in respect of grants to fee-paying schools and whether this policy is supported by the Council of Ministers?
- what reaction, if any, has he received to his latest proposal from the Boards of Governors of Jersey College for Girls, Victoria Collage, De la Salle College, Beaulieu and FCJ?

Answer

- Reducing the subsidy to fee paying schools is one of a range of measures the department is taking to meet agreed savings targets. This proposal is supported by the Council of Ministers

and the final decision about the reduction in subsidy will be taken by the States when it debates the 2012 Business Plan in September.

The details of this proposal are set out below:

The grants payable to the secondary schools are based on a formula that takes into account the cost of educating a child in the non fee-paying secondary sector. It is proposed that for Jersey College for Girls, Victoria College, De La Salle and Beaulieu Convent the subsidy will reduce from 50% to 25% over time.

In addition, the grant to FCJ Primary School will be reduced from the current 40% level, to 25%. By doing this, the funding available to FCJ is brought into line with the financial support granted to other fee-paying primary schools, i.e. Jersey College for Girls Preparatory School, Victoria College Preparatory School, De la Salle Primary School and Beaulieu Primary School. The phasing of this reduction is proposed over four years.

As a result the overall subsidies paid will reduce as shown:

	Current	Proposed Final
	£	£
Jersey College for Girls (inc Prep)	2,517,700	1,470,400
Victoria College (inc Prep)	2,414,300	1,381,800
Beaulieu (Primary & Secondary)	1,876,700	1,067,000
De La Salle (Primary & Secondary)	1,976,000	1,142,300
FCJ	490,400	314,200
	9,275,100	5,375,700

figures shown at 2011 price base

Part of this process has involved ESC working closely with all schools in order to identify a workable solution. As a result of this work and after gaining agreement from the COM, the time-scale for the reduction of grant has been extended to five years, instead of the three years initially proposed under the CSR process, to minimise the impact on parents.

Financial assistance will be provided to each school to help them deliver efficiency savings and support parents who may find it difficult to pay the extra fees over the transition period.

The current proposal allows fee increases to be managed within generally acceptable levels.

The table attached at **Appendix 1** shows fee increases over the past ten years.

Finally, the subsidies currently payable to St George's Preparatory School and St Michael's Preparatory School are to cease and arrangements are being made with each school to ensure that the phasing for the removal of the grant reflects their particular circumstances.

- (b) In their reactions to the proposals, schools and their Boards of Governors have recognised the need for the States to reduce overall expenditure and have cooperated fully with the department in finding a workable solution to deliver the subsidy reductions.

I have listened to all concerns and together we have found a solution that not only allows the savings to be achieved but more importantly will secure the long-term viability of each school.

I am confident this proposal offers a reasonable way forward that takes into account the circumstances of individual schools. All Boards of Governors have confirmed they are prepared to work with the Education, Sport and Culture Department in implementing the proposed changes.

Appendix 1: Table showing school fee increases over the past 10 years

	JCG Prep		Jersey College for Girls		VC Prep		Victoria College		Beaulieu		Ar P
	Annual Fee £	Increase %	Annual Fee £	Increase %	Annual Fee £	Increase %	Annual Fee £	Increase %	Annual Fee £	Increase %	
Sep 2000	2,070		2,250		2,223		2,421		2,460		2
Sep 2001	2,310	11.6%	2,364	5.1%	2,478	11.5%	2,664	10.0%	2,730	11.0%	2
Sep 2002	2,475	7.1%	2,655	12.3%	2,730	10.2%	2,931	10.0%	2,970	8.8%	2
Sep 2003	2,655	7.3%	2,985	12.4%	3,084	13.0%	3,252	11.0%	3,147	6.0%	3
Sep 2004	2,925	10.2%	3,210	7.5%	3,420	10.9%	3,480	7.0%	3,330	5.8%	3
Sep 2005	3,075	5.1%	3,360	4.7%	3,600	5.3%	3,600	3.4%	3,525	5.9%	3
Sep 2006	3,180	3.4%	3,441	2.4%	3,690	2.5%	3,690	2.5%	3,630	3.0%	3
Sep 2007	3,300	3.8%	3,525	2.4%	3,780	2.4%	3,780	2.4%	3,849	6.0%	3
Sep 2008	3,522	6.7%	3,765	6.8%	3,975	5.2%	3,975	5.2%	4,080	6.0%	4
Sep 2009	3,612	2.6%	3,858	2.5%	4,074	2.5%	4,074	2.5%	4,326	6.0%	4
Sep 2010	3,684	2.0%	4,020	4.2%	4,194	2.9%	4,194	2.9%	4,587	6.0%	4
Sep 2011	3,831	4.0%	4,263	6.0%	4,320	3.0%	4,446	6.0%	4,860	6.0%	

1.13 SENATOR F. du H. LE GRESLEY OF THE MINISTER FOR SOCIAL SECURITY REGARDING CHANGES TO WINTER FUEL ALLOWANCE:

Question

Could the Minister provide a progress report on the implementation of the proposition 'Cold weather payments: amendment to income support' (P.4/2011) which was approved by the States on 6th February 2011?

Does the Minister expect to be in a position to commence cold weather payments to this new group of pensioner households with effect from October of this year?

Answer

The outcome of the amended proposition P.4/2011 was a commitment to consider the reprioritisation of existing expenditure proposals to identify funding for these payments in 2012, within the existing overall 2012 expenditure limit.

This is being done as part of the business planning process. The detailed expenditure proposals for 2012 will be lodged in July and debated in September.

Subject to the outcome of the Business Plan debate in September, legislation will then be prepared for approval by the States.

The current States decision on P.4/2011 did not raise the issue of funding during 2011 and payments will not be available during 2011.

1.14 DEPUTY A.E. JEUNE OF ST. BRELADE OF THE CHIEF MINISTER REGARDING DIFFERENTIALS IN THE PAY OF NURSES BETWEEN JERSEY AND THE UNITED KINGDOM:

Question

Would the Chief Minister, as Chairman of the States Employment Board, advise members what investigations, if any, the Board has undertaken, or what advice it has received, during the last 12 months to identify pay differentials for nursing staff between Jersey and the United Kingdom and would he provide any evidence of differential by nursing grade?

Answer

The Health and Social Services Department and the States Human Resources Department jointly commissioned an investigation by Incomes Data Services (IDS) in 2010 into recruitment and retention difficulties for nurses and midwives and the implications these had for the way in which we pay nurses and midwives. IDS reported in January, 2011.

The IDS report showed that, whilst Jersey pays higher basic rates of pay than the UK for nurses and midwives, once the high cost of living and rental accommodation in Jersey is taken into account, differentials become very narrow and in some cases negative. This was also confirmed in a report produced by the Consultants, Tribal, in 2010, which benchmarked general States of Jersey pay rates against those in the UK.

IDS recommended that basic pay for registered nurses and midwives in grades 5, 6, 7 and 8 should be reviewed, and also a housing rent subsidy scheme should be considered for all registered nurses and midwives whose housing rental costs exceed 25% of gross household income. This report is currently being considered by the States Employment Board and appropriate consultations are being held with staff representatives.

The Jersey and UK (Agenda for Change) basic rates of pay for nurses and midwives are shown below. High cost area allowances, paid in Inner London, are also shown.

UK Agenda for Change / Jersey Nurses & Midwives Pay Comparisons

April 2011

Job Title	AfC band	AfC Apr 2010 / Apr 2011	AfC + high cost area allowance (inner London)	Jersey Grades	Jersey 2011	Pay differentials AFC / Jsy 2011	Pay differentials AFC / Jsy 2011 inc high cost area allowance
Health Care Assistant	Band 2	14,779	18,815	NM01 00	21,673	6,894	2,858
		15,194	19,230	NM01 01 NM01 02 NM01 03	22,216	7,022	2,986
		15,610	19,646	NM01 04	22,659	7,049	3,013
		16,145	20,181		23,104	6,959	2,923
		16,753	20,789		23,547	6,794	2,758
Senior Health Care Assistant	Band 3	17,118	21,154	NM02 01	25,331	8,213	4,177
		17,604	21,640	NM02 02	25,776	8,172	4,136
		18,152	22,188	NM02 03	26,223	8,071	4,035
		18,577	22,613	NM02 04	26,670	8,093	4,057
Staff Nurse ODP 2 nd level RN	Band 4	19,333	23,369	NM03 01	29,242	9,909	5,873
		20,554	24,664	NM03 02	29,782	9,228	5,118
		21,176	25,411	NM03 03	30,322	9,146	4,911
		21,798	26,157	NM03 04	30,861	9,063	4,704
Senior Staff Nurse	Band 5	24,554	29,464	NM04 01	34,870	10,316	5,406

Senior OPD		25,472	30,566	NM04 02	35,573	10,101	5,007
Midwife		26,483	31,779	NM04 03	36,276	9,793	4,497
		27,534	33,040	NM04 04	36,982	9,448	3,942
Sister/Ch Nurse	Band 6	30,460	36,552	NM05 01	40,555	10,095	4,003
Deputy Clinical Mgr		31,454	37,671	NM05 02	41,431	9,977	3,760
		32,573	38,790	NM05 03	42,311	9,738	3,521
Specialist Nurse Senior Midwife		34,189	40,406	NM05 04	43,193	9,004	2,787
Senior Sister	Band 7	36,303	42,520	NM06 01	46,351	10,048	3,831
Clinical Manager		37,545	43,762	NM06 02	47,322	9,777	3,560
		38,851	45,068	NM06 03	48,292	9,441	3,224
Tm Leader Midwife		40,157	46,373	NM06 04	49,262	9,105	2,889
Specialist Nurse							
Charge Nurse/Sister Ward Manager	Band 8A	41,772	47,989	NM07 01	50,812	9,040	2,823
		43,388	49,605	NM07 02	51,780	8,392	2,175
Dept Manager		45,254	51,471	NM07 03	52,752	7,498	1,281
Lead Nurse		46,621	52,838	NM07 04	53,722	7,101	0,884
Senior Nurse Mgr Op Services Mgr Consultant Nurse	Band 8B	48,983	55,200	NM08 01 NM08 02 NM08 03 NM08 04	54,015	5,032	(1,185)
		51,718	57,935		55,172	3,454	(2,763)
		54,454	60,671		56,327	1,873	(4,344)
		55,945	62,162		57,482	1,537	(4,680)

1.15 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE IMPACT ON COMPANIES OF HIGHER RATES OF TAX:

Question

In the debate on the proposition 'Income tax – introduction of higher rates' (P.23/2011) on 6th April 2011 the Minister stated that following the introduction of a 50% tax rate 'Major companies and wealthy individuals departed the UK in their droves.' Is the Minister aware that in a written answer given to the House of Commons on 9th March 2011 the UK Exchequer Secretary Mr. David Gauke MP stated that in the 3 years to 2009/10 only 18 companies moved their headquarters

from the UK for tax reasons; does the Minister therefore accept that his statement was misleading and, if so, will he withdraw it?

Would the Minister set out what evidence, if any, his Department has to indicate that higher personal tax rates would lead to an exodus of companies from Jersey and, if he has no such evidence, does he accept that any threats to that effect can be safely ignored?

Answer

Mr. David Gauke MP, the UK Exchequer Secretary, actually said “Businesses may move their headquarters for a combination of reasons, including tax, and can restructure in different ways with different tax consequences, depending on the facts in each case. One form of restructuring involves businesses formerly headed by a UK tax resident company creating a new parent company that is claimed to be tax resident elsewhere. Businesses are not required to inform HMRC of this change, but on the basis of research undertaken by HMRC, we believe the numbers are as follows”:

	<i>Number</i>
2007-08	1
2008-09	10
2009-10	7
2010-11	4

The figures quoted by Mr Gauke, whose response states “One form of restructuring” therefore represent an estimate of a specific type of relocation and do not capture the movement of wealthy individuals and businesses that are being establishing outside of the UK.

Discussions with professional intermediaries in London and reference to independent surveys support the view that raising tax rates are influencing the decisions of companies and wealthy individuals to relocate outside of the UK. As an example Sunday Times Rich List compiler Philip Bersesford analysed data from Companies House that showed more and more limited liability companies and partnerships are moving offshore. It showed that Entrepreneurs and business people are leaving the UK at a rate of 10 a week to escape higher taxes.

With regard to Jersey, raising our tax rate would affect our competitiveness and represent a serious threat to our economy. This is consistent with feedback from professional intermediaries, businesses and wealthy individuals on the Island.

I do not believe that my comments were misleading and I will not withdraw them.

1.16 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE JUSTIFICATION FOR RAISING THE PENSION AGE:

Question

Following the lodging of the proposition ‘Pension Age: Increase’ (P.58/2011) would the Minister give his justification for the approach taken and, in particular –

- (a) confirm that the increase in pension age produces only a small reduction in contribution rates (paragraph 7.5)?
- (b) state whether he is satisfied that the detrimental effect on those in manual occupations is adequately dealt with (section 6.1) and state whether the proposals would lead to increases in demand for other welfare benefits such as Incapacity Pension, LTIA and Income Support and thereby increase the cost of these benefits?
- (c) state whether he accepts that, despite references to *Keeping Jersey Special, Imagine Jersey 2035 and JASS*, none of these included any properly structured consultation on the far-reaching proposal to raise the pension age and that in none of these is there a clear acceptance that raising the pension age is a preferred option?
- (d) explain why the additional options given on page 17, many of which involve incentives, are left for future consideration and are not being taken as starting points now?
- (e) state why no measures are proposed to start in the next 2 or 3 years but are deferred for 10 years?

Answer

The justification for my approach to addressing the challenges we face to the long-term sustainability of the Social Security Fund is clearly set out in the detailed 32-page report that accompanies the proposition.

In relation to the Deputy's specific points:

- (a) I do not accept that the increase in pension age produces "only a small reduction in contribution rates". The saving in contribution rate increases as a result of increasing the pension age is significant. The increase required by 2036 is cut by one-third.
- (b) I do not believe that there will be any significant "detrimental effect" on those in manual occupations. Employment patterns have changed and many workers will undertake a variety of different jobs during their working lives. Opportunities now exist to develop flexible working arrangements that will benefit all groups, but in particular those looking to continue working longer, but for fewer hours per week.

Phasing the proposed increases in pension age gives ample time to review the benefits already in place to help those who are not genuinely fit enough to work up to pension age. Any potential increase in benefit costs will be heavily outweighed by the overall financial benefits accruing to the Social Security Fund and the economy in general from people who will be working and contributing for longer and also enjoying a lengthy retirement, no shorter on average than those enjoyed today.

- (c) Imagine Jersey 2035 and the JASS annual surveys amount to significant and meaningful exercises to obtain the views of many islanders in respect of the Jersey Old Age Pension. For example, JASS 2010 was sent to 3,200 households with a 51% return rate. In addition, the latest Government Actuary's Report was published in 2009. As the report accompanying P.58 sets out in some detail, increasing pension age is a key component of the overall policy to maintain economic activity in the Island by encouraging people to extend their working lives. It is also a vital part of the actions needed to ensure the sustainability of the Jersey Old Age Pension.

(d) and (e) The report makes it clear that the measures set out on page 17 will be considered and introduced **before** any change in the pension age. The measures cover a number of areas and each will need to be co-ordinated with other policy developments and be implemented according to an appropriate timescale. It would be the intention that some of the measures will be considered within two or three years, while others will be addressed later in the decade.

1.17 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING ALTERNATIVES TO RAISING THE PENSION AGE:

Question

Will the Minister accept that the key statement in the report accompanying the proposition 'Pension age: increase' (P.58/2011) is that "while being funded by much lower contribution rates" (page 3) and will he undertake to give consideration to raising contribution rates in the short term rather than putting off action for 10 years?

Would the Minister explain what the impact would be of annual 0.5% increases to employer and employee rates over the next 5 years on the social security fund and on the need to raise the pension age? Will the Minister agree to consult fully on a wider range of options than the far-reaching option being put forward in the proposition?

Answer

I do not accept the emphasis placed by the Deputy on the phrase on page 3 of the report. The relevant passage in the report quoted in the question refers to the Island being in the fortunate position of paying higher weekly pensions than other jurisdictions and doing this while having much lower contribution rates.

We are in this fortunate position due to the foresight and long-term planning applied by previous States Assemblies. It is essential that we continue to take a long-term view of Social Security funding and that we approach the ageing demographic issue with a positive outlook, acknowledging the additional costs but also grasping the opportunities that it provides.

Setting out proposals to increase the pension age does not "put off action for 10 years". It requires a multitude of actions during that 10-year period. Government needs to provide the necessary legislative framework to encourage the employment of older workers; the business community needs to develop HR and training policies that tap into the potential of the increasing number of older people in the workforce; the States, as a major employer, needs to lead the way in these efforts. In the meantime it is vital that certainty and adequate notice with respect to the pension age is provided to all.

There are already two increases planned in contribution rates - a new rate above the existing contribution ceiling, and one in respect of Long-Term care. Additional increases in contributions at this time for all employees and their employers will create a further, unnecessary burden on local people and local businesses. The Social Security Fund remains in annual surplus at present and this will continue for the next three to five years. However, it is likely that contribution rates will need to rise in the middle of the decade as the benefits paid out of the Fund increase faster than the contributions coming into the Fund.

Increasing employer and employee rates by 0.5% per annum over the next five years would place a significant cost on individuals and local businesses. It would also require significant additional funding from the States to meet the additional cost of supplementation for the two-thirds of workers

who earn below the earnings ceiling. There would also be an additional, direct, cost to the States as an employer.

I do not agree that there is a "wide range of options" that could be consulted on at this stage. As acknowledged in Question 6239, considerable consultation has already taken place on this issue. The key message from local residents is that they wish to maintain the value of the old-age pension. I endorse this view and my proposals acknowledge the importance of protecting the value of the pension.

Many other similar jurisdictions have already taken steps to increase the pension age, as one of a number of measures that need to be taken to address the ageing demographic. This is a particularly important step to take in Jersey in order to maintain a healthy economy, without needing to resort to a much higher level of immigration.

2. Oral questions

Senator A.J.H. Maclean:

May I just raise one point? I am going to have to leave the Assembly before the end of Oral Questions. I am participating in the ceremony of the opening of Durrell. There is an oral question on the Order Paper - number 13 - from the Deputy of St. John, who is always very keen that I answer personally the questions that he puts forward. As such, it seems to me there are 2 options. Either the question is deferred or with the agreement of the Assembly I am more than happy to take the question first.

The Bailiff:

There are only 12 questions today, so there should be no difficulty completing the list, so do Members agree to allow the Deputy of St. John to pose his question first? Very well, Deputy.

2.1 Deputy P.J. Rondel of St. John of the Minister for Economic Development regarding the movement of the sculpture from the Airport Departures Hall:

I apologise to Members for jumping the queue on this one, but it is outside of my control. Can the Minister give details of the number of times the sculpture called "Flight" has been moved, giving each location, plus the time and cost for each move; would he also give details of its final location or resting place and state on whose instructions the sculpture was moved and clarify whether any new Shadow Board has been involved in this issue in any way?"

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

As part of the overall redevelopment plan of the airside departures hall, the "Flight" sculpture had to be removed to increase the concourse area. Since this time it has been kept in 3 secure storage areas; originally at the airport, subsequently a storage area belonging to Health and Social Services and currently one provided by Transport and Technical Services. The sculpture was moved with minimum inconvenience and at no direct financial cost to the airport to date. It has always been the intention of Jersey Airport that the sculpture be moved to an area where it can continue to be enjoyed by members of the public. We are therefore looking at alternative public locations around the airport where the sculpture can be sited. One of the options includes the public roundabout in front of the airport, which Members may have seen mentioned recently in the local media. Jersey Airport are in discussions with officers from Transport and Technical Services who maintain this public roundabout, as well as the Parish of St. Helier, to ascertain the feasibility of moving the sculpture to this location and what the likely relocation and future maintenance costs will be. The decisions on the movement were the airport management's. Members of the Shadow Board are aware of this initiative, but this is an operational matter and is not something of the Shadow Board have been asked to consider. Thank you, Sir.

2.1.1 The Deputy of St. John:

I am taken aback by the Minister's comments about no direct cost to date. That cannot be the case. Somebody will have been paid on a number of occasions to move this particular structure. Therefore, would the Minister tell us who, which department, and therefore how much labour was involved in the moves? A States department will have been responsible for moving it and therefore there must be a cost in labour.

Senator A.J.H. Maclean:

All I can tell the Deputy is that to date the airport has not been invoiced for any charges in relation to the removal or storage of this particular item. Indeed there may well and I am sure there will be costs once a final resting place is found for it. Indeed those particular costs are yet to be finalised, but they will be available and I am happy to publish them at a later date when they are known.

The Bailiff:

I will come back to you, Deputy. Deputy Grouville?

2.1.2 Deputy C.F. Labey of Grouville:

The Minister will recall that I have asked several questions about this particular sculpture, because I have been contacted by parishioners of mine. Does the Minister not feel that it is an awful shame that it was originally located in water and there was a wishing well ... it was used as a wishing well at the airport and collected quite a lot of funds for charity. Could he not look to reposition it in a similar situation in the future?

Senator A.J.H. Maclean:

I do understand the Deputy's concerns and in many respects I share them. The commercial realities were that we had to move it from its original very central location for the redevelopment plans of effectively a £4.5 million redevelopment of the retail area, which has been very successful and increase average spend per passenger by 22 per cent, so commercially it was the right decision. As far as finding another location within the airport itself, a number have been considered, but it is a very, very large item and the view is that the central roundabout is the best place for it. The only other point I would mention, in terms of raising of charitable funds, there are various boxes and events that airport does carry out throughout the year and will continue to do so in order to give charities an opportunity to raise funds through access to the airport.

2.1.3 Deputy M. Tadier of St. Brelade:

I am concerned that the Minister seems to have changed his answer to the Deputy of St. John. Initially we were told that there were no direct financial cost to the airport and then a moment later we were told that there will be costs to the airport and that they simply had not been invoiced yet. Could the Minister confirm which is the case and why we were initially told that there were no direct financial costs, when it seems that once the invoices come in there will be direct financial costs to the airport?

Senator A.J.H. Maclean:

No, what I said was there are no direct financial costs that have been invoiced to the airport at this stage. That was in direct response to the question. I further stated that there will be a cost at some point once the final location of the sculpture is decided upon and in fact there have been some very constructive discussions with the Parish of St. Peter and Transport and Technical Services in order to find a suitable resting place and indeed to mitigate some of those costs that may well be shared between other parties, indeed sponsorship is also an option that is being considered. The Constable of St. Peter has been very helpful in this particular area. I have already had discussions with him. So that will mitigate some of the potential costs that will be considered.

2.1.4 Deputy M. Tadier:

To clarify, the final answer then is that there will be direct financial costs to the airport, which is not what seemed to be being conveyed in the initial answer given by the Minister.

Senator A.J.H. Maclean:

I just repeat the question again. I answered directly the Deputy of St. John's question: "Has there been any cost to date?" The answer is: "No." "Will there be some future costs?" "Yes, there are likely to be some future costs. Some of those will be mitigated, we hope, by sponsorship and in co-operation with other parties such as the Parish of St. Peter."

The Bailiff:

Deputy Le Hérissier and then the final question from Deputy of St. John.

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

Would the Minister not agree that the continual traffic obstruction caused by the lack of a proper right turn into a commercial premise - to wit a garden centre - is preventing people from reaching the roundabout on time at the airport **[Laughter]** and thereby appreciating the sculpture?

The Bailiff:

Deputy, I feel that even you know that that one is a bit off the subject. **[Laughter]** Very well, then final question, Deputy of St. John.

2.1.6 The Deputy of St. John:

I am far from happy with the response I have had to date. If the Ministries across the board are all telling us they are short of funding, could the Minister please give details why his officers have not chased-up the departments concerned who moved the statue on 3 occasions, 3 different departments being involved, including his own? There must be officers from his own department who were involved in the move. Why have these funds not been identified within the various departments, including his own? Because there must be a rolling account of the sum that has been spent by his own team. Will he please answer that? How much is that figure being spent within his own officers and staff at the airport?

Senator A.J.H. Maclean:

I have already said to the Deputy of St. John, we do not have a figure in relation to any costs undertaken so far. I clearly cannot answer on behalf of other departments that have carried out the work, such as Transport and Technical Services. I think, to be frank, we should focus on the fact that this particular sculpture was moved as part of a £4.5 million redevelopment of the retail area. Indeed any associated labour costs with moving it are very minimal in the overall scheme of the very successful development we have seen at the airport, which has increased retail spend per average passenger by 22 per cent. It has been a success and really the Deputy is looking at areas that at this stage we do not have any further detail on and are therefore not relevant.

2.1.7 The Deputy of St. John:

How is the Minister running his department if he cannot keep his finger on the pulse of the small items that are being spent, let alone the big items? **[Laughter]** Will the Minister in future make sure he keeps an eye on all areas of his budget?

Senator A.J.H. Maclean:

I am very happy that both myself and my Assistant Minister who has responsibility for the airport and the harbours have our fingers very much on the pulse of expenditure and I am very satisfied, as I have said, with this particular project which has seen a 22 per cent increase in average spend. It has been hugely successfully. It is a £4.5 million redevelopment and the Deputy, with all due respect, is dealing in the minutiae of a few hundred pounds probably or a few thousand at best.

The Bailiff:

Very well. Then we will come next to question 1, which Deputy Lewis will ask of the Minister for Economic Development. Deputy?

[10:00]

2.2 Deputy K.C. Lewis of St. Saviour of the Minister for Economic Development regarding the behaviour of fast food take away outlets in St. Helier and St. Saviour:

Will the Minister be taking action against fast food takeaway outlets in St. Helier and St. Saviour whose late night businesses are bad neighbours and whose many drivers block access and cause nuisance to residents, and, if not, why not?

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

As the Minister responsible for regulating such food establishments under the Places of Refreshment (Jersey) Law 1967 and indeed in conjunction with other authorities, I take firm action wherever proof can be provided of persistent offending and relevant owners/operators failing to take appropriate steps to comply with licensing regulations or instructions given by my department's officers.

2.2.1 Deputy K.C. Lewis:

This is nothing new. This has been going on for some time. Is the Minister aware there are certain fast food takeaways which routinely ignore closing hours, instructions from Planning and Health and Safety and whose many delivery drivers block parking spaces, neighbours' driveways and are generally threatening and abusive?

Senator A.J.H. Maclean:

Yes, I am and I am very concerned about the cases in question. There are 2 in particular that I have been made aware of in recent times. I have had discussions with other political colleagues who have represented residents of those areas. I have written to establishments warning them that they need to comply with the law and the regulations. One of the difficulties is getting suitable evidence to be able to take the matter further. I am pleased to say that one particular establishment has been taken to court and has been prosecuted and we are monitoring that particular situation on an ongoing and regular basis.

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

Could the Minister advise what he means when he says "firm action"? Because from my recollection of dealing with a particular case, I have had to be on Economic Development's back with regards to this case consistently for the last 2½ years. The last letter that was sent was asking the establishment to abide by the rules otherwise further action would be taken. That was over a year ago. Could the Minister confirm what he means by "Action"?

Senator A.J.H. Maclean:

I have indeed had some meetings with the Deputy. We have written to the establishment in question. We have carried out some, what one would describe as, mystery shopping exercises, where officers from the department have attended at different times on the assumption and to try and corroborate complaints by residents. Evidence is the key to this. I am delighted to say that in this particular case the local resident managed to get some photographic and video evidence and prosecuted through the courts and was successful with that particular establishment. The next stage for the department is quite simply if there is a continuing offence then we will look seriously at revoking the licence. That is the nuclear option and one that I will consider now having gone through this escalating process.

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

Much in the line of following on from Deputy Vallois, I am not sure if the Minister is aware that we have even had fine upstanding members of the public physically assaulted as a result of complaining about these bad neighbours. How seriously does he take the problem in bringing forward action? Some of those places probably should be closed as a warning to others.

Senator A.J.H. Maclean:

I do, as I think I have stated, take it very seriously indeed. I think the Deputy is referring to another establishment in St. Helier and unfortunately as far as my department is concerned that particular establishment has an alcohol licence and as such it is a matter for the Licensing Assembly to revoke the licence before, indeed, we can take any action under the Places of Refreshment (Jersey) Law, which I referred to before. So sadly in this particular case, that the Deputy is referring to, I at this stage can take no further action until the matter is resolved.

2.2.4 Deputy M. Tadier:

Will the Minister take steps to encourage either the Parish, T.T.S. (Transport and Technical Services), or indeed the outlets themselves to provide greater facilities for recycling to avoid antisocial littering, to encourage the individual operators for recycling themselves?

Senator A.J.H. Maclean:

Yes, I would be very enthusiastic to do so. I know that T.T.S. and indeed the Parish themselves do some excellent work already in this area. I am sure they are always looking for ways in which they can improve on initiatives they have underway and I would always encourage that to be the case.

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

Is the Minister aware that under the Statutory Nuisances Law it is not possible to take action against such outlets which create a lot of vehicle disturbance for residents and would he support an amendment to the law to enable vehicle drivers in particular to be clamped down on if their behaviour impinges on residents?

Senator A.J.H. Maclean:

Yes, I am aware of that and indeed I think it does need to be looked at further. Thank you, Sir.

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

It is a question on a similar line. Many Deputies, myself included, and quite a number of the St. Helier Deputies, have been trying to deal with establishments such as this for 2½ years and we have been sort of fobbed-off by one department after another and every department seems to say: "It is not our problem, we need to get evidence" and so on. When is the Minister and other Ministers going to get together and take actions that deal with the problem rather than putting it off and saying: "There is nothing we can do" and relying on residents to spend their own money to take video evidence, *et cetera* and States Deputies to do the work of the departments?

Senator A.J.H. Maclean:

The Deputy is conflating 2 particular issues. He is first of all talking about the St. Saviour premises, which has been prosecuted, due to the good work of one of the local residents who did assimilate some evidence, as I have said. I think it is appropriate that we do not move straight to the nuclear option of revoking a licence, we have to go through a set process, an escalating process, which I think is reasonable. I accept in St. Saviour's it has gone on for a very long time, but it was difficult getting the necessary evidence. As far as the other premises the Deputy is referring to, as I have already said, that is a premises that has an alcohol licence. Unfortunately, as such, it would be up to the Licensing Assembly to revoke that licence before indeed my department could take any action under the Places of Refreshment (Jersey) Law.

The Bailiff:

Final question, Deputy Lewis.

2.2.7 Deputy K.C. Lewis:

I deliberately did not mention the allegation of assault, because there may or may not be legal action. Will the Minister take personal responsibility for this, as it has been going on for so many years and ensure that residents, once again, have peaceful enjoyment of their homes? Thank you, Sir.

Senator A.J.H. Maclean:

I take personal responsibility of areas of the law under which my department has direct responsibility. On the wider sphere, I am more than happy to raise the matter for discussion with the Council of Ministers. It does cross a number of different departments and I understand the frustration that some Members feel in this regard. Certainly the outcomes are extremely unsatisfactory and indeed the timescales that have been involved in some of these cases have gone on for far too long, so we do need to find in one way or another a satisfactory solution.

The Bailiff:

Very well then. We will move on to the next question, which the Deputy of St. John will ask of the Chief Minister.

2.3 The Deputy of St. John of the Chief Minister regarding Voluntary redundancy (V.R.) packages:

Would the Chief Minister inform Members how many public employees received V.R. (Voluntary Redundancy) packages as part of the recent scheme and whether any of these have now reached retirement age, and, if so, would he advise why these employees were granted Voluntary Redundancy?

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

Of the 282 applications for Voluntary Redundancy at the time of the general invitation for Voluntary Redundancy in the summer of last year a total of 80 were approved after thorough evaluation. None of those employees whose applications were not approved have now reached normal retirement age.

The Deputy of St. John:

I thank the Minister for his reply, Sir.

The Bailiff:

We now come to question 3, which Deputy Power will ask of the Minister for Planning and Environment.

Deputy S. Power:

I think that question has been withdrawn, because the Minister is not here.

The Bailiff:

Very well, thank you. Then we come to question 3, which I will try again, which the Deputy of St. Mary will ask of the Chief Minister, but he is not here. Very well. We will come to question 4, which Deputy Le Claire will ask of the Minister for Transport and Technical Services.

2.4 Deputy P.V.F. Le Claire of St. Helier of the Minister for Transport and Technical Services regarding green waste facilities at La Collette:

Would the Minister explain what is happening at La Collette in respect of the development and management of green waste facilities? What new cement laying and works are being carried out and at what cost?

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

I note that the Deputy has also put this as a written question and the answer has been furnished ... written question 10. Is it your wish for me to repeat that, Sir?

2.4.1 Deputy P.V.F. Le Claire:

It is a new tactic of mine that may be taken up by others, I do not know. In any event it does help that the Minister has supplied us with written answers to my questions so that I can now try to ask him some other questions that might elucidate upon the decision. From the written answers we see £1.65 million has been spent on these facilities. I have a number of other questions which you may or may not allow me to ask. I will just start very simply by asking simple precise questions. Where did that money come from and under what process?

The Connétable of St. Brelade:

The funding comes as part of the solid waste strategy from funds within the department.

2.4.2 Deputy P.V.F. Le Claire:

There is also reference... this is to do with work that is of a commercial nature and there is a large number of materials and changes that are being made due to smells. It talks about the fact that the principal consultation - because I asked about that: "Where was the consultation?" - had been with the Environmental and Health Regulators. Is the Minister aware that the Minister for Planning and Environment has known nothing about this until this morning?

The Connétable of St. Brelade:

The processes undertaken down at La Collette are subject to the regulator, which is under the auspices of the Minister for Planning and Environment.

2.4.3 Deputy P.V.F. Le Claire:

With respect, I did not ask that question, I asked is he aware of the fact that the Minister for Planning and Environment has known nothing about this until this morning.

The Connétable of St. Brelade:

His officers will know about it.

2.4.4 Deputy J.A. Hilton of St. Helier:

Is the Minister able to tell Members what measures he has taken to minimise the smell coming from the green waste site? Also, I know that there were a huge number of complaints in the past. Has that been addressed? I would like to know how the residents are dealing with that and whether they are still facing the same problems that they have done in the past?

The Connétable of St. Brelade:

The processes have been addressed as outlined in the answers to the question put by Deputy Le Claire. I have to say that in the past couple of years the complaints have been virtually negligible and the revised processes have achieved the goal of reducing the odours experienced by residents in the past. So I am quite satisfied that the moves we are taking at the moment are in line with what local residents rightly expect.

2.4.5 Deputy T.M. Pitman:

Could I just ask the Minister, is he aware that some of the residents have stopped complaining because they have almost given up, the situation is that bad, or moved? There are still big problems with mosquitoes and flies and things; people keeping their windows shut. Is he aware of that?

The Connétable of St. Brelade:

I cannot be aware of complaints if they do not exist. But in practice the department monitor the odours very stringently around the area and the processes have achieved a significant reduction in the odours experienced by the local residents through the recording measures taking place. So I am perfectly satisfied that the processes presently undertaken are certainly far more acceptable to the local residents than they were in the past.

2.4.6 Deputy P.V.F. Le Claire:

If I could tell the Minister as of yesterday I was receiving complaints as to the odour in that area. Historically over the last few months, coming in from sea, at a mile or 2 when they just turn the green waste, you can smell the odour when the wind is in a certain direction. So if it is a south-westerly, I feel sorry for the poor people living at Havre des Pas. That said, funding was put aside to cover that area. What has happened to the funding? Is it likely to be covered with a building to cover the green waste? Is it likely to happen?

The Connétable of St. Brelade:

The funding that was allocated to a covered vessel, if you like, has been in abeyance within the department for some time and probably will go back to the Treasury, because it is felt that the covered building will not achieve what was intended and will not be an improvement on the present processes. Yes, I can understand the Deputy's comment about smelling when the compost has been turned from seaward and I have experienced that myself. But it is far better that the odours are taken out to sea and the turning is done when the wind is in the north than, as he suggested, when it is in the south-west.

[10:15]

I would suggest that we do not presently turn when the wind is blowing toward the town if we can possibly avoid it. But the present processes, as laid out in the answer to Deputy Le Claire's question, have mitigated those odours to a very large extent.

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

Could the Minister inform the House whether or not his department has been conducting trials in the recent past to add - as is suggested as one of the reasons for going with this new process - nitrogen-rich materials probably from sewerage components or from the leachate components on to the existing materials? If so, could he inform the House on which dates this process has taken place?

The Connétable of St. Brelade:

I am afraid I am unable to answer the Deputy's question on that, but I am perfectly prepared to ask and investigate and furnish him with the answer.

The Bailiff:

One supplementary, Deputy Le Claire.

2.4.8 Deputy P.V.F. Le Claire:

It is of concern recently we had a ... I would like to ask the Minister if he could maybe issue a paper bringing Members up to date. We recently had a debate in this Assembly on the introduction of a commercial charge for green waste. No mention of this was brought into that debate and it

obviously must have been going through a planning process at that stage. There remain a number of questions I would like to ask the Minister. One of concern, which has just been raised by the Minister for Planning and Environment in relation to the addition of sewerage sludge, because if that enters the land that is currently being used ...

The Bailiff:

One supplementary, Deputy, please ask your question.

Deputy P.V.F. Le Claire:

Yes, Sir. The smell was reduced because a portion of the green waste service was moved to Bellozanne. Is this now to be returned when this is completed to being sorted at La Collette?

The Connétable of St. Brelade:

The portion of the green waste reception moved to Bellozanne was the domestic green waste reception. Once it is accumulated there in skips it is moved to La Collette for composting, which is still exactly the same case as was before. So the only change has been the actual reception of it. Sorry, I do not know if there was another part to the Deputy's question, I think that would have answered it.

The Bailiff:

Thank you. We now come to question 5 which Deputy Southern will ask of the Minister for Social Services.

2.5 Deputy G.P. Southern of St. Helier of the Minister for Social Security regarding proposals for maternity leave:

Given that the first 6-month period is vital to the well being of babies, can the Minister justify his proposals for maternity leave?

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

My proposals for law drafting derive from the recommendations of the Employment Forum, which were developed following extensive public consultation. The forum's reasons for their recommendations and my response to those recommendations are available on the website and are in the public domain. The forum recommended that new rights should be introduced in 2 stages, because the consultation revealed concerns that it would be excessive to introduce the full range of family friendly rights at one time. It is essential to allow the business community time to adapt to any impact and to assess the impact of any new rights, particularly in the absence of sex discrimination legislation. Stage 1 would include the right to take a reasonable period of maternity leave in accordance with the existing 18-week period in which the Social Security benefit - Maternity Allowance - may be claimed.

2.5.1 Deputy G.P. Southern:

Does the Minister accept that his proposals are severely limited compared to those that exist in the Western world?

Deputy I.J. Gorst:

I do not accept that they are severely limited. Members will have seen that there have been arguments on both sides. They are a 2-stage appropriate response. I believe that this is a fundamental protection that we should have in our community. But in these times of economic difficulty, while I still want to introduce the protection, we must do so carefully and proportionately, Sir.

2.5.2 Deputy P.V.F. Le Claire:

May I follow up by asking the Minister to circulate for us the provisions that are made within the other countries within the European Union? Interestingly Romania has these provisions and they are suffering the economic effects of the downturn as well. It would be interesting to see what we can afford and what they can afford.

Deputy I.J. Gorst:

I am not aware of the particular country mentioned and what their provisions are. It is not always helpful for us to benchmark ourselves against other European jurisdictions. However, it can be helpful for us to benchmark against similar Island communities. I can certainly have a look to see what those provisions are in the country that the Deputy mentioned. But I still maintain that this is an appropriate first stage, as recommended by the Independent Employment Forum. I do believe it is an appropriate protection that we should have in our community and that is why I am bringing it forward, Sir.

2.5.3 Deputy P.V.F. Le Claire:

Appropriate to the Independent Employment Forum, what about the Independent Mothers Forum? Would he please agree to circulate all member states of the European Union not just have a look at what Romania is doing? So that we can be appraised of what the situation is in other countries and take a view other than that of the Independent Employers Forum.

Deputy I.J. Gorst:

I must correct the Deputy it is not the Independent Employers Forum, it is the Independent Employment Forum, made up of employee and employer representatives and they consult widely and they did consult widely and their recommendation was that we should do it in a 2-stage approach. I do believe that what I am proposing is appropriate for a small jurisdiction and once we have had time to let that bed in then I have committed in principle to reviewing and looking again at that second stage. We are often told in this Assembly that we should not be looking at large jurisdictions and just importing legislating from other jurisdictions. This is a case where we are not doing that. We are trying to bring forward something which is an appropriate protection and it is appropriate for Jersey, Sir.

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

It is nice to hear the Minister justifying this very, very cautious approach on the basis that we are a small, small jurisdiction and therefore by implication do not have too much economic means to do anything about it. When I first looked at this question, I scanned it. I thought I saw the word paternity leave. I thought that is what we are talking about, because maternity leave, surely we have sorted that, have we not? Could the Minister give a date for action on paternity leave?

Deputy I.J. Gorst:

Paternity leave, as I am sure the Deputy will be aware from reading the Employment Forum's recommendation and my response to that recommendation, is part of stage 2 of their proposals. Therefore, I am not in a position to give an actual date.

2.5.5 Deputy J.A. Hilton:

The Minister talked about the second stage. Could the Minister advise Members when he believes that we will be at the second stage? Is he prepared to say what he personally thinks is an adequate amount of maternity leave?

Deputy I.J. Gorst:

I, in my role as Minister for Social Security, must take the appropriate independent advice and that is what I am doing. I am very firmly nailing my colours to the mast and saying that this is a basic provision which we ought to have in our community and I am bringing it forward despite the fact

that it was always intended that it would be brought forward in line with sex discrimination to ensure that there were not any inappropriate consequences of it. I am continuing to bring it forward, despite the fact that that is not going to be in place. We must then wait and see how it operates in the absence of that piece of legislation, which I personally believe is necessary to make it work in a better and more protective environment. I do not think that 18 weeks, which is what I am proposing, which is in line with the maternity allowance that you can get from the Social Security fund is inappropriate. We know that other jurisdictions have probably around 26 weeks. That is what we would be looking for in the longer term. I suppose the question ultimately is who then is going to pay for it? What is the balance going to be between employer and the States? If we look at the second phase of the Employment Forum's proposals, they are proposing that the States pays more of that maternity provision and not less and not necessarily putting the onus upon the employer *per se*. So we must, I believe, firstly put this fundamental protection in place and then we can move forward after that, Sir.

The Bailiff:

One supplementary, Deputy Southern.

2.5.6 Deputy G.P. Southern:

One final supplementary are we? Does the Minister consider that moving ahead on this particular issue without an anti-discrimination law is putting the cart very much before the horse?

Deputy I.J. Gorst:

I know in politics one is told that one can never win. I feel a little bit like that in regard to answering that question. I have said that I am prepared and I am committed to bringing this forward despite the absence of sex discrimination legislation. I believe that they should be coming forward, hand-in-hand I recognise why that is not so. I am not being deterred from bringing this forward in the absence of that legislation and I hope that it will work in the way that I wish to see it work, despite not having that in place. Sir, thank you.

The Bailiff:

We now come to question 6, which Deputy Trevor Pitman will ask of the Minister for Social Security.

2.6 Deputy T.M. Pitman of the Minister for Social Security regarding contribution cover for those on short-term contracts:

Given that the contributions of those made redundant through no fault of their own are protected by Social Security, why are such individuals subsequently accepting short-term contracts in trying to improve their chances of re-gaining full-time employment then penalized once these contracts end by losing this contribution protection; further still, how does this encourage people to work rather than exist on benefits?

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

The Social Security Law allows credits to be awarded to workers who have been made compulsorily redundant. The credits protect the pension and benefit rights of the worker. These credits are only available if the unemployed person is actively seeking work. The credits are designed as a short-term measure to bridge any temporary gaps in an individual's record due to compulsory redundancy. The cost of the credit is born by workers who are in employment. If an individual is offered a short-term contract, but refuse to accept it they would no longer be eligible for unemployed credits as they would be breaking the conditions of actively seeking work set out in the law. Sir, thank you.

2.6.1 Deputy T.M. Pitman:

Supplementary, Sir? I thank the Minister for his answer, but I raised this because of a constituent 30 years in work made redundant in May 2010; who accepted the offer of 12 weeks work in November; who informed the Social Security Department of the change in situation and was told that they were not longer entitled to protection because they had effectively chosen to make themselves unemployed again. Does the Minister not see this is a bit ... it is not in the spirit of what was intended, at the very least?

Deputy I.J. Gorst:

As ever, it is extremely difficult for me to comment on a personal situation which is just relayed to me across the Assembly. I fully see why the law and the regulations are in place as they stand, because at the end of the day credits might sound like a nice ineffective word, but the reality is that those who are employed and making contributions and that tax payer are in actual fact subsidising and providing the funding for those credits. Therefore, credits must very clearly only be awarded to those who are made redundant through no fault of their own. Having said that, the Deputy does raise a good point with regard to very short-term contracts and whether an individual is taking that to enhance their employment opportunity or they are a continual short-term contract worker. In light of that interesting point, I will go away and review the situation. Thank you, Sir.

2.6.2 Deputy T.M. Pitman:

I thank the Minister for that encouraging end to his answer. Could he then just clarify that if my constituent gets in touch with the department, the department will be willing to at least reconsider her situation, which does seem very unfair?

Deputy I.J. Gorst:

As I have said, I cannot comment on that individual case, because I do not know all the details. The Deputy, unfortunately, is pushing me into a position that I cannot give an assurance on. Having said that, of course, should he provide me with the details then of course I will undertake to review it. Sir, thank you.

The Bailiff:

Very well. We come to question 7, which Deputy Southern will ask of the Minister for Social Security.

2.7 Deputy G.P. Southern of the Minister for Social Security regarding proposals to extend the retirement age:

Would the Minister state whether the recently announced proposals to extend the retirement age will simply transfer the costs from the Pension Fund to Income Support or Long-Term Incapacity Allowance or other?

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

I can reassure Members that the proposals to extend pension age do not amount to a transfer of costs from one area of States' expenditure to another and I refer Members particular to written answers which I provided today. Briefly, extending the pension age has 2 main benefits. It helps with the long-term viability of the Social Security Fund, by increasing the value of contributions and decreasing the cost of benefits. The second important benefit is it creates a working environment which encourages the employment of older workers. This helps us to limit the amount of inward migration that would be needed and still maintain a healthy economy.

[10:30]

2.7.1 Deputy G.P. Southern:

Does the Minister not accept that by prioritising the extension of the pension age he is once again putting the cart before the horse when he ought to be examining the low contribution rate that we already have for Social Security contributions to contribute towards that pension?

Deputy I.J. Gorst:

I am not sure that was a question, was it? I do not believe that is the case. What I am doing with this proposition is asking the States to indicate that they agree some long-term or medium-term planning for the Fund. As I say in my proposition, other measures will need to be taken in the intervening period but we must give individuals time to plan for their own retirement and that is what I am asking the States to do, to recommend that we must look for the medium and long-term viability of the Fund and at the same time, in this proposal, allow those individuals time to plan. There will be other measures which need to be taken and which will be taken in the nearer and short-term.

2.7.2 Deputy G.P. Southern:

Will the Minister come to the House with figures which show, for example, the impact on his proposals of raising the contribution rate by say 0.5 per cent per annum for employers and employees over the next 5 years? Will he come to the House with definitive figures to show what the alternatives are before he brings to the House a decision to, in principle, extend the pension age?

Deputy I.J. Gorst:

I can of course provide those figures, I have them in front of me now but I do not think it is appropriate to get into detailed figures in an oral question. Perhaps the Deputy might like to ask a fuller written question, I know he has asked a written question, I did answer it despite what the Deputy says. If he would like the figures then of course I can provide them. Needless to say we can only spend money once, the Deputy earlier this year or last year, was it, wanted to raise contributions for some other purpose. We can only raise them once and we can only then use them once, not twice or 3 times as the Deputy appears to wish.

2.7.3 Senator S.C. Ferguson:

Will the Minister confirm that the current pension age of 65 was set in 1946 when the average life expectancy was about 65 and that this raising of pension age is quite reasonable considering that the average life expectancy is well into the 80s?

Deputy I.J. Gorst:

Of course I would agree. Everything that I bring before this Assembly, despite what some Members like to think, I believe is reasonable and appropriate for the protection of Islanders and our Island community. The Deputy is quite right, the life expectancy of someone retiring, I do not have the exact year but I believe in 1956 was 12 years. Now in 2010 a person retiring at 65's life expectancy is 21 years and a little bit. By the time my proposals come into play, 2031, someone retiring at 67 - which is what I am proposing - at that time will still have a life expectancy of over 21 years.

2.7.4 Deputy M. Tadier:

Very much following on from that question, does the Minister acknowledge that perhaps a one retirement age for all is not the best way forward? Does he also acknowledge that as certain jobs - particularly physically arduous jobs where workers start at a younger age statistically than those perhaps in clerical jobs and also tend to die younger and have more physical ailments - perhaps should be allowed to retire earlier than those in more affluent positions who have statistically longer life expectancies?

Deputy I.J. Gorst:

Of course if I had a magic wand and we were able to know when it were that each of us were going to leave this life then perhaps we could do something about it and work in a more coordinated approach with the Health Department. Having said that, the Deputy raises some very good points and he will know that I have covered them in my proposal where I say that work in those areas will need to be undertaken right across Government to ensure that we do have appropriate policies in place, particularly for those who undertake heavy manual work. Having said this, what we are talking about here is pensionable age and not necessarily retirement age, so one of the reasons for indicating that this is the direction in which we are going to go now is so that individuals and Government can prepare itself for these provisions, provisions made by Government and provisions made by the individual as well for their own retirement.

2.7.5 Deputy G.P. Southern:

Does the Minister accept that despite his protestations in the document he produced there has been no significant consultation on this specific issue, apart from a general question in the *Imagine Jersey 2035* which was responded to by a majority of people who are already retired?

Deputy I.J. Gorst:

I am a little surprised, in his written question of course the Deputy cast doubt about the questions in the *Jersey Annual Social Survey* as well, so we have had questions in the *Jersey Annual Social Survey*, we have had questions in *Imagine 2035*, so there has been some consultation. I have looked at this, I am bringing forward a proposal to protect the benefit of current pensioners and to protect the sustainability of the pension that we pay in Jersey in the medium and long-term and I wish to ensure that we do not leave a burden for our children and grandchildren. Sometimes it is not always appropriate to go out to consultation on an issue where you believe that the evidence is straightforward, we must just make a decision. It would, in my opinion, be disingenuous for me to go out to consultation when I at this point believe that this is the best way forward in regard to this issue for the Fund and for protecting benefits of current pensioners and, as I say, ensuring we do not pass on an unacceptable burden to our children and grandchildren.

2.8 The Deputy of St. Mary of the Minister for Health and Social Services regarding funding for A.C.E.T. from 2008 to the present day:

What financial and other support was provided to A.C.E.T. (AIDS Care Education and Training) year-by-year from the department from 2008 to the present day and what work did this support, and is the Minister satisfied that A.C.E.T. will receive adequate support this year to allow all its programmes to continue? If not, will this work be replaced and, if so, how? What risk analysis was carried out before funding was cut?

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

In 2008/2009 a service level agreement existed between Health and Social Services Department and A.C.E.T. The annual £80,000 grant funded a charity to provide practical and emotional support for Portuguese people and others whose first language was not English and who were living with H.I.V. (Human Immunodeficiency Virus), community based H.I.V. education and prevention programmes for these communities, an advisory ...

The Deputy Bailiff:

Minister, I am sorry, you are going to have to stop, the States are inquorate. I invite Members to return to the Assembly. Thank you, you may now continue.

The Deputy of Trinity:

A community based H.I.V. education and prevention programmes for these communities, an advisory and consultancy service for professionals within Health and Social Services who provided services for Portuguese people. This arrangement ended in January 2010 by mutual agreement when the objectives had been delivered. Health and Social Services provides proportionate modern preventative and specialist H.I.V. treatment and care services, the latter targeted to a small number of people in Jersey with the infection. It is considered that the hospital translation service and the English as a second language provision at Highlands College offered a more comprehensive and sustainable option to support the ongoing community needs.

2.8.1 The Deputy of St. Mary:

I just want to pick out from that answer one detail. Did I hear the Minister right when she said that the agreement to fund A.C.E.T. £80,000 a year in 2008 and 2009 was terminated in January 2010 by mutual agreement, could she confirm that is what she said and could she explain a little bit around how that mutual agreement was arrived at?

The Deputy of Trinity:

Yes, I can confirm that it was done by mutual agreement. It was a service level agreement for 2008 and 2009 and obviously it delivered its objectives.

2.8.2 Deputy G.P. Southern:

Does the Minister accept there is a further ongoing piece of work conducted by A.C.E.T. which was being funded by the States in association with the prison in particular, and that funding has now been removed and that piece of work will have to stop because not only has the States money been removed from this project, but the matching funding coming from private sources has also been removed?

The Deputy of Trinity:

Yes, I am aware that there was some work done within the prison, within staff and prisoners, and I understand that this year they have got some funding via the Treasury and Resources and it is a one-off grant, I think the precise amount ...

2.8.3 Deputy G.P. Southern:

May I have a quick supplementary, was that this year or last year's funding?

The Deputy of Trinity:

That is a question I think you have to ask Treasury and Resources, it was a one off grant but I think the Minister for Treasury and Resources has questions without notice so I am sure he will ...

Deputy G.P. Southern:

In a linked question on the same subject, can the Minister justify that the previously accepted random anonymous testing for blood-borne diseases has also been abandoned and is this approach not a short-term solution to a long-term problem because if we have got Hepatitis B and AIDS in our population then the problem in years to come may be significant but we do not know it?

The Deputy of Trinity:

No, as I said 2 weeks ago, the world has definitely moved on with diagnosis and prevention of H.I.V. The unlinked anonymous testing was, as it just says on the tin, you took a blood test but you could not relate it, if it was positive you could not relate it back to the person. That kind of link does not change behaviour, which I hope you would agree is the most important thing... prevention. The unlinked anonymous testing was right in the U.K. (United Kingdom) and it did work in the U.K. because it did show the prevalence of H.I.V., but with the Chief Medical Officer of the U.K.'s advice we have tried to make H.I.V. as normalised as possible and H.I.V. testing is done with certain medical conditions or symptoms encouraged for them to be tested and it is a

normal part of diagnosis and a proper duty of care. This approach has been communicated last year to all the doctors.

2.8.4 Deputy G.P. Southern:

Can the Minister assure the House that we are not ignoring a potential enormous problem for Hepatitis B and H.I.V. in the population and can she assure the House that the problem will not descend on us in 20 or 30 year's time? Can she assure us that we do not have that problem and that levels of Hepatitis and H.I.V. are at low levels?

The Deputy of Trinity:

The low levels of H.I.V. is about 70 people known to have the H.I.V. infection and receiving services. As to the future, I do not have a crystal ball.

2.8.5 The Deputy of St. Mary:

In her answer to my original question the Minister said that A.C.E.T. did, among other things, practical and emotional support for people living with H.I.V., community-based education and prevention programmes and provided advice and consultancy for professionals within H.S.S.D. (Health and Social Services Department) working in this field. Can she tell Members who is doing this work now if there is no longer a service level agreement and no longer any funding and is she satisfied that all those strands of work are being done to a satisfactory standard now?

The Deputy of Trinity:

Yes, it just does not involve one department, it involves Education via the P.G.P.S., the public education curriculum (Personal, Social and Health Education) that they do, as well as other charities like Brook, and we have a consultant microbiologist and a specialist nurse who does pick up these issues, as well as G.P. (General Practitioner). The whole emphasis is not to stigmatise people with H.I.V., for it to be as normal as possible and to receive the proper services, which includes counselling services as appropriate.

[10:45]

2.9 Deputy T.M. Pitman of the Minister for Treasury and Resources regarding the release of a report relating to 1(1)(k) residents:

Following statements from his Assistant Minister that a confidential report indicating that 1(1)(k) residents bring a financial benefit in excess of £50 million cannot be released to Members to enable them to verify these claims, will the Minister agree to release the document under the Code of Practice on Public Access to Official Information? If not, does he accept that this will only cast doubt on the validity of such claims?

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

The Deputy will be aware that there are exemptions to the Code of Practice on Public Access to Official Information; several exemptions are relevant in this instance, paragraph 3(2)(i)(a), 14, and possibly paragraph 9 and 12. This means that the report cannot, in its complete form, be published although of course the Scrutiny Panel can request and review the report under the confidentiality agreements that we have. So, therefore, while publication is not possible there can be oversight and scrutiny by Members of this Assembly. I do appreciate the interest that the Deputy and other Members have shown in this report and I want to try and be helpful. I have asked that an executive summary of the report is prepared which takes out the confidential aspects of the report which cannot be put into the public domain, and that report is made available as soon as possible. I have also arranged for a briefing for Members to be done by the authors of the report and that briefing should, I hope, be useful to Members to understand some of the context and also some of the international comparative work that has been going on in relation to other 1(1)(k) regimes. As for the validity of the claim that they contribute in excess of £50 million, I repeat what has been said

before, this is an estimate of the total contribution based on experiences in similar jurisdictions. Whether this number is correct is frankly irrelevant, in my view it is sufficient to know that this small group of wealthy individuals contributes directly more than £13.5 million of direct tax.

2.9.1 Deputy T.M. Pitman:

I thank the Minister for his answer and this is relevant, given that the World Bank data reveals that globally the move to give beneficial tax breaks to the super wealthy over the last 30 years, i.e. a bigger slice of the pie in order that there will be more pie for the rest of us, has not in fact worked. Does he not agree that it is high time Jersey led the way to consign these policies to the dustbin or at least prove that it works in Jersey by finding some way to give us all this information?

Senator P.F.C. Ozouf:

I am not sure that the Deputy and I are going to agree fundamentally on whether or not this is good for the Island; the Deputy has a particular view that these arrangements should not exist internationally. The report that I will be publishing in the abridged version sets out the comparative regimes that are in place in Malta, Isle of Man, Monaco, Guernsey, Hong Kong, Luxembourg, Cypress, B.V.I. (British Virgin Islands) Cayman, the U.K., Montenegro, Switzerland and all these other places. So I do not think there is any doubt in my mind... I have no doubt that the 1(1)(k) regime has benefitted Jersey and I am going to be lodging legislation after the panel that I have set up with my Assistant Minister, Housing, and Economic Development, for a new 1(1)(k) regime for Jersey so we can continue to benefit... our community can benefit from direct tax contribution and the economic benefit that these individuals - who have a choice of where they locate - can benefit Jersey.

2.9.2 Deputy M. Tadier:

Does the Minister accept that this is not about what an individual States Member's opinion may be of 1(1)(k)s or the tax regime, it is about access to information. Now, we have been told by the Assistant Minister... he has made an assertion that 1(1)(k)s bring a financial benefit in excess of £50 million; now the States Members and the public are not being given the working for that answer. It is only right, does the Minister not agree, that we should have access to how that figure was arrived at but also on the other hand questions are being asked about what perhaps the negative financial implications are and the social implications are for having 1(1)(k)s, and the Assistant Minister has blithely answered that he does not think that there are any. But it also acknowledges that there is no desire for a cost benefit analysis to be held of 1(1)(k)s. So will the Minister give an undertaking at least that a cost benefit analysis would be desirable so that we can look at these things in the round and base these calculations on evidence rather than on any kind of ideological doctoring?

Senator P.F.C. Ozouf:

I have to say I have a great deal of sympathy from what the Deputy is saying. I was not in the Assembly when my Assistant Minister answered the questions but Deputy Noel was quite right because he was being asked about the specific report and we do have a difficulty in publishing the whole of that report. But what Deputy Tadier is asking is justification of the workings of how we justify our overall cost benefit analysis for 1(1)(k) regimes and I am happy to provide that and certainly I am going to have to argue on my feet in this Assembly why we should be changing the 1(1)(k) regimes and I fully accept that Members need to be completely informed of all of the benefits and the costs associated with a 1(1)(k) regime. I am going to do a briefing with the people that wrote the report, we will do another briefing on the new regime and we will have a debate in this Assembly and of course it is a matter that Corporate Services Scrutiny Panel can review as well as I would expect that they would be wanting to comment and scrutinise that legislation. I do not think the report is going to show that there is a net loss to Jersey of having 1(1)(k)s. 1(1)(k)s have

historically benefitted Jersey directly and indirectly and I want to see more of that benefit accruing to the Island.

2.9.3 Deputy M. Tadier:

I thank the Minister for his partially encouraging words but, at the end of the day, how is the Minister going to show whether or not there is any kind of social disadvantage, for example in the housing market to do with the price of first-time buyer homes, if for example the 1(1)(k) regime was not in place and had not been in place? Is it possible to do this to have a meaningful debate on the issue?

Senator P.F.C. Ozouf:

Again I sympathise with the Deputy and I understand exactly how it is naturally possible for the argument to be constructed that because we have had 123 1(1)(k)s historically and they have bought expensive properties, that that has had an impact on the housing market. I fully accept that I have got to explain, with my Assistant Ministers as we attempted to do so in the past, how this does benefit overall the Island and how a carefully judged, a carefully allocated number of 1(1)(k)s does not have the unintended consequence of making house purchase for young people harder. I do not think it does because it is the high value properties that these people are buying and it is obviously low value properties, that is what they want, the first-time buyers want low value properties, and we would need to do other things - I have said in this Assembly many times - one of the unintended consequences of economic growth in Jersey is high house prices, which is why we have got to do something about affordable homes and things like shared equity. But I am happy to argue all of these points at the appropriate time when we have the legislation before us, and in advance.

2.9.4 Deputy G.P. Southern:

The Minister produced a great long list of people with whom we can be compared, but he said: “the experience in other places” did he mean the experience, i.e. have they got real figures, or did he mean an estimate of what happens in other places? Also can he state among that particular long list how many of those are whitelisted rather than grey or blacklisted?

Senator P.F.C. Ozouf:

That is a good question but it is not relevant. I do not know what grey list or white list he is talking about if it an O.E.C.D. (Organisation for Economic Co-operation and Development) in those countries that have set up arrangements for transferring information. I think all of those countries that I have listed now are on the white list because they are all signing tax information exchange agreements, but I think that is, with respect, a different issue. What is very interesting is how other countries have put in place beneficial regimes in order to attract high net worth individuals. They have done it and their parliaments have approved it and there is a whole range of political opinion in these different countries. There is an interesting debate in Switzerland on this matter, they are making arrangements in their own national tax policies to attract people that bring revenue, that bring prosperity, that bring economic benefit to their countries and I am keen that we compete to highly mobile individuals who have choices about where they live, who benefit other countries. I do not think we have had enough of them. [**Approbation**] I do not say hundreds but a few of them can benefit our economy and I want to see that happen and I am certainly going to be laying before this Assembly a competitive regime designed to benefit Jersey and we will see in that report what is available in other countries.

2.9.5 Deputy G.P. Southern:

If I may, a supplementary, because the Minister, while producing a wonderful answer did not answer the question, which was is the comparison with real figures in these other jurisdictions, i.e. he said experience in other jurisdictions, or are they estimates? Are we just talking about a bunch of estimates rather than our single estimate?

Senator P.F.C. Ozouf:

A big and complicated subject is difficult just to boil down into ... I think what the Deputy wants to know is what is the equivalent 1(1)(k) regime that is available in the Isle of Man or Guernsey or Malta or Cypress or Switzerland in various different cantons. I certainly need to set that out so that we can see the competitiveness of our own regime. I would just remind the Deputy that our regime is quite expensive compared to quite a lot of other places and that is why we have not had the large inflow of high net worth individuals that some other countries have. Guernsey has had a more beneficial regime, as has Switzerland and a number of other places and we are quite expensive, but we made a decision that a small amount of 1(1)(k)s with a high amount of tax contribution to the exchequer was the best policy and that will continue to be the case but it has got to be reasonably competitive.

2.9.6 The Deputy of St. John:

Would the Minister agree that 1(1)(k)s are very beneficial to the Island and will he continue to talk-up the Island for 1(1)(k)s to enter, as they are very important to the Island's future? Early on in the early days of 1(1)(k)s coming to the Island will the Minister agree that in purchasing a lot of the old derelict properties that they did - local people could not afford at that time to renovate these properties - and it was only through the 1(1)(k)s that the Island has been able to benefit some of these beautiful old properties which have now been listed to pass on to future generations?

Senator P.F.C. Ozouf:

I would warmly agree with the Deputy on that issue. 1(1)(k)s and our own indigenous high net worth individuals have benefitted our countryside, they have benefitted our historic properties in Jersey to a great extent. The Deputy is right to ask me to talk-up Jersey and to talk-up 1(1)(k)s and that is exactly what we must be doing over the next few months. The world now is emerging from the dark days of the recession: we are in a fantastic position to compete, we are in a great position without any of the hangover of debt and other problems that other countries have with their very high rates of tax, having to repair their public finances. We are in a unique position to attract business, to attract innovative people that can benefit our economy and run their businesses from Jersey and that will help us in our challenges to fund public services into the future without having to worry, as is happening I am afraid in Parish Halls around the Island, without Islanders being concerned that tax rates are going to go up and up and up because we have to pay for things like healthcare service. It does not have to be that way, we are in a great position and, yes, I will talk it up.

Deputy P.V.F. Le Claire:

I have just noticed that there are questions without notice to the Minister for Treasury and in his absence the Chief Minister which will be answered by Senator Ozouf so I will wait.

2.9.7 The Deputy of St. Mary:

I just wanted to go back to the cost benefit analysis issue and ask the Minister to confirm that when Members are briefed by the people who wrote the 1(1)(k) report that the cost benefit analysis figures or ideas and concepts will be in front of Members at that time and not brought to the table on the late side. Will we have that information as well in order to base judgments on earlier rather than later?

Senator P.F.C. Ozouf:

I will do my best but I understand the Deputy... I am not sure whether or not I am ever going to convince some Members of this Assembly that 1(1)(k)s are a good thing for Jersey so some Members continue to ask me questions to provide reports for the answers that they want and I am not sure - with the greatest of respect - that I am going to be able to do that. But I have to argue a new 1(1)(k) regime through this Assembly, it is important that Members have full information and I

will ensure that Members are given good time and good information in order to make that important decision.

The Deputy of St. Mary:

The Minister is entitled to his view and we are entitled to ours.

Senator P.F.C. Ozouf:

I completely respect that, this is how we resolve issues in a democratic Assembly.

The Deputy Bailiff:

Mutual admiration at its best. [Laughter]

2.9.8 Deputy T.M. Pitman:

I can soon put an end to that. I always look for common ground and I have to say I can certainly agree with the Minister that we certainly have not had enough of these individuals' money. I would like to say to the Minister that I too always talk-up Jersey but I will also always talk-up morality, honesty and social justice.

[11:00]

Does the Minister not concede that is equally as important and will he allow such individuals as myself to possibly take part in his review into the way forward for 1(1)(k)?

Senator P.F.C. Ozouf:

I share the Deputy's view about wanting to get more revenue from 1(1)(k)s and I think that we just differ in how we are going to achieve that. The Deputy, I think, thinks that we can extract more revenue from individuals: I would argue that is going to mean that we will see these individuals go to other places. What I do want to do is to end the situation where 1(1)(k)s are not bringing their wealth and their investments and their family offices to Jersey. We have a strange situation that the current arrangement is structured that 1(1)(k)s structure their affairs in nice places like Guernsey but they do not do it here and I want to see 1(1)(k)s having a regime that means that they bring the whole of their wealth and that is managed from Jersey. That is good for jobs, that is good for revenues. I will take up the Deputy's offer of a review, there is a working party consisting of Housing, Economic Development and Treasury, there is that working party that is coming forward with proposals. I will ensure that those proposals are going to be published as soon as possible and the Deputy - like all Members of this Assembly - is going to be able to take part in a workshop on the 1(1)(k) regimes before it is lodged before the Assembly. So in that context, yes, he can be involved.

2.9.9 Deputy T.M. Pitman:

Could I just seek clarity from the Minister on something he said very briefly. In his previous answer he seemed to intimate that we will be able to have a meeting, a summary, with the people who wrote this report, yet his Assistant Minister had said that we could not even know who did write the report. Could he just clarify that?

Senator P.F.C. Ozouf:

Yes, I have discussed it with the Assistant Minister and we are as one in relation to the fact that now we are completing this work and the code of information requirements are abilities for a Minister, when there is policy under review, we can hold back information. There is a point at which the information does come into the public domain and the report which was done by Withers LLP, which is a London-based law firm, and Panopticon, an independent policy adviser unit, we are the stage now where we can be more advanced and we can be more expansive in terms

of the information that we have got. The Assistant Minister is doing a very good job in relation to steering the working party on that is looking into this matter.

2.10 Deputy S. Power of the Minister for Economic Development regarding milk prices:

Following the announcement that the wholesale price of milk is to increase by 5 pence per litre, or 5 per cent, on 9th May, can the Minister explain why the efficiencies created by a new dairy facility at Trinity are not being reflected in lower milk prices as was claimed would be the case when the States were asked to agree to facilitate the move of the dairy to Trinity from Five Oaks?

Connétable L. Norman of St. Clement (The Assistant Minister for Economic Development):

Of course any price increase is regrettable, particularly in these difficult times, however, this is only the second price increase since 2002 and after this has been implemented the wholesale price of milk will have reduced by nearly 20 per cent in real terms over the past 10 years, indicating significant savings to the consumer due to efficiencies which have taken place. Further efficiencies are now being achieved at the new dairy facility at Howard Davis Farm, for example, the number of production staff has reduced by more than 50 per cent, and the new dairy has reduced the amount of energy used to process milk. But the increased costs of fuel and packaging have overtaken some of the efficiency gains. Regrettably, the increase in operating costs make the price increase essential to ensure that Jersey Dairy can compete with these inflationary pressures.

2.10.1 Deputy S. Power:

I must question the Assistant Minister to reply in a little better detail on the variation that we have been indicated now as to what was indicated to the Assembly at the time of the debate. This Assembly and the public were led to believe that there could be a price reduction of up to 30 pence a litre at the time of the debate which, when factored into the 5 pence a litre, is almost a 35 per cent increase now on what the public and this Assembly were led to believe. Can the Assistant Minister answer as to how the dairy could have a 35 per cent variance in what was indicated to this Assembly?

The Connétable of St. Clement:

Certainly I have never suggested there would be a reduction in the price of milk at that sort of level. As I say, in real terms it has decreased by something like 20 per cent over the last 10 years and the dairy has no plans for any increase, certainly they intend to trade through at least to 2015 without any further increase.

2.10.2 Deputy S. Power

It is obviously riveting Members with this subject, I will follow on with a final question to the Assistant Minister, can the Minister confirm whether or not it is necessary to conduct a 24 hour shift operation at the new dairy?

The Connétable of St. Clement:

No, I cannot.

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

Is the Minister able to mention how much of that 5 pence is going to go to the producer?

The Connétable of St. Clement:

The last increase of 7 pence was in 2008 after the *McQueen Review* of which 100 per cent of that 7 pence went to the producer. Of this increase the entire amount will be going to the Jersey Dairy.

2.10.4 The Deputy of St. John:

Would it now be possible for the dairy then to subsidise the Education Department with school milk?

The Connétable of St. Clement:

The States have made a decision about school milk and as Members were informed during that debate school milk was at a cost to the Jersey Dairy and was subsidised by Jersey Dairy at the time so removing school milk has made a saving to Jersey Dairy.

2.10.5 Deputy M. Tadier:

We have been told that the costs are associated with packaging and fuel; these are both environmentally very important issues. Can the Assistant Minister either confirm what efficiencies are being looked at in these 2 areas, and if not would he encourage the dairy to make greater efficiencies, particularly when it comes to fuel consumption which I am sure that they have got a vested interest to do anyway, if they are not doing it already, and to relay these efficiencies to the Assembly at a later date?

The Connétable of St. Clement:

Yes, absolutely, certainly. I mean, the move to Howard Davis Farm has enabled significant savings to be made in fuel and in staffing and the dairy are absolutely determined to be as efficient as they possibly can. I will be pleased to provide the Deputy or any other Member with more detailed information if they require it.

2.10.6 Deputy S. Power:

So the Assistant Minister in one of his replies to me indicated a reduction in labour costs, I think he indicated the order of 50 per cent. As the transitional phase from old to new within the dairy has now come to a close and the new dairy must be operating efficiently, can the Assistant Minister confirm that if this price increase of 5 per cent does go ahead on 9th May that there will be no more further price increases for the foreseeable future and that the Assistant Minister should seek to find out whether there could be a price reduction in the future?

The Connétable of St. Clement:

The dairy recovery plan which started in 2008 is well underway and is on track and, as I said in my answer to the Deputy, looking as far as we can into the future, bearing in mind any lack of variables, the dairy have no intention to ask for a price increase until at least 2015.

2.10.7 The Deputy of St. Mary:

May I crave your indulgence not to bring it to an end just so quickly, because I was caught out by the curious disappearance of 2 questions in the order paper. In fact, on my order paper the Deputy of St. John's question is last, it is number 13, of course it bounced to first, I do not quite know how that happened, and then 2 others disappeared and the order paper I was working off with all my notes did not have those jumpings about, so I do crave your indulgence to ask what was question 5 about energy efficiency?

The Deputy Bailiff:

The fact that the Deputy of St. John's question was advanced up the order gave you more time rather than less time, Deputy. The order for questions is fixed in accordance with Standing Orders and Members know that order and should be here to ask the questions of which they have given notice and it is a discourtesy to other Members and to the relevant Minister if they are absent from the Chamber. Now, if there is not some disadvantage to Members failing to observe these courtesies there is a risk that the practice of not being present at the right time would become more prevalent. I also see no reason why Ministers who are the subject of the question should have to hang around awaiting the pleasure of the absent Member. So for these reasons, Deputy, if I may say so, added by the fact that you had the opportunity of asking your question in questions without

notice in any event, for these reasons I am afraid you have missed your turn and, therefore, you cannot resurrect it now.

The Deputy of St. John:

On a point of clarification, given we have a 2-hour window for our questions and the Ministers are supposed to be in the Chamber along with the remainder of us for the duration of all our debates and our question time, I think you are being a little harsh if I may ask you to reconsider the Deputy's request to fit this one in within our 2-hour limit.

The Deputy Bailiff:

There has never been a rule under Standing Orders that the full 2 hours must be taken up in question time, it is a maximum and not a minimum, or not a fixed period, and the practice has been - most of the time, at any rate - not to allow a Member who has missed his turn to ask the question.

Deputy G.P. Southern:

I do not believe it has happened that we have run out of the 2 hours before the opportunity arose previously. I think given that we have space within the 2 hours it is perfectly possible, since the Minister has prepared an answer, that he should be able to give that answer to the States at this particular junction.

The Deputy Bailiff:

The Chief Minister himself is not in the Chamber because he is attending on the Princess Royal, which is another reason why it is not appropriate to ask the question because the Deputy Chief Minister would have expected the Chief Minister to have answered the question before this time and, therefore, should not have to face the supplementary questions on that point. Do you wish to make a contribution to this?

Senator P.F.C. Ozouf:

I am more than happy to answer the question either now or in questions without notice.

Deputy M. Tadier:

Can I also make the point, it is slightly unfair on other Members who may not be able to get their question in during questions without notice because the Deputy of St. Mary is maybe eating into that time. I recall that also in the past I think I made the same mistake because I was caught out by the order paper and I think I was allowed to ask my question by yourself, perhaps because I was more contrite when I stood up and apologised to the House for not being here. **[Laughter]**

The Deputy Bailiff:

Your contrition, I am sure, was very valuable, Deputy, but had nothing to do with it. The view that has been taken by those who share the job of chairing this Assembly is that when the time is passed, the time is passed. Therefore, although you are right, I gave you an accommodation on the last occasion, it is not available: the Member should be present.

The Deputy of St. Martin:

I do not want to prolong this, and I have no sympathy either for the Deputy of St. Mary because the Deputy should have been here, however, he was not and we are within the 2 hours and if indeed you are not going to allow it can I ask that P.P.C. (Privileges and Procedures Committee) may look at this issue with the view that we do get a definitive ruling because, again, I do not condone what the Deputy of St. Mary is doing but we are within the 2 hours, the time should be there.

The Deputy Bailiff:

If I may so, Deputy, you have had a definitive ruling on the Standing Order as it now is [**Approbation**] but of course P.P.C. will have heard what you have to say and will take account if they wish to change the Standing Orders in any way.

Senator F. du H. Le Gresley:

As you are talking about Standing Orders could I raise a point of order? It refers to question 4 asked by Deputy Le Claire, the wording of his question is identical bar one word to the wording of his written question and written question answers are submitted at the beginning of this session before we have oral questions. So I would ask whether allowing that second question is an abuse of 10.8 of our Standing Orders?

The Deputy Bailiff:

Senator, the view from the Chair is that it was not contrary to Standing Orders for the Deputy to put in a written question and an oral question at the same time. It is very undesirable practice and no doubt the Chairman of P.P.C. will wish to take account of this point. [**Laughter**]

Deputy P.V.F. Le Claire:

Can I ask on a point of clarification, why is it undesirable?

[11:15]

The Deputy Bailiff:

Because it is requiring Ministers to give attention to a written question and then also have to spend time with their officials, preparing the answers to potential oral questions that follow. Now, there is no reason why you should not ask your written question or there is no reason why you should not ask your oral question, but it seems to me that it is an undesirable practice. However, I wish to make it absolutely plain, Deputy, that you were not breaching Standing Orders in any way at all in doing what you did and there is absolutely no criticism of you in that respect and the Privileges and Procedures Committee will just wish to consider all the arguments in the round in the future.

Deputy P.V.F. Le Claire:

Can I thank you for that clarification and also make the point that with the greatest of respect, I would attend upon Privileges and Procedures and ask that they ask me to do that, to argue why I think it is not undesirable. I believe it is desirable.

3. Questions to Ministers without notice - The Minister for Treasury and Resources

The Deputy Bailiff:

That is entirely your right, Deputy, and I am sure the Chairman of P.P.C. will pay attention to that. Now we come to questions without notice and the first question period is to the Minister for Treasury and Resources.

3.1 Deputy S. Power:

I was very happy to hear the Minister for Treasury come out this morning in answer to an oral question about the need for affordable housing and shared equity housing and I hope he will add to that social rented housing. Would the Minister be prepared to endorse or comment on the efforts that were made on Homebuy Mark 1 and would he like to see a new deferred payment project Homebuy Mark 2?

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

I strongly support the provision of supply in all sectors of the market, including social renting and that is why I have been, I hope, at the vanguard of supporting the setting up of the Homes Trust and

other areas where we now have over 800 social renter units with happy tenants and we can do more. I have campaigned since I was a Deputy sitting over there in relation to shared equity. I did have my moments with the former Minister for Housing on it and I do understand that there are unintended consequences of shared equity because if it is not properly thought through economically you can disrupt the overall market. I strongly support Homebuy, I had some issues in relation to the first scheme but I believe that shared ownership property is absolutely vital for Jersey and is the only way and is the right way that we can achieve the legitimate aspiration of home ownership for Islanders and particularly first-time buyers and young families in the longer term. I will be working with whomever I need to do so in order to achieve the Homebuy 2.

Deputy S. Power:

Can I ask the Minister for Treasury and Resources clarification of that, is he saying that he agrees with the principle of the deferred payment scheme, as was prototyped at La Providence?

Senator P.F.C. Ozouf:

I am going to hold back a final judgment, if I may, on that, because I have not yet studied in detail the Public Accounts Committee's report on it. But certainly I was part of it, I think that the issues of policy, that I want to see a policy properly constructed, brought to the States, which was the promise of the various different parties of the time, and then we can then move forward with a certain scheme. But I do think that developers... I do not want to see developers achieving the same amounts that they would have achieved in Category B housing as a result of it, and that has been my only argument. I want to see that with the right of developing land comes the obligation of providing affordable homes and cheaper homes and I do not want the States or the individuals buying them to pay those high prices. That is the whole premise on which shared equity is built and that is my problem in relation to the first scheme only.

3.2 The Deputy of St. Martin:

The Senator has recently overseen a serious complaint made against a senior civil servant, will the Minister inform Members whether the investigator into the complaint interviewed the former Police Chief Officer and a QC who investigated the circumstances into the former Chief Police Officer's suspension? If they were not interviewed will he explain why?

The Deputy Bailiff:

I think that is a question for the Chief Minister, Deputy, so ...

The Deputy of St. Martin:

Sorry, it was one of the Deputy Chief Minister.

Senator P.F.C. Ozouf:

I discharge the functions of the Deputy Chief Minister in that regard and I will answer that later.

The Deputy Bailiff:

Yes, we are dealing with the Minister for Treasury and Resources at the moment, not the Chief Minister, so you will ask your question later on.

3.3 Deputy G.P. Southern:

I think mine might go the same way, but I will ask it anyway. In the *Jersey in Figures 2010* produced by the Stats Department, there are figures showing the change in income tax receivable with projections to 2013 - there is a projection of goods and services tax receipts with projections to 2012. But in figure 9.2 where income tax is broken-up down into self employed, salary and wage earners and companies, there are no projections beyond 2009. Will the Minister suggest why this might be so and why he does not project what the breakdown is of income tax between companies, personal tax and other?

Senator P.F.C. Ozouf:

The Deputy has got an advantage on me because I have not studied the excellent publication which all Members have had, I think the Stats Unit has done a great job again in relation to these numbers, I have not studied all of them. I am not sure, is the answer to the question, of exactly why there are not estimates in this report. Certainly we have got estimates of forward projections of income tax from wage earners, from corporates, from G.S.T. (Goods and Services Tax) all the way through and we are updating our forecasts currently in preparation for the Business Plan. I have not studied this thing but if there is anything that I see about that is an error or omission I will certainly email later today.

3.3.1 Deputy G.P. Southern:

Does the Minister not consider that the reason why such projections are not projected is that they will confirm the figures I have produced a month ago and that they would emphasise the difference between company tax, which is going down, and personal tax which is going up.

Senator P.F.C. Ozouf:

The Deputy seems to suggest that there is something surprising about that. This Assembly, since 2002 has been debating the issue of the balancing of our public finances and the introduction of Zero/Ten caused a loss of income to the Island of £100 million and that has been confirmed as being an accurate assessment. We further lost revenue as a result of the global downturn, which meant that we had to make difficult but necessary decisions to rebalance our public finances last year. All of this information is in the public domain, there is nothing new, there is nothing in the schedule that I have. If the Deputy is trying again - if I may say - to reinvent history and rewrite history then he is not going to get me to agree with that. We have projections, there has been a rebalancing of our public finances and I have answered accurately all questions about revenue and please do not reinvent history.

3.4 Senator F. du H. Le Gresley:

Could the Minister advise if he agreed with the decision of his Assistant Minister to reopen Haut de la Garenne as an outdoor activities centre and hostel and why he and the Council of Ministers apparently failed to consult beforehand with people, using his own words, who have legitimate interest in the building, such as the Jersey Care Leavers Association?

Senator P.F.C. Ozouf:

I have discussed this issue with my new Assistant Minister, the Constable of St. Peter, and also at the Boat Show I met the principals behind the organisation that has taken the license for Haut de la Garenne. I do accept that I gave an undertaking to consult with the individuals and I did not do that and that was an error and I apologise for that - the fact that I gave that and then it did not happen because of communication between Property Holdings and myself. Notwithstanding that, I think that it has been the right decision to open Haut de la Garenne as an activity centre. I was impressed by the individual that I met and talked and chatted to and I am going to go up to the facility. The issue of Haut de la Garenne needs to now be moved on, it is an important site which was set up for the benefit of Islanders and visitors with a great deal amount of taxpayers' money and it is a facility which I think now - having now got closure on the issues to do with Haut de la Garenne - I think that we can use that appropriately and sensitively and there is a short-term arrangement, which we will see how that arrangement goes over the next 12 months.

3.5 Deputy T.A. Vallois:

Could the Minister explain how having approximately 17 interims in Treasury and Resources since January last year, costing just under £1.8 million, of which one individual in procurement is costing approximately £260,000 per year, could the Minister explain how this represents a good use of taxpayers' money or value for money?

Senator P.F.C. Ozouf:

Sound bite figures are always difficult to defend but what I will say is that - and I congratulate the Assistant Minister on having done her research - it will not come as a surprise to know that the Treasury has been under an enormous change over the last 2½ years. A new Treasurer, new arrangements in procurement *et cetera*. I do not like running on interims, I think it is the wrong thing to do, but we have no choice but to put in place people where people are stood down in the case of the Treasurer and in the case of the urgent need to get better value out of taxpayers' money in terms of procurement. That is why interims have been appointed. I am pleased to say that now the Treasury under the new leadership of the new Treasurer is no longer running on interims, we have now got a full management team which is going to serve this Assembly and serve the people of the Island and serve departments to a much greater extent, better than we could do in the past. We have improved financial management, we no longer have got interims. In the other resources areas there is work to do. The Assistant Minister, who is doing a great job in reforming H.R. (human resources) and procurement, property, there is a great deal of work to do and there will be more change and on occasion it is important to have interims in order to deliver that change, make things happen and deliver better value for money. So it is overall value for money but I do not like interims.

3.6 The Deputy of St. Mary:

I want to go back to the cost of housing. When are we going to see progress on tackling the problem of the increasing value of land when it is zoned or passed for housing as a way of reducing the cost of housing, whether it is rented or purchased, to an acceptable level?

Senator P.F.C. Ozouf:

The cost of land is an economic matter. When there is a tightness of supply and there is demand and, as we have seen exuberant credit matters around Europe and in the developed world, we have seen house prices rising in terms of an asset bubble. I do not think that we have seen that to the same extent as we have seen in other places in Jersey. We are now seeing a period of stability in terms of house prices and we - in the decisions that we need to take in the Island Plan - need to ensure that there is an appropriate supply of new accommodation by planning and by the release of appropriate land - of which St. Helier is important - to ensure that the underlying land price does not mean that young people cannot get on to the housing ladder. This is an economic issue and hobnail boot style intervention sometimes by government, well intentioned, sometimes does not work. I am happy to debate with the Deputy or others about the economics of land prices when we have got more time.

Deputy P.V.F. Le Claire:

Could I ask the Minister for Treasury and Resources what his acknowledgement is of this little book, *Jersey in Figures 2010*, page 38, that the net migration in Jersey over the last 4 years, aside from births over deaths, people that have arrived have been on average 700 a year?

The Deputy Bailiff:

No, Deputy, I am sorry, that is a question to the Deputy Chief Minister in due course and not the Minister for Treasury and Resources. Deputy Southern was right that his question really should have been aimed at the Deputy Chief Minister because the responsibility for the Statistics Unit rests there. You will be able to ask that question later on.

Deputy P.V.F. Le Claire:

Could I have another bash at this then from a different question?

The Deputy Bailiff:

I am sure that we will get to you but I will put you down at the bottom of the list.

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

What assurances will the Minister give to Members that, if and when the C.S.R. (Comprehensive Spending Review) savings are not achieved, G.S.T. will not automatically be increased without looking first at all other avenues?

Senator P.F.C. Ozouf:

I congratulate and thank the Deputy for that very important question. There is going to be a lot of debate about G.S.T. in the next few days and I certainly am going to be getting involved in that debate in terms of the run-up when G.S.T. goes up to 5 per cent and the debate on food exemptions and I will be arguing strongly that I think that we would need to maintain the food exemptions to keep our G.S.T. low and to keep it simple, easy to collect. The C.S.R. savings are on track, I am pleased to say. I have made it a condition, politely, with Ministerial colleagues that they only get their underspends or their carry forwards if they continue to confirm that they are on track to deliver their C.S.R.s, that is not unkind, I do not think.

[11:30]

All departments - and I congratulate departments who have under-spent their budget last year - but they can get it back, good financial management means that they should get their underspends back and particularly they should get it back when they are investing in their services and providing the mechanism to deliver their C.S.R. savings. I am confident that we are going to deliver the £65 million, it may be a different make up in some areas but we will make it. My position on the economy generally is that, if we deliver on C.S.R., we stick to G.S.T., we stick to our taxation policies, I think that we are in a very strong position financially. We need to find more money for areas such as Health, as we are going to debate in the Health Service Review in coming years, but we can cope with that. I want to give a message of stability and certainty to Islanders, while G.S.T. has gone up to 5 per cent, it can stay at 5 per cent in my world for the foreseeable future providing we deliver on the C.S.R. savings and we continue to deliver efficiencies in the longer term.

3.8 Deputy T.M. Pitman:

I would have liked to have got in earlier but could I ask, would the Minister reconsider or withdraw his use of the term “closure” with regard to Haut de la Garenne, because, as he is aware, we have got a Committee of Inquiry to come and he must surely acknowledge that for many people no such closure has been reached.

Senator P.F.C. Ozouf:

I fully accept the comments that the Deputy made. Closure to different people means different things but in terms of the administrative process and the judicial process there has been closure on that particular issue. But I share the understanding and I share the sentiments of the Deputy that there is more work to be done in terms of the victims and there is another debate which is going to happen imminently in this Assembly on the Committee of Inquiry in relation to those matters. That is on the Council of Ministers agenda on Thursday. But I accept that point, I mean no disrespect to any of the individuals concerned. It is important that the property does, however, continue to live and is used.

3.9 Deputy R.G. Le Hérissier:

Notwithstanding the fact that the Assistant Minister is labouring mightily to bring order and movement to the property portfolio, would the Minister for Treasury and Resources confirm that he will soon be publishing a list of priorities in handling the portfolio so that for the old standbys like Jersey College for Girls, the Rue des Pres Trading Estate, and the amount of money put into the cultural estate, there is going to start being a proper debate about how these matters are handled and they are not going to be hidden much longer?

Senator P.F.C. Ozouf:

The Assistant Minister is doing an excellent job in terms of dealing with that necessary and important reform of Property Holdings and he informed me last week that he is going to be working on a statement that he is going to be publishing in the next few weeks, I hope in advance of the summer break, on the strategy for Property Holdings. I do want to see S.O.J.D.C. (States of Jersey Development Company) up and running. S.O.J.D.C. is an important partner for Property Holdings in delivering and getting best value for taxpayers of sites which we are going to need to dispose of. Certainly the other thing that we are doing in Treasury is we are now looking much longer-term in terms of capital requirements. The Deputy of St. John will be pleased to hear that we are looking at capital infrastructure requirements out for 10, 15, 20 years in terms of money, and we are looking at how we can use the property portfolio. The States has £1 billion plus of property so how we can use that. Yes, there should be some disposals, and yes, we will be publishing what that plan is going to be before the summer break.

The Deputy Bailiff:

The last question in this part of Questions without notice is Deputy Le Claire.

Deputy P.V.F. Le Claire:

I will take a different approach on this. Does the Minister for Treasury and Resources think that a written constitution would be necessary given that in the last review of our constitution conducted by the Royal Commission, between 1969 and 1973, found no economic grounds for there to be a change in the constitution?

The Deputy Bailiff:

I do not quite understand how that is question for the Minister for Treasury and Resources.

Deputy P.V.F. Le Claire:

There were reasons given, sir, in the Home Office report between 1969 and 1973 and one of those areas was in relation to the economic conditions related to the United Kingdom and the Channel Islands. It had a whole section on whether or not they thought there should be a change due to the circumstances of the Channel Islands ...

The Deputy Bailiff:

Deputy, thank you very much, I have found a way out of your difficulty. That brings an end to the questions to the Minister for Treasury and Resources [Laughter] and we have questions now to the Deputy Chief Minister and I call on Deputy Le Claire. [Laughter]

4. Questions to Ministers without Notice - The Deputy Chief Minister

4.1 Deputy P.V.F. Le Claire:

Would the Minister give me some tuition in asking questions?

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

I am happy to answer that question the Deputy just asked. I have to say I am not sure how we are going to deal with the debate on the constitution and I speak only in my own capacity and not speaking on behalf of the Chief Minister or the Council of Ministers. I have to say that I think there are some attractions to a written constitution. I think it may well be a solution of setting out a Bill of Rights in relation to the constitution of the States reform. I think it could also be the document that one could put to a referendum within the next 3 years in terms of setting out all sorts of issues. So, notwithstanding the economic issues, I have to say that my initial reading of the constitution idea is that it is possibly something that we should be looking at. I am not sure whether we can commit at this stage to the Deputy's report and proposition but I have been looking at written

constitutions for a number of different countries and I am attracted. My early conclusions are it is something that we should look at. It may well be the solution to dealing with a whole range of issues.

4.2 Connétable J. Gallichan of St. Mary:

Further to the recent, shall we say, spirited media interest in a number of decisions taken, can the Deputy Chief Minister state whether he maintains confidence in the Minister for Planning and Environment?

Senator P.F.C. Ozouf:

I thank the Chairman for that question. I have been deeply sorry to see how the Minister for Planning and Environment has, in my view, been unfairly treated in the media. I think that there are 2 problems [**Approbation**] the first is that as a result of some photography, which I think does not give justice to the Portelet scheme, that certainly has been used to portray a scheme which is not completed, which has houses that another committee was responsible for on the top, does not do justice to that. Obviously Islanders have views on modern architecture but I would urge Islanders to defer their judgment on Portelet, and to the *J.E.P. (Jersey Evening Post)*, until it is completed. I think the Minister for Planning and Environment has done a fantastic job in raising the quality of architecture in Jersey in a way that nobody has done in recent decades. I drive around the Island and see ... I came out of St. Ouen Parish Hall and saw a fantastic granite development outside of that, which I have no doubt that the Minister for Planning and Environment was responsible for. He has lifted architectural standards in Jersey and I think he deserves this Assembly's continued approval for what he is doing. It is a difficult job. There is one issue which has happened, he has been the subject of some personal unacceptable phone calls to him that have affected his family [**Approbation**] and we should send out a message that this is not acceptable in Jersey. No individual standing for public office should suffer the kind of abuse that he has in recent days and I take this opportunity of condemning that but giving him my full support in the work that he does.

4.3 Deputy A.E. Dupré of St. Clement:

Would the Deputy Chief Minister agree that the boat show was a huge success and does he think this shows the importance of such diverse events as the marathon, the Branchage Film Festival, the air display and, of course, the Battle of Flowers?

Senator P.F.C. Ozouf:

I completely agree with the Deputy, the boat show was a spectacular success in terms of good for commerce, good for Islanders and good for visitors. All people concerned, including the sponsorship of Barclays Wealth, should be thanked for that. Yes, events are part of our calendar, they are good for the Island and they are good for tourism and I do not know whether the Deputy is asking for specific money for a new event that she has in mind but certainly she can come and ask.

4.4 The Deputy of St. Martin:

The Senator has recently overseen a serious complaint made against a senior civil servant, will the Minister inform Members whether the investigator into the complaint interviewed the former Police Chief Officer and the Q.C. (Queen's Counsel) who investigated the circumstances into the Police Chief's suspension? If they were not interviewed, will he explain why?

Senator P.F.C. Ozouf:

I did discharge those functions because the Chief Minister asked me to and an independent investigator was appointed. He carried out the review. These are not matters which should be ventilated into the public domain. The Deputy of St. Martin made a number of allegations and they were not upheld but unfortunately he continues on this line of questioning in relation to various matters in relation to this. I looked at this issue and as far as I am concerned that matter, which I do

not think it is appropriate that we talk about in the public domain, is now closed after a satisfactory independent review.

4.4.1 The Deputy of St. Martin:

I ask the question I asked be answered: were these 2 gentlemen interviewed?

Senator P.F.C. Ozouf:

No, and I do not believe it was relevant. The independent review was made. But they are not relevant, the Deputy continues to makes comments and casts aspersions on people and individuals and I hope that we have drawn a line under those issues in a way that we should have closure. We need to move on and stop attacking individuals who are discharging public office and have done so properly. **[Approbation]** This issue was basically thrown out.

4.5 Deputy R.G. Le Hérissier:

Notwithstanding the announcement to be made about possible local appointment to the Chief Executive position, would the Deputy Chief Minister not acknowledge that the policy of allegedly promoting local appointments has proved to be hollow and non-existent?

Senator P.F.C. Ozouf:

Yes, I think we need to do more. I am not a Jersey nationalist that believes that only people from Jersey need to be involved in senior positions, but I will say 2 things. The experience that this Assembly has had in dealing with issues like the Deputy of St. Martin has done, I wonder why individuals would want to serve in senior positions. We have seen numerous individuals serving with distinction, to the best of their ability. People do not always get everything right, but then they have had the fear of being targeted in public in a way that is not good for the public sector and is not good for the Island. So we have failed but one of the reasons we have failed is that the States of Jersey has not been a very happy place to discharge senior responsibility for. My own view is that Jersey success is built from a fusing of imported talent and local talent and we need that in the highest echelons of the Civil Service just as we need everywhere else in Jersey.

4.5.1 Deputy R.G. Le Hérissier:

Supplementary. Would the Minister acknowledge that the balance is right?

Senator P.F.C. Ozouf:

The other issue is that because of the success of the financial services industry many young people aspire to working in the more remunerative areas of the private sector. This Assembly's interest in salaries... I understand people need to be paid appropriately and performance managed properly, but the attraction now of working in the public sector... why would you when all of your information is put into the public domain, you run the risk of getting accused of all sorts of things in the public domain in our, frankly, unacceptable areas of some political debate. We have to be careful because we are not going to be the kind of place that attracts high-performing, high-calibre individuals, but remuneration should be fair and it should be worked for in terms of high salaries.

4.6 Deputy M. Tadier:

Will the Deputy Chief Minister take on board the words of wisdom, first of all this morning from the Minister for Social Security that ideally maternity legislation should be brought forward in conjunction with discrimination legislation, in particular sex discrimination legislation, and the previous comments of the Minister for Home Affairs which said that discrimination laws should best sit with the Chief Minister's Department, who perhaps have better resources to bring this forward? If so, will he give an undertaking that the Chief Minister's Department will bring forward at least the sex discrimination part of the law this year before the elections?

Senator P.F.C. Ozouf:

I met with Ministerial colleagues at the Childcare Trust in relation to matters of maternity and paternity rights, and I congratulate the Minister for Social Security who has brought forward matters. Yes, we need to do more in this whole area. As far as discrimination is concerned, this was championed by former Senator Kinnard in Home Affairs and that has remained in Home Affairs. My own view is that we have had difficulties in our public finances in the last few years and some issues have had to be put on the back-burner because we have been dealing with economic issues. I will look again at the issue of discrimination legislation and the progress of that, and we need to talk about that at the Council of Ministers. But discrimination legislation is the backstop. What you need is education and an Island community that will abhor the kind of discrimination that Senator Cohen has had to deal with, and I have had to deal with on some occasions in terms of that issue. Discrimination legislation is the backstop. There is a lot to do to say that it is unacceptable as a society before we do that.

4.7 Deputy M. Tadier:

Is that in the same way that murder is a backstop; a legislation for murder and for thieving and for other undesirable behaviours in a society, and that we do not need this kind of legislation? Does the Minister accept that these 2 go hand-in-hand and in order to change behaviour, especially in the minority, which the offensive minority legislation is required, and it is a 2-way system that we need both legislation and social pressure in order to show is desirable behaviour in society?

[11:45]

Senator P.F.C. Ozouf:

I accept that legislation is a backstop and we are going to need it in terms of discrimination. But there is a lot of education and awareness-raising that you do. It is better to stop the problem happening rather than dealing with the consequences of it. It is not the same as murder but I take the Deputy's point.

4.8 The Deputy of St. John:

Is the Minister aware that both boat hoists were disabled over the boat show and this sent out the wrong message to the exhibitors and the public alike, with both hoists having mechanical problems? One hoist being out of action for over a month and the other one for days prior to the boat show. This created problems for exhibitors getting their crafts back in the water yesterday to leave on the boat last evening, and the like. Will he see to it that both Ministries - the Harbours and T.T.S. - work much closer together in future to make sure this type of thing cannot happen again?

Senator P.F.C. Ozouf:

I was not aware of it but I will draw the matters the Deputy has raised to the appropriate Ministers.

4.9 Deputy R.G. Le Hérissier:

Would the Minister not acknowledge that the Royal Wedding celebrations went off very well on the Island and the alarmist fears propounded by the Minister for Home Affairs of 36 hour continuous drinking binge sessions were totally unfounded?

Senator P.F.C. Ozouf:

The Island celebrated the Royal Wedding appropriately. I saw flags and general support for the Royal Wedding couple across the island. It was a great day, people enjoyed it with street parties, *et cetera*, and the Deputy knows what my position was on that. I did not agree with my good friend the Minister for Home Affairs, I did not think there were problems. That does not lead me to the conclusion that we need 24-hour drinking legislation permanently or 1.00 a.m. pubs that we do need to liberalise. No, I am not a prohibitionist and I believe that people had appropriate fun and there was not lawlessness and all the rest of it on the streets of St. Helier. So I think this Assembly in the majority was right.

4.10 The Deputy of St. Martin:

Will the Deputy Chief Minister inform Members whether the Chief Minister or indeed the Council of Ministers have explained why they have not yet consulted with States Members, the Care Leavers Association and those other bodies who have an interest in the Haut de la Garenne, or indeed the historic abuse inquiry with a view to discussing the terms of reference and a composition of the Committee of Inquiry.

Senator P.F.C. Ozouf:

The matter is before the Council of Ministers on Thursday and there will be an appropriate communication with those people that need to be properly consulted immediately after the Council's meeting on Thursday, or shortly thereafter.

4.10.1 The Deputy of St. Martin:

At the moment I have not been informed, can I ask whether any other States Members are going to be invited to be consulted?

Senator P.F.C. Ozouf:

The Council of Ministers is meeting ... I have just received my papers this morning myself and the Chief Minister will no doubt ensure that there is appropriate communication with all those people that there needs to be.

4.11 Deputy G.P. Southern:

What response does the Minister have to the Chairman of the Jersey Community Relations Trust and other who suggest that the proposed maternity leave regulations are inadequate and shameful, and does he not accept that the key element is the absence of any paid leave, and that in the absence of paid leave very few women on this Island can afford to give up their work for 16 weeks unpaid?

Senator P.F.C. Ozouf:

The Minister for Social Security has ... there is 2 weeks paid leave, there are a number of organisations ... having just become an uncle, I am pleased to say, over the weekend **[Approbation]** I am more aware of these issues because I have learnt about issues in terms of maternity pay and all of the rights, *et cetera*. I learnt all the social security arrangements where a young mother gets an upfront payment and she gets a payment, irrespective of income, in terms of maternity pay of, I think, £179 a week. I am certainly more informed of these issues. Do we need to do more in terms of maternity care? Yes, we do. This is the first step but there will be more in terms of parental rights and maternity rights in the longer term.

The Deputy Bailiff:

That brings an end to the second questions without notice period to the Deputy Chief Minister. There is nothing under J. Under K the Chief Minister will make a statement regarding the appointment of a new Chief Executive to the Council of Ministers. Deputy Chief Minister.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

5. The Chief Minister - statement regarding the appointment of a new Chief Executive to the Council of Ministers

5.1 Senator P.F.C. Ozouf (The Deputy Chief Minister):

I would like to take this opportunity to update Members on the programme for appointing a new Chief Executive to the Council of Ministers. The Council of Ministers has reviewed the current Chief Executive's role and responsibility and has decided it would be appropriate to restructure the role. We have also considered the current structure of responsibilities of the Council of Ministers, Ministers and accounting officers. This is particularly relevant since the Public Accounts

Committee has also reviewed the structure and published its report of 16th March. The Council of Ministers believe that the current structure needs to be reviewed with the intention of creating greater clarity and accountability. The Council intends to lodge a report and proposition setting out the draft terms of reference and a structure of this review with the intention of securing a debate in June or July. This will be a significant review and any changes would need to be thoroughly explored and enshrined in legal changes. It is therefore likely that it would take up to 3 years to review and implement changes. The Council of Ministers therefore intends to appoint the new Chief Executive on a 3-year contract in order to mirror the likely length of the proposed review. The current Chief Executive will be leaving at the end of May and the Chief Minister has therefore appointed Mr. John Richardson, who is the current Deputy Chief Executive, as the Interim Chief Executive in order to allow the appointment process of a 3-year Chief Executive to proceed. The Chief Minister has said he has every confidence, as I do, in Mr. Richardson as Interim Chief Executive and we thank him for agreeing to take on this role. The States needs a top class Chief Executive to deal with the challenges of the next 3 years. These include the Comprehensive Spending Review, supporting a new Council of Ministers and maintaining performance. However, the Chief Minister and Council of Ministers believe that in the first instance the job should be advertised locally with the intention of appointing a Jersey person to be Government's most senior official. The post will be advertised this week with the intention of completing the selection process by early July. The Chief Minister wishes to make it clear we are seeking a local candidate so will only appoint someone who can meet all of the requirements of the role. The Appointments Commission will be participating in overseeing the process and the Chairman is determined to ensure that the appointed person is fully capable of fulfilling the role. The Chief Minister will keep Members informed of progress.

5.1.1 The Connétable of St. Mary:

The Deputy Chief Minister has made reference to what amounts to a further machinery of government review. Can he firstly confirm whether the Council of Ministers would intend to consult with P.P.C. on this proposal prior to lodging? Furthermore, does he acknowledge that any potential changes to the machinery of government would need to be considered by the Electoral Commission which we are in the process of setting up? Perhaps, in fact, these processes should be co-ordinated and therefore how does he see the proposal would affect the setting up of the Commission.

Senator P.F.C. Ozouf:

I think the Chairman is absolutely correct that first of all there is a requirement and an intention to consult with P.P.C. on this. It should be very much a joint working party. There are crossovers in relation to the Electoral Commission and the issues concerning changes to machinery of government do need to be looked at in terms of the composition of the States, the States of Jersey Law, the Public Finances Law and everything together. Certainly there may well be some grounds... we need to look at the terms of reference of the agreed proposition for the appointments for the Electoral Commission and to see how these things can be brought together so that there could be one overall review looking at the structure of the States, looking at the accountability and dealing with one overall review rather than 2 separate reviews. But I am sure the Chief Minister will be in touch with the Chairman shortly in order to discuss that.

5.1.2 Deputy R.G. Le Hérissier:

A related question. Would the Chief Minister agree that given the comments of P.A.C. (Public Accounts Committee) that without something approximating to or appears like a party system, there is not the glue to hold the system together to provide for enforceability of policy and therefore to provide for a clear role for the Chief Executive. While we have a fragmented system, such as we do have, an apparent inability to bring discipline to the system, does he truly think it can be reformed to give the Chief Executive real power?

Senator P.F.C. Ozouf:

Yes, I agree. The system that we are currently working in certainly is an improvement. I know that Members do not universally agree with this, but having worked in the committee system I think the current system is a lot better than the committee system but, no, it is not working optimally. I certainly have had my sympathies for the Chief Executive who was recruited on a certain ideal of Ministerial government and accountability but, in fact, this Assembly on amendments which were, at the time, mainly promoted by former Senator Syvret effectively meant that the Chief Executive has not been able to do his job but there is a delicate balance between the Chief Executive's ability to run departments and to be responsible for Chief Executives in the rest of the department and the Minister's requirement to overall also see policy. There are some changes that have to be made. The current system is not working optimally and it does need to be improved and it does need to be strengthened so that we can deliver better services, better value for money and that this Assembly and the esteem in which it is held in the public has improved because the nonsense that goes on in politics sometimes is also not doing any of us any good, and not doing the Island and our reputations good, but we can now work to solve this.

5.1.3 Deputy R.G. Le Hérissier:

Does the Deputy Chief Minister therefore think that the system is not working because the Chief Executive cannot give direct orders across all areas to the chief officers of departments?

Senator P.F.C. Ozouf:

I think that it is very difficult to respond to a question of direct orders because ultimately there is an important difference which I know that many Members, including myself from time to time, struggle with in terms of being responsible. I am clearly the Minister responsible for policy and oversight but I am not responsible ultimately, I do not think, for ensuring performance if I am a Minister in a certain department of the Chief Executive. The Chief Executive should be responsible for delivering performance improvements with individuals. The current almost unclarity in relation to reporting structures is not helping. I think that that is one of the reasons why we have not seen any improvements in performance in the States that we should have seen over the last few years. Members know which departments have not been performing well and it is, I think, because of the structure in part.

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

I would just like the Deputy Chief Minister to clarify, are we talking about one thing here? I think the first ... and I am going from the Chairman of P.P.C., are we just talking about the Chief Executive's role or changing the whole structure? What worries me, we are talking about setting out a proposition of draft terms and reference for debate in early June. Could he give me at least one or 2 - and they must have discussed this around the Council of Ministers - what these terms of reference will cover, because I think we really need a proper statement and that first paragraph should be a 2-page statement on the whole role of the machinery of government and not veiled in secrets or little, little terms of reference. I want to know the draft terms of reference and what is going to be discussed in June or July. If the Minister cannot give me any today, will he say that he will bring forward another statement by the next sitting?

Senator P.F.C. Ozouf:

The aim is to make a statement today concerning the interim arrangements that need to be put in place to deal with the Chief Executive's departure. The Chief Minister will need to explain all of the terms of reference of effectively the changes that he believes, and the Council of Ministers believe, are going to need to be reviewed. Ministerial Government has been in place now for 6 years - since 2005 when we brought it in - and there does need to be some changes to it. All is not well in terms of the detailed structures of reporting lines, and this review is designed to encompass all of the issues in terms of the way that the Council of Ministers work. Yes, I think it needs to

look at issue about the rules of Scrutiny and we need to be really honest with ourselves about what has worked well and what has not. This is a machinery of government review looking at all the issues 6 years after Ministerial government came in. The Deputy will be aware - in fact I think she is a supporter in some ways of the issues - that Clothier was not completely implemented, for better or for worse there are issues that were taken out and there are some issues about reporting structures, accounting officer instructions, as we were talking about with Deputy Le Hérissier, are not working and some changes need to be done but it needs to be an inclusive review, it needs to be a properly open review with as many Members involved and this will guide the future of effectively the structure of the Assembly and the structure of Ministerial government for probably the next 5 to 10 years.

The Deputy Bailiff:

Minister, can I remind you that the answers should be crisp and concise. Senator Ferguson.

5.1.5 Senator S.C. Ferguson:

The Interim Chief Executive has up until now been responsible for the supervision of the C.S.R. which is a full time occupation in itself, it is unlikely that he will be able to continue in this role as well as dealing with the overall operations of the States. What plans are there to deal with the ongoing management of the C.S.R.?

Senator P.F.C. Ozouf:

A very good question. I will answer it in 2 ways. It is unfortunate that we are losing a senior person with oversight but the C.S.R. is now much more progressed than it was a few months ago and now also the new Treasurer is in place. She will be taking a much more direct involvement in terms of monitoring C.S.R. and delivering.

[12:00]

We still have some discussions about the structure of the Chief Executive's Department, the Chief Minister's Department and the Treasury. For example, procurement may well now sit better directly into the Treasurer as opposed to the Deputy Chief Executive. So there are some changes that we can make and we are going to have to work with the structure that we have.

5.1.6 Deputy M. Tadier:

Regarding the last paragraph, in what ways will a local candidate be sought, given that it goes on to say that only somebody who meets all the requirements will take up the role, irrespective of whether they are local or not?

Senator P.F.C. Ozouf:

I think the point the Chief Minister was attempting to make in the statement is after having consulted the Appointments Commission the first interview or the first advert will be locally and there will be an attempt to appoint somebody locally. If that is not successful then there is going to have to be a wider trawl in terms of a candidate. The Appointments Commission is independent, they are fiercely independent and that is a very good thing, and they will be overseeing the appointment. We need the right person to discharge what is going to be a very huge amount of work for a 2- or 3-year period. I hope Members would welcome the fact that the Chief Minister is directing that this recruitment should be done on-Island if possible. If it is not successful then we will have to go outside the Island.

5.1.7 Deputy M. Tadier:

Supplementary. Will the advert that is placed locally say that those with 5-year residency will be given preference or will it not say that?

Senator P.F.C. Ozouf:

I have not seen the advert but, yes, the assumption is that it is local resident. I have got nothing further to add. I think it is obvious.

5.1.8 The Deputy of St. Mary:

The Minister talked earlier about the failings of the present structure as if that is where the failings lay and thereby diverted attention away from political failings within the present Council of Ministers. My question follows on from that. Does he not think that there is a danger in persuading all of us to think, or trying to persuade all of us think that the answer lies in a really powerful Chief Executive who can tell departments ... call them to heel and so on and make sure they do this and that. In fact the problems are deeper than that, and that we are being, in a sense, sold a false dawn.

Senator P.F.C. Ozouf:

I would say 3 things: first of all, we constantly live in a world ... I almost think that Jersey has been through a black cloud in the last few years. Everything is wrong; we talk about failures and things going wrong everywhere. My approach to life is that there are always opportunities to do better. Yes, we can do better. This Assembly can do better. We can do better in all of the areas that we do, we can become more productive, we can be better. So we say the word failings as though everything is wrong. Everything is not wrong in this Island, everything is not wrong in this Assembly, but we can do better. I do not seek my own position on a Chief Executive, it is not a powerful dictator Chief Executive that you want, you want a Chief Executive who is looked up to, who is a motivator of the public sector, who is a defender of the public sector, who is modern in their approach, who understands the local context. You win, ultimately, debates in any organisation by charm and persuasion as opposed to dictats.

The Deputy of St. Mary:

But the failings ...

The Deputy Bailiff:

No, thank you, Deputy, that brings an end to questions of the Deputy Chief Minister in relation to that statement. The next thing on the agenda is the Chairman of the Education and Home Affairs Scrutiny Panel will make a statement regarding the panel's review into school examination results, although I understand, Chairman, that as the Scrutiny report for various reasons is just about to be printed and circulated, you may be asking the States to agree to take this later on?

Deputy R.G. Le Hérissier:

Yes, Sir, while Members may not obviously be able to read it in a detailed sense, it would, it strikes me, be courteous if they could see the findings and recommendations in order to better inform themselves if they have any questions.

The Deputy Bailiff:

It is a matter for Members. Do Members agree that the panel's statement should be made later on? It seems to be agreed. We will return to that at a later stage. That being so we now come to Public Business and the first item on the agenda is the draft Freedom of Information (Jersey) Law 201- and I ask the Greffier to read the citation.

PUBLIC BUSINESS

6. Draft Freedom of Information (Jersey) Law 201- (P.39/2011)

The Greffier of the States:

Draft Freedom of Information (Jersey) Law. A law to provide for the supply of information held by public authorities and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following law.

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

Rather sooner than I expected, nevertheless ...

Deputy M. Tadier:

Sorry, could I interrupt. I have an issue with a possible conflict of interest from the Chair because I recall that during my time on the Committee, in a former role as a Attorney General, the Chair did come to us and make very strong recommendations of a political nature, which he was entitled to do, that we should consider certain exemptions and I think it was to do with legal advice saying that he thought very strongly that legal advice should be completely exempt rather than qualified exempt, something which the panel subsequently decided against. So I perhaps ask if it would be maybe more prudent for somebody else to chair, Sir. That is not meaning to impugn your integrity in any way but just to avoid any kind of perception from the public or from States Members.

The Deputy Bailiff:

I have to say, Deputy, that I do not feel in the least conflicted in this particular matter. There are numbers of matters where, as Attorney General, one gives advice either to Ministers or to Members and subsequently that does not prevent the new Deputy Bailiff, as in this case, from presiding over the Assembly and I, for my part, do not consider myself conflicted at all. Chairman.

6.1 The Connétable of St. Mary:

The Council of Ministers open their comments on this proposition by saying that they support the principles of openness, transparency and access to information. Indeed, the words “openness” and “transparency” are often spoken in this Chamber and they surely go hand in hand with that other word we hear so often; accountability. They have become so central to our view of what makes effective government that Members agreed in 2009 to incorporate them in the Strategic Plan. It is now a key aim of the States to create a responsive government that embraces a progressive culture of openness, transparency and accountability to the public. P.P.C. would suggest that in order to have open, transparent and accountable government it is essential to have freedom of information. Six years ago the States charged the Privileges and Procedures Committee to develop a Freedom of Information Law for Jersey. Successive P.P.C.s have carried out consultation and research in order to develop the right law for the Island. The key principle of this law is to provide a legislative right of access to official information held by public authorities in Jersey. States departments already provide information to members of the public in accordance with the Code of Practice for Public Access to Official Information. This code was adopted by the States in July 1999 and was intended to establish a minimum standard of openness and accountability while at the same time safeguarding an individual’s right to privacy and the need for the confidentiality of exempt information to be maintained. So why should the code of practice be replaced by a law? Firstly, the code is voluntary and, secondly, the law will provide members of the public with a statutory right of access to official information, which is something that the code cannot provide. The law includes a general right for applicants to be supplied with the information that they request, which is a further basic principle under freedom of information. The law does not operate on a need-to-know basis, instead authorities have a duty to supply the person with the information unless it is exempt. When making a request for information applicants will need to make sure that their request is in writing, includes their name and an address for correspondence, and describes in adequate detail the information that they are requesting. It is not necessary for the requestor to say why they want the information or what they intend to use it for. Authorities will be expected to help applicants to make their request and to respond to most of those requests within 20 working days. A failure to respond within the designated time period without good cause can be treated by

the applicant as a decision to refuse to supply the information. Information will normally be provided free of charge. A charging system can, however, be introduced by regulation. The Committee has not yet finalised draft regulations to accompany this law but a possible draft is attached to the proposition at appendix G. Under the draft regulations the Committee has suggested that information should be free of charge if it costs less than £50 to provide. Requests which cost more than this to answer should be charged at the projected cost, less £50, while those requests which are expected to cost more than £500 to answer can be refused. As I have said, these are draft regulations and are subject to amendment but they have been included to give Members some idea of the level of cost recovery which could be achieved if Members see fit. Public authorities will not be expected to comply with vexatious or repeated requests and requests for personal information will continue to be dealt with under the Data Protection Law. The law includes 2 categories of exempt information which a public authority can refuse to supply. These will be dealt with in detail when I present the articles, which are as follows. Firstly, there is absolutely exempt information. This is information which is otherwise available, prohibited from disclosure by another law or information that would constitute an actionable breach of confidence, a threat to national security or an infringement of the privileges of the States Assembly if it were to be disclosed. Secondly, qualified exempt information. This concerns information which must be supplied to the applicant unless the public interest in supplying it is outweighed by the public interest in refusing to supply it. In other words, the obligation is on the public authority to release the information unless it can prove that it is in the public interest not to. This relates to information about the Royal household, international relations and law enforcement. It applies to information which would endanger someone's health or safety if it were to be released. It covers privileged legal advice, trade secrets and information which could prejudice the Island's financial or economic interests. The exemption also applies to information relating to the formulation of policy, audit functions or employment negotiations, as well as information which is intended for publication within 12 weeks of the receipt of the request for its release. Under the law an authority can also refuse to inform an applicant whether or not it holds absolutely exempt or exempt information using the neither confirm nor deny clause. This clause is included to cover situations which will, for the most part, involve law enforcement where even the refusal to supply information, thereby implying that there is indeed information which could be disclosed, might prejudice proceedings. This system of exemptions will provide far greater rights of access to information under the law than those currently available under the code. The code allows all exempt information to be withheld automatically without recourse to a public interest test. Any appeal is made in-house to the President of the committee concerned or to the Minister. There is no independent arbiter of appeal or appeals process as such. While there is provision for the complaint to be reviewed by the States of Jersey Complaints Board that board reviews processes and procedures and does not review the release of the information itself, although it may pass comment. The law means that qualified exempt information has to undergo a public interest test and that the department has to prove that it is in the public interest to withhold the information in order to refuse its release. The public interest test will need to be applied at every stage of the request and the appeals process. If the Information Commissioner or the Royal Court rules that the information should be released it must be released. Under the law the public will be legally entitled to access the requested information and the obligation will be on the authority to justify a decision not to release information. The law provides a minimum standard of access. There is nothing to stop a public authority from exceeding this standard and supplying information that has been requested, whether or not it is in fact exempt. The law provides applicants with a right of appeal if their request for information is rejected. This right of appeal is far more robust than the one currently available under the code. An appeal under the code can only result in a recommendation by the Complaints Board that the requested information be released. Under the law authorities must release the information if required to do so. It is essential for the appeals route be autonomous and just.

[12:15]

It was therefore agreed that the independent post of Information Commissioner should be created and that the ultimate appeals body should be the Royal Court sitting in administrative mode. The route of appeal under the law is as follows. The first stage of appeal is an internal review. The requestor will first go back to the authority and appeal against a refusal to release information at which point any complaints procedure provided by the scheduled public authority must be followed. If the refusal is maintained the next stage is to appeal to the Information Commissioner who decides the appeal and then serves a decision notice to the applicant and the authority. If the decision of the Information Commissioner is disputed and depending on that decision, either the applicant or the authority may appeal to the Commissioner, the next level of appeal is to the Royal Court. The court's decision will be final. The Committee would suggest the application of pre-emptive cost orders to mitigate against any fears an applicant might have regarding the cost of an appeal to the Royal Court. If information is refused as absolutely exempt information on the grounds of national security (Article 27) or States Assembly privileges (Article 28), a certificate to this effect will be issued by either the Chief Minister or the Greffier or the States. The route of appeal in this case is directly to the Royal Court on the basis that there were insufficient grounds to issue the certificate. The decision of the Royal Court as to whether the information should be released is final. P.P.C. believes that the law will cost an estimated £348,400 in additional manpower in the first year. But until a charging scheme has been agreed by regulation and until the Executive decides whether an electronic document system is indispensable and must be funded prior to implementation, it is difficult to quantify the cost to departments. The Council of Ministers have, in their comments, raised concerns that P.P.C. has underestimated the need for resources in key areas, however when P.P.C. considered the draft Socitm report it noted that the majority of costs appear to be attributable to records management rather than freedom of information. Much of the resources required is in connection with current legislation, namely the Public Records (Jersey) Law 2002, which is, of course, not the subject of this current debate. While it may be that this pre-existing law has not been adequately funded the Council should not use this as an argument in connection with the funding of Freedom of Information but should tackle this as a separate issue. The Council has stated in its comments that departments do not adhere to the Public Records Law but this cannot be used to counter the need for a Freedom of Information Law. Indeed, it could be argued that the introduction of this legislation could be, and I say should be, the catalyst for the true importance and value of records management to be acknowledged and ultimately resourced. In the report accompanying P.107/2002 - the draft Public Records (Jersey) Law - the Finance and Economics Committee acknowledged that high quality public recordkeeping and management are now seen vital to government efficiency and to its transparency and accountability. The availability, reliability and correct management of information not only protects the rights of the citizen but also enables quality and timely decision making by public authorities. This still holds true today. It is undoubtedly true that financially times are very tight at present but things were considerably different when the Public Records Law was introduced, yet still the steps necessary to successfully deal with the key matter of records management were not taken. The importance of records management was recognised by this Assembly nearly a decade ago and yet it continues to be neglected today, presumably to the detriment of quality and timely decision making by the Executive. So while the Council asserts that the main concerns with funding must be addressed when discussing the implementation plan and states in comments that it supports the proposed draft law itself, which support I am grateful to receive, I would ask the Chief Minister to identify how much of the purported £5.6 million implementation costs can be directly attributed to unavoidable items required by the F.O.I. (Freedom of Information) provisions and how much is, in fact, down to rectifying historic underfunding of records management. Similarly I would like to know exactly how much of the costs identified by the Socitm report relate to absolute necessities, without which Freedom of Information could not be pursued, and how much, in fact, relates to what are commonly called the "nice to haves". To assist the Chief Minister with some specifics I would firstly refer to paragraph 4.8.6 of the Socitm report dealing with cost implications. In particular for the Law Officers Department where it is stated that 2 full-time equivalent Legal Adviser grade staff will be

required to support the implementation of the legislation, not just for the States of Jersey itself but also in order to be able to provide an appropriate service to support the wide public authority spread across the Island. I am sure the Chief Minister will correct me if I am wrong but I did not think that the Law Officers Department were responsible for the provision of legal advice to the wider public authorities, i.e. non-States departments, so I would appreciate more information on exactly what is meant by this. Similarly, could the Chief Minister reassure me that the figures given for training costs do relate specifically to F.O.I. In the Socitm report at paragraph 4.7.7. it says: "Based upon the previous work undertaken with the records management gap analysis project it was estimated that both a half-day introduction to document management and a full day of Livelink training would be provided to 4,000 staff totalling approximately £288,000. So surely this training requirement has already been identified in connection with the records management deficiencies and should not be seen as a cost of F.O.I. States departments are already complying with the code of practice and, as such, should be in a position to cope with the transition to a law, particularly as it initially relates to information created since the introduction of the code. The cost also depends upon the number of requests received. The Committee has discussed the possible cost of this legislation at length and believes that it does not need to be excessive, especially if the implementation is responsibly managed. Initially the Committee has recommended that the following public authorities be covered by the legislation as set out in Schedule 1 with others capable of being added at a later date by regulation: the States Assembly (including the States Greffe), a Minister, a committee or other body established by resolution of the States or by or in accordance with the Standing Orders of the States Assembly, an administration of the States, the Judicial Greffe and the Viscount's Department. The Committee recognises that concerns have been expressed by departments regarding the cost of implementation but does not consider that expensive records management software or complex processes are necessary to implement this law. Departments have been aware for 6 years that a law is being developed, they have complied with the code of practice since January 2000 and they have also had to comply with the Public Records Law since August 2003. So it is reasonable to assume that authorities will be able to locate any requested information without too much difficulty. It would not be reasonable, however, to assume that departments should cover the full cost of time spent answering requests. If a large media organisation, for example, wishes to make a complex request for information it should not be the responsibility of the taxpayer to meet that cost. For that reason appropriate regulations should be adopted which will enable departments to recoup some of the cost. The cost implications associated with the law are also likely to have another benefit in respect of the availability of official information. In order to limit any costs they are likely to incur as a result of the new law, all public authorities will automatically take a more proactive approach in getting information into the public domain. The more authorities make information readily available and easy to access the less likely they are to receive requests. The law will provide an incentive to make Jersey's Government more open, transparent and accountable. Implementation of the law is the responsibility of the Chief Minister's Department, however the Committee would hope to see it being brought into force in as short a period as possible and ideally within 2 years. This should allow sufficient time for any preparatory work to be carried out to make sure it runs efficiently. It is a matter for the Council whether it believes this can only be done with a States-wide electronic document management system following a full review of every scrap of information the States currently hold or whether a simpler approach can be adopted, reviewing information once a request for it has been received. It is our responsibility to introduce this law in order to make freedom of information a factor from the moment a document is created. Indeed, it has been a requirement of the code since 2000 to undertake the drafting of documents so as to allow maximum disclosure. That is Article 2.1(1)(k) of the code. Public authorities should not be waiting for an information request before deciding to disclose, but for the last 11 years it should have been addressing accessibility at the moment a document was created. Non-exempt information should be readily and systematically published. This Freedom of Information Law will give people a sense of partnership with the States of Jersey as authorities choose to actively publish and provide

information. This can only serve to improve the proper conduct of government and to give the Island's people a sense of trust and empowerment. Freedom of Information legislation exists in the United Kingdom, United States, Australia, Sweden, Canada and France to name just a few. Today, I ask Members to bring freedom of information to Jersey. I put the principles of the Law.

The Deputy Bailiff:

Are the principles seconded? **[Seconded]** Does any Member wish to speak? The Deputy of St. Martin.

6.1.1 The Deputy of St. Martin:

I thought people would be jumping up and down to speak. I compliment P.P.C. for coming forward with this. I go right back, I think it is about 1994, when under the former Senator Syvret a committee was set up to see if the Island could have freedom of information. I looked up some notes only recently and I saw that the late Vernon Tomes was on that committee, as indeed was Robin Rumboll, Nigel Qu  r  e, Jimmy Johns, Gary Matthews and myself. The battles there have been over all the years for us, as a body here, to accept that we are elected and most of us have on our portfolios or pamphlets that we all believe in openness, transparency and accountability and yet when it comes to it, we do not really believe it do we? Or do we? Today is the opportunity for us to endorse what P.P.C. are bringing forward and we should not, again, be considered by the, I suppose, red herring we are going to get from the Minister for Treasury and Resources and the Council of Ministers that we cannot afford this. There are so many things on this Island we cannot afford: we cannot afford discrimination legislation, we cannot afford issues like having a body to have oversight of human rights. All these things which really should benefit us as individuals and the people we represent. We are not here to look after our interests, we are here to look after the interests of the Island. What I would hope is that we will not spend too long discussing something which has now been running, in trial and error, for the last 10-11 years. It has been well bedded-in and I would ask that we move forward with a confidence and positive manner to get this piece of legislation endorsed today.

The Deputy Bailiff:

Sorry, the States are inquorate. Can I invite Members outside the Assembly to return to the Chamber? Thank you. Does any other Member wish to speak? Deputy Le H  rissier.

6.1.2 Deputy R.G. Le H  rissier:

Partly along the lines of Deputy Hill and partly to allude to the Chairman's comments... I will refer to these matters in greater detail when I speak to my proposition. But yet again we have had another attempt, a last gasp attempt, to ambush this law with an unbelievably extravagant resources statement **[Approbation]** as contained in that independent consultant's report. I shall be addressing that in my comments. In order that Members have not been made fearful and will resist voting, I would ask them to vote it through, to take that report from the Council of Minister as one of a never-ending series of reports we have had of hellfire and brimstone if we implement this law. Vote it through on principle and then we will discuss in much more detail the implementation issues which have been grossly, grossly exaggerated.

[12:30]

6.1.3 Senator A. Breckon:

Just a few comments. Like the Deputy of St. Martin, I remember various discussions over this and what form it should take. I remember looking at a system that operated in the U.K. and I think for a 28- or 30-day period they have a period of openness and transparency where everyone on the electoral role has access to virtually everything, including how much a load of sand costs. I think there will be a cost of doing this but there will also be a significant benefit if this transparency leads to perhaps more thoughtfulness in some of the things that we do and some of the things that we

spend money on, for example. I think, as I say, there will be a cost but there will be a benefit and I think personally it would be very, very effective. The other thing is, in earlier questions this morning and answers, we have talked about Ministerial government and it has been mentioned again about the Clothier report, *The Review of the Machinery Government*. One of the things that the Clothier report said - and it is conveniently forgotten by people who said we should have adopted it - is that there should be access to information. There should be a Freedom of Information Law, and that has been forgotten by many people who thought about constituencies, about what we do, how many there is, but that is actually an important part because what Members should not forget is that if we have a concentration of power like we have in the Ministerial system, and we have meetings with most of the stuff on a 'Part B' agenda, how does the ordinary States Member, let alone a member of the public, access information? Okay, some things need to be confidential for a number of reasons but we have gone into policy in development needs to be confidential. That could be something about the buses, for heaven's sake. Why should that be confidential? Why should that be on a 'Part B' agenda if we are talking about traffic and transport and things like that? So if this leads to perhaps more openness, we can still have sensible discussions and share it but, as the Deputy of St. Martin mentioned, it does go back a long way and various ... I think there was a House Committee at the time, there was something else... there was something else and they were asked - it says in there - on the 6th July, the States approved P.72/2005 and agreed that the existing Code of Practice on Public Access to Official Information should be replaced by a law. There have been a number of false starts in that time and again here we have got reasons why we should not do it. But power and access to information is part of the system we have got. As somebody else has just mentioned, most of us standing for election have said we should have more openness and more accountability. If people have access to that then it is up to them to decide whether or not they want to access it or not. Then I think this; we have had a code in place - and it has been in place - but, again, I do not think it has been widely used and hopefully things will develop from this and hopefully it will not be too costly. There are people for professional reasons, for example, the media, who will want to use it on a regular basis hopefully and hopefully they will use the information they get wisely and share it with their public. But I think it is a long time coming and it is quite comprehensive. I think where the current Privileges and Procedures Committee find themselves is not really of their making, it is from failures of the past and by others who had a responsibility and have been able to block it, who have taken that opportunity to do so. I just close by saying there is a cost but there is a benefit and I hope the House will support this.

6.1.4 Deputy T.M. Pitman:

I think I recall former Chief Minister Walker acknowledging certainly that the focus on purely economic-based policy had been allowed to get completely out of kilter with the necessary focus on social policies and yet here again we see, as Deputy Le Hérisier has already highlighted, another in the never-ending list of reasons of we cannot afford what is in fact an element of social justice. It will be, in effect, Armageddon: I get that impression. That is being put across if we commit ourselves to this piece of legislation and really all I want to do is echo Deputy Le Hérisier's words and just add that I think if we stall this or put it off or make excuses yet again the public genuinely will feel, if they do not already, that we are just completely not committed at all to transparency, to openness and to justice. I really do not think that is a place we want to be. I find the figure quoted by the Council of Ministers absolutely incredible and I would like to see it broken-down into much more detail. I would urge people to support this. This is not a mess made by P.P.C. and we really should be supporting this, it has been too long.

6.1.5 Senator P.F. Routier:

It is a great shame that this debate so far seems to be focusing on what the costs of this new legislation is going to be. I know it is a main focus of what the comments are from the Council of Ministers but I would like to congratulate the P.P.C. on bringing forward this legislation. It is

something that is needed and I believe that we should be progressing it. Obviously the Council of Ministers and the Minister for Treasury and Resources have a duty to make us aware of what the costs are going to be and we will no doubt have to make that judgment in September time when we decide how to allocate our funds. But as far as this piece of legislation is concerned I believe we should be progressing it and I will be supporting it.

6.1.6 The Deputy of St. Mary:

On a point of order, is there any way of ensuring that, in the interests of an orderly debate, we hear someone defend those cost estimates because otherwise everyone is talking into the nothing and then we are going to get a defence when everybody has spoken and nobody can reply to the assertions that will be made, no doubt, in due course, and it would be very useful if someone would get up and defend those estimates early in the debate.

The Deputy Bailiff:

That is a political matter for the Members of the Council of Ministers.

6.1.7 The Deputy of Trinity:

Being one of the biggest departments this proposed Freedom of Information Law will have an effect. As you can imagine, there will be many challenges especially in the record-keeping and creation of records, training senior management and staff, and also the complexity of requests. In 2002 the U.K. Department of Health received 62 requests for information under the code of practice on access to government information: 62 was, by a very long way, the highest number of requests ever received over the 6-year period. In 2005 the Freedom of Information Act came into force in the U.K. and the number of requests jumped from 62 to 1,203, a 19-fold increase. If this scenario was to be replicated here in Jersey my department would not be able to respond. With only one full-time information officer and the equivalent of one full-time information administrator, we could not absorb even a small increase in activity without additional ongoing sustained resources. As well as an upfront investment in improved record management and good I.T. (information technology) we would need extra financial resources and an extra, what works out to, one to 2 full time equivalents to deal with requests on a daily basis. Without it the department would either fail to comply or we would face the prospect of diverting staff away from front line services. Neither would be acceptable. But freedom of information is a principle which I and the department can sign up to, but in doing so we will need to recognise that it will have a cost implication.

Deputy R.G. Le Hérissier:

Point of clarification. Could the Minister outline what happened after the spike, in other words after the introduction? Has it settled down to a different pattern to that of 2002?

The Deputy Bailiff:

One moment, Minister. Deputy of St. Martin, do you have different question?

The Deputy of St. Martin:

I was going to ask, as the code has been in practice now for some years, could the Minister give the House some indication of how many inquiries she has had during the course of the time in which the code has been in operation?

The Deputy Bailiff:

There were 2 questions for clarification.

The Deputy of Trinity:

I do not have the exact figures but I think it did pan out at about the same number - the increased number - over the years. Regarding Deputy Hill's question, I can get the exact number but this year I am only aware that we have had one request under the code and that was denied.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

The adjournment is proposed. It is a little early, do Members wish to adjourn at this stage? I have the Minister for Treasury and Resources down to speak next.

Deputy M. Tadier:

Could I just ask another clarification from the Minister? Can I confirm that when she said it panned out at roughly the same figure as the increase, is it correct that once it spiked it stayed at that figure for all those years afterward? It does not sound likely and could she use the lunch break perhaps to find ...

The Deputy Bailiff:

I was going to say, Deputy, Minister, there were a couple of questions of clarification to you, perhaps you could take the lunch adjournment to ...

The Deputy of Trinity:

I can do that but I would have to give it to my Assistant Minister because I am involved with the Princess Royal visit this afternoon.

The Deputy Bailiff:

Are you able to clarify any further now, then?

The Deputy of Trinity:

No, Sir.

The Deputy Bailiff:

The adjournment is proposed. All in favour? We will reconvene at 2.15 p.m.

[12:41]

LUNCHEON ADJOURNMENT

[14:15]

The Deputy Bailiff:

I see some Members hovering close to the Chamber, if they might like to enter I am sure that we will then be able to proceed. Very well, we now are going to recommence, restart or go back to the debate on the Freedom of Information (Jersey) Law 201-. I call upon Senator Ozouf to speak.

6.1.8 Senator P.F.C. Ozouf:

I will get my breath back. I want to start, if I may, by saying that I for one agree with the principle of freedom of information and I am going to be supporting the preamble and I am going to be supporting the law itself. I think the Connétable and the Privileges and Procedures Committee should be congratulated on bringing forward the legislation [**Approbation**]. I do believe that a commitment, a legal commitment ... we were talking about legal commitments earlier as to whether or not you should have a Discrimination Law in addition to a code of practice. I think that the right of an individual to access information within the public sector, within the political environment is one of the fundamental protections that you can put in place and is a vital aspect of democracy and

the maintaining of democratic principles. I think that it is the right thing to do. I will come on to the costs associated with it because you cannot avoid the fact that proper information and proper costings do need to be put in place. I cannot help but take the opportunity of telling Members that I hopefully practice what I preach in terms of information and I say to Members that I hope that they will enjoy reading the States Accounts that are going to be published at the end of May because they will be the most detailed set of accounts that Jersey has ever seen. The process was started by my predecessor and there has been good work done in terms of information. I say it is important for there to be a commitment to put information into the public domain because that is how, as I referred to a few moments ago, we as politicians can be held to account. It is the threat of information being put into the public domain which I think helps. So I say that the armchair auditors of Jersey... and I think that is one of the reasons why Jersey - while there is lots of things wrong and we need to improve - does manage to provide services and Islanders pay less. I know they are paying more in terms of G.S.T. and tax. We do provide an efficient public sector, we can do more, but the armchair auditors of Jersey that have been at work for years in holding us to account, they need more information in order for them to continue doing their work in the next few years as we deliver on the Comprehensive Spending Review. I also would say that I do not think that ... we often in this Assembly, and increasingly when I read the front page of the *J.E.P.*, as I have just done today, saying that States has failed in all sorts of different respects, I do not think the States has failed in respect of the totality of freedom of information, I think the code of practice that was put in place a number of years ago has served its purpose. It was the first step and it will continue to have to be the mechanism by which we get information or which Islanders get information for some time to come. I will come on to the costings in a minute. I think we are going to hear a statement by the Chairman of the Education and Home Affairs Scrutiny Panel and there is a good example of an individual who has got information using the codes of practice for the purposes of political debate. Whether or not you like the outcome of it, I just make the point that the code of practice is in place and has been shown to be working in the past but I do accept that there does need to be a statutory basis on which freedom of information is put in place. I think that there are a number of cases where the Code of Practice has worked. The Code of Practice sets out, in perhaps a way that the law does not, the principle of openness and I think that there should be the principle of openness in political office and in the Council of Ministers. There should be a public commitment to ensure that the Departments are as open as they possibly can be to accessing information. Some people may be surprised that I have a view that we should be signing-up to the highest standards and to the deepest standards of getting information but I think that that is the hallmark of a modern democracy and good democracies around the world do have Freedom of Information to do that. I think that I will confine my remarks to 2 final things. There is the issue of costings, which I will come to in a minute but I think that the Code of Practice for the period of time that it will need to continue to be in force can be amended and strengthened further in the run-up to when the law comes in to force. I think that we can, for example, commit to an annual report on the operation of the Code, setting out exactly how many requests there have been. I will be corrected if I am wrong but I do not think that there is an annual report or it can certainly be improved in terms of it and I think the Chief Minister's Department should commit, for the period of time that the Code of Practice is still in place, to do an annual report on the functioning of the Code. I think that, for example, the next step in terms of requiring review boards for their conclusions to be mandatory in terms of not just simply a request. I think that having a review board and for Ministers to sign-up to when a review board concludes, that something should be released because the review board system does work and it is good and there have been some examples - uncomfortable sometimes for Ministers - but there have been some review boards that have concluded that information should be released and I think that Ministers should probably sign-up to a properly constructed arrangement whereby the review board's findings will be implemented and indeed that they will be mandatory. At the heart of this debate is going to be putting in place the appropriate funding. It is easy... and I am sure like other Ministers sometimes, I am frustrated that the Council of Ministers is accused of shroud-waving in terms of costs; almost in a way that

indicates that we do not support the underlying fundamental principles. I do, but what I do not want to be part of is I do not want to be part of an over-promising and under-delivering situation. Members have to be, I think, aware and they have to be realistic that if you are going to run data systems in the States in a way that can be searched and responded to by requests for information, you have to put the right systems in place. I regularly receive, not that regularly, but I receive reasonably regularly, communication from the UK government where every single email has a classification of restricted, I am not sure I see anything more than the higher levels of confidentiality, but every single email is categorised with a standard of its ability to be shared. Now that does not happen by accident; there is a system by which data is stored, data is collected, there are decisions about data and the way in which it has got to be handled and that just does not happen by accident, and it does not happen without the significant investment in information technology and the people who set up these systems and then to monitor them and to ensure that they are run on an ongoing basis. The worst thing that we possibly could do, in my view, is to pass legislation, bring it in to force and then be in a position that we cannot deliver on that. We have done this in the past and this Assembly has done this sort of thing in the past and it is quite the wrong thing to do. We should not be (a) underestimating the costs, (b) overpromising, and then under-delivering. I say, pretty strongly to Members who have criticised the Council of Ministers for the costing, that they are wrong; these have been properly constructed, independently in terms of the costs and if you want freedom of information, which I do, then we are going to have to put the budget behind it and we are going to have to time the investment in the budget for putting in place the arrangements for the data holding and data protection and data dissemination in the longer term. I am willing to have the debate about how and when the money is found. I am willing to challenge the estimates that have been made by departments for the costs. I do not offer any criticism to any of the information. We had a good debate at the Council of Ministers about the costs. We did challenge the costs and the timing of them and we are going to come to a debate about Deputy Le Hérisier's requirement to bring this into force. I think the Council of Ministers for once has done what has been asked of them in terms of a plan, properly costed, independently done and getting on effectively with explaining what the costs are. I support Freedom of Information. I congratulate again P.P.C. for doing this. There may well be some wrinkles in the legislation; I confess I have not done the Scrutiny job that, shock horror, I am sure that a lot of Members have not done either in terms of the detailed legislation. I hope that it has been done. I hope that it has been given the due care and attention in terms of the detailed Article by Article examination. There may well be some issues that we may find that are wrong or need to be improved upon in certain time and there is going to be, obviously, a period of time to look at the legislation again at the point at which we come to the Appointed Day Act in terms of seeing whether there are any further wrinkles that need to be done in order to ensure that it works. I challenge those Members who are going to stand up and criticise the Council of Ministers and the Treasury for its estimates of Freedom of Information to say where we are wrong in terms of the costings. There is one suggestion which is correct, which the Public Records Law was not properly costed, and that is the best example of a law which was brought into place. I was a young, fresh-faced Deputy and new member of the Finance and Economics Committee; I remember being told that no, no, there are not any particular costings. Hopefully we have improved dramatically the financial advice and the financial management of the States since then, and that the good work has been done for years on all that now. Yes, the Public Records Law has not been properly funded and if the Public Records Law is going to work with this law it is going to have to be properly funded and that is one of the reasons why the costs are higher; because that investment was not made. Let us not make the mistake again in terms of passing a law and then not putting the right administrative systems in place. That is all I have to say.

6.1.9 Deputy P.V.F. Le Claire:

I will be supporting the legislation and congratulate also the Chairman of P.P.C., the Constable of St. Mary for bringing forward this important legislation to Jersey. There will be costs, it is without

doubt. We had a very useful presentation from the Information Commissioner of the Cayman Islands in Jersey in March of last year. The lady came to speak to us and gave a presentation in the museum and the information that she relayed to us was very useful. As usual I did my normal and asked a dozen questions at the end much to the chagrin of most people that were there but I did manage to identify 2 things. One thing was that she found it curious that our legislation, when I asked how it differed from theirs, seemed to be giving with one hand and taking away with another and I did try to engage with her on that subject but I was dissuaded from doing so by the people that were managing the meeting because I was trespassing perhaps on to political territory and it was not the right forum for doing that. So I did contact her office in the Cayman Islands to try to understand those issues but stopped that dead in its tracks when it looked to me that this legislation was going to be shelved for a number of years because of the cost implications. It was clear at the time when the Commissioner spoke to us that the cost implications in the Cayman Islands for the first year had been considerable and she did put that down to the fact that there was no real system of good record-keeping management in place at the place so there was a lot of catch up to do, plus also the fact that she said that there had been a desire to instil somebody 6 months prior to the legislation coming about and that had not happened either.

[14:30]

I have been on P.P.C. in the past and I have been grateful to receive your advice and the advice of the Law Officers before you in your formal role as Her Majesty's Attorney General and I think it came fast and regular whenever we asked questions. Deputy Le Hérissier chaired that committee and contrary to people's opinions I enjoyed being on it and I think he enjoyed me being there. It was a very productive committee, a very interesting committee, greatly served by the Greffier and Assistant Greffier in this work; they have both been stalwarts in providing support for this legislation coming forwards. One thing I would say just in finishing - because people do not want to listen to me - I am a bit troubled by the view of the Minister for Health and her officers in giving the speech that she gave today. I have had a number of people speak to me in the past about difficulty in accessing medical records. To understand what had gone wrong, *et cetera*, and for her to highlight that she would not have enough people to keep the hospital going I think is not a very mature argument to resist the introduction of this legislation. We do have and we have had for a number of years an advanced warning of this legislation coming through, so Departments have been warned that it would be coming forwards and they have been getting trained, the Civil Service has been getting trained, on record management which is a key component of delivering a practical, workable cost benefit solution. So, just in finality, I think Health really needs to think again about what it is that is being asked of them. We have given them recently a lot of money for the areas that they need money for but they certainly do need to have access to a good system of records and a good management in place to do that and if they have only got one person now for the entire Department of Health and Social Services, a hundred and how many million pounds a year? Think of a number, double it, treble it ... and they have got one person in there for the whole of Health and Social Services; absolutely amazing. Absolutely amazing. No wonder people are telling me of the difficulties they are having in tracking down the information of procedures that they think they need information on for redress. Congratulations all round and also to the *Jersey Evening Post*, I would like to take my cap off to them and their editor. They have been championing Freedom of Information within this Island for a very long number of years and they have done it on the front page and they have done it in the columns. They have done it in the opinions and I think they do it to our greater good so I would be very happy to support the Constable and congratulate them.

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

Prior to the lunch recess the Minister for Health and Social Services was asked a couple of questions and I would just like to help to answer those now. Health and Social Services currently only keep a record of the requests that specifically mention the Code of Practice. From the

experience to date, we only get about one or 2 such requests per year. If I could try and answer Deputy Le Claire's point, we do keep records of all requests made by individuals about their own medical records but these do not come under the F.O.I., these come under Data Protection. The other point that was made was the spike figures that were mentioned by the Minister that occurred in 2005 when the Freedom of Information Act was brought in to the UK. These went from a total of 62 to 1,203 which was a 19-fold increase. In response to the question from, I believe, Deputy Tadier, the Minister said that she believed that this was a trend carried on at that level. Having checked over the lunch time, she was being a bit cautious. They have not peaked at that level; they have continued to increase and the figures from the Minister of Justice for 2009, if I can recap, that in 2005 is 1,203; in 2009 it was 1,897 and in 2010 it was 2,023, so the Minister has been slightly cautious. The figure has not plateaued but it has, in fact, continued to increase year-on-year. Having said that, both the Minister and myself support the principles, however, there must be acknowledgement that this will have a resource implication to the Departments and in particular in Health we anticipate that it will be 2 full-time equivalents to manage the record management and information process. Some will say that we should already have this expertise in house, however, when the Codes were brought in we were not given additional resources to manage that so although both the Minister and myself fully support P.P.C. in bringing this forward, we do so with the caveat that to be able to comply with it we will have to find the additional sources and so when we are trying to keep our promises with the public and produce savings of £65 million over the next 3 years, to increase the cost at this time might not be the wisest thing to do.

The Deputy Bailiff:

Does any other Member wish to speak?

6.1.11 The Connétable of St. Brelade:

Given that the existing Code of Practice has not been applied, I think, or understood, I would ask whether the Chairman has confidence that the proposed law has any chance of being effective. I would also ask her, does she not consider that it may just amount to a large amount of unnecessary burdensome red tape on Government which it was my understanding we were trying to get rid of? So, from a Departmental point of view, I have as a result of C.S.R. been striving to keep down administration charges and Members must have no doubt that the costs alluded to by the Council of Ministers are basically additional salary costs. The extra cannot be absorbed by the existing system and I would just urge Members to accept the proposed law with their eyes open.

6.1.12 Deputy J.A. Martin:

I was going to mention the same as Deputy Noel; that Data Protection covers personal information at the hospital and there are certain reasons why some people have not had their medical records when directly asked; because some of them have to be taken through with the psychologist because of what they are reading. Having said that, I am in full support, I am on P.P.C. I was listening - I think I was listening intently - to the Minister for Treasury and Resources when for once he said that the code was working very well but if you introduced a law it is going to cost you millions of pounds. Both cannot be right. The Constable of St. Brelade has just answered that; he does not think many people out there know that the code exists. I think where the code has been used and understood by people, I think where the information is quite easily available and has been found, they have got it. It is public information and I think, also, the Minister for Treasury and Resources said he likes to be as open as possible. If a lot more things... I mean, we seem to be so guarded you could go to any council in the UK and what you can find in their libraries and on their web pages you would think you were asking for: "How much are the Crown Jewels valued at today" or Jersey's Crown Jewels. We are very sensitive and we have a long, long way to go to say we are not. As on the actual money... and beware of what you are signing-up for, as I said, there was a very small statement this morning but the whole first paragraph said it all: "They were already in the throes of changing again a large, large chunk of the machinery of Government" and that will

not come at no cost but they will find the money for that. The money has already been spoken about and we are talking ... we have already spent millions in the last 5 years going from committee to machinery of Government and to Ministerial. So, I really do wonder where we are; which comes first. We are all, in principle ... I will support this and I will also support Deputy Roy Le Hérisier's implementation. We do mention implementation in the draft Freedom of Information Law but I do get the feeling that it will be one of those that we will sit on the shelf. There really is not anything apart from the cost and if you talk to people who supply the information, the Departments that are keeping their records completely and in as good order as they can, the information is able to be obtained very quickly. So I will say 2 things; we need to publish more information because that is covered in the draft agreement because if things are going to be put out there, I think it is within the 6 weeks of a request, they are not given information; and secondly, you must get your own house in order so people know where they are looking for the information straight away and it can be given out. Really that is all I have got to say; you cannot have it both ways.

6.1.13 Deputy G.P. Southern:

Here we are again. The Chamber is almost unanimously, so far, behind the principle of Freedom of Information but of course Ministers do not want to be told how to spend our money by us; they would rather decide for themselves. As Deputy Martin has just pointed out; the cost that we want to do to rearrange, reorganise the furniture in the Treasury Resources Department comes at a cost because that is important but Freedom of Information is not. I want to just remind Members of what I believe Senator Breckon mentioned this morning when he said: "Let us just look at the process that we have gone through in reorganising Government over the last few years." We have seen a reduction in the number of people who know about the background to any decision that has been made because we went from a committee system to a Ministerial system where most of the decisions are made by the Chief Officer and then put on a 'Part B' agenda. If anyone wants to find out about it you cannot and we heard this morning about 3 reasons why we could not find out about a particular piece of information today because of item xyz on the Code of Practice. In addition to putting things on the 'Part B' agenda we do not get access to any number of papers and again admirably though the Assistant Minister for Treasury and Resources defended his case, and admirably thought the Minister for Treasury and Resources said: "I am going to give you something but I am not going to give you the full works because it is confidential and I have decided that you should not see it." We get report after report that is a background to a decision that we do not see. That is the reality; we have got less information knocking around, even in this Chamber, and we have got far less information for the public at large. I just want to draw Members' attention to a letter which appeared in the paper today and it is entitled: "Too many unanswered questions" and that is what we are talking about, unanswered questions. The author, who I do respect enormously because I know him personally, said: "Ministers warn of the high cost of information" was your headline. To misquote Mandy Rice Davis: "Well, they would say that, would they not". He then goes on to a series of questions that he does not know about and would like to know about before this goes through. He says: "What is SOCitm?" I do not know how to pronounce that acronym but it sounds awfully like: "Sock it to me". So we will call it "Sock it to me"; what is "Sock it to me"? What is SOCitm? It appears to be a relatively recent UK trade body subscribing IT people. What is its expertise in costing legislative programmes? We are not told. Who commissioned this review? We are not told. Where can we get a copy of this review? We are not told. How much does this review cost? We are not told. When, if at all, were Island IT operators invited to cost this exercise? We are not told. That has it in a nutshell; as far as the public is concerned out there, we are not told. About time we did start telling people, not only in this Chamber but out there, what is going on and the basis on which we are coming to decisions and stop this secrecy culture that we have increasingly under Ministerial government. So we are all in favour of this but the Minister pointed out very carefully that he going to have not one but 2 or 3 bites of this cherry, I am sure, because there is a cost.

[14:45]

Now, that cost, he says, has been costed for the implementation plan which is going to come later but nonetheless, he is referring to this debate and it is going to cost you £5.3 million to start with and ongoing £1 million per year plus. So he is in full support of Freedom of Information but he does not appear to want to spend any money on it. Then we will have a debate on Deputy Le Hérisier's implementation programme and we will see yet another debate, I am absolutely convinced, when we will see some shroud-waving: "Freedom of Information versus..." and you can put your own item in there, emotive as you like, make it really emotive, we will have a debate on the Business Plan as to what goes in and what goes out. So we are totally in favour of it because we cannot afford not to be because it makes sense to everybody on the Island but we will throw a spanner in the works somehow. At the moment the spanner is those costings and we will see that debate. We will see this debate and they will support it and we will probably get this through; we will then have a debate on the implementation plan: "Ah, but we cannot do it in this" and: "We will hear the arguments properly then" and then we will hear them really wound-up before the end of the year when we come to debate the Business Plan and that is what will sabotage it. So, do not worry about this particular vote because it means something but it does not necessarily mean very much. The next vote and the vote after that are the ones that are going to count and we will see whether we will get Freedom of Information. Freedom of Information has been crying out to be needed for years. Let us certainly support this proposition and the implementation plan and do not forget to come back on the Business Plan and back it up with your votes then.

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

I think, if nothing else, the last speaker has made a very good case why we should not support this today, because I am quite surprised that the Minister for Treasury and Resources has jumped ship. He has been preaching to us since the day that he was put in office about how we need to control our finances, how we must not do exactly what we are planning to do today. We must not make a proposition without the funding there in the first place and that is exactly what we are going to do. This proposition will probably go through but it is not funded and it is the wrong way to do business. All my life I have had to fund things with my own money so of course it is very important to make the right decision and on many occasions I had things nice to have, I had things essential to have but at the time I could not afford them so I had to plan properly so that when I could afford them I did get them. I did not buy them first and hope I could afford them afterwards. I think that is where we have got a problem. Deputy Southern says we need to tell the people out there. I think we need to tell them how we are going to pay for this and what are we going to cut in order to pay for it and the public out there should know that before we make this sort of decision.

6.1.15 Deputy of St. Mary:

I am glad to follow that sterling defence of not providing Freedom of Information. Just remind Members how fundamental what we are talking about is. It is people's right to know what the Government is doing. Who paid for what our Departments are doing? The public pay every penny of what our Departments are doing and they have a right to know what those Departments are doing. That is quite clearly set out in the excellent report of P.P.C. I will just remind Members of what it says between paragraphs 2.9 and 2.14, where they set out the issue around the culture of secrecy. They say, more or less, that whether or not it is really true, the fact is there is a perception that it is hard to know what is going on, the public participation is limited and we have written it into our strategic plan, they point out, they quote where we have written in transparency, openness and accountability and it is in the States of Jersey Law as well, those same words: "accountability" and "governance." The relationship between us and the people, it is not negotiable, they have a right to know because it is their money and we are their representatives. So I am really struggling with people who say that this can be just put on the back-burner. The beginning of this report where it states the underlying principles is really helpful because that is what has provided the

energy for this whole process which P.P.C. have excellently done. They brought over, I think... is it the Deputy Freedom of Information Commissioner from the U.K.? They brought over the person from the Cayman Islands. They really explained - and Mr. Frankel as well - and we were able to see the benefits of what Freedom of Information would bring and the difference between giving legal backing to it and not giving legal backing to it. Any Member who reads the list of the Public's Right To Know under paragraph 1.5 on their report, it is a very, very good statement of the rights of our citizens to have Freedom of Information legislation. Now the Minister for Treasury and Resources opened-up with a flamboyant statement of his support for Freedom of Information and I am glad that he did because that is an important marker. May I just remind Members that he said: "Access to information is a vital aspect of democracy and democratic principles." Once again I would say it is non-negotiable. He said: "I think it is the right thing to do." I was just waiting for the word "but" and he did not use the word "but"; he said: "I will come on to costs later [which is the same thing]. If you want freedom of information you are going to have to put the budget behind it." He then referred to the figures of the Council of Ministers but he did not defend them he said it was up to Members to challenge them. It was up to Members to challenge them. There is a massive difference between the estimates of P.P.C. and the estimates of the Council of Ministers' consultants. So we have a challenge issued on the day of the debate by the Minister for Treasury and Resources for Members to challenge his figures, but those figures were given to us 4 days ago. This proposition was lodged months ago and we have been talking about Freedom of Information for years. If Members would like to turn to 9.66 of the Freedom of Information proposition - you do not have to because I will just read what it says. What it boils down to is that P.P.C. recognised there was a problem with assessing the costs but they did not feel that they should do an independent review of the costs, they felt the executive should do it and I quote: "A delegation of the Committee attended a meeting of the Council of Ministers on 1st April 2010 [remember that date, 1st April 2010] when the Council again requested that the P.P.C. undertake a review, this time in concert with the Council of Ministers. The Committee was advised that such a review would take 3 months. The Committee considered this at its next meeting and the Chairman advised the Council on 15th April 2010 of P.P.C.'s decision that it did not feel it should participate in this review which was a matter for the Executive." On 15th April 2010 the Council of Ministers are told that P.P.C. feel that it is appropriate that the Executive review the costs and produce some estimates of how much this legislation might cost. Now if they had produced, 3 months, 6 months after that date, their report and their estimates we would have had months to dissect that, to have a discussion properly around tables - not in this Chamber - about whether those estimates were realistic or not. I do not accept the Minister for Treasury and Resources coming on the day of the debate and saying to us that we have to challenge his figures when they are 6 months late. I am sorry; there is something badly wrong and when people say it looks like shroud-waving. That is the kind of thing ... that is the kind of timing that makes you wonder why the figures are produced like that, in that way, at such a date, in such an untimely fashion so that we cannot have a sensible debate on the costs, as the Constable of St. Ouen was asking for. He was saying: "We do not know, really, the cost implications." Well, we do not know because it has been kept from us. How classic for a Freedom of Information debate and I think I will leave it there. Just one other comment which is that a lot of the costs boil down to managing information within departments. Well, departments should manage their information anyway. How can they develop policies if they do not know what somebody said 6 years ago, which might be what they are now researching again? Again, P.P.C.'s report on page 58, paragraph 9.50. They point out how important records managers are to: "... unlocking the vital resource that carefully classified and retrievable information undoubtedly is." This is not just about answering questions from members of the public; it is about us doing our job better. It is about Ministers and officers having access to the information they need easily and that surely is a given anyway. So, instead of leaving filing, as they say a few paragraphs earlier, to the most junior and untrained person in the organisation, you treat information as the precious commodity it is and then when it is properly sorted it becomes, by definition, available, and that is not a cost that is attributable to Freedom of Information. As the proposer said in her opening

speech, it is about good management of information anyway. We should be doing it as a matter of course and if we have not been doing it then it is time we started and we have to find the money, and that is another question. But we are doing ourselves no service, we are doing ourselves a disservice if we do not manage our information properly anyway. So I shall be supporting this. I think P.P.C. have done an excellent job and let us hope that we pass the principles and that we implement this in a timely fashion.

The Deputy Bailiff:

Does any Member wish to speak? Deputy Tadier.

6.1.16 Deputy M. Tadier:

It has been alluded to that this whole episode here may be futile in the end. I will save my comments on that for a moment. First of all, of course I will be supporting this, both in principle and later on when it comes back to the House. I think, though, we have to be mindful of the fact this is not going to be some kind of elixir; it is not a golden bullet, so to speak, it is not going to solve all our woes. Nonetheless, it is a step in the right direction, I believe. The example is often given about the whole U.K. expenses scandal and the fact that this would never have come out if it was not to do with freedom of information. Of course, we know that is not quite the case because the information that was released under the Freedom of Information Act in that particular instance was very heavily censored and all the juicy bits were not put in there. It is only because you had undercover journalists who were working on it that had information that was leaked to them. So it was not entirely true in that particular instance that that was the reason behind it. I am sure that the Freedom of Information (Jersey) Law which is being campaigned for by the *Jersey Evening Post* will be welcomed but clearly that will need to be combined with perhaps more investigative journalism. It would be nice to see also, I imagine, the *J.E.P.* not simply campaigning on Freedom of Information but also campaigning on accuracy of information in the future and I look forward to that next campaign in subsequent months. It has already been said, I think, that of course records need to be kept in good order. This is something which relates to the value of the Freedom of Information (Jersey) Law itself which is very difficult to put a value on because we do not know what the cost of the Law is because we have got 2 conflicting figures here; we have had the Minister for Treasury and Resources and the Ministers coming up with completely different figures to what, perhaps, P.P.C. have estimated. At the end of the day, though, we have to acknowledge that our Freedom of Information (Jersey) Law is going to cost a substantial amount, I think, to enforce; not just simply the Law, not just simply the requests for each department.

[15:00]

Of course, you have got the whole appeals process that goes with that, which I know P.P.C. have been mindful of reducing the costs so that it is available to the appeals and not simply the domain of the wealthy. Everybody can have access to meaningful appeals process and I look forward to perhaps hearing more about that later on when we go through the individual parts of the Law. Nonetheless, we have to be mindful of the fact that these things do cost money and this is because we are running a society; we are running a community which has certain presumptions, not simply to do with social services but to do with transparency and openness. I think sometimes certain Members, certain Ministers, perhaps forget that we are not simply just running a business in the Island, we are not simply here to provide the framework for businesses and for perhaps one particular type of business, we are also running a society with its various and complex needs which go along with that. So my concern is that when I hear the Assistant Minister for Treasury and Resources, who is also the Assistant Minister for Health and Social Services; strange that, is it not, he has got control of the very large budget there in Health and he is also the Assistant Minister for Treasury and Resources. That is an interesting fact. When he says that we made a promise to the public to cut spending by £65 million and we may have to break our promise, I mean, first of all,

that is concerning in the sense that I do not remember the public clamouring to say: “We want you to slash £65 million from your budget”, which is perhaps going to have resource and front line implications on that; he is saying that there is a problem with keeping a promise which the public did not even ask for, to my knowledge. But also we have got this... again it is going to come back to the House, in a few months and Health could quite easily turn around after saying that they support the principle of the Freedom of Information (Jersey) Law - very laudable aspirations - and say: “Well, in order to do this we are going to have to cut incubators at the hospital; we are going to have to stop life support machines”, which will, of course, be completely distasteful to any States Member and we can essentially be blackmailed in order to ... we support the Freedom of Information but we can do something which is completely politically unacceptable and socially unacceptable and we will have no real way of stopping them doing that and that can be repeated right across the board with the Council of Ministers. So I think we do have to put this into context and into perspective why we are here today voting on something in principle when, in fact, we can be strait-jacketed and have our arms twisted in perhaps how many months time when the Budget or the Business Plan comes up for debate. Nonetheless, let us not finish on a gloomy note; of course we know that lots of work has gone into this. It is certainly there to be endorsed and to be supported but it is only the first step. I wanted also to make the point it is slightly strange, perhaps, giving public access to information which relates to policy direction, both present and past. But what we should be doing, in order to engage more public involvement and transparency within our whole system, is to involve the public in policy making. It is interesting to note the Minister for Treasury and Resources’ commitment to transparency but I am sure if a Back-Bencher were to bring a proposition, for example, that the Council of Ministers should hold all their meetings in public unless there is particularly sensitive information, the Minister for Treasury and Resources would find lots of reasons why that is not possible and I am sure the Comité des Connétables, if someone were to propose that those meetings should be held in public, notwithstanding information which might need to be put on ‘Part B’ minutes would find all sorts of reasons why these meetings should continue to be held behind closed doors. Having a Freedom of Information (Jersey) Law here today is not going to solve all our wishes, we need to change the way that we think about how we do politics, about being open right from the very outset, not simply election time when we talk in very grandiose and laudable terms, but on a day-to-day basis about how we do politics and there should always be a presumption of openness unless there is a very good reason not to.

6.1.17 Senator T.A. Le Sueur:

This debate should be, ideally, on the content and context of a law because it is, after all, a law that we are passing here but most of the discussion this afternoon appears to have been in terms of some of the financial implications. That is understandable because it is a requirement of Standing Orders that any proposition of this nature has to set out, as best it can, the financial and manpower implications and clearly the size of the financial implications at this stage are a matter of conjecture. What is quite clear, as the last speaker has just said, is that whether the total sum for implementation is £5 million or £3 million there will be a cost to be incurred and that is a cost which I think many Members will say needs to be incurred, but we do need that information if we are going to make a fully informed decision. It seems unfortunate that the Health Ministers are damned if they do and damned if they do not; if we have made no attempt to evaluate the financial implications we have been told we are failing in our duty. So, in an effort to avoid that we have had a first go at looking at the financial implications and now we are criticised for doing that and even from Deputy Southern, who is not here at the moment, for not making it public. In fact, it is public, it is on the States website and Members know, or should know if they read their emails last week, that it is on the website for States Members and for the public to see. If we try to say that we should bring in a law and not worry about the financial implications I would point out 2 things: the first is that that is a very dangerous line to take and, secondly, I draw Members’ attention to past experience. About 10 years ago we brought in a Public Records (Jersey) Law and that said in the preamble: “We are of the opinion there are no financial implications.” As a result of which no

department had any resources in order to implement the Public Records (Jersey) Law and here we are 10 years on trying to implement a Freedom of Information (Jersey) Law which will require for a successful implementation proper keeping of public records. So, part of the cost of this legislation is going to be also ensuring that the Public Records (Jersey) Law is in a fit place to operate. Now some may say: "Well, we should have done that years ago, there is no excuse not implementing a law which we have passed." I think it does point out the need to at least try to identify, even if not totally accurately, the extent of those financial and manpower implications and that is why - although this afternoon I am sure this Law will be passed by an overwhelming, if not unanimous, majority - the date of its implementation will be very much subject to those resources being in place. The last thing we want to do, I am sure, is to repeat the problem we had with the Public Records (Jersey) Law where we passed a law and then did not implement it properly. If we repeat that exercise in this instance we will have a law which again is totally fit for purpose but cannot be properly implemented. Now I am sure that is a matter for another day; today is a matter for debating the content of the Law. But Members should be under no illusion and should not try to ignore the fact that when we come to debate the Annual Business Plan and the need to implement reductions that we have already spoken about, there are going to be conflicting pressures and if we simply say that because of those pressures we implemented the Freedom of Information (Jersey) Law with no resources, I say to Members now that that is a waste of time because it will not work without some resources. We can delay providing those resources and delay bringing in F.O.I., but if Members want to bring in a Freedom of Information (Jersey) Law as soon as possible - and the indications are it will still take 4 years, even with a favourable wind - then resources need to be put there and they need to be put there in the next Business Plan. That is the debate which we will need to have in September. Today is a debate about the content of the Law, the content which I think has been discussed almost *ad nauseam* and which seem to be approved by most people, and that today we can take one major step along the route. But let us not be under any illusions that without that second step of the Annual Business Plan funding of the implementation it is not going to be able to work.

The Deputy of St. Mary:

Can I ask for a point of clarification of the Chief Minister? Would the Chief Minister explain why this work was done so late in the day so we could not review it properly at all?

Senator T.A. Le Sueur:

In response to that I would say that it has been with remarkable haste and it is only an initial analysis. This Law was lodged on 15th March. Now we could have tried to ascertain the costs of an earlier draft of the Law and, in fact, we did and we had different views expressed by Health Ministers and by P.P.C. and clearly if you asked 53 people around this room for their idea of the costs I am sure you would get 53 different answers except that most of them would probably be: "I do not know." I think whatever figure we came up with would probably be open to question. States Members might say that one side or the other is biased. So we tried and we have, in advance of Deputy Le Hérisier's proposition which we will come to later, commissioned an independent review of what the likely costs might be. I have to say that that has been commissioned, even though at the moment I have no funds in my department's budget in order to do that, because we acknowledge the importance of Members being as well informed as possible in advance of a debate. Yes, it has been done within 3 months of the lodging of the Law and it is a first indication. Whether that £5.6 million turns out to be the actual final figure exactly, I still would not be sure but we can be certain that it is a significant figure, a figure which we can go back to refine by the time of the Annual Business Plan. But members should be under no doubt that this Law cannot be brought in without additional adequate resource.

The Deputy of St. Mary:

May I ask again, that was not quite an answer to the question? The question was why was the information produced so late? Why was the review commissioned so late in the day so none of us have had time to really compare those estimates with those of P.P.C.?

The Deputy Bailiff:

I call on Senator Le Marquand.

6.1.18 Senator B.I. Le Marquand:

I also wish to pay tribute to the Chairman and other members, past and present, of the P.P.C. Committee. I am including myself ... paying tribute to myself **[Laughter]** very carefully because I do not think I have put very much into this, I think the others have worked incredibly hard on this. I also want to pay tribute - I do not know this has already been paid or not today - to the Deputy Greffier of the States **[Approbation]** whose tenacity and determination to bring this to a conclusion - a fruitful conclusion - is very much to be admired. I think there were times within committee when many of us despaired of the detail that we were having to grapple with and she drove us on and that is much to be applauded. I am going to support this because to reject this today would throw away all the hard work which has been done over such a long period of time. We simply cannot do that. I cannot agree with the Connétable of St. Ouen on this point. I understand his concern about passing a piece of legislation and not being sure as to how soon you can implement it but, nevertheless, we must pass this, it is important. However, we must also be realistic about the costings and realistic about the timescale for implementation. I sometimes think that some Members of this Assembly have short memories. We voted overwhelmingly - yes, there were dissenters - in favour of £65 million savings by 2013, which is not an easy task, yet when a new and worthwhile law such as this comes forward we are quick to decide that we must have this. Yes, this is a very worthwhile law; it is a matter of public access to government information. But if we have to make hard choices then how will we rate this against other things?

[15:15]

That, of course, is a matter for future Business Plan debates. I am afraid that the reality of modern Jersey politics - I wish it were otherwise, I hope it will be otherwise - is likely to be about making difficult choices if we are to avoid a cycle of rising taxes which the public of all political persuasions most certainly do not want to see. In relation to Home Affairs, the anticipated position is set out in the documentation but it is so lengthy that it is probably hidden. I need to quote from information given to me back in August by the leadership then of the States of Jersey Police: "The experience of introduction of the U.K. Freedom of Information Act was that police received disproportionate volumes of Freedom of Information requests. The level of increased requests was maintained over time in the U.K., indeed, there was a significant year-on-year growth in police inquiries with specific increase in demand from major requests. So although the current level of information requests under the Code of Practice across the Home Affairs Department appears to currently be low and manageable within existing resources, the new Law may open up a wave of applications and a demand for information, if what happened in the U.K. is replicated." We are not sure, I am anticipating possible questions, such as were received by the Minister for Health and Social Services, how many requests we do receive because we suspect that on paper the numbers are going to be lower than, in fact - this is from the police - that officers do not treat these matters as Freedom of Information requests but treat them as just general requests for information. So that is my position. I will be supporting this but we must be realistic about hard choices which certainly it appears we are going to have to make in the future.

The Deputy Bailiff:

Does any other Member wish to speak? Deputy Fox.

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

As Vice-Chairman of P.P.C. I have had the privilege of going through the last 2 years, as opposed to the Deputy Greffier going through, I think, 16 years all told - or 17, is it - from the original Committee. Yes, current and past members must be congratulated that we have finally at least got to the stage of having this 166-page document before us today. Yes, this is one of those hard decisions but it is an essential decision that has to be made. It cannot be put off for another 16 years. There will never be a time where in current States expenditure there could be considered surpluses to fill in the gap. This is one that the Minister for Home Affairs has just rightly said that current and future States no longer have got the gravy train to fall back on. Decisions have to be made. They are going to be hard decisions but it means that we have to make the initial decision to move forward otherwise we cannot look at the hard decisions later. We owe it to the public that we serve that we have the appropriate laws for them to receive the information to be able to have good governance and, of course, the Freedom of Information is part of that and the States is part of that for the future. We have had the Code of Conduct, yes, codes of conduct have only been required when specifically asked for, generally speaking, if a department is asked for something and they are able to fulfil that requirement of explanation they do so without considering whether it is an F.O.I. question or otherwise. Good, that is fantastic; that saves expense, *et cetera*, everything else. But we have got to recognise that we are in a professional era and we have to become more professional in the way that we maintain our records, that we keep the information current, that we allow as much information as possible into the public domain and the more that we allow it ... and certainly in police force terms in the U.K., among others, they promote having as much of the information they can on public record because then it stops the necessity of asking for the information through F.O.I., which again is an important factor. Yes, there will be times when the information cannot be made available and, rightly, there are things that have to protect the public in one form or other. But, in general speaking, we have been far too precious in saying no when we could easily have said yes and this is one of those days when we have got to make a hard decision. No, we have not got the money upfront now; we are never going to have it upfront. We are going to have to put it into the Business Plan and we have got to listen to the case that will be put forward. The problem that we have on P.P.C. is that this is a split responsibility. For so long now P.P.C. and past P.P.C.s and through the diligent work of the Greffe and so many other people, the information is being compiled together and is being analysed and assessed, *et cetera*. But the final implementation of the F.O.I. (Jersey) Law is, in fact, the Council of Ministers' Executive and that is where it makes it more difficult because they are having to take on board at this very difficult time - and it is recognised it is a very difficult time - but, nevertheless, that is the responsibility of the Council of Ministers, that is what their role and their place in this States Assembly is. It is to examine these difficult responsibilities and find ways in which to bring this legislation forward to fruition and if that takes a bit longer then they will have to come to the House and explain the reasons why it has to take longer. But this is not the moment in time to say: "No, we cannot progress, this is too difficult" and put it away in a "too difficult" box to sit on a shelf and end up covered in dust. We have done that for too many years and it is time that we have to take those very difficult decisions and responsibilities and collectively bring it back to the States for the States to consider the information that is put forward and make the appropriate decision which, hopefully, will be moving this Freedom of Information into a positive way forward. I think that is all I need to say at this moment in time.

The Deputy Bailiff:

Does any other Member wish to speak?

6.1.20 Senator S.C. Ferguson:

I have not heard such shroud-waving for years. Has it occurred to the Ministers that if their records are properly organised this Law would not prove an excessive expense. The whole F.O.I. proposal has been on the stocks for years and good record-keeping is an absolute necessity for an efficient operation of the States. There has been plenty of time to get the records in order. If I was really

cynical I might say that poor record-keeping is an excellent way to bury information. **[Approbation]** Now, we have seen in the answer to the written questions today that Health are spending, or have nearly spent, some £12 million on a new record-keeping system for patients which goes live in June. So their costs of compliance should be coming down very quickly and rapidly. We have heard that a lot of information already exists for the public. Well, yes, there is an awful lot of information on the States website if we had a decent search engine. **[Approbation]** I think, with all due respect, Ministers are missing the point. Any well-run business - and those of us who have run businesses know this - has a good record-keeping system, be it financial or qualitative. If the costs of providing information under this Law are so high then I think Ministers need to ask their officers why their systems are so lacking. I would say that departments should be finding the money for this within their resources because this is something they should have done years ago. **[Approbation]**

6.1.21 Deputy T.A. Vallois:

I am going to speak on this as a Member of the States not as an Assistant Minister for Education because as a previous member of Corporate Services we were requested by the Chief Minister to have a look at the costings for Freedom of Information after P.P.C. were going to lodge this particular proposition. It was difficult for us to go ahead and do the costings because, of course, that is not our job as a Scrutiny Panel but we were willing to speak with the Minister and identify what was going on. Of course, things changed and Corporate Services ended up with a large amount of workload coming their way. It was interesting when the SOCitm report was only released last week, I had the weekend just to quickly flick through the information that was on there and I also took it upon myself to Google the consultants and have a look at their website. They have extensive knowledge and experience with public and private companies dealing with records management and this is the key, this is the issue, this is the problem of the £5.6 million that keeps on cropping-up. I would like to set a challenge for the Ministers, who seem to like setting challenges for the Assembly, that the Minister for Treasury and Resources and his colleagues - should this Law not go through - come back to the House and tell us where they are going to find the money for adhering to the Public Records (Jersey) Law and, if they are not going to do that, when will it be repealed? If the Minister for Treasury and Resources is right in what he is saying that we should not agree legislation without the manpower and resource, which I fully agree with, then we should not have a law that we cannot adhere to. We cannot preach to the people outside on the street, bring in legislation and not adhere to it ourselves. The surprising element of all of this was the fact that records management has not been part of what we would call the comprehensive spending review. Now, you would have thought a comprehensive spending review would have looked at records management because the consultant has also been quoted as saying that in the long term - and this is talking long term so it may be a bit difficult for the States to acknowledge a long-term look at things because we have not done that before - it saves costs, administration goes down. The reason why legislation is more important than a code of practice is because it is people's rights to access the information, and this comes back to the communication and publication of people's rights. We can turn round and say we have a Code of Practice but, guess what, it is voluntary. Legislation allows people the right to access that information. Scrutiny also did a Data Protection Report on amendments that were made and we also identified ... the Data Protection Commissioner does an excellent job in adhering and regulating the Data Protection (Jersey) Law within the resources that she has. A significant part of their job is communicating people's rights to data protection and that will also be a part of the Freedom of Information (Jersey) Law, it is communicating to people what rights they have. If we are going to adhere to Strategic Plan and go forwards with accountability and transparency and openness with the public and continue to any one of our stands on that in elections, then I believe we owe it to the people of this Island to implement the Freedom of Information (Jersey) Law with all of us backing it.

[15:30]

If we do not agree to the Freedom of Information (Jersey) Law I suggest that we all work together ... well the Ministers work together to identify how they are going to adhere to the Public Records (Jersey) Law. Also, on the point of the costs and the statistics, I also had a look at the F.O.I. Act for the U.K. and back in 2004 was when they had their largest peaks of access to information and there were some rather amusing requests that were made during those areas. There was a Frontier Economics study done ... well it was a study done by Frontier Economics, October 2006, on the implementation of F.O.I. and the effect that it had. It was a significant cost to the U.K. but the point was that people were able to access the information and the reason why there was such a problem ... well such a high amount of people accessing information was because there was not very much trust in government and they did not believe there was openness and transparency being put out to people. They believed that central government would have 34,000 F.O.I. requests annually and, surprisingly, the local constituencies would receive 60,000 requests, not 34, but they believed the smaller constituencies would have higher amounts of F.O.I. requests than the central government would and this can all be seen on the internet. But it also gave a nice little F.O.I. process and all the information and how they go through the process. I understand that there will be costs to this but I am fully behind Freedom of Information and I believe that it is about time that we set-off and acknowledge the problems that we have had in the past, as the Minister for Treasury and Resources has done with the Public Records (Jersey) Law, but if we are not willing to go ahead and implement that appropriately then we should not have that Law in place.

The Deputy Bailiff:

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

6.1.22 The Connétable of St. Mary:

I think we have had a reasonable airing of Members' views. I am very, very grateful to all those Members who spoke in support of the principle of the Law. Of course, I am conscious that there is a responsibility on the part of the Executive, and the Treasury and Resources Minister in particular, to highlight resource implications and it would be irresponsible if that was not done. We must also ensure that the implications we are made aware of are the implications absolutely necessary for the implementation of the Law. As I asked in my opening speech, I wanted to be assured of what was essential not what was nice to have, but I did not get a clear answer to that. My own understanding is that of the figures quoted in the report possibly about a 7th of the figure quoted relates to essential items, possibly not even quite a 7th, and the rest I think is what we should be having in what we used to call - I think we used to quote for it - a Rolls Royce system. I think that is really essential to understand. What I was hoping for was a clear indication of what the actual unavoidable cost of this might be, as far as it would be possible to tie that down with the Law, which is absolutely new to us. For example, I do not want to ask for a fuel-efficient car to get me from A to B and then get given the Rolls Royce that I really cannot afford to run, and that is the kind of figure work that I was hoping for from the SOCitm report and from the answers to the questions I raised in my opening speech. However, moving on, I do not intend to address most of the questions raised because they were generally supportive and very much on the same line but there are a few things that I think I do need to say. I think the first person to raise serious concern during the debate was the Deputy of Trinity, the Minister for the Health and Social Services. We did have consultation responses from her department - and in as far as we could we reacted to - and took on board the concerns that the department had raised. One of the concerns was could we limit the applications to people only from the Island. Unfortunately, we did not consider that to be possible but we did include provisions, as Members know, for the ability to charge to help recompense, that was one of the things the department asked for. We were asked was there a possibility of extending the time limit so that the time under which applications would need to be processed so that departments would have more time when necessary if they were under pressure. Indeed, we have built that into the Law because other departments, such as Education, were concerned about questions that might arise during the school holidays when, of course, most of

their key staff were constrained to take their leave, so we have built that in. I think we have done as much as we can to deal with things and, of course, I echo what the Assistant Minister said, many, many of the requests that people will make of the Health Department will be data protection requests for personal records and this Law is not concerned with personal information. The Constable of St. Brelade asked questions concerning the current code; did I have confidence that if the code was not being used whether the Law would be adhered to. I am absolutely sure that people are aware of what the Law will entail. We have had a long consultation period and the status of the code has been highlighted over and over again. People are aware of the code simply as has already been highlighted by other speakers. When people approach a department for information they usually do so quite informally in the first instance, they phone up, they ask. They do not specifically say: "Under the terms of the Freedom of Information code, can you please tell me ..." and unless they do make that formal statement there is no request logged in the code statistics, with the result that since the code has been operating since 2003, and including figures for 2010, there have been 239 requests, 24 refused, 6 appeals to the Minister and only 1 to the Complaints Board. That does not mean those are the only requests that were made, it just means those were the only ones that were made quoting the code. Departments deal with requests for information as a matter of normal business. They do it on a daily basis. We do not intend that that should change. So simply identifying the number of requests ... if requests come in under the Law in a set format there will definitely be an immediate increase in numbers. Even if we looked at the figures retrospectively there would be an increase in numbers because of the way that things are reported. The code is well known, it is out there in the public domain: the Citizen's Advice Bureau use it, the library has it, the States Information Centre will do it. So the code does work, it is just that the figures are not really accurate when you look for how many applications that have been statistically ... but I am confident to answer the Constable's question that the Law will be adhered to and that it will work and I am confident that there will be as little red tape as possible. The reason for that confidence is that this Law has been, as everyone knows, a jolly long time in the drafting and successive P.P.C.s have looked to ensure that it is tailored to fit the Island, that it is not over complex, that it is as simple, not only to use as a member of the public, but also for departments to comply with. We have looked for simplicity and for that reason I think there is no ground for the Constable's concerns. Senator Ozouf asked a few pertinent questions. He accepts the principle of the Law, I am glad to hear that - I hope he is here to vote to give me his support. But he asked a question about whether the Code of Practice could be amended and strengthened to fill the gap between, hopefully, the adoption of the Law and it coming into force. Well, the answer is, of course, yes, it can. We can work to strengthen the code but of course we should not use that as an excuse to delay the Law unnecessarily. The difficulty, though, is that the Complaints Board is not an appeals body. What would be needed is the political will for the States today to send a message to the Ministers that if the Complaints Board requests them to reconsider and to release information, the Ministers take that on board and take that as an instruction. If that was accepted by the Council of Ministers there would not be any need to amend the Administrative Decisions (Jersey) Law and we could then have some confidence in the interim there would be more satisfaction for applicants. Senator Ozouf again said that it was a question of putting the right systems in place to make sure this Law could function. Now I, ideally, would agree with that entirely but the majority of information across departments is already created using computer software and technology. In its most basic format that is usually searchable. You can make the simplest indexing system using the simple Excel spreadsheet and you can make that work. It is the philosophy; it is the culture change that makes departments create documents with Freedom of Information in mind and indexes them on even the most simplistic system to make them accessible. It does not have to be the all-singing, all-dancing system; times are hard but we can cut our cloth to fit our pockets, as it were. Again Senator Ozouf did confirm that it was the Public Records (Jersey) Law shortfall that would make up the bulk of the costs. Now, I understand that the Public Records management is integral to Freedom of Information but it is not a reason not to accept Freedom of Information if we have continually failed to recognise the importance of efficiently managing our

public records. I do not wish to go on too long. I really hope that the people who stood up and said that they value Freedom of Information - the principle of it - and that they value openness and transparency, will support this Law. I hope that we will make a step forward today because I agree entirely with what the Chief Minister said that this is an important first step. We cannot possibly know what we need to put aside in funding until we know what it is we want to fund. We must take that first step and when we have taken that first step all we need to do is keep on walking. It is not a sprint but it is a marathon and we must eventually reach the end if we just keep going. I opened my speech by saying that I believed that in order to have open, transparent and accountable government it was essential to have Freedom of Information. I would go further than that; I would say Freedom of Information is a vital tool for democracy. Having said that, I ask Members, please, to support the principle and I ask for the appel.

The Deputy Bailiff:

The appel is called for. I invite members to return to their seats. The vote is on whether to adopt the principles of the Draft Freedom of Information (Jersey) Law 201- and I ask the Greffier to open the voting.

POUR: 40		CONTRE: 2		ABSTAIN: 0
Senator T.A. Le Sueur		Connétable of St. Ouen		
Senator P.F. Routier		Connétable of St. Brelade		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
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 Trinity				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisser (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				

Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Very well, before we do that, Senator Ferguson, Chairman of the Corporate Services Scrutiny Panel, do you wish to scrutinise this legislation? Chairman, how are you going to take this? Are you going to deal with, perhaps, Part 1 in Schedule 1 first?

[15:45]

The Connétable of St. Mary:

I would like to take this in parts and, exactly as you say, open with Articles 1 to 7 and the first schedule and, hopefully, with your leave when we come to it, I will be able to propose ... there is an amendment which I would like to propose as part of the main proposition.

Deputy M. Tadier:

Just a point of order before we continue. I would like to certainly speak on Part 4 and Part 5 individually. So, will those be taken separately as votes or can I just ask on the process for taking these?

The Deputy Bailiff:

At the moment we are taking a vote on - as I understand it - Part 1 in Schedule 1 and the Chairman, no doubt, will listen to Members when she comes to Parts 4 and 5.

6.2 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Articles 1-7

6.2.1 The Connétable of St. Mary:

I will indeed listen to Members, as always. I probably will not take any notice but I will listen. Articles 1 to 7 and Schedule 1: these Articles set out the definition of various terms and phrases used within the Law. Article 1 defines the words and phrases used in the Law and, in particular, “information”, “public authority” and “scheduled public authority”. Information can be a record in any form from reports to photographs and audio recordings. Public authorities include, among others, Ministers, committees, panels, departments, Parishes and the police. However the Committee has agreed that implementation of the Law across these authorities should be staggered and that it should initially apply to the scheduled public authorities listed at Schedule 1 with other authorities being introduced through the adoption of “coming into force” Acts. Article 2 sets out how requests should be made; they must be in writing, whether that is by letter, email or fax, for example. They must include the applicant’s name, give a correspondence address and describe in sufficient detail the information that is being requested. Articles 3 and 4 deal with information that a public authority holds and would be expected to supply. Information is deemed to be held by that authority if they have the information or if another person holds the information on their behalf. If the information is updated or amended between the time that a request is received and when that information is provided the applicant can be supplied with the amended version. Requests for information must be made to the data controller and not to another department that happens to hold the same information. Any request will be forwarded to the correct department. In accordance with Article 5, nothing in the Law prohibits the supply of information. A public authority can provide any information it is requested to supply, regardless of exemptions, if it wishes to do so. Article 6 enables the States to amend by Regulation any of Articles 1 to 4 and Schedule 1. It also allows the addition, but not the removal, of exemptions. If the States wanted to remove an exemption an amendment to the Law would be required. Article 7 requires each scheduled public authority to prepare and maintain an index of the information held for the purposes of facilitating

implementation of the Law. Other schedules simply list out the schedule of public authorities. I propose Articles 1 to 7 and the first schedule.

The Deputy Bailiff:

Articles 1 to 7 are proposed. **[Seconded]** I will not, just for the moment, ask any Member if he or she wishes to speak. Deputy Tadier, perhaps I was not as helpful as I should have been in answer to your question a moment ago. Standing Order 74(5) allows any Member of the States to request that any provision be voted upon separately. So although the Chairman of P.P.C. may decide to take - I do not know if she will - but if she does decide to take Part 4 in one lot it is open to any Member to ask for any Article within that part to be voted upon separately and that is so, of course, in relation to Articles 1 to 7 and Schedule 1 now as well.

Deputy M. Tadier:

Just to clarify, I want to speak on Parts 3 and 4. I think we are just taking Part 1 at the moment, are we not?

The Deputy Bailiff:

We are only taking Part 1.

Deputy M. Tadier:

So that is fine.

The Deputy Bailiff:

Does any Member wish to speak on part 1 and/or Schedule 1? Deputy Le Hérissier.

6.2.2 Deputy R.G. Le Hérissier:

The provision of the public utilities not being covered under that somewhat unsightly name of Public Emanations, you can see that some of them are quite clearly - although they are all monopolies in the Island, so to speak - in a more competitive situation than others. As the reason given is one of commercial confidentiality, and I presume it is meant to relate to competition issues, why are bodies, for example, like Jersey Electricity and Jersey Gas - who it might be argued are only in a rather distant sense in competition with each other - why are bodies like that exempted from the provisions of this Law?

The Deputy Bailiff:

Does any other Member wish to speak? Chairman, do you wish to reply?

6.2.3 Connétable J. Gallichan of St. Mary:

Yes, basically, where there are public utilities there are often published accounts so the information is already in the public domain. We could not, obviously, deal ... all entities should be bound by the same constraints and it would not be possible to request one company to give information under this Law as a public utility where its direct competitor would perhaps be exempt from so doing which is why we have attempted to keep all entities on a level playing field.

Deputy R.G. Le Hérissier:

On a point of clarification, why for example is Jersey Electricity exempt? Who is, except in maybe a minor way, its competitor which prevents it from making things public?

The Deputy Bailiff:

Chairman, are you able to answer that?

6.2.4 The Connétable of St. Mary:

Specifically not on a question of who the competitors of the Jersey Electricity Company are. We have to deal with all eventualities and it may well be that there is a subdivision of a utility's business which does have a competitor even if the main entity does not.

The Deputy Bailiff:

Would all Members in favour of adopting Part 1, i.e., Articles 1 to 7 and Schedule 1, show? The appel is called for. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 38		CONTRE: 1		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy R.G. Le Hérisssier (S)		
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
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 St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
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 J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Chairman, we now come to Part 2. May I suggest that you do not speak to Article 19 until we have adopted, if Members do adopt, the subsequent Articles referred to in that Article.

6.3 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Articles 8-18 and 20

6.3.1 The Connétable of St. Mary:

In that case, in order to propose Articles 8 to 18 and Article 20. Article 8 establishes a general right for people who make a request to be provided with the information and puts the obligation on the public authority to supply it. Under Article 9, a public authority can refuse to supply information if it is absolutely exempt; it is qualified exempt; the request for the information is vexatious or repeated; the applicant has not paid any required fee; or if the cost of supplying the information exceeds the amount set down by regulation for providing it. Article 10 requires a scheduled public authority to tell a person who has requested information whether the authority holds the information or not. However, where it is in the public interest to do so, a scheduled public authority can decide neither to confirm nor to deny that it holds the information. This clause is particularly relevant to law enforcement and national security where it would be inappropriate for an authority to disclose information they hold which they are investigating, for example. It is also relevant to authorities such as the Jersey Financial Services Commission both in terms of their knowledge of economic and commercial activities such as company takeovers and their investigatory powers. If an authority were simply to refuse to supply information, it would be implicit that the information existed. This fact alone could be prejudicial to the authority's activities. Information refused under Article 10 will be taken to have been refused on the grounds that it is absolutely exempt information. There is no need, however, for a public authority to inform the applicant of the grounds on which the information was refused. In accordance with Article 11 of the Law, authorities can provide the information by any reasonable means be that via email, in a letter or on a CD or data pen, for example. Authorities are also expected under Article 12 to ensure that applicants are given advice and assistance in making application for the provision of information. Article 13 sets out the time frame for dealing with applications. Information should be provided within 20 working days from the receipt of the request unless some other period has been prescribed by regulation. If a scheduled authority fails to provide the information within the given time period or within such further period as the applicant consents to then the applicant can treat this as a decision to refuse the information on the grounds that it is absolutely exempt information. Article 14 states that a scheduled public authority may, however, request the applicant to supply further details in connection with a request to enable it to identify and locate the relevant information. In this event, the time clock does not start ticking until the additional information has been supplied. Articles 15, 16, 17, 18 and 20 deal with situations which may be covered in future by regulation. They are permissive in that they set a framework for regulations to be put in place. Article 15 allows a scheduled public authority to require a fee for supplying information. Article 16 allows a scheduled public authority to refuse to supply information if the cost of doing so is too high. Article 17 establishes that applications for information that has been transferred to the Jersey Heritage Trust should be dealt with by a manner to be prescribed by regulations. Article 18 allows for the manner in which an authority should refuse a request to supply information to be set out by regulations. Article 20 deals with the setting out of the publication of information in accordance with the publications scheme and that remains available under Article 20. So I propose those Articles.

The Deputy Bailiff:

Articles 8 to 18 and 20 are proposed. Seconded? [**Seconded**] Does any Member wish to speak on any of these Articles?

6.3.2 The Deputy of St. Mary:

Yes, a couple of questions. The first is that all these Articles, I think, refer to scheduled public authorities, i.e. only 6 public authorities in Schedule 1, which is quite a restricted list: the States; a Minister, a committee and administration States; the Judicial Greffe; and the Viscount's Department. So does that exclude all the public authorities mentioned in the definitions in Article 1? In other words, does it exclude the police, all the Parishes? So that is the first question

because it seems as if Parishes are basically exempt from the Law. My second question is about the business of fees in Articles 15 and 16. Article 16(1) says that an authority can refuse to supply information if the cost of doing so would exceed the fees set down in Article 15. Then sub-section 2 of Article 16 says that that is all right. There is a way around it. If it is a costly request then a scheduled public authority may still supply the information requested on payment to it of a fee determined by the authority in a manner prescribed in regulations. Can the Chairman explain exactly what the “may” is and whether that would be appealable if, for instance, someone made a costly request or a request that was quite involved to answer, it was more expensive than the standard fees, and then they insisted that they were willing to pay the additional fees and then the public authorities just said: “We do not feel like it because it says “may” in paragraph 2 of Article 16.”

6.3.3 The Deputy of St. Martin:

I am following this through and, indeed, the Deputy of Grouville is as well. We are looking at where was Article 11 or have we missed it? If we go on page 39 there was Article 10 and page 25 we move on to Article 12 and I was wondering where Article 11 was.

The Deputy Bailiff:

You should be at page 146 and 147, Deputy. It looks as though you must be following the reports rather than the legislation itself. Does any other Member wish to speak? Very well, then I ask the Chairman to reply.

6.3.4 The Connétable of St. Mary:

Firstly, to answer the Deputy of St. Mary’s first point, it is precisely right. Only the authorities which are scheduled public authorities are caught by this Law. That is part of the phasing that P.P.C. has envisaged and that over time by regulation additional public authorities will be brought into the Law so that we have a stepped and a phased introduction. That was exactly the point of doing that. As regards the second point about Article 16 and the “may”, what will happen is normally what the authority would do first is try to assist the applicant to restructure the request so that it can be dealt with within the cap but as I have already said, Article 5 says that nothing in this Law will prevent a public authority releasing information, supplying information, if it wishes to. But there is the cap for very good reason and it is exactly that; it is a cap although the authority may decide if it feels it necessary to release the information.

[16:00]

The Deputy Bailiff:

Perhaps the question raised was one of law. Was it something we should refer to the Solicitor General, Deputy?

6.3.5 The Deputy of St. Mary:

It seems we have been talking about the absolute right of individuals to access information held by the government and now it appears that a public authority, if it is a costly request, can simply evade the responsibility. That is what it seems like to me.

The Deputy Bailiff:

Are you asking what the construct of the words mean?

The Deputy of St. Mary:

I am asking ... I have had that clarification but maybe the Solicitor General could clarify it.

Mr. H. Sharp Q.C., H.M. Solicitor General:

I know we have not yet reached the Article but perhaps if we all turn to Article 46 please for a moment. Assuming the States Members agree this provision at Article 46, one can see that the Article sets out the various rights of appeal a person may have from a public authority's decision and decisions made in respect of Article 16(1) and 16(2) are to be found at (a) and (b). In other words, if a public authority reaches a view about the level of costs and the applicant is unhappy with that decision then it can be appealed and if we look at the bottom of Article 46 to Article 46(3) we can see that on appeal the test is whether or not the decision was reasonable having regard to all the circumstances. I hope that assists.

The Deputy Bailiff:

Very well. Articles 8 to 18 and Article 20 are proposed. Would all Members in favour of adopting these Articles kindly show. Those against. The Articles are adopted. Chairman, we now come to Part 3.

The Connétable of St. Mary:

Shall I do Article 19, sir?

The Deputy Bailiff:

No, because we have not yet debated Articles 28, 30, 33, 34, 37.

6.4 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Articles 21-22

6.4.1 The Connétable of St. Mary:

Part 3, Articles 21 to 22 dealing with vexatious and repeated requests. A scheduled public authority does not need to comply with a request if it is considered vexatious and the applicant has no real interest in the information or is just asking in order to cause extra work for an authority. An application which asks for the number of windows in all States-owned properties would, for example, likely to be viewed as vexatious. However, if the applicant is intending to cause embarrassment or is asking for the information for political purposes their request cannot be considered vexatious and the information should be supplied. Article 22 deals specifically with repeated requests which can be refused unless a reasonable interval has lapsed since the previous request was complied with. I move Articles 21 and 22.

The Deputy Bailiff:

Are Articles 21 and 22 seconded? [**Seconded**] Does any Member wish to speak on Articles 21 and 22?

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

Just a quick question to the proposer and I believe that it was explained earlier that an applicant who is requesting information does not require to give any reason why they require that information and yet in 21(3)(a) it allows a public authority not to comply with a request for information if it considers the request to be vexatious and one of the reasons is that the applicant has no real interest in the information sought. Well how are we or a public authority to determine whether an application is vexatious if the applicant is not required to give a reason why they want the material in the first place?

The Deputy Bailiff:

Does any other Member wish to speak?

6.4.3 Deputy M. Tadier:

Just to reinforce that point, I think I perhaps know the answer and what the result would be and practically as a sensible way forward. I think the term is "applicant-blind" so anyone who applies for information should be treated as if it does not really matter who is applying for it, whether it be a States Member, someone very high up or lowly citizen who is not one of the good and the great.

But I suspect what would happen and maybe the Chair could confirm this but it would be judged on the balance of reasonableness whether or not that particular request for information appeared to be vexatious and then it would be up to the panel who is looking at that to go back to the individual and only in those circumstances when there is reasonable grounds to presume that it is vexatious or silly or whatever to get them to ask: “Why do you need this information?” or to get that person to justify why they need that information. But nonetheless that does make me slightly uneasy because the presumption is that it is applicant-blind and an applicant should not have to give any reason. I may wish to know how many windows there are in the States Building or entirely in the States portfolio and that may be seen as vexatious but if I am a window cleaner I may wish to tender for a contract. That could be seen as either right or wrong but that is certainly a legitimate use and it could be that I like studying windows and I want to know historically whether the amount of windows has increased over time from a time when we had a tax on light in the past, maybe not in Jersey but elsewhere. There could be all sorts of reasons and I would be interested to hear the Chair’s response.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Chairman to reply.

6.4.4 The Connétable of St. Mary:

Well, as suggested, before Deputy Tadier even stood I thought: “Well, of course that information would be relevant to a window cleaner,” the number of windows. It is a question of context and there is still the opportunity under Article 14 for public authority to go back. It may not be, for example, a vexatious request may be quite unclear - quite general - and therefore there would be the initial request to go back to the applicant and tie-down exactly what they were looking for and I think every request would need to be judged on its merits. I have to say that the vexatious aspect is something that is very rarely invoked but it is just necessary to have it in the Law because there could be a time when people simply seek to repeatedly tie-down resources by requests that are completely non-essential and not of any real interest to the applicant. As for political purposes, that is really to ensure that an authority cannot refuse to disclose the information simply because it might be politically embarrassing to them and, basically, it is just a question of that is exactly what would have to be evaluated. Information would still have to be supplied and, of course, once the information is supplied the authority has to simply sit back and watch what the applicant will do with it. I hope that has cleared things up and I move the Articles.

The Deputy Bailiff:

Articles 21 and 22 are proposed. Would all Members in favour of adopting them kindly show. Those against? The Articles are adopted. Chairman, we now come to Part 4.

6.5 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Articles 23-29

6.5.1 The Connétable of St. Mary:

Part 4, Articles 23 to 29. These Articles deal with the instances in which information may be refused. The Committee has tried to restrict as far as possible the amount of information which falls into this category. Departments can refuse to provide information on the basis that it is available elsewhere in accordance with Article 23 of the Law but they should make every effort to inform the applicant where they can get the information they have requested. In this way the Law cannot be used to obtain information which is already available elsewhere but perhaps at a cost. In accordance with Article 24, court information is considered to be absolutely exempt if it is in a document in the custody of a court; served upon or by the authority; created by a court or its staff; placed in the custody of or created by a person conducting an inquiry or arbitration and used for those purposes. Personal information is not available under this Law. Persons wishing to access information about themselves should make an application under the Data Protection (Jersey) Law. Article 25 brings the Law into line with the provisions of the Data Protection (Jersey) Law by

classifying personal information as absolutely exempt information. Article 26 deals with information supplied in confidence where its disclosure would be actionable. Article 27 deals with the information which is needed to secure national security. Conclusive evidence of this status may be conferred by a certificate issued by the Chief Minister. This may only be challenged in the Royal Court on the grounds that the Chief Minister did not have reasonable grounds to issue the certificate. In the same way, Article 28 deals with the States Assembly privileges and a certificate in this case would be issued by the Greffier and, again, it could only be challenged on the same grounds. Information is considered to be absolutely exempt in accordance with Article 29 if its disclosure is prohibited by an enactment; does not comply with a European Union obligation; or would constitute a contempt of court. I move Articles 23 to 25.

The Deputy Bailiff:

Are those Articles seconded? [**Seconded**] Does any Member wish to speak on Articles 23 to 29 inclusive?

6.5.2 Deputy M. Tadier:

I think the first point to say is that I am generally pleased that the amount of absolute exemptions has been kept fairly minimal. There was a risk at one time I think of more absolute exemptions being put forward than might have been necessary or certainly that I and others would have been comfortable with. That said, I have to say that and because of the nature of the Freedom of Information (Jersey) Law in itself I am sceptical of any absolute qualified information because I think that every piece of information should be subject to the public interest test. Of course, we will go on later to talk about the difficulties you have determining where the public interest lies and it is not always an easy thing to do. I completely understand why it is that the integrity and independence and impartiality of the court needs to be maintained but what I need to seek clarification on really is about the nature of the information held by the court. I can completely see when a case is ongoing why information should not be released. Even in that circumstance, I do not think that necessarily constitutes it needing to be absolutely exempt because I think what you could quite easily have is a qualified exemption where the presumption is against the information being released unless there is a good reason and unless there is a compelling reason that says it is in the public interest to do that. So I would like to hear from the Chairman about perhaps the debate that went on. I know that the Committee did, when I was on it, consider whether everything should be qualified exempt rather than having the 2 absolutes and qualifieds so perhaps the Chairman could say something on that. The second is to do with court information. I do not see why - and I am not saying this would necessarily be the case but clarification would be helpful - if the court still has access to information which only it has but it is no longer under jurisprudence, if that is the correct word, if it is no longer before the court and if there no real reason why the court should not be able to release that information and if it could be shown to be in the public interest, I do not see why that information should not be released and there needs to be a public interest test there. So unless it can be shown otherwise, I will be voting against this particular part on the basis that I think all pieces of information should be subject to the public interest test. I have no problem with 25 and 26 because they are covered with the Data Protection (Jersey) Law, from what I can see. I find 27 slightly strangely worded and I question whether it should be in this part at all. We have this strange part of national security. Essentially it is saying that if something relates to national security, if it would prejudice national security, then the Chief Minister can issue a certificate saying that an exemption is required. But we have the third part under 27 which says that there is recourse if somebody does not agree with the decision of the Chief Minister to take that as an appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing that certificate. That does not seem to be an absolute exemption. That seems to be a qualified exemption because what we have here is somebody who does not agree with the decision can take it to a normal route of appeal but nonetheless it is taking it to the Royal Court as an appeal

and then the Royal Court can turn around, whether they would or not but they can turn around and say: “The Chief Minister was incorrect in this circumstance to issue this certificate.”

[16:15]

What we have here is not an absolute exemption. We have a qualified exemption and I would like to know why that is being put under this Part 4 when it seems to me that is ... I think that is the correct thing to do but it is not an absolute exemption. I think Article 28, similarly, I have concerns about information which is seen to be covered by the privilege of the States as being covered by absolute classification. The only example I can think of offhand might be where a debate takes place *in camera* where the information perhaps ... I am not sure if it even is transcribed but I think it is transcribed somewhere but it is just not published. That seems like a classic scenario where something may be said *in camera* which later on or at the time might be of public interest which the public have no way of finding out but somebody might make an application to say: “I want to know if anything was said in this debate, perhaps 10 or 20 years ago on this subject” and then they will be told under that circumstance that is absolutely qualified and that information can never be released whereas what I would say is the most sensible way forward would be for a qualified exemption for the panel or whoever it is set up to look at that and say: “There is no reason that this piece of information cannot be released even though it goes against the presumption of that information staying secret.” Because, essentially, when we debate here whether it is *in camera* or not, clearly there must be a presumption that all the information during that debate is kept secret but we know that in the past individuals and there is nothing to stop States Members currently who feel that they have been elected by the public and if something is of particular importance and it comes out in a debate - and I am not advocating this - they will judge on their conscience whether or not to make that information available and what to do with it. So it seems to me that a more sensible way to do it would be for that information to be subject to a qualified exemption which is still very stringent, remember; I would remind Members because there is still a presumption that information would not be released. So certainly for my part I cannot support Article 28 relating to States Assembly privileges coming under the absolute exemption. I think it should be qualified exempt. I think the similar case applies to 24 but I am willing to listen to clarification on that and perhaps even from the Solicitor General if he feels that he can contribute, certainly from the Chairman of P.P.C., and to do with 27, I think it has been put in the wrong area and certainly by the same logic, I will be asking for 24, 27 and 28 to be taken separately so that I can vote on those individually.

The Deputy Bailiff:

24, 27 and 28?

Deputy M. Tadier:

24, 27 and 28 to be taken separately.

6.5.3 Deputy R.G. Le Hérisier:

I wonder if under 26 the Chairman could explain if, for example, somebody gives information in confidence to - maybe it is under 28 - a Scrutiny Panel or a Committee of Inquiry, does that mean that confidence is absolutely entrenched and respected forevermore thereafter or can it be changed in the light of changing norms, so to speak?

6.5.4 Deputy J.A. Hilton:

As a follow on from Deputy Tadier, the question I have is in the case of evidence given in an open court, would it be possible for a member of the public to now access a transcript of that evidence given in an open court? Yes?

The Deputy Bailiff:

I am sorry, I thought you were still making a speech.

Deputy J.A. Hilton:

No, that was my question. I think at the moment that ...

The Deputy Bailiff:

Then perhaps the Solicitor General can help you.

6.5.5 The Deputy of St. Martin:

Just a follow on from Deputy Tadier because I was a little bit concerned about it seems to be quite a drastic step and also there is a cost involved if that goes to the Royal Court and I was just wondering where the role here would be for the Complaints Court because we did have a case not long ago. I think the Constable of St. Helier is not here but he assisted the former police chief in taking the case to the Complaints Board where it was, I understand, a difficulty in the Chief Minister releasing some information and there was an issue, I know, I was at the hearing, about the freedom of information and whether he had the right or not. I just wondered maybe when the Chairman sums up she could give maybe the role of the Complaints Board here. Would there be a case maybe that the Complaints Board could first be considered necessary to see whether in fact the refusal was unreasonable. Thank you.

6.5.6 The Deputy of St. Mary:

Again, following on from Deputy Tadier just to put a point on the question, it is probably for the Solicitor General again, in Article 24(4) where it defines courts, inquiries and arbitration my concern is that evidence given to an inquiry, not necessarily in court, but to an inquiry such as Reg's Skips - was that a Committee of Inquiry? - and if it was not then to a full-blown Committee of Inquiry, whether that in some sense comes under this Article. I am not clear. I do not think it should but, clearly, any evidence given to that or any documents that went to that inquiry should be open, so I just wanted that clarified as to where that lies within this Law now. On Article 27 about national security, this business of the appeal process being to the Royal Court because it falls within absolutely exempt, could the Chairman tell us if that paragraph had been moved to the qualified exempt, if it was a matter of qualified exemption, would the appeal process be the normal process: department, Minister, Information Commissioner, rather than to the Royal Court? It seems to be a very amateurish way - and also not in keeping with the rest of the Law - to have it go into the Royal Court rather than up the ladder to the Information Commissioner.

6.5.7 Deputy P.V.F. Le Claire:

Just listening to Deputy Tadier and his concern about matters ever surfacing, I did come to the Assembly a while ago to ask that we would open-up the in camera debate on Les Pas and the States did not want to because it had considered it in camera. I asked the Greffier, I believe, or yourself, Sir, I am not sure, if we had a Repeal of Secrets Law where in the U.K., for example, I think it is after 100 or 150 years that secrets become available to be looked at by members of the public except for Her Majesty's business. I take it that there are certain areas we are not allowed to investigate. But I believe in the U.K. that is tackled by a different law and I am just standing to ask clarification from Her Majesty's Solicitor General if he does give a view as to whether or not this other matter about secrets finally coming out after 100 years that that would require a new law or whether or not this would be possible.

The Deputy Bailiff:

Does any other Member wish to speak? Solicitor General, there are a number of questions which have been put to you then.

The Solicitor General:

Yes, can I deal with the last one first? If we turn back to Article 19 which we are yet to consider. If one reads through Article 19 one can see at subsection (1) that there are various categories of documents that must be supplied after a period of 30 years. If we look at subsection (2) there are

further categories of information that must be supplied after a period of 100 years and, finally, at subsection (3) there can be exemptions defined by various Regulations if the States see fit. So I hope that answers that question. Perhaps if we can move back to Article 24, please. I believe I was asked whether or not a transcript of a court hearing might fall under absolutely exempt information, and I believe it does. If one looks at Article 24, please, and looks at subsection (2): "Information is absolutely exempt information if it is held by a scheduled public authority only by virtue of being contained in a document created by (a) a court; or (b) a member of the administrative staff of a court." It seems to be that a member of a court would create the transcript in the first place and therefore it falls to be absolutely exempt. Finally, I think the third question was whether or not a Committee of Inquiry falls within the ambit of subsection (4). In my view it does. I hope I have covered all the points. If I have not, I will do my best to help in a moment.

Deputy M. Tadier:

Can I have a supplementary on that one? A follow-up. It is not question time, I know. It relates to the document having been created by a court or a member of the administrative staff of a court. But what if that document were to subsequently become publicly available by however means, it would therefore be in the public domain. So, under this provision here, it would say that even though it is in the public domain that information could not be given out because it had been created by the court or by a member of the administrative staff of the court.

The Solicitor General:

Well if the information is already available to the public by another means, then the public authority would not have to disclose it at all because it is already out there.

Deputy J.A. Hilton:

Just a point of clarification again just so that I fully understand. Evidence given in an open court, oral evidence, but it is contained within a document produced by the court, would be exempt even though we are in a public domain?

The Solicitor General:

Yes, that is correct. If I may say so, of course, court proceedings are normally public but that does not mean that the public are entitled to see evidence adduced during the course of those court proceedings and, indeed, in most situations the disclosure of such evidence might even amount to a contempt of the court. So, just because court proceedings are public does not mean that the public have a right of access to the evidence that they are hearing.

The Deputy of St. Mary:

A point of clarification, if I may, on the same area because I am really lost here. A court is a public event. I can take my mobile in and film the thing and ... well maybe I cannot, you see? **[Laughter]** Maybe I cannot. **[Aside]** No, I have a real problem with ... we have an absolutely public event and now we are being told that the official transcript would be absolutely exempt. Although I could perfectly well go in there as a reporter for the local paper and make an unofficial total transcript and put it in the paper and that would be absolutely exempt information and everybody could read it. I wish this could be clarified.

The Deputy Bailiff:

Can you add anything, Solicitor General?

The Solicitor General:

I have nothing to add on the legal position; obviously it is a matter for Members what they feel of the legal consequences. But I am quite sure that a transcript of a hearing produced by a member of the court falls within the definition of 24(2).

Deputy M. Tadier:

There was another question which has not been answered yet. I would like to inquire whether or not 27, and even 28 for that matter, are in the right place because it seems to me that they are not, by definition, absolute exemptions if one can turn around and disagree with the decision for withholding the information.

The Solicitor General:

It seems to me what the person is entitled to challenge is not so much the decision but the certificate that is issued by the Chief Minister or the Greffier. So you are not challenging the decision itself, you are challenging the certificate. I hope I have made that clear; there is a distinction here. I do not quite see the difficulties that have been outlined.

Deputy M. Tadier:

It is very nuanced, that response, and it is perhaps correct. But it seems to me the 2 are inextricably linked and so the decision to issue a certificate would be on the basis that there are sufficient grounds for it to be considered absolute information and whether or not a certificate is present ... well I think the first point to make is that whoever makes the decision to refer it to the Chief Minister, it will not be the Chief Minister. There will be a decision being taken place at a lower level which says: "I have got reasonable grounds to presume that this information should be considered absolutely exempt and therefore a certificate is just a necessary consequence of that decision to make it absolutely exempt." So I think certainly it is a nuanced argument but is it not the case that we are saying that this information is absolutely exempt? The certificate proves that fact, and if we were to challenge that certificate, one is challenging the decision which says that it is absolute information.

The Solicitor General:

Well I suppose it depends on the facts but the position is, if we look at Article 27, once the Chief Minister has signed a certificate saying that in his view the information pertains to national security, the onus is then on the applicant to demonstrate in the Royal Court that there were no reasonable grounds for the signing of that certificate.

[16:30]

It is only the signing of the certificate that is being challenged in the Royal Court. Unless the applicant can demonstrate grounds to challenge the decision of the Chief Minister in the first place, then he cannot challenge the certificate. Even if he gets over the hurdle of challenging the certificate successfully, it may still be, depending on the case, that there are grounds - albeit not the grounds under Article 27 - for still withholding the information, so it is a 2-stage process. It is: how do you categorise the information and then, secondly, should it be disclosed? They are not the same thing.

6.5.8 The Connétable of St. Mary:

I am exceptionally grateful to the Solicitor General for that because that is exactly what I was going to say [Laughter] but I feel a lot more satisfaction with Deputy Tadier being confused by the Solicitor General than by being confused by myself. I think it is a lot more gratifying but certainly that is completely my understanding. It is the issuing of the certificate, not the information, that is challenged in the Royal Court; grounds for the issuing of the certificate. I am just going to try and mop-up what has not been dealt with. Firstly, P.P.C. believes that the information is in precisely the right category of absolute exemption. We looked as regards Article 24 - the court one - at great length. We did consult with the Judicial Greffe and the Viscount's Department, *et cetera*, and we remain convinced that this is where the information should be held. Of course, under the rules of discovery the parties in any case can obviously obtain the information and all court cases are, as has been mentioned, subject to the Rules of Court but certainly I maintain that this is the right place for

court information to be. The Deputy of St. Martin mentioned the Complaints Board and asked whether there could be a role for the Complaints Board. There often is a role for the Complaints Board because, not particularly in regard to the challenging of the ability to make a certificate for national security or privilege, but in other areas of the law because before an appeal process starts, all other complaints procedures within a department must have been exhausted and that may well involve the Complaints Board. But certainly it would not be appropriate for the Complaints Board to intervene in this area. We are looking at a very specific case. As Deputy Tadier has said there are nuances here and that is something only the Royal Court can adjudicate on. Reference to parliamentary privilege and the in camera debates. That is all covered by our privilege report that the Privilege and Procedures Committee put out some years ago with the great assistance of the Greffier. What goes on in an in camera debate remains in camera and it would be a breach of privilege so far as I understand for that to be raised. The Deputy of St. Mary asked what was the position regarding a Committee of Inquiry. Committees of Inquiry are dealt with under Standing Order 147. The business will normally be in public wherever it can but there are items which are given in confidence and they will have to be ... I am not sure, I would be grateful if the Solicitor General perhaps could confirm to me, whether a Committee of Inquiry in fact would fall under the court law - I do not believe it would - and whether Article 24 would extend to cover Committees of Inquiry which are constituted under Standing Orders.

The Solicitor General:

In my view they do, if you look at Article 24(4) in the definition of inquiry.

The Connétable of St. Mary:

Thank you and I hope that that answers the Deputy's question. I think I have covered everything but I may need to be reminded.

The Deputy of St. Mary:

I would like a point of clarification on that then. If a lot of evidence goes into a Committee of Inquiry, and we can all think of Committees of Inquiry, can we not? So a lot of evidence goes in and then that becomes suddenly absolutely exempt and immune to the public seeing that information. So, is that the case? That means that nobody can ask for any information that went into the Reg's Skips Inquiry: it is dead now, it is gone, no one can ever see it.

The Deputy Bailiff:

Chairman, do you wish to add anything to clarify it?

The Connétable of St. Mary:

I am just clarifying in my own mind. Well I will defer to the Solicitor General on this but my understanding of a Committee of Inquiry while it falls under this Article is that Standing Orders say that it will determine its own proceedings. While the Rules of Court may deal with the matters under the judicial system, surely the Committee of Inquiry setting up its own proceedings would allow any information to be released as is currently done.

The Deputy Bailiff:

Do you wish to add anything, Solicitor General?

The Solicitor General:

May I just add this? There is plenty of House of Lords' authority which has been adopted by the Royal Court in this Island that says crudely and in terms that it is often very difficult to get witnesses to come to court and to give evidence in relevant proceedings and that often it is necessary to encourage them to come to court. One reassurance that can be given is that their witness statement, the information they have provided, will only be used by the court and will not be disseminated off to third parties or other interested people without their permission. So that is

why I say, for example, if a witness in a criminal proceedings provides a statement, they know that although they will be giving evidence in a criminal trial perhaps, that their witness statement will not be being transmitted to different people for all sorts of different purposes without their permission. So where you come to courts, inquiries and tribunals there is a wealth of case law that says it is very important in fact that the information is not disseminated for reasons as are ancillary to the main purpose of the information being used, that is to say, to have a fact-finding hearing or a trial or whatever it is, because there is a public interest in fact in getting witnesses voluntarily to come to court and give their best evidence. I just add that by way of background.

The Connétable of St. Mary:

Also, of course, there is the standard provision in Article 5 that nothing in this Law is to be taken or interpreted as prohibiting a public authority from supplying any information it is requested to supply. If they decide to publish, it is public information.

The Deputy Bailiff:

Very well. The Articles have been proposed. Do you wish to take the vote on each one individually in the light of Deputy Tadier’s request?

The Connétable of St. Mary:

Yes, Sir, I will do that to accommodate him.

The Deputy Bailiff:

So Article 23 is proposed. All Members in favour of adopting Article 23 kindly show. Those against. The Article is adopted. Article 24 is proposed. The appel is called for on whether or not to adopt Article 24 of the Draft Freedom of Information Law. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 34		CONTRE: 7		ABSTAIN: 0
Senator P.F. Routier		Senator T.J. Le Main		
Senator P.F.C. Ozouf		Deputy R.C. Duhamel (S)		
Senator B.E. Shenton		Deputy R.G. Le Hérisssier (S)		
Senator J.L. Perchard		Deputy J.A. Hilton (H)		
Senator S.C. Ferguson		Deputy S.S.P.A. Power (B)		
Senator A.J.H. Maclean		Deputy M. Tadier (B)		
Senator B.I. Le Marquand		Deputy of St. Mary		
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy of St. Martin				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				

Deputy I.J. Gorst (C)				
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 D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

I will ask the Greffier to re-set the voting buttons. Article 25 is proposed. Those Members in favour of adopting Article 25 kindly show. Those against. The Article is adopted. Article 26, those Members in favour of adopting Article 26 kindly show. Those against. The Article is adopted. Article 27. The appel is called for. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 38		CONTRE: 4		ABSTAIN: 0
Senator P.F. Routier		Deputy R.C. Duhamel (S)		
Senator P.F.C. Ozouf		Deputy R.G. Le Hérisier (S)		
Senator T.J. Le Main		Deputy M. Tadier (B)		
Senator B.E. Shenton		Deputy of St. Mary		
Senator J.L. Perchard				
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 St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy of St. Martin				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
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 D.J. De Sousa (H)				

Deputy J.M. Maçon (S)				
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The Deputy Bailiff:

We come to Article 28. The appel is called for in relation to Article 28. I will ask the Greffier to re-set the system, all Members to return to their seats and I ask the Greffier to open the voting.

POUR: 39		CONTRE: 3		ABSTAIN: 0
Senator P.F. Routier		Deputy R.C. Duhamel (S)		
Senator P.F.C. Ozouf		Deputy M. Tadier (B)		
Senator T.J. Le Main		Deputy of St. Mary		
Senator B.E. Shenton				
Senator J.L. Perchard				
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 St. Helier				
Connétable of Trinity				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
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 D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Article 29 is proposed. Those Members in favour of Article 29 kindly show. Those against. The Article is adopted. Chairman, we now come to Part 5 of the ...

The Connétable of St. Mary:

Should I do Article 19 now, Sir?

The Deputy Bailiff:

No. **[Laughter]** Because we have not yet adopted Articles 33, 34, 37 and 39.

The Connétable of St. Mary:

Sorry, Sir, I thought I could slip them through.

The Deputy Bailiff:

Article 19 is obviously getting to you but we will come to it in a moment.

The Connétable of St. Mary:

Thank you, Sir. I am just very anxious to get everything in order and having one out of order is bothering me slightly.

The Deputy Bailiff:

I take it you are going to propose Article 42 as amended, are you?

The Connétable of St. Mary:

Yes, Sir, I would like to if that pleases yourself.

The Deputy Bailiff:

If Members are in favour of allowing the Chairman to do that. Very well.

6.6 Draft Freedom of Information (Jersey) Law 201- (P.39/2011) - Articles 30-41

6.6.1 The Connétable of St. Mary:

Part 5: Qualified exempt information. Qualified exempt information is information which is subject to the public interest test. The information must be supplied to the applicant unless the public interest in supplying it is outweighed by the public interest in refusing to supply it. Article 30 relates to information about the Royal household and replicates that in other Commonwealth countries. Articles 31 and 32 relate to advice given by the Bailiff or a Law Officer and information which is subject to legal professional privilege. The Committee considered whether this should in fact be absolutely exempt information but agreed that there could be occasions when it would be in the public interest for this information to be released, although experience in the United Kingdom shows that application of the public interest test tends to result in information not being released. Article 33 deals with commercial interests and include trade secrets as qualified exempt information. Trade secrets are specific information used in a trade or business which must not be generally known and the disclosure of which would be liable to cause significant harm to the owner. Information which would be likely to damage the Island's economic or financial interests is treated as qualified exempt under Article 34 and is subject to the public interest test. This will be particularly relevant to the Jersey Financial Services Commission upon their addition to the list of scheduled public authorities under the Law. Article 35 relates to the formulation and development of policies. The disclosure of draft policies and policy development matters will be subject to the public interest test as qualified information. Once a policy has been agreed, however, it will not be subject to any exemption. Section 36 of the United Kingdom Freedom of Information Act contains a provision which also covers Ministerial communications, advice given by Law Officers, and the operation of private Ministerial offices, as well as the proceedings of the Cabinet. Any non-disclosable matters which arise in this kind of forum in Jersey will be covered by other exemptions so the Committee did not believe that there should be a blanket exemption relating to advice given by an officer. Article 36 covers information which is intended for future publication. If an authority denies access to information for this reason, it will need to inform the applicant of the planned date of publication. This Article should have the added benefit of encouraging authorities to publish information proactively on a frequent basis. Article 37 relates to the audit functions and allows bodies such as Internal Audit, the Public Accounts Committee, the Corporate Services Scrutiny Panel and the Comptroller and Auditor General to carry out their work without being used as a conduit to access information provided by another

authority. Article 38 makes qualified exempt any information which would endanger the health or safety of an individual and is self-explanatory. Article 39 deals with employment and provides a qualified exemption for information relating to pay and conditions negotiations. Article 40 provides a qualified exemption for information relating to the armed forces or a force that is co-operating with the armed forces. International relations are covered by Article 41. While the United Kingdom equivalent provision includes a “neither confirm or deny” clause, the draft Jersey Law includes this at Article 10(2).

[16:45]

This Article provides a qualified exemption for information obtained from a state other than Jersey so that the States of Jersey Police can continue to access databases in the U.K. for policing purposes. There is also limited protection for information supplied in confidence under Article 41(4). Article 42 deals with law enforcement and makes information relating to the prevention, detection or investigation of crime, whether in Jersey or elsewhere, qualified exempt information. The same is true in relation to the administration of justice, immigration controls, prison security and the regulation of financial services and the collection of duties and tax. This Article is the subject of an amendment by P.P.C. itself, the effect of which is to include in the Article a new subparagraph (h) the exercise by the Jersey Financial Services Commission of any function imposed on it by any enactment. P.P.C. decided to re-lodge this amendment as a result of ongoing consultation with the Jersey Financial Services Commission amid concerns that the Law as presently drafted could prejudice the exercise of the statutory functions of the J.F.S.C. (Jersey Financial Services Commission) under the Companies (Jersey) Law 1991, the Control of Borrowing (Jersey) Order 1958 and the Proceeds of Crime Supervisory Bodies (Jersey) Law 2008. There is no clear provision in the current draft of the Law to deal with information held by a public authority which has been derived from information provided to it by a legal person. Such information is only exempt under the draft Law where disclosure would or would be likely to prejudice the commercial interests of that person or prejudice the economic interests of Jersey. These exemptions will not apply in all cases dealt with by the J.F.S.C. under the aforementioned legislation and so this could result in the Commission being requested to provide information that it considers to be prejudicial to the exercise of its statutory functions. Although the J.F.S.C. is not included in the list of scheduled public authorities which will be subject to the Law from the outset, the Committee believes that this amendment should be made now in anticipation of the Commission being then subject to the Law at a future date. I move those Articles.

The Deputy Bailiff:

Are those Articles seconded? **[Seconded]** So Articles 30 to 42 are proposed. Does any Member wish to speak? Deputy Duhamel.

6.6.2 Deputy R.C. Duhamel:

Most States Members have expressed the thoughts, or perhaps had them in their mind, in the discussions that have been taking place so far that moving forward with a Freedom of Information (Jersey) Law is absolutely the right thing to do. But I would contend that whatever we agree to has to deliver and in one particular instance, I think, Article 35 does not deliver. One of the drivers, as I said earlier, for freedom of information, coupled with our new Ministerial form of government, was not only to speed-up decision-making but to provide an opportunity for not just States Members but for the public at large to be happy that the decisions being taken were of the highest quality. In order to do that you have to have information on which to make that decision or judgment. If indeed under Article 35 information is said to be qualified as exempt information if it relates to the formulation or development of any proposed policy by a public authority, that seems to me to be not playing by the rules. In particular, having agreed to Article 9(2), we have already agreed that a scheduled public authority must supply qualified exempt information, which sounds

good if it has been requested to supply it but there is a sting in the tail. It says: “unless it is satisfied that, in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so.” Now further under Article 10(3)(b) it says that the scheduled public authority, if challenged in refusing to pass over the information, need not inform the applicant of the reasons for refusing the request. So it strikes me that although the goodwill of many Members has been called upon in voting for Articles 9 and 10 under Part 2, it does seem to me that in accepting Article 35 as justification for qualified exemptions, we appear to be going in the opposite direction. Freedom of Information is exactly that. It is not an expression of blind faith, although the letters may well in certain languages add up to that. On that basis, I do not think that any person would wish to see the quality of the decision-making in this House, whether it be by Ministers or by this House together, not be put forward on the basis that it cannot be challenged or indeed it cannot be proclaimed as being the best decision that could have been taken under the circumstances. In order to do that I feel we cannot vote for Article 35.

The Deputy Bailiff:

Does any other Member wish to speak? Deputy Tadier.

6.6.3 Deputy M. Tadier:

I think to follow on from that looking at Article 9 and 9(2), page 146, it talks about: “A scheduled public authority must supply qualified exempt information it has been requested to supply unless it is satisfied that, in all the circumstances of the case, the public interest in supplying the information...” I am slightly concerned about the clause “in all the circumstances of the case” because it seems to give rise to a certain amount of ambiguity that might suggest, for example, that there must be a public interest in all of the circumstances in every part of the case rather than necessarily overall the public interest must be greater in not withholding it than in giving it out.

The Deputy Bailiff:

Deputy, I am sorry to interrupt you, we have already adopted Article 9(2).

Deputy M. Tadier:

But I think it relates to the point that Deputy Duhamel was making in this particular context, Sir. But moving on, I will start with Article 34. There is something about the wording of this which slightly concerns me and I preface this by saying I know that with qualified exemptions the presumption is always that the information should be released unless it can be proven otherwise that the public interest is heavier the other way round. But I am slightly concerned when it talks about the economic interests of Jersey or the financial interests of the States of Jersey because by the very nature these are subjective. What one values as the public interest on the one hand or the economic interests of Jersey, first of all, are subjective; they can be different to individuals and they also often can be the same thing. I will try and give an example but I will not make it too specific. There could quite well be information out there which is both of public interest in being disclosed but which at the same time would definitely and necessarily have a detrimental economic impact on the interests of Jersey or on the financial interests of the States of Jersey. Now I do not want to dig up history but clearly what was used as one of the arguments in one of the allegations, which I think is unfair to those who were involved at the time, is that there was a tendency, or there was a risk, at the time when discussing the historical child abuse, there was an allegation that one of the protagonists was putting the economic interests of Jersey before those of the victims. As I said, I do not think that is a fair charge but nonetheless an innocent scenario like that you could quite easily say - and we will move away from that example very quickly - there could very easily be an example whereby releasing some information ... let us give a slightly whimsical example. It could be to do with the fact that a particular Council of Ministers likes to drink its tea and coffee out of a particularly expensive and rare type of bone china or it could be made out of an animal part. It could be that the Chief Minister of the time has said: “I want this tea set to be made by the bones of

a particularly rare penguin” and then they have used that particularly rare penguin that has been extinct, and they are drinking this tea and coffee from it. Now that information would clearly not be in the financial interests of the States of Jersey necessarily and it may bring a detrimental effect to the States of Jersey. I have deliberately used an outlandish and whimsical example there **[Laughter]** because I do not want to perhaps get too close to the bone in other areas. **[Members: Oh!]** That was not a pun, incidentally. But it could well be said that that would clearly be something which was in the public interest to say that the Council of Ministers in Jersey has killed the last living penguin of this particular species because they wanted to drink tea in opulence at the top floor of Cyril Le Marquand House. That would clearly be in the public interest to know that, and within the wider public interest around the world, but it would probably have some kind of detrimental interest to the economic or otherwise interests of Jersey and perhaps the States of Jersey. Now, in that scenario, I would say that information definitely should be released but there might be others who say the economic interests are too great and that it would create unemployment in Jersey and the public interest would not be very well served because there would be mass unemployment. Not from that simple example, of course, but there could be other examples. So I would say that is something I am slightly concerned about and I would like further information on. Of course, the other problem is, and I think it was alluded to, when you are dealing with qualified information and if you are told for whatever reason you are not being given a piece of information because - and let us stick with this example - it would not be in the financial interests of the States of Jersey, in order for me to appeal this and to take it to a tribunal, I have to have the information in the first place. I need to know what that information is that is being withheld from me so that I can make a judgment call on whether it is being withheld reasonably and whether the appeal is going to be viable before I potentially go and spend lots of money appealing it up to the Royal Court with the necessarily financial implications that may have. So we are in a bit of a conundrum here. In order to determine whether the information should be qualified and should reasonably be withheld from you, you have to have the information in the first place. That is not a problem which I think is easy to solve but I would be interested to hear what the deliberations of the Committee and of the Chairman are on that particular issue. Lastly, I would like to hear about the arguments to do with the legal advice, whether it be from Law Officers or from Crown Officers, being given. I know that there was strong opposition from the previous Attorney General who came and talked to the Committee saying that this information should always be kept secret but it should never be released similar to Part 4 which deals with court information. I notice also that the rationale is given for that being withheld from the ... that is on page 37. We have several paragraphs 7.18 right down to 7.20 but there is only a very small statement at the end of 7.20, one which says: “The Committee reconsidered whether this should be absolutely exempt information but decided to retain it ...” but there is not really any explanation as to the rationale as to why it went against the advice of the Attorney General of that time. By the way, I completely think that this is in the right place; I think that legal advice and advice of Crown Officers should be qualified. There should certainly be a presumption of secrecy. When this is given in confidence there should be a presumption ... or certainly what I am saying is that there should be a presumption against it but it should be subject to a test, and it should be released if that is possible. But there does seem to be a contradiction on the one hand, and I will give an example again. We have recently voted to have a Committee of Inquiry to look at what went on over the last few decades in that place that we all know only too well, but not simply in that place which should not be mentioned, but on the one hand we are saying that we have asked that legal advice should be looked at. We have asked that the Crown Officers and the legal advice should not be exempt from that Committee of Inquiry, but we have just voted today that the court information cannot be released. So we have voted for a Committee of Inquiry which will not be able to look at any of the court proceedings and that Committee of Inquiry will not be able to look, if it happens after this Law comes in, at any of the transcripts which related to those court proceedings, but it will be able to look at the legal advice. So I am slightly concerned here that, while we have this part in the right place, there is an inconsistency with the information potentially being released when it relates to

legal advice that has been given, but when it relates to court proceedings which could well be in the public interest in certain circumstances, and certainly within the context of a Committee of Inquiry, then we have a slight contradiction here. I acknowledge that is an argument I should have made perhaps 10 minutes ago but it is not one that came to me at the time but nonetheless the inconsistency I think is an issue here.

6.6.4 Deputy R.G. Le Hérisier:

I think when we talk about penguins I do not want us to get into a flap about the issue.

[17:00]

What I would say on the issue of international relations, it strikes me there is a major, major issue there as we have seen with the release of all that WikiLeaks information in recent months. It strikes me at any point in time, particularly as we are now developing a new profile in international relations, you can use the good old standard excuse: "This is highly sensitive. If we were to put it into the public domain it would prejudice the nature of the negotiations we are involved with" and so on. In other words, you could close down international relations all the time. As Scrutiny is closed down under this formation of policy argument a lot of the time, you could close down international relations a lot of the time. I would have expected that this would be incredibly tightly defined so that it would only be in cases where there were very, very sensitive issues at stake with very, very sensitive actions contemplated of the kind the United States has been involved with this week or whatever. But it is highly, highly unlikely that such issues will apply to Jersey that will be in these kind of what you might call life or death situations. I would like the Chairman's comment on whether there is a real possibility that this is going to be misinterpreted, it is going to be much too rigid in its application and whether in fact we need it, this is Article 41, because I do think this is an over-the-top important kind of provision which I think is a bit, quite frankly, not only over the top, but over-dramatic in the Jersey context. Thank you.

6.6.5 Deputy P.V.F. Le Claire:

I am looking at the slides of the presentation made by the Information Commissioner of the Cayman Islands and it is a pity, really, that this legislation has not been accorded - well it has taken time - a greater level of scrutiny perhaps to look at these issues that have been raised by Deputy Duhamel and, setting aside the penguin analogy, the issue that was raised by Deputy Tadier. In the slides for the presentation by the Information Commissioner it says that there are only 11 narrow circumstances in which the application for a record that is made to a public authority the Government may refuse access. I am concerned that when I asked the Commissioner what her view was of their law and our law she said: "Your law is somewhat different in that it gives with one hand and it takes away with another" and maybe this is where she was referring to because I could not drive home that inquiry. So, when you look at Part 5: Qualified exempt information, I am wondering whether or not we have more exemptions in there than are healthy. Under Article 33 Commercial Interests: "its disclosure would, or would be likely to, prejudice the commercial interests of a person, including the scheduled public authority holding the information." To what level and to what degree? It is probably not the right time to be asking these kinds of questions. Would that go into agricultural subsidies through the Agricultural Scheme in the future where we have another requisite at the moment where all public money given to individuals is declarable to Senator Ferguson's group? Also, in relation to the corporation sole, the Minister, if somebody wanted to come back to Jersey under Article 34: the economic interests of Jersey or the financial interests of the States of Jersey. We heard in written answers this morning an answer to a question I put of the Minister for Economic Development that the claimants in regards to the water pollution at the airport have been given a final settlement opportunity. They are considering that now, and the representatives are considering that now, but at what time in the future, given that we debated that in camera and that we have a timescale in camera of the information that was given to us, and

now is the only time they can come to a reasonable settlement, are they going to be able to evaluate what happened and to take into account what circumstances may visit upon them, their property and their loved ones in the future because of this pollution? So I think that the overall concern that has been raised by Deputy Duhamel sets some fears running in my mind and I am going to be probably voting against some of these if we can take them independently. I think they are perhaps of importance but they certainly are causing some concern. Just lastly, I did note that, apart from the costs which they set out, which are interesting maybe for Third Reading or the amendment, that the Freedom of Information Law when it was introduced in the Cayman Islands, a requirement under that was that it was reviewed in 18 months. Are we going to be reviewing this in 18 months, because there certainly may be that time between now and then for us to dig-down about the policies, *et cetera*, that have been discussed. At the moment, it is quite concerning because of the policies under consideration. If you take, for example, the compost site: millions of pounds of public money being expended, there is no access to those documents, no analysis of the tendering, no analysis of the technology, no analysis of the sites and no analysis of the officers' recommendations. In the first instance, the documents which I have now which indicate that during the meeting of the Council of Ministers when it was decided not to put it in Warwick Farm, the Council of Ministers were not fully there - well, that is a by-the-by - but they were not all present.

The Deputy Bailiff:

Deputy, which of the qualified exemptions are you addressing at the moment?

6.6.6 Deputy P.V.F. Le Claire:

The one which relates to policy. An exemption to ... Article 35. In relation to that, at the time it was suggested by the officers that the best place to put the compost site was in Warwick Farm. But peculiarly the Council of Ministers of the day were hung in their decision, so the Chief Minister for the first time, Senator Walker, cast his second vote. He had 2 votes that day. So he cast his second vote in relation to that policy and it ended up in La Collette instead of in Warwick Farm where the officers recommended it go. Ever since then - including Buncefield and all the other issues that we have been talking about, and the loss of maritime opportunity, which I am sure the Minister for Transport and Technical Services may appreciate - all of those opportunities, all of those evaluations and all of those documents, at the moment they are available, but they certainly will not be in the future if we agree to this, and there are no minutes at the moment. There are no minutes between when the Ministers meet and when their officers meet. That has been raised recently by the Deputy of St. Mary, I believe. What official record is held? It has been in questions in the States as to what is decided upon. It was only after a proposition I think I brought myself, or a question I brought myself, that the actual agenda of the corporate officers was made available to States Members, because we were not being told what they were up to and no political representation was taking place, and still is not, at those meetings. Then we were told they would be circulated but I understand they are just put up on the website; we certainly do not get them through the post, much less anything else these days. But my concern is there is no trail as to how the decisions have come about. For example, with instances like the water pollution at the airport where somebody's life may have been affected, certainly their livelihood and their property, there is no way of backtracking the actual decision that was made, and in this instance, by the corporation sole to then come back in the future and say: "Look, I have found this decision they made and based upon this paperwork that I have, I think they are liable and I want to take them to court." Well, fat chance you have of that. Then, again, maybe I am wrong but I am certainly concerned that we have this comment from the Commissioner who has looked at our law and looked at her own law in the Cayman Islands and has said ours is peculiar inasmuch as it gives with one hand and takes away with the other and I think it is down to the exemptions. I think basically you can have freedom of information until and unless it gets us where it hurts and then you cannot have anything. That is where I really have struggled over the years in being a States Member and this whole notion that the States gets it in the ear when something goes wrong and the Council of Ministers gets

applauded when something goes right. Well, I have never been in favour of coming to the States and defending the States. I have always come to the States to try to defend the people. I have seen on many occasions the States acting in interests that I would only describe as being contrary to the good of the public.

6.6.7 Deputy T.M. Pitman:

Deputy Le Hérissier has talked about the Article I wish to raise so I can be very brief. I am quite open. I have very little faith often in the Chief Minister and the Council of Ministers but even I have been shocked to learn that he may be authorising the murder of rare penguins. **[Interruption]** Nevertheless, I think we should not lose track that Deputy Tadier has raised an important issue there and it certainly got my mind thinking. So all I would like to say is I hope the Chairman will give us some reassurance over the issue within Article 34 - economic interests - because it does look potentially as if it could be used as a catch-all for an awful lot of excuses not to go along with openness and transparency. I was not on P.P.C. at the time but I know that certainly is not what is intended, so if she could give us some reassurance there I would appreciate it.

6.6.8 The Deputy of St. Mary:

I am very glad to follow on from Deputies Le Claire and Pitman because I too wish to make a comment on Article 34 but slightly different. But when Deputy Le Claire finished by talking about the people of Jersey, that is exactly what is missing ... well it is not missing but it is a funny way of putting it that information is qualified exempt information if its disclosure would be likely to prejudice the economic interests of Jersey. The financial interests of the States of Jersey. So, that is the test that is written in here: money. Now you could, for example, re-write that “prejudice the interests of the people of Jersey”. You could write it like that so it would not be the “economic interests”, it would be the “interests” because our interests are not just economic. So I have a serious problem with that Article 34. I know there is a public interest test which is then applied but it seems odd that the public interest test is not built into the Article as it stands, and instead we have the money test, the economic interests of Jersey, as if those are the same as the interests of the people of Jersey. Well they might be, but they might not be. For instance, just to give one example, if you have an issue which is going to affect the reputation of Jersey like, for instance, a beach pollution incident, that will have an effect on visitor numbers. It will have an effect on the economic interests of Jersey. Do we keep it quiet because it will have an effect on the economic interests of Jersey or is there some other wider interest like the public interest? Or the interests of the environment. Or the interests of children bathing in the sea. So I think reputation has to be taken very widely and interest, the word “interest”, has to be taken more widely than in this Article as it stands.

The Deputy Bailiff:

Does any other Member wish to speak?

6.6.9 Senator A. Breckon:

Just a couple of points. The Deputy of St. Mary made the issue I wanted to make on Article 34. In Article 33 I mentioned earlier the fact that if the general public - us included - have access to some information, then perhaps it does save money. When I look at Article 33(b) Commercial Interests, it says: “its disclosure would, or would be likely to, prejudice the commercial interests of a person, including the scheduled public authority holding the information.” That reminded me of a case that came to light quite recently in the United Kingdom where it was discovered that the Ministry of Defence were paying some astronomical sums for light bulbs. Now although that might be small beer, as it were, it was a silly amount of money. I cannot remember how much it was but it was many, many pounds, and it was only discovered because somebody had access to the information. So what we are saying there is we could not go there. The other thing that concerns me is, again, something I mentioned earlier, in Article 35 it mentions formulation and development of policies.

So we have that shut-out clause where again it could be about bus shelters, it could be about buses, transport in general, whatever it may be. But if it is at that level then it is any proposed policy by a public authority; the formulation or development of any policy. So again we have that shut-out clause which is worrying, I think, because if we are going to have this then there needs to be that. I was reminded of this because I think it was Deputy Martin said this morning about visiting a library in the U.K.

[17:15]

I remember about 7 years ago there was a planning issue that concerned my mother and I went to the local library and I asked: "How do I access the information?" and they said: "Well it is there on the shelves." I said: "What is there on the shelves?" He said: "The last so many agendas." I said: "What about accompanying papers?" He said: "It is all there" but if somebody at number 76 had objected, their name was not in there, it was just somebody from Smith Street had objected. So in the main we have a long way to go to catch up with other areas. With the local authorities, most of their functions are readily available - readily available - in public libraries, changed and rotated; the last 10 agendas are there; accompanying papers including officers' recommendations are all there. We have a long way to go to do that. Now, policy and development could go on for years like this has done, so what would be the public's access - a bit ironic - what has happened to freedom of information? I will tell you: policy and development is doing something but it has been through P.P.C. so it is a different channel. But some of these things as qualified exemptions as automatic, although there would be a test, but then who is applying the test; who judges the test? Is it the same people making the decisions? This bit is of a little concern to me. Thank you.

The Deputy Bailiff:

Does any other Member wish to speak? Chief Minister.

6.6.10 Senator T.A. Le Sueur:

Yes, it does strike me that Members who are concerned about the qualified exempt information need to also read on to Part 6 in terms of appeals to the Information Commissioner and subsequent appeals to the Royal Court. It is a matter of balance, I think. Had there not been the appeals provisions within the Law I can understand those concerns. But any person who tries to hide behind qualified information for the wrong reasons I think will get pulled-up quite quickly, either by the Information Commissioner or by the Royal Court.

The Deputy Bailiff:

Does any other Member wish to speak? Then I call on the Chairman of Privileges and Procedures Committee to reply.

6.6.11 The Connétable of St. Mary:

I have heard many things in this Chamber. I have heard some things described as whimsy before but I am afraid that penguins take the biscuit. To deal with this, firstly, as the Chief Minister has just said, all of these exemptions are qualified and are subject, as we know, to the public interest test but then there are various stages of appeal. Senator Breckon asked who applies the public interest test. Well initially in the department and then any complaints procedure in that department would be reviewed, perhaps then a senior officer would determine the test, then there is an appeal to the Information Commissioner and then there is a final appeal to the Royal Court. There is a full procedure. Both the Minister and the Information Commissioner are able to assess information and, to pick up on Deputy Tadier's point, they know the information, they are able to assess whether the public interest test has been applied and there is a possibility of a pre-emptive cost order. We are giving powers to the Rules of Court to be made about this so that there will be a certainty of level of fee to be charged before someone will decide to go to the final level of appeal. We have built in a 4-stage process to how the public interest test will be evaluated. It is there for a

very good reason. What Members must realise... firstly, Deputy Le Claire seemed to be concerned about many problems he has encountered previously and how this Law might address them or might not address them. This is, I would remind Members, the law for public access to official information. States Members should and do enjoy an enhanced process. We have access to information that the public currently do not so nothing in this Law is designed to take away from that. But this Law specifically comes down on the side of releasing information wherever it is possible. Even if there is something which is under one of these exemptions, the authority can release it. The public interest test will be applied. It cuts both ways. If the public interest is in releasing information, it will be released. Deputy Duhamel started things rolling by questioning Article 35 and that was echoed by some other Members. As I say, it is qualified, the public interest test means that there will be an appeals process but maybe there is an argument for taking policy and development out. If that is what the Deputy thinks, the effect would be that all information on policy formation would be open unless of course it came under another exemption. The information when it is requested can be touched by any of these exemptions and it would need to be evaluated as such. We would need to understand if everything was going to be open, whether we would, given our policy formulation, be able to rely on as much free and frank information as we would expect from our officers. Article 41, Deputy Le Hérisier was concerned particularly about this, Jersey cannot be a weak link. There are various pieces of information which our public authorities might have access to by virtue of agreements with international agencies. We cannot have Jersey being the point of attack for people wishing to break into that information. We have to ensure that we will not be excluded from receiving information, that our public authorities who need the information will not be cut-off by virtue of the fact that the authorities who currently hold the information would see Jersey as a weak link. On the face of it, it seems true that what real international threats could Jersey have? But of course we could be just a part in a chain of a bigger international picture and unless our authorities have this as a qualified exemption we might find ourselves excluded from that process in future.

6.6.12 Deputy R.G. Le Hérisier:

On a point of clarification, to take a less contentious example, say the Island through its new Brussels' office was involved in intense negotiation about Zero/Ten, and then it transpired it went down the wrong route, how would we know what had gone on, or what in a general sense is going on in those negotiations? Does she believe it should be kept from us, for example?

6.6.13 The Connétable of St. Mary:

I am sorry, I am not very good with hypothetical situations like that. I believe that the public interest test should be applied and that the balance of whether it is in the public interest to know exactly what has gone on would be applied, and probably in many cases it would come down to the information being disclosed. What Members must realise is these Articles do not prohibit disclosure; they simply say that there must be a public interest in disclosure. Where some Members seem to be confused is in understanding what is the public interest as opposed to what is just simply interesting to the public. It is a very different situation and I think that is partly the reason the Deputy of St. Mary is concerned because he is divorcing the public interest from what is set out in various Articles. But the public interest, the interest of the public at large, the global interest of the public, is that the exemptions are applied, are tested against whether it is in the public interest, in the Island's interest, in whatever capacity for information to be released, and that is applied every single time. So in fact the public interest is at the very heart of every single exemption and that is why I believe these exemptions are not a weakness; they are a strength. Members should not anticipate that simply because the exemptions are available they will always mean that there is no disclosure. In fact, analysis of what has happened in other jurisdictions shows how the test works and how often the information is readily available but there are safeguards which need to be built in.

The Deputy Bailiff:

Chairman, I am wondering if it would be helpful to ask the Solicitor General’s comment on the legal structure of dealing with Deputy Le Hérisier’s question; not how it would be dealt with in practice, but the legal structure of it.

The Connétable of St. Mary:

I would be very grateful for that, yes.

The Solicitor General:

I am sorry to ask Members to change pages but if we go back, please, to Article 9 which is on page 146 and if we look, please, at Article 9(2) because this is the key to the disclosure process: “A scheduled public authority must supply qualified exempt information ...” so pausing there the onus is very much on disclosure even if it falls within one of the categories of qualified exempt information. But then the public authority will go on to consider or weigh or balance the public interests in deciding whether or not the particular information should be disclosed and that would be assessed on all the circumstances of the case and, of course, the decision must be a reasonable one. I hope that assists.

Deputy R.C. Duhamel:

I did mention as well that under Article 10(3)(b) it does state that the authority does not have to give any specific grounds for refusing information. So in effect the authority is in pole position to decide for whatever reasons it so wishes without disclosure.

The Deputy Bailiff:

Do you wish to comment on that Solicitor General?

The Solicitor General:

Well that might be right, of course, at the initial decision-making stage, but if one then gets up to the appeal process, an independent party is then starting to consider what is reasonable and what is not. If the request in itself seems reasonable, then the public authority have to start becoming slightly more forthcoming as to why it reached the decision it did.

The Connétable of St. Mary:

I do not think I really have anything else to add, so I move those Articles.

Deputy R.C. Duhamel:

Could I ask for Articles 34, 35, 36, 37 and 41, please, to be taken separately by an appel?

Deputy M. Tadier:

Could I ask for Articles 31, 32 and 34 to be taken separately?

The Deputy Bailiff:

Chairman, shall we take each Article separately?

The Connétable of St. Mary:

Sir, that would be simpler.

The Deputy Bailiff:

Very well. Article 30 is moved. All Members in favour of adopting Article 30, kindly show. Those against. Article 30 is adopted. Article 31 is proposed. The appel is called for in relation to Article 31. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 38		CONTRE: 2		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy of St. Martin		

Senator P.F. Routier		Deputy P.V.F. Le Claire (H)		
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator F.du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

We come to Article 32. The appel is called for in relation to Article 32. I ask the Greffier to open the voting.

POUR: 40		CONTRE: 2		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy of St. Martin		
Senator P.F. Routier		Deputy P.V.F. Le Claire (H)		
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.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 St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Article 33. Those Members in favour of adopting Article 33 kindly show. Those against. Article 33 is adopted. Article 34. The appel is called for. I ask the Greffier to open the voting.

POUR: 33		CONTRE: 9		ABSTAIN: 0
Senator T.A. Le Sueur		Senator A. Breckon		
Senator P.F. Routier		Deputy R.C. Duhamel (S)		
Senator P.F.C. Ozouf		Deputy of St. Martin		
Senator T.J. Le Main		Deputy R.G. Le Hérisssier (S)		
Senator B.E. Shenton		Deputy J.A. Hilton (H)		
Senator S.C. Ferguson		Deputy P.V.F. Le Claire (H)		
Senator A.J.H. Maclean		Deputy S. Pitman (H)		
Senator B.I. Le Marquand		Deputy M. Tadier (B)		
Senator F.du H. Le Gresley		Deputy T.M. Pitman (H)		
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				

Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
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 D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Article 35. The appel is called for. I will just ask the Greffier to re-set the system and to open the voting.

POUR: 33		CONTRE: 8		ABSTAIN: 1
Senator T.A. Le Sueur		Senator A. Breckon		Deputy M. Tadier (B)
Senator P.F. Routier		Senator F.du H. Le Gresley		
Senator P.F.C. Ozouf		Deputy R.C. Duhamel (S)		
Senator T.J. Le Main		Deputy of St. Martin		
Senator B.E. Shenton		Deputy R.G. Le Hérisssier (S)		
Senator S.C. Ferguson		Deputy P.V.F. Le Claire (H)		
Senator A.J.H. Maclean		Deputy S. Pitman (H)		
Senator B.I. Le Marquand		Deputy T.M. Pitman (H)		
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
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 D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Article 36. All Members in favour of adopting ...

[17:30]

Deputy R.C. Duhamel:

I did ask at the beginning for 34, 35, 36, 37 and 41 to be taken by appel and you did make a note of it.

The Deputy Bailiff:

No, I made a note of which ones you wanted taken separately; I did not know you wanted the appel. Very well, Article 36, the appel is called for. The Greffier has re-set the system and I ask the Greffier to open the voting.

POUR: 38		CONTRE: 3		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy R.C. Duhamel (S)		
Senator P.F. Routier		Deputy of St. Martin		
Senator P.F.C. Ozouf		Deputy P.V.F. Le Claire (H)		
Senator B.E. Shenton				
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 St. Helier				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				

Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

If the Greffier could then re-set the system for Article 37 and I will ask him to open the voting.

POUR: 38		CONTRE: 3		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy R.C. Duhamel (S)		
Senator P.F. Routier		Deputy of St. Martin		
Senator P.F.C. Ozouf		Deputy P.V.F. Le Claire (H)		
Senator B.E. Shenton				
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 St. Helier				
Connétable of Trinity				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Article 38. All Members in favour of adopting Article 38 kindly show. Those against. The Article is adopted. Article 39. Those in favour of adopting Article 39 kindly show. Those against. The Article is adopted. Article 40. Those Members in favour of adopting Article 40 kindly show. Those against. The Article is adopted. Article 41. The appel is called for. I ask the Greffier to open the voting.

POUR: 37		CONTRE: 6		ABSTAIN: 0
Senator T.A. Le Sueur		Deputy R.C. Duhamel (S)		
Senator P.F. Routier		Deputy of St. Martin		
Senator P.F.C. Ozouf		Deputy R.G. Le Hérisier (S)		
Senator B.E. Shenton		Deputy P.V.F. Le Claire (H)		
Senator A. Breckon		Deputy M. Tadier (B)		
Senator S.C. Ferguson		Deputy T.M. Pitman (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 St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy D.J. De Sousa (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

Article 42. Those Members in favour of adopting Article 42 kindly show. Those against. The Article is adopted. **[Interruption]** The adjournment is called for. Chairman, I know the excitement is barely too much for you but Article 19 we will take first thing in the morning. **[Laughter]**

The Connétable of St. Mary:

Sir, thank you so much.

The Deputy Bailiff:

The States now stand adjourned until 9.30 a.m. tomorrow morning.

ADJOURNMENT

[17:32]