

# STATES OF JERSEY

## OFFICIAL REPORT

**TUESDAY, 19th FEBRUARY 2013**

<b>COMMUNICATIONS BY THE PRESIDING OFFICER .....</b>	<b>9</b>
1.    The Deputy Bailiff:.....	9
<b>APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS .....</b>	<b>9</b>
<b>2.    Resignation of Mr. S. Haigh as a non-elected Member of the Public Accounts Committee .....</b>	<b>9</b>
2.1    Deputy T.A. Vallois of St. Saviour: .....	9
<b>QUESTIONS.....</b>	<b>9</b>
<b>3.    Written Questions .....</b>	<b>9</b>
3.1.    THE DEPUTY OF ST. PETER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE LENGTH OF WAITING LISTS FOR HOSPITAL CONSULTANTS: .....	9
3.2    DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE PRESENT POSITION OF P.6/2007 ‘SOCIAL HOUSING PROPERTY PLAN 2007 – 2016’: .....	10
3.3    DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE PROJECTED FIGURES FOR 2013 – 2016 RENTAL INCOME:.....	13
3.4    DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE PROJECTED COSTS TO BE TRANSFERRED TO THE NEW HOUSING TRUST: .....	15
3.5    DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE EVALUATION OF MANAGEMENT COSTS: .....	17
3.6    THE DEPUTY OF GROUVILLE OF THE MINISTER FOR HOME AFFAIRS REGARDING THE RE-ZONING OF 7 SITES FOR SHELTERED HOUSING: .....	20
3.7    THE CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING SEWAGE PUMPING STATIONS:.....	21
3.8    DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING JERSEY TELECOM’S FIBRE OPTIC SCHEME: .....	22
3.9    DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF HEALTH, SOCIAL SECURITY AND HOUSING SCRUTINY PANEL REGARDING A REVIEW OF THE PROPOSED NEW HOSPITAL BUILD: .....	23
3.10    DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING A MUTUAL DRIVING-LICENCE EXCHANGE WITH ROMANIA: .....	25

3.11	DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE RECOGNITION OF JERSEY DRIVING-LICENCES OUTSIDE OF THE ISLAND: .....	25
3.12	DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING THE RECENT DISCIPLINARY HEARING INVOLVING 3 POLICE OFFICERS:.....	25
3.13	DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING EVIDENCE IN A DISCIPLINARY HEARING INVOLVING 3 POLICE OFFICERS:.....	26
3.14	DEPUTY M.R. HIGGINS OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING COMPLAINTS PROCEDURES IN RESPECT OF CERTAIN POST-HOLDERS: .....	27
3.15	DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING STUDIES ON INCIDENTS OF CANCER IN JERSEY: .....	28
3.16	DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE LEGAL RIGHTS OF PARENTS TO ACCESS RECORDS RELATING TO THEIR CHILDREN:.....	30
3.17	DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE PRICING STRUCTURE OF GIGABIT SERVICES:.....	31
3.18	THE DEPUTY OF GROUVILLE OF H.M. ATTORNEY GENERAL REGARDING THE REZONING OF 7 SITES FOR SHELTERED HOUSING: .....	31
3.19	SENATOR S.C. FERGUSON OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE NUMBER OF HOUSEHOLDS IN RECEIPT OF SOCIAL SECURITY: .....	32
3.20	SENATOR S.C. FERGUSON OF THE MINISTER FOR HEATH AND SOCIAL SERVICES REGARDING MODERN WORKING GUIDELINES AND THEIR RELATIONSHIP WITH THE MENTAL HEALTH (JERSEY) LAW 1969:.....	33
3.21	DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING AN ACTION AID REPORT ON COMPANY TAX AVOIDANCE: ....	35
3.22	DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE AVOIDANCE OF TAXES:.....	35
3.23	DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING A REVIEW OF PRIMARY HEALTH CARE:.....	36
3.24	DEPUTY T.M. PITMAN OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING THE ELECTORAL COMMISSION’S REFORM PROPOSALS REGARDING CONNÉTABLES: .....	37
3.25	DEPUTY T.M. PITMAN OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING THE CRITERIA FOR FINANCIAL ASSISTANCE TO PURSUE ACTIONS UNDER THE DATA PROTECTION (JERSEY) LAW 2005: .....	38
3.26	DEPUTY T.M. PITMAN OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING PARITY WITH THE UNITED KINGDOM ON ISSUES SUCH AS HATE CRIMES: .....	38
3.27	DEPUTY T.M. PITMAN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING CHARGES TO IMPORT ELECTRICITY FROM FRANCE:.....	39

3.28 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE COST OF LANDSCAPING AT LA COLLETTE: .....	39
3.29 DEPUTY M. TADIER OF ST. BRELADE OF THE CHIEF MINISTER REGARDING FUNDING FOR THE NURSES PAY PARITY AGREEMENT:.....	40
3.30 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING LICENCES TO ENTER THE JERSEY WORKFORCE:.....	41
3.31 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING REMOVING OR DELAYING ENTITLEMENT TO INCOME SUPPORT FOR THE UNEMPLOYED:.....	42
3.32 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING TARGETS FOR THE GIGABIT PROJECT:.....	43
3.33 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING ENCOURAGING MORE COMPANIES TO REGISTER IN JERSEY:.....	43
3.34 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF THE ENVIRONMENT SCRUTINY PANEL REGARDING THE REVIEW OF PLANNING PROCESSES:.....	44
3.35 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING PROGRESS ON BRINGING FORWARD ‘DEATH BY CARELESS DRIVING’ LEGISLATION: .....	45
<b>4. Oral Questions.....</b>	<b>46</b>
4.1 Connétable P.J. Rondel of St. John of the Minister for Transport and Technical Services regarding the road resurfacing programme:.....	46
Deputy K.C. Lewis of St. Saviour (The Minister for Transport and Technical Services): .....	46
4.1.1 The Connétable of St. John: .....	46
4.1.2 Deputy S. Power of St. Brelade: .....	47
4.1.3 Deputy M. Tadier of St. Brelade: .....	47
4.1.4 Deputy J.M. Maçon of St. Saviour:.....	47
4.1.5 Deputy G.C.L. Baudains of St. Clement: .....	47
4.1.6 The Connétable of St. John: .....	47
4.2 Deputy K.L. Moore of St. Peter of the Minister for Health and Social Services regarding the appointment of a 4th consultant in Trauma and Orthopaedics to help manage waiting lists:.....	48
Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):.....	48
4.2.1 The Deputy of St. Peter: .....	48
4.2.2 Senator S.C. Ferguson: .....	48
4.2.3 Deputy J.G. Reed of St. Ouen: .....	49
4.2.4 Deputy J.A. Hilton of St. Helier:.....	49
4.2.5 Deputy G.P. Southern of St. Helier: .....	49
4.2.6 Deputy R.G. Le Hérissier of St. Saviour: .....	49
4.2.7 Deputy J.H. Young of St. Brelade:.....	49
4.3 Deputy G.C.L. Baudains of the Minister for Planning and Environment regarding the monitoring of local bass stocks: .....	50
Deputy R.C. Duhamel of St. Saviour (The Minister for Planning and Environment): .....	50
4.3.1 Deputy G.C.L. Baudains:.....	50

4.4	Deputy M.R. Higgins of St. Helier of the Attorney General regarding the co-operation of the Jersey authorities in the Hampshire Police enquiry:.....	51
	Mr. T.J. Le Cocq Q.C., H.M. Attorney General: .....	51
4.4.1	Deputy M.R. Higgins:.....	51
4.4.2	Deputy M.R. Higgins:.....	51
4.5	Deputy G.P. Southern of the Minister for Social Security regarding the basis for the cessation of Income Support payments to claimants:.....	51
	Senator F. du H. Le Gresley (The Minister for Social Security): .....	52
4.5.1	Deputy G.P. Southern:.....	52
4.5.2	Deputy G.P. Southern:.....	52
4.5.3	Deputy M. Tadier: .....	52
4.5.4	Deputy M. Tadier: .....	53
4.5.5	Deputy G.P. Southern:.....	53
4.6	Deputy R.J. Rondel of St. Helier of the Minister for Treasury and Resources regarding the tender process for the States mobile telephone contract:.....	53
	Senator P.F.C. Ozouf (The Minister for Treasury and Resources): .....	53
4.6.1	The Connétable of St. John: .....	54
4.6.2	Senator S.C. Ferguson:.....	54
4.6.3	Senator S.C. Ferguson: .....	54
4.6.4	Deputy R.J. Rondel:.....	54
4.7	Deputy S. Pitman of St. Helier of the Minister for Home Affairs regarding the co-operation of Senior Police Officers with a disciplinary investigation relating to the Curtis Warren case:.....	54
	Senator B.I. Le Marquand (The Minister for Home Affairs): .....	55
4.7.1	Deputy S. Pitman:.....	55
4.7.2	Deputy S. Pitman:.....	56
4.7.3	Deputy M.R. Higgins:.....	56
4.8	Deputy M. Tadier of the Minister for Home Affairs regarding the recommendations contained within the disciplinary tribunal's judgement relating to the 3 police officers involved in the Curtis Warren case: .....	57
	Senator B.I. Le Marquand (The Minister for Home Affairs): .....	57
4.8.1	Deputy M. Tadier: .....	57
4.8.2	Deputy M.R. Higgins:.....	58
4.8.3	Deputy M.R. Higgins:.....	58
4.8.4	Deputy J.A. Hilton:.....	59
4.8.5	Deputy R.G. Le Hérisier: .....	59
4.8.6	Deputy M. Tadier: .....	59
4.9	Senator S.C. Ferguson of the Minister for Home Affairs regarding the compulsory micro-chipping of all dogs in Jersey: .....	60
	Senator B.I. Le Marquand (The Minister for Home Affairs): .....	60
4.9.1	Senator S.C. Ferguson: .....	60
4.10	Deputy R.G. Le Hérisier of the Assistant Minister for Economic Development regarding the responsibility for signing off the funding of projects: .....	61
	Deputy C.F. Labey of Grouville (Assistant Minister for Economic Development - rapporteur): .....	61
4.10.1	Deputy R.G. Le Hérisier:.....	61
4.10.2	Deputy M. Tadier:.....	62
4.10.3	Deputy M. Tadier:.....	62
4.10.4	Senator L.J. Farnham: .....	62
4.10.5	Deputy T.M. Pitman of St. Helier:.....	63

4.10.6	Deputy S.G. Luce of St. Martin: .....	63
4.10.7	The Deputy of St. Martin: .....	63
4.10.8	Deputy T.A. Vallois: .....	63
4.10.9	Deputy R.G. Le Hérissier: .....	63
4.10.10	Deputy R.G. Le Hérissier: .....	64
4.11	Deputy J.M. Le Bailly of St. Mary of the Minister for Planning and Environment regarding the rezoning of the Longueville and Samarès Nurseries sites: .....	64
	Deputy R.C. Duhamel (The Minister for Planning and Environment): .....	64
4.11.1	Connétable L. Norman of St. Clement: .....	64
4.11.2	Deputy R.G. Le Hérissier: .....	65
4.11.3	Deputy J.A. Hilton: .....	65
4.11.4	Connétable J.M. Refault of St. Peter: .....	65
4.11.5	The Deputy of St. Peter: .....	66
4.11.6	Deputy J.A. Martin of St. Helier: .....	66
4.11.7	Deputy M. Tadier: .....	66
4.11.8	The Deputy of St. Mary: .....	66
4.12	Deputy J.H. Young of the Minister for Planning and Environment regarding the provision of pre-application Planning advice in respect of the 18th Century historic properties in Dumaresq Street: .....	67
	Deputy R.C. Duhamel (The Minister for Planning and Environment): .....	67
4.12.1	Deputy J.H. Young: .....	67
4.12.2	Deputy R.G. Le Hérissier: .....	67
4.12.3	Deputy R.G. Le Hérissier: .....	67
4.12.4	Deputy J.H. Young: .....	68
4.13	Deputy T.M. Pitman of the Minister for Home Affairs regarding the authenticity and accuracy of unsigned statements provided as part of the disciplinary investigation relating to the Curtis Warren case: .....	68
	Senator B.I. Le Marquand (The Minister for Home Affairs): .....	69
4.13.1	Deputy T.M. Pitman: .....	69
4.13.2	Deputy M.R. Higgins: .....	69
4.13.3	Deputy M.R. Higgins: .....	70
4.13.4	Deputy T.M. Pitman: .....	70
4.14	The Deputy of St. Martin of the Minister for Health and Social Services regarding the current time that a new referral would normally expect to wait in order to see a consultant in Urology at the General Hospital: .....	70
	The Deputy of Trinity (The Minister for Health and Social Services): .....	70
4.14.1	The Deputy of St. Martin: .....	70
4.14.2	Deputy M. Tadier: .....	71
4.14.3	Deputy R.G. Le Hérissier: .....	71
4.14.4	Deputy R.G. Le Hérissier: .....	71
4.14.5	The Deputy of St. Ouen: .....	71
4.14.6	Senator S.C. Ferguson: .....	71
4.14.7	Senator S.C. Ferguson: .....	72
4.14.8	The Deputy of St. Martin: .....	72
4.15	Deputy T.M. Pitman of the Minister for Treasury and Resources regarding complaints received from residents in the Havre des Pas area about noise emanating from the La Collette power station: .....	72
	Senator P.F.C. Ozouf (The Minister for Treasury and Resources): .....	72
4.15.1	Deputy T.M. Pitman: .....	73
4.15.2	Deputy J.H. Young: .....	73

4.15.3	The Connétable of St. John: .....	73
4.16	The Deputy of St. Peter of the Minister for Health and Social Services regarding budget cuts to the respite services based at Oakwell: .....	74
	Deputy J.A. Martin (Assistant Minister for Health and Social Services - rapporteur): .....	74
4.16.1	The Deputy of St. Peter: .....	74
4.16.2	The Deputy of St. Ouen: .....	74
4.16.3	The Deputy of St. Ouen: .....	74
4.16.4	The Deputy of St. Ouen: .....	75
4.16.5	Deputy J.A. Hilton: .....	75
4.16.6	Deputy J.A. Hilton: .....	75
4.16.7	Deputy R.G. Le Hérisier: .....	75
4.16.8	Deputy R.G. Le Hérisier: .....	76
4.16.9	The Deputy of St. Peter: .....	76
4.17	Deputy M.R. Higgins of the Minister for Home Affairs regarding confidence in the States of Jersey Police's co-operation with the Hampshire Enquiry: .....	76
	Senator B.I. Le Marquand (The Minister for Home Affairs): .....	76
4.17.1	Deputy M.R. Higgins: .....	76
4.17.2	Deputy G.C.L. Baudains: .....	77
4.17.3	Deputy M. Tadier: .....	77
4.17.4	Deputy M.R. Higgins: .....	77
4.17.5	Deputy M.R. Higgins: .....	78
4.18	Senator S.C. Ferguson of the Minister for Health and Social Services regarding the health implications for humans who import dogs and cats or who are injured by wild animals whilst travelling in Eastern Europe: .....	78
	The Connétable of St. Peter (Assistant Minister for Health and Social Services - rapporteur): .....	78
<b>5.</b>	<b>Questions to Ministers without notice - The Minister for Treasury and Resources....</b>	<b>79</b>
5.1	Deputy S. Power: .....	79
	Senator P.F.C. Ozouf (The Minister for Treasury and Resources): .....	79
5.2	The Deputy of St. Peter: .....	79
5.3	The Connétable of St. John: .....	80
5.3.1	The Connétable of St. John: .....	80
5.4	Deputy J.A. Hilton: .....	80
5.4.1	Deputy J.A. Hilton: .....	81
5.5	The Deputy of St. Martin: .....	81
5.6	Deputy M. Tadier: .....	81
5.7	The Deputy of St. Mary: .....	82
5.8	The Deputy of St. Ouen: .....	82
5.9	Senator S.C. Ferguson: .....	82
5.10	Deputy J.H. Young: .....	83
<b>6.</b>	<b>Questions to Ministers without notice - The Chief Minister.....</b>	<b>83</b>
6.1	Deputy S. Power: .....	83
	Senator I.J. Gorst (The Chief Minister): .....	83
6.2	Deputy R.G. Le Hérisier: .....	84
6.2.1	Deputy R.G. Le Hérisier: .....	84
6.3	Deputy J.A. Hilton: .....	84
6.3.1	Deputy J.A. Hilton: .....	85
6.4	Deputy G.P. Southern: .....	85
6.5	Deputy M. Tadier: .....	85

6.5.1 Deputy M. Tadier: .....	86
6.6 Deputy M.R. Higgins:.....	86
6.7 The Deputy of St. Martin: .....	86
6.8 Deputy J.H. Young:.....	87
<b>PUBLIC BUSINESS .....</b>	<b>87</b>
<b>7. Minister for Justice and Department of Justice: report (P.120/2012) – as amended ..</b>	<b>87</b>
7.1 Senator L.J. Farnham:.....	88
7.1.1 Deputy J.A. Hilton:.....	89
7.1.2 Deputy J.H. Young:.....	90
7.1.3 Deputy G.P. Southern:.....	91
7.1.4 Senator I.J. Gorst:.....	91
<b>LUNCHEON ADJOURNMENT PROPOSED .....</b>	<b>92</b>
<b>LUNCHEON ADJOURNMENT.....</b>	<b>92</b>
7.1.5 Senator B.I. Le Marquand:.....	92
7.1.6 Deputy S. Power:.....	94
7.1.7 Deputy R.G. Le Hérissier: .....	95
7.1.8 Deputy T.M. Pitman: .....	96
7.1.9 Deputy M. Tadier: .....	98
7.1.10 Senator P.M. Bailhache:.....	99
7.1.11 Senator L.J. Farnham: .....	100
<b>8. Draft Motor Traffic (Third Party Insurance) (Cost Recovery) (Jersey) Regulations 201- (P.135/2012) .....</b>	<b>103</b>
8.1 The Deputy of Trinity (The Minister for Health and Social Services):.....	103
8.1.1 Deputy K.C. Lewis:.....	104
8.1.2 Deputy J.H. Young:.....	104
8.1.3 Senator L.J. Farnham:.....	104
8.1.4 The Deputy of St. Ouen:.....	104
8.1.5 The Connétable of St. John:.....	105
8.1.6 Senator B.I. Le Marquand:.....	105
8.1.7 The Deputy of Trinity:.....	105
The Deputy of St. Peter (Chairman, Health, Social Security and Housing Scrutiny Panel): ..	106
<b>9. Draft Referendum (Reform of States Assembly) (Jersey) Act 201- (P.5/2013).....</b>	<b>107</b>
9.1 Senator P.M. Bailhache (Rapporteur).....	107
<b>9.2 Draft Referendum (Reform of States Assembly) (Jersey) Act 201- (P.5/2013): amendment (P.5/2013 Amd.) .....</b>	<b>110</b>
9.2.1 Deputy G.P. Southern:.....	111
9.2.2 Senator P.M. Bailhache: .....	112
9.2.3 Senator L.J. Farnham:.....	115
9.2.4 Deputy M. Tadier: .....	115
9.2.5 Deputy J.M. Maçon: .....	117
9.2.6 The Deputy of St. Martin:.....	119
9.2.7 The Connétable of St. Peter: .....	119
9.2.8 Deputy J.A.N. Le Fondré:.....	119
9.2.9 Connétable J. Gallichan of St. Mary: .....	121
9.2.10 Deputy J.A. Martin: .....	122

9.2.11	Deputy M.R. Higgins:	123
9.2.12	Senator I.J. Gorst:	124
9.2.13	Deputy T.A. Vallois:	124
9.2.14	Deputy R.G. Le Hérisier:	125
9.2.15	Senator F. du H. Le Gresley:	125
9.2.16	Deputy T.M. Pitman:	126
9.2.17	Deputy J.A. Hilton:	126
9.2.18	The Connétable of St. Helier:	126
9.2.19	Senator A. Breckon:	127
9.2.20	Senator P.F. Routier:	128
9.2.21	Deputy G.P. Southern:	128

<b>ADJOURNMENT</b>	<b>130</b>
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[9:31]

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

## **COMMUNICATIONS BY THE PRESIDING OFFICER**

### **1. The Deputy Bailiff:**

First of all I would like to take the opportunity, as usual, of welcoming Her Majesty's personal representative, His Excellency. Secondly, hawk-eyed Members will have noticed that we had a change of representation in bringing the mace into the Assembly this morning, and I would like to take the opportunity of welcoming on your behalf Advocate Mark Harris, who has been appointed Deputy Viscount. Very well, there is nothing further under A.

## **APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS**

### **2. Resignation of Mr. S. Haigh as a non-elected Member of the Public Accounts Committee**

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

The resignation of Mr. Haigh as a non-elected member of the Public Accounts Committee has been tabled. Chairman, is there anything you wish to add to that?

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

I would just like to thank the member, Mr. Haigh, for serving on the Public Accounts Committee. His time there has been very much appreciated and I wish him all the success in future. I would like to advise Members that we will be shortly going out to seek a new member on to the Public Accounts Committee.

[9:45]

## **QUESTIONS**

### **3. Written Questions**

#### **3.1. THE DEPUTY OF ST. PETER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE LENGTH OF WAITING LISTS FOR HOSPITAL CONSULTANTS:**

##### **Question**

Could the Minister advise if the current length of waiting lists to see hospital consultants include preliminary lists to get on to waiting lists?

##### **Answer**

The current system in operation has a single waiting list, per Consultant/specialty.

When a GP sends a referral for a consultant outpatient appointment it will:-

- Be logged onto the patient administration system and the waiting time clock begins
- Be given to the Consultant to grade as urgent or routine
- Urgent referrals will then be sent an appointment straight away
- Routine referrals to specialties with short waits will be sent an appointment straight away

- Routine referrals to specialties with a routine wait greater than 8 weeks will be sent an acknowledgement and then an appointment will be sent closer to the time of the actual appointment. Some clerks refer to this as the ‘pending or preliminary list’
- On occasion further information may be sought from the GP or patient but this is not the case for the vast majority of referrals

Clinics are not booked more than 6-8 weeks in advance to prevent cancellations and re-booking as Consultants are required to give 6-8 weeks notice of leave.

The calculation of the time waited by patients is the same for all and starts with the receipt of the referral and the entering of that referral onto our patient administration system.

There are no secondary lists or hidden waits.

### **3.2 DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE PRESENT POSITION OF P.6/2007 ‘SOCIAL HOUSING PROPERTY PLAN 2007 – 2016’:**

#### **Question**

- a) Would the Minister provide the present position of sales versus the forecast in respect of P.6/2007 (“Social Housing Property Plan 2007 – 2016”) year by year, showing planned disposals versus actual and identifying -
  - i) the number and types of units sold each year (ie 3 bed houses, 1 bed bungalows etc), versus the planned disposal programme;
  - ii) the amount of actual cash received (versus projected) for transactions in any one year,
  - iii) where a deferred payment was agreed, the amount actually deferred (compared to projections) for transactions in any one year?
  
- b) In relation to the balance of cash of £101 million by 2016 originally envisaged in P.6/2007 to generate funds for the department, could the Minister provide actual cash balances for that fund from the period 2007 to 31st December 2012 on an annual basis, and also provide the revised annual forecasts for the period from 1st January 2013 to 2016?
  
- c) Would the Minister provide an explanation of the reasons for any significant discrepancies that have arisen from the original proposals agreed in P.6/2007?

#### **Answer**

I would start by saying that P.6/2007 did not forecast annual sales; it merely said that up to 800 properties would be sold over 10 years and made no guarantee about actual numbers of sales or proceeds in any specific period. The present position is that we have provided 119 social housing residents with the opportunity to become homeowners by taking advantage of the deferred payment scheme. In addition to this we have sold a further 45 properties on the open market.

The breakdown of sales carried out by year is as follows;

Year & Bed Size	Deferred Payment	Open Market
-----------------	------------------	-------------

<b>2007</b>		
1 bed		
2 bed	1	
3 bed	19	2
4 bed	1	
5 bed		2
<b>2008</b>		
1 bed		3
2 bed	5	
3 bed	19	
4 bed	4	
5 bed		
<b>2009</b>		
1 bed		6
2 bed		
3 bed	15	1
4 bed		1
5 bed		
<b>2010</b>		
1 bed		
2 bed	3	2
3 bed	4	1
4 bed		1
5 bed		2
<b>2011</b>		
1 bed		2
2 bed	2	1
3 bed	2	2
4 bed	1	
5 bed		
<b>2012</b>		
1 bed		1
2 bed		4
3 bed	2	4
4 bed		1
5 bed		
Total	78	36
<b>Sales prior to P6/2007</b>		
2004-2006	41	9
Total number of sales	119	45

In relation to the amount of cash received I can confirm that the sales listed above have generated £42 million and a further £6.7 million is held in bonds. £27.1 million of that has been generated through deferred payment sales.

The breakdown of deferred sales figures by year is as follows

<b>Deferred Payments sales</b>							
<b>Year</b>	<b>£ received</b>	<b>Bond Value</b>	<b>% equity taken</b>				<b>Total number of sales</b>
2005	£3,700,000	£418,000	17 @ 10%				17
2006	£5,000,000	£564,666	24 @ 10%				24
2007	£4,300,000	£1,400,000	21 @ 25% reducing to 10%				21
2008	£6,700,000	£2,100,000	23 @ 25%	1 @ 0%	4 @ 25% reducing to 10%		28
2009	£3,900,000	£1,200,000	14 @ 25%	1 @ 21%			15
2010	£1,700,000	£406,275	3 @ 25%	1 @ 22%	1 @ 18%	2 @ 0%	7
2011	£1,300,000	£451,250	5 @ 25%				5
2012	£543,750	£181,250	2 @ 25%				2
<b>£27,143,750</b>		<b>£6,721,441</b>					<b>119</b>

In addition to the P6 sales a further 46 homes were sold through the Jersey Homebuy pilot scheme at La Providence in the 2009 and 2010.

	<b>Number of sales</b>	<b>Bond Value</b>
<b>Total Homebuy sales</b>	46	£8,531,000

P6/2007 said that sales will be carried out in a managed, sustainable way, without imposing unnecessary strain on the wider housing market, and related at all times to current levels of supply and demand within social housing. Decisions on sales to the open market and to tenants continue to be balanced against delivery of new social renting housing and the needs reflected in the Affordable Housing Gateway List.

I believe that there is a significant lack of supply; particularly in respect of affordable and social housing. More homes are clearly required and finding sources and sites for these is the responsibility of the Planning Minister. It is a fact that despite rezoning a number of sites in 2008 to address the urgent need for new homes, particularly homes designed to meet the needs of the ageing population, there has been next to no new supply of new social housing since 2008.

With regards to future sales the Department is currently working towards a target of achieving 15 sales a year. Should we meet those targets we are expecting to see monetary values in the region of those set out below.

#### **Assumed sales**

<b>Year</b>	<b>£ received</b>	<b>Bond Value</b>	<b>Total number of sales</b>
2013	£5,001,000	£714,000	15
2014	£5,197,000	£743,000	15
2015	£5,460,000	£780,000	15

2016	£5,736,000	£819,000	15
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I will of course be bringing forward my proposals for the future in my Report and Proposition setting out the principles of the proposed social housing transformation, together with a supporting Full Business Case, to the Council of Ministers on 27th February.

I do not think there are any discrepancies as the Deputy is suggesting, P.6 did not forecast specific numbers of sales within specific periods. Let us remember that the report was agreed in 2007, before the Island entered recession and lending became even more difficult for prospective buyers in the Island. This has of course had an impact on the amount of sales that were carried out. The fact that the Housing Department has managed to sell properties in line with P.6 despite the economic conditions and has been able to offer opportunities to aspiring first time buyers is in itself commendable and deserves to be praised.

### **3.3 DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE PROJECTED FIGURES FOR 2013 – 2016 RENTAL INCOME:**

#### **Question**

Would the Minister provide the following information for the years 2008 – 2012, and the projected figures for 2013 – 2016 in respect of the following -

- i) rents received from Housing tenants;
- ii) any other income – separately identifying any classifications of income of £100,000 or more;
- iii) a reconciliation of the total of (i) and (ii) (by year) to the revenue figures provided in the Annual Business Plans/MTFP for the department;
- iv) gross and net expenditure in respect of lettings and, where expenditure in respect of lettings includes expenditure in respect of asset disposals, identifying identify the latter separately ensuring that the figures correlate to the Business Plan/MTFP of the relevant period;
- v) gross and net expenditure in respect of rent and fee collection, ensuring that the figures correlate to the Business Plan/MTFP of the relevant period;
- vi) any other expenditure not included above separately identifying any classifications of amounts of £100,000 or more and where expenditure has been reclassified in later years identifying for both the year of reclassification and subsequently the amount that was reclassified ensuring that the total of (iv) – (vi) above correlates to the totals of the Business Plan/MTFP for the relevant period?

#### **Answer**

Projections for 2016 are not included as the MTFP does not cover this period. Modelling has been performed for the proposed Housing Association over a 30 year period, the results of which will be published in the ‘Incorporation of States Housing’, Report and Proposition and ‘Full Business Case’, in due course.

Each of your points is answered in turn below.

- (i) In accordance with International Financial Reporting Standards and UK Generally Accepted Accounting Standards, the Housing Department accounts for rental income on an accruals basis. Rental income as per the Annual Business Plans on that basis is noted below.

	Social housing rental income
2008	32,835,500
2009	32,913,800
2010	34,513,300
2011	35,325,100
2012	38,356,400
2013	39,824,500
2014	41,243,700
2015	42,709,800

- (ii) The Housing Department's other income per the Annual Business Plans is noted below.

	Other Rental Income*	Other income from operating activities**	Other income	Total
2008	414,300	2,270,700	99,000	2,784,000
2009	385,800	2,503,200	112,600	3,001,600
2010	487,500	2,493,000	82,000	3,062,500
2011	695,000	2,080,100	83,100	2,858,200
2012	716,900	1,709,500	87,000	2,513,400
2013	781,500	1,562,800	81,000	2,425,300
2014	776,000	1,562,600	81,000	2,419,600
2015	586,800	1,562,600	81,000	2,230,400

\*contributions received from Cottage Homes residents and income from parking permits, commercial rents and garages

\*\*utility recharges

- (iii) I refer you to the answer to your question 1240/5(7414) which shows where the above noted income streams are incorporated in the Annual Business Plan.
- (iv) Sales and marketing costs are less than £100k in each year of the Annual Business Plan in question. In accordance with States of Jersey requirements, properties are valued at fair value prior to sale and so no profit or loss is made on properties sold. The remainder of the Housing Department expenditure is in relation to the core activity of letting properties. I refer you to the answer to your question 1240/5(7414) which analyses expenditure as per the Annual Business Plans.
- (v) I refer you to the answer to your question 1240/5(7414) which analyses the expenditure in relation to rent and fee collection as per the Annual Business Plans.

- (vi) I refer you to the answer to your question 1240/5(7414) which analyses all expenditure as per the Annual Business Plans.

### **3.4 DEPUTY J.A.N. LE FONDRE OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE PROJECTED COSTS TO BE TRANSFERRED TO THE NEW HOUSING TRUST:**

#### **Question**

Would the Minister provide information for the years 2008 – 2012, and the projected figures for 2013 – 2016 in respect of the following :

- (i) any costs which will be transferred to the proposed new Housing Trust;
- (ii) any costs that will either remain with the States (ie any States Department) and any expenditure (revenue or capital) that may be incurred by any States Department as a result of the new Housing Trust or any other part of the proposed Housing Transformation Program, separately identifying any classifications of expenditure of £100,000 or more, and also identifying which Department / Ministry will incur such expenditure;
- (iii) any costs that will be incurred by any third parties as a result of the new Housing Trust or any other part of the proposed Housing Transformation Program, separately identifying any classifications of expenditure of £100,000 or more, and also identifying the nature of such third parties;
- (iv) any additional expenditure (revenue or capital) that may be incurred by the proposed Housing Trust separately identifying any classifications of expenditure of £100,000 or more?

#### **Answer**

As a Trustee and Secretary of the Les Vaux Housing Trust, Deputy Le Fondre will be aware that a Full Business Case in support of the proposal to create a Housing Association from the current Housing Department is complete. It is an impressive and comprehensive document, in excess of one hundred pages in length and is more than sufficient to answer the questions posed. All that was needed was some patience or perhaps a visit to the Housing Department where my door is always open to all.

My Department and I have adopted a collaborative and transparent working relationship with stakeholders and the other Housing Trusts, but regret this has not always been reciprocated. It is somewhat ironic that the request for information comes from the Secretary of Les Vaux Housing Trust which has, to date steadfastly refused to provide information. This would have assisted me in formulating plans for all social housing providers well into the future. I should reiterate that my efforts are motivated by a desire to protect and improve the rights and conditions of all social housing tenants.

I sincerely hope that this is not an attempt to compare a small Housing Trust with that of the largest Social Housing provider in the island. This would be like comparing apples to pears, as the organisations are very different. The Housing Department has an on-going large capital development programme, providing many hundreds of new units of accommodation, which Les Vaux Housing Trust has little or no history of undertaking. In addition, the Housing Department

has specialised services, co-ordinated with many other agencies dedicated to supporting some of the Island's most vulnerable residents.

In all of the questions above, I presume the reference to a 'Housing Trust' is in fact meant to be a reference to a 'Housing Association'.

Projections for 2016 are not included as the MTFP does not cover this period. Modelling has been performed for the proposed Housing Association over a 30 year period, the results of which will be published in the 'Incorporation of States Housing', Report and Proposition and 'Full Business Case', in due course.

Each of the points is answered in turn below.

- (i) The returns made by the Housing Department for the years in question are noted below. All costs incorporated in the returns, with the exception of those noted in point (ii) below, will be transferred to the proposed Housing Association on inception.

	Housing Department cash limit £000s
2008 – actual	22,015
2009 – actual	22,362
2010 – actual	23,287
2011 – actual	20,929
2012 – actual	24,558
2013 – forecast	26,799
2014 – forecast	27,972
2015 – forecast	29,339

- (ii) As part of the Housing Transformation Programme, a Strategic Housing Unit ("SHU") is proposed to be formed which would sit within the Chief Minister's Department. The activities of the proposed SHU are currently performed by the Housing Department, Population Office and Planning and relate to staff costs only. The cost is forecast to be £182k on inception of the proposed Housing Association and has/will vary in line with civil service pay rates. This cost will remain with the States of Jersey on formation of the Housing Association.

Depending upon the agreed rent policy some additional cost, which would be phased in over a number of years, may become payable to the tenants of social housing providers (both to the proposed Housing Association and the existing social housing trusts) by the Social Security Department in the form of additional housing component of Income Support.

- (iii) As part of the Housing Transformation Programme, a Social Housing Regulator is proposed to be established. The forecast cost of the regulator is £160k per annum and will commence on formation of the regulator. This will be funded by social housing providers on a pro-rata basis. The Housing Association will fund £120k of this cost.
- (iv) An allowance is made in the Housing Association business model for additional expenditure as follows:



- One off set up costs totalling £2,820k in years 2013/2014 (including the purchase of the pension debt in relation to Housing Department employees of £2,135k)
- Replacement IT systems of £500k
- Recurring costs paid to the Social Housing Regulator of £120k

The proposed Housing Association is forecast to perform substantial capital redevelopment of a number of sites currently in States ownership and to refurbish a number of existing units to bring them up to Decent Homes Standard. Total costs for this work is forecast to be £201m. Further capital expenditure will be incurred should there be demand for new social housing and sufficient funding available to the Housing Association.

Additional maintenance expenditure is forecast to be incurred to bring remaining homes up to Decent Homes Standard, and maintain them at that level. More management and time will be required to govern the amount of capital and revenue works required particularly in the first 10 years. Provision has been allowed for in the business case for the governance and support costs currently provided by other departments free of charge, such as legal services. Details of the business model of the proposed Housing Association will be published in the Full Business Case in due course.

### **3.5 DEPUTY J.A.N. LE FONDRÉ OF ST. LAWRENCE OF THE MINISTER FOR HOUSING REGARDING THE EVALUATION OF MANAGEMENT COSTS:**

#### **Question**

In light of the fact that in the Annual Business Plan 2011 the 2010 comparative figure for Sales and lettings had been restated from £2,082,000 (as per the Business Plan 2010) to £775,700 (2011 Business Plan) and that Estate Services had also been re-analysed, could the Minister provide the following information to show how these figures have been changed, and to allow an evaluation of management costs -

- i) A breakdown of the allocation of costs within the service analysis provided in the Annex to the Business Plan, separately identifying any sub-classifications for any amounts greater than £100,000, and ensuring that the totals clearly reconcile to the individual services analysed in the Business Plan (Planned Maintenance, Operations, Voids Refurbishment, Response Repairs, Assisted Living, Tenant participation, Sales and Lettings, Financial Management rent and fee collection)?
- ii) For each of the sub-categories of Estate services provide the amount allocated to each of these classifications in respect of management/administration costs, including the number of FTE's, ensuring that any other amounts are identified as necessary to reconcile back to the totals provided in (i) above?
- iii) Provide the information requested in (i) and (ii) above for 2012, and the projections for 2013 – 2016?

#### **Answer**

The information requested is on the attached appendix.

The reason for the reclassification is due to the cost of upgrading properties when they become void being classified within “sales and lettings” under “tenant services” in 2010 before being separately accounting for under “estate services” in 2011. This movement is shown in the appendix.

2010	Rental Income	Other Income	Staff	Repairs and Maintenance	Other	Overheads Incurred	Grand Total	FTE
<b>Estate Services</b>								
Maintenance			557,300	3,930,200	400,000	276,700	5,164,200	11.3
Operations		2,545,000			4,189,800	55,300	1,700,100	2.3
Cleaning					963,000		963,000	0.0
<b>Tenant Services</b>								
Assisted Living		20,000	167,200	200,000		110,700	457,900	4.5
Tenant Participation			100,900		81,000	55,300	237,200	2.3
Lettings & Sales			578,500	1,200,000	54,500	249,000	2,082,000	10.1
<b>Finance Services</b>								
Rent and Fee Collection	34,513,300	497,500	607,800		196,400	315,400	-33,891,200	12.9
	<u>34,513,300</u>	<u>3,062,500</u>	<u>2,011,700</u>	<u>5,330,200</u>	<u>5,884,700</u>	<u>1,062,400</u>	<u>-23,286,800</u>	<u>43.4</u>

2011	Rental Income	Other Income	Staff	Repairs and Maintenance	Other	Overheads Incurred	Grand Total	FTE
<b>Estate Services</b>								
Planned Maintenance		35,000	518,300	6,818,800	219,300	265,900	7,787,300	11.7
Operations		2,487,300			3,371,100		883,800	0.0
Voids Refurbishment			66,600	1,225,000		26,600	1,318,200	1.2
Response Repairs			250,100	1,792,600		132,900	2,175,600	5.9
<b>Tenant Services</b>								
Assisted Living		5,000	176,000	205,000		106,300	482,300	4.7
Tenant Participation			103,300		60,900	53,200	217,400	2.3
Sales & Lettings			380,500	70,000	122,900	186,100	759,500	8.2
<b>Finance Services</b>								
FM, Rent and Fee Collection	35,325,100	330,900	652,100		148,200	303,100	-34,552,600	13.4
	<u>35,325,100</u>	<u>2,858,200</u>	<u>2,146,900</u>	<u>10,111,400</u>	<u>3,922,400</u>	<u>1,074,100</u>	<u>-20,928,500</u>	<u>47.4</u>

2012	Rental Income	Other Income	Staff	Repairs and Maintenance	Other	Overheads Incurred	Grand Total	FTE
<b>Estate Services</b>								
Planned Maintenance		40,000	532,100	17,272,000	120,800	426,000	18,310,900	12.0
Operations		2,049,600			2,960,700	0	911,100	0.0
Voids Refurbishment			67,000	1,025,000		47,300	1,139,300	1.3
Response Repairs			176,200	1,735,000		142,000	2,053,200	4.0
<b>Tenant Services</b>								
Assisted Living		5,000	176,300	210,100		189,300	570,700	5.3
Tenant Participation					32,400	0	32,400	0.0
Sales & Lettings			379,600	50,800	30,000	331,300	791,700	9.3
<b>Finance Services</b>								
FM, Rent and Fee Collection	38,356,400	418,800	487,300		150,000	416,700	-37,721,200	11.7
	<u>38,356,400</u>	<u>2,513,400</u>	<u>1,818,500</u>	<u>20,292,900</u>	<u>3,293,900</u>	<u>1,552,600</u>	<u>-13,911,900</u>	<u>43.6</u>

2013	Rental Income	Other Income	Staff	Repairs and Maintenance	Other	Overheads Incurred	Grand Total	FTE
<b>Strategic Housing Unit</b>			182,100		29,000		211,100	3.0
<b>Regulatory Functions</b>							0	0.0
<b>Landlord Services</b>								

Estate Services	1,993,800	908,400	9,258,000	12,287,100	548,200	21,007,900	20.0	
Tenant Services	2,000	575,900	30,800	55,400	376,900	1,037,000	13.8	
Finance Services	39,824,500	429,500	424,500	161,400	294,600	-39,373,500	10.8	
	<u>39,824,500</u>	<u>2,425,300</u>	<u>2,090,900</u>	<u>9,288,800</u>	<u>12,532,900</u>	<u>1,219,700</u>	<u>-17,117,500</u>	<u>47.6</u>

2014	Rental Income	Other Income	Staff	Repairs and Maintenance	Other	Overheads Incurred	Grand Total	FTE
Strategic Housing Unit			182,100				182,100	3.0
Regulatory Functions							0	0.0
Landlord Services								
Estate Services		1,978,700	920,000	9,557,600	12,328,100	531,800	21,358,800	19.9
Tenant Services		2,000	616,900	30,800	55,400	365,600	1,066,700	15.0
Finance Services	41,243,700	438,900	428,300		161,400	285,800	-40,807,100	10.7
	<u>41,243,700</u>	<u>2,419,600</u>	<u>2,147,300</u>	<u>9,588,400</u>	<u>12,544,900</u>	<u>1,183,200</u>	<u>-18,199,500</u>	<u>48.6</u>

2015	Rental Income	Other Income	Staff	Repairs and Maintenance	Other	Overheads Incurred	Grand Total	FTE
Strategic Housing Unit			182,100				182,100	3.0
Regulatory Functions							0	0.0
Landlord Services								
Estate Services		1,779,600	927,500	9,367,200	12,463,000	535,000	21,513,100	19.9
Tenant Services		2,000	623,600	30,800	55,400	367,800	1,075,600	15.0
Finance Services	42,709,800	448,800	432,200		161,400	287,600	-42,277,400	10.7
	<u>42,709,800</u>	<u>2,230,400</u>	<u>2,165,400</u>	<u>9,398,000</u>	<u>12,679,800</u>	<u>1,190,400</u>	<u>-19,506,600</u>	<u>48.6</u>

### 3.6 THE DEPUTY OF GROUVILLE OF THE MINISTER FOR HOME AFFAIRS REGARDING THE RE-ZONING OF 7 SITES FOR SHELTERED HOUSING:

#### Question

Further to the re-zoning of 7 sites for sheltered housing in July 2008, and the referral of two constituents with their complaints to the States of Jersey Police that same year, could the Minister inform members of the precise nature and scope of the police investigation that took place into these allegation and, in particular, inform members whether -

- information was sought, or officers questioned, from the Planning and Environment Department?
- anyone else was interviewed by the police other than the two constituents who came forward and made statements?
- was there a full investigation into the statements that were given?

#### Answer

- Allegations concerning re-zoning issues were first made by Deputy Labey in 2008 directly to the then Chief Officer. Following an initial view by a DCI, the former Acting Chief Officer wrote to the former Chief Executive of the States in November 2008 indicating that there was an absence of available evidence to commence a criminal investigation. It was suggested that the matter be referred to another body with responsibility for scrutiny of parliamentary affairs to examine the issues. Indeed, the matter was referred by the Chief Minister's Department to the Comptroller and Auditor General who subsequently concluded that he was unable to take the matter further and could find no evidence which supported the allegations. It is

understood that the Comptroller and Auditor General reviewed documentation held by the Planning and Environment Department as part of his review.

Protracted communications continued between Deputy Labey and the States of Jersey Police with Deputy Labey claiming to possess evidence supporting allegations of corruption. This was eventually received by the Solicitor General on 18<sup>th</sup> April 2011 and passed to the States of Jersey Police. The 'evidence' consisted of three statements prepared in September 2009 from Deputy Labey and two of her constituents.

A police investigation ensued which involved re-interviewing witnesses, identifying and interviewing others who may assist, an examination of e-mail traffic and the examination of documentation in respect of land re-zoning. Officers from the Planning and Environment Department were not interviewed by police.

The investigation has not revealed anything of evidential value to support the allegations, but has revealed that suspicions circulating are without firm foundation and that speculation by individuals has been fuelled by the speculation of others.

- (b) Two constituents named by Deputy Labey were interviewed and gave witness statements to the States of Jersey Police. In addition, the States of Jersey Police identified a further five individuals who may have been able to assist the investigation. They too were interviewed, made witness statements and provided additional documentation for examination.
- (c) A full investigation has been conducted by the police based upon all the information obtained. Reports have been provided to HM Solicitor General at the conclusion of the investigation. There is no evidence to support the allegations made.

### **3.7 THE CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING SEWAGE PUMPING STATIONS:**

Could the Minister advise whether, since December 2012, a number of sewage pumping stations across the Island have failed causing effluent to discharge on land and along the roads and, if so, would he provide a résumé of the reasons for the failures and highlight which stations have required temporary back up facilities like tanker services or running temporary surface piping to help alleviate flooding pollution?

Would the Minister provide an estimate of the additional cost to the Department's budget to date caused by the failure of these stations, and advise whether an application has been made to the Treasury for additional funding to help meet the costs of remedial works necessitated by the heavy rainfalls over the last 9 months, and, if not, why not?

#### **Answer**

Since the middle of last year and particularly from December onwards, there has been practically continuous rainfall which has raised the height of the water table to a level far higher than has been seen in recent years. This has resulted in significant groundwater and rainwater finding its way into the foul sewer system through leaking pipes and manholes, both Public and Private, and overloading many of the smaller pumping stations.

A number of stations have been served by tankers and overpumping since December, including Chestnut Grove, La Re traite, Thistle Grove and La Chasse. Whilst spillages have occurred from some of these stations, none has occurred as a result of a pump station failure. It has simply been the case that fresh water has inundated a number of stations to the point where they have been unable to pump the water away quick enough. Both the TTS tanker service and private tankers have done an excellent job and worked long hours to prevent and reduce spillages over this period.

Jersey is not currently alone in experiencing sewage drainage issues of this nature as both Southern England and France are experiencing numerous problems.

The cost of tankering during this period with both the TTS fleet as well as contractors is approximately £60,000. Throughout the period TTS has been surveying and attempting to identify the locations of groundwater and rainwater ingress into the foul sewer system using both TTS staff and specialist Contractors. These surveys are providing vital information for the department to start eliminating this water ingress. Works have already started on repairs in some of these areas and will continue for the foreseeable future.

Whilst surface water infiltration into the foul network has been recognised as an issue for some time, and surveys of sewers to identify problems were commenced 12 months ago as part of a long term surface water infiltration programme, this recent episode has seen a re-prioritisation of this capital funding within TTS to address the most vulnerable areas as quickly as possible. Should further funding be required this will be sought through a re-allocation of Capital funding within TTS.

### **3.8 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING JERSEY TELECOM'S FIBRE OPTIC SCHEME:**

#### **Question**

With regard to Jersey Telecom's fibre optic scheme and its installation, would the Minister, as the shareholder representative, advise:

- (a) what independent advice, if any, was taken;
- (b) whether the amount of work involved was grossly under-estimated;
- (c) whether other jurisdictions have laid fibre to hubs, with copper connecting hubs to homes;
- (d) whether, in view of the considerable expense to Jersey Telecom and the upheaval and expense to home-owners, the continuation of the project will now be reconsidered; and,
- (e) how, given few people appear willing to pay premium rates for faster connections, it is anticipated Jersey Telecom will recoup the cost of the outlay?

#### **Answer**

- (a) It is the Board of JT's responsibility to robustly assess the business case. While the shareholder would not normally be expected to carry out a further assessment or seek independent advice, on this occasion the Economics Unit was asked to carry out an analysis of the business case to move directly to an all-fibre network. The clear conclusion of that analysis was to support the proposals.

- (b) JT does not consider that the work was under-estimated but rather it has not yet managed to implement as efficient a production process as is needed. Doing so is currently the focus of intensive efforts by JT and its suppliers.
- (c) Networks that have fibre based strategy to the greatest extent possible are broadly considered to be leading the way, primarily because copper in the network is a bottleneck to the broadband speeds that can be achieved by users (this aspect was also considered in the advice referred to in (a) above). Jersey has an opportunity to do away with this bottleneck for once and for all.
- (d) It is not planned to reconsider the Gigabit project. As with all national infrastructure projects there have been initial problems with rollout. The wider, long-term benefits of the Gigabit project are critical to Jersey's ability to continue to compete for global business. Investments of this nature are precisely the sort being encouraged by leading economists the world over in these challenging economic times and the Gigabit Jersey programme is a key building block to the work of Digital Jersey as well as many other initiatives across Jersey's strategic planning, including health and education.
- (e) JT has just completed the first year of a 5-year rollout plan for a telecom access network that will be in place for many generations. The Board of JT remains confident that it will recoup the cost of the outlay.

**3.9 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF HEALTH, SOCIAL SECURITY AND HOUSING SCRUTINY PANEL REGARDING A REVIEW OF THE PROPOSED NEW HOSPITAL BUILD:**

**Question**

Will the Chairman advise whether the Panel is reviewing the proposed new hospital build and, if so, give details of the scope, extent and projected completion date for the review?

**Answer**

The Panel is not currently reviewing the proposed new hospital build, but does intend to conduct a review into the matter once the Health Department has carried out further work. In that regard, we understand that the Department intends to consider the preferred option for the "new" hospital in the early part of this year, and subsequently go out to public consultation on the proposed site imminently. It is also understood that the preferred site location will be considered by the States in the middle of this year, and then the development proposals, again to be considered by the States, by September 2014.

The Panel recognise that the Health Department's work on the "new" hospital is a matter of great public importance. We do and will continue to question and monitor any developments regarding the hospital in our ongoing business and Quarterly Hearings.

During its review into the Health White Paper: *Caring for each other, Caring for ourselves*, the Panel made a commitment to undertake further study into the approved proposals for a new hospital, a new model of Primary Care and a sustainable funding mechanism for health and social care.

Therefore, the Panel is currently undertaking a review into the Full Business Cases which provide detail regarding services which will be provided from 2013. Within P.82/2012, it explained four workstreams including the priority areas for phase 1 (2013 – 2015) which include:

1. Refocusing Children’s Services: Early Intervention
2. Adult Mental Health: Jersey Talking Therapies
3. Healthy Lifestyles: Alcohol
4. Adults & Older Adults: End of Life Care, Dementia, COPD, Intermediate Care

We understand that proposals for the “new” hospital are part of the Department’s longer term plans. Therefore, we are concentrating our current review on the process of how the Full Business Cases have been developed, and have drafted the following Term of Reference -

1. To assess to what extent key stakeholders, in particular the Voluntary and Community Sector, have been included in the development of the Full Business Cases
2. To determine whether the FBC process to date has properly fulfilled the first 6 of the 9 points outlined in the departmental document “Understanding Commissioning”.
  1. Understanding the health and social care needs of Islanders
  2. Identifying what services are currently provided, where and by whom
  3. Understanding where the gaps are – to what extent do services meet the needs of Islanders, and to what extent are services delivering what they should be?
  4. Agreeing where things could be done differently or better
  5. Identifying the outcomes that we need to achieve, for example, keeping people out of hospital and caring for them in their own homes
  6. Developing service specifications – working jointly with a range of current and potential future providers to make sure plans are realistic and the services we will receive are the right ones
3. To assess how the Department plans to progress the implementation of points 7 – 9 as outlined in the departmental document “Understanding Commissioning”.
  7. Tendering for services, and being clear on what will be provided, to whom, when, where and how – and also how we will work closely with service providers and maintain relationships, trust, openness and transparency
  8. Monitoring the delivery of services, to assure ourselves and to reassure Islanders that we are achieving value for money and the right services are being made available
  9. Supporting service providers to enable them to deliver outcomes for individual service users, where relevant
4. To determine to what extent the Full Business Cases have fulfilled the original objectives, as set out in proposition: Health and Social Services: A New Way Forward (P.82/2012).
5. To establish how the new funding and resources allocated in the MTFP are used to support the delivery of each Full Business Case.



Therefore, once the Health Department has completed its work on the four workstreams, and we have conducted our review into them, we will have more scope to conduct further study into the “new” hospital.

**3.10 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING A MUTUAL DRIVING-LICENCE EXCHANGE WITH ROMANIA:**

**Question**

Will the Minister state what correspondence, if any, has been entered in to during the course of the past 3 years with a view to establishing a mutual driving licence exchange scheme between Jersey and Romania?'

**Answer**

Normally, the approach is made by the other jurisdiction - there has been no approach from Romania. However, at a meeting at the Department for Transport in London, last November, Jersey asked representatives of the Driver and Vehicle Licensing Agency to approach all new EU/EEA jurisdictions to recognise Jersey licences for mutual exchange.

**3.11 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE RECOGNITION OF JERSEY DRIVING-LICENCES OUTSIDE OF THE ISLAND:**

**Question**

Will the Minister state if there are any countries' driving licences which are accepted by Jersey, but where Jersey driving licences are not recognised?

**Answer**

The jurisdictions that have a mutual exchange arrangement with Jersey are set out in Schedule 5 of the Motor Vehicles (Driving Licences) (Jersey) Order 2003 as amended.

While there have been occasional difficulties reported in the past by former Jersey residents who have moved to parts of France and Poland, they were resolved relatively quickly, there have been no jurisdictions brought to my or the Department's attention, recently, where that jurisdiction's licences are accepted by Jersey but where Jersey licences are not accepted in the jurisdiction for mutual exchange.

**3.12 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING THE RECENT DISCIPLINARY HEARING INVOLVING 3 POLICE OFFICERS:**

**Question**

Will the Minister explain how, following the recent disciplinary hearing which led to the exoneration of the three police officers involved in the Curtis Warren car bugging case -

- (a) the police officers will be able to work closely and harmoniously with the senior officers who brought the disciplinary charges against them;
- (b) how a trusting relationship between the police and the Law Officers' Department will be restored; and,
- (c) what the effects were of the illegal bugging in France, Belgium and Holland on the relations between those countries and Jersey and what steps have been taken to restore the trust and confidence of those authorities in the Jersey police and Law Officers' Department?

**Answer**

- (a) Disciplinary charges were brought following the recommendation of the investigating police force. Police officers are well aware that they will be subject from time to time to complaints and may be subject to a disciplinary hearing. The position in relation to disciplinary hearings is similar to that for a civil servant or other public employee. There should be no reason why a police officer who has been exonerated or made subject to a disciplinary sanction short of dismissal, and who remains able and fit for work, should not be able to return to normal duties.
- (b) A strong professional relationship exists between the States of Jersey Police and the Law Officers' Department and has not been harmed in any way by this action.
- (c) There has been no detrimental effect to continued international relations with enforcement agencies. Requests for international assistance are undertaken in accordance with the law through appropriate letters of request and close scrutiny by the police and legal authorities.

**3.13 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING EVIDENCE IN A DISCIPLINARY HEARING INVOLVING 3 POLICE OFFICERS:**

**Question**

Following the unauthorised publication of the judgement of the disciplinary hearing against 3 police officers will the Minister -

- a) explain why the signed statements of the three police officers who faced a disciplinary hearing over the bugging of the hire car of one of the defendants in the Curtis Warren case were not made available at the disciplinary hearing which resulted in unsigned statements transposed onto Hampshire Police paper being introduced instead;
- b) state whether or not the evidence in the unsigned statements was disputed by any of parties to the hearing and, if so, the nature of the disputed evidence?

**Answer**

I strongly deplore the decision of the disciplinary tribunal being used in this way. Not only was the hearing by law held in private, but also, the presiding Chief Officer expressly stated in his verbal decision that he did not expect to see his comments in the media and that he did not authorise the use of his comments other than for this hearing; and, in his written decision that he did not authorise the publication of his written judgment other than for the purposes of this hearing.

Although I was initially minded to continue to decline to answer questions on the written decision, the outrageous nature of some of the questions posed to me which imply serious misconduct on the

part of senior police officers has forced me into clarifying the position by answering a number of procedural questions.

- (a) The Hampshire Police loaded the relevant statements into the HOLMES computer system as part of the investigation. Unfortunately, it was the printout of the statements which were presented as part of the agreed and disclosed bundles to the presiding Chief Officer and not the original statements. I am informed that the original signed statements were available at the hearing but the presiding Chief Officer did not refer to them.
- (b) It would appear that one officer raised a question as to whether the HOLMES version of his statement was accurate.

### **3.14 DEPUTY M.R. HIGGINS OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING COMPLAINTS PROCEDURES IN RESPECT OF CERTAIN POST-HOLDERS:**

#### **Question**

(a) Will H.M. Attorney General set out clearly each of the steps that need to be taken by anyone wishing to make a complaint (including misconduct) against the actions of any of the following office holders, explaining in detail each step and each level, until the matter reaches the persons or bodies ultimately responsible for determining such matters:

- (i) Legally qualified members of the Law Officers Department;
- (ii) Solicitor General;
- (iii) Attorney General;
- (iv) Deputy Bailiff;
- (v) Bailiff;
- (vi) Jurats;
- (vii) Magistrates?

(b) To whom are the office holders (i) to (vii) listed above accountable for appraisal purposes?

#### **Answer**

a) The question is not clear as to what is meant by “complaint”, particularly in respect of the officer holders who are listed at (iv) to (vii) whose functions require them to act as judges in the Jersey courts. It is important to distinguish between two types of complaint in relation to a judge.

In so far as the complaint relates to matters occurring in the course of legal proceedings (for example, a complaint that the judge’s decision is wrong or that he or she has behaved unfairly or should not have sat because he or she had a conflict of interest) then the appropriate remedy is for the aggrieved party to use the judicial process and appeal or apply for *doléance* (an alternative method of review) where available.

Where the complaint alleges misconduct other than in the course of legal proceedings, then the appropriate course in respect of a complaint made against a Jurat or a Magistrate is to lodge that complaint with the Bailiff. The Bailiff can then decide if the complaint requires investigation. If it does, he will seek to replicate the procedures applied in England and

Wales as far as possible and, where appropriate, will appoint an independent person to investigate the matter.

The process thereafter in respect of a Jurat is set out in the Royal Court (Jersey) Law 1948. The Bailiff can convene the Superior Number at the conclusion of any investigation so that the Royal Court can consider whether or not to petition the Privy Council seeking the removal of the Jurat (if no resignation is forthcoming) by Order in Council.

A Magistrate may only be dismissed by Order in Council. Should the independent investigation merit such a course of action, the Bailiff would make a recommendation accordingly.

The Bailiff and Deputy Bailiff are appointed by Her Majesty and may only be dismissed by Her Majesty.

If a complaint of misconduct outside court proceedings concerns the Bailiff or the Deputy Bailiff then the complaint should be lodged with the Lieutenant Governor as Her Majesty's personal representative. If he decides that the complaint requires investigation, he may appoint an independent person to investigate in the same manner as described above. Should the result of the investigation merit such a course of action, a recommendation can then be made to Her Majesty.

The Attorney General and the Solicitor General are appointed by Her Majesty and may only be dismissed by Her Majesty. The procedure for a complaint against either of them would be analogous to that in respect of the Bailiff and Deputy Bailiff.

The Law Officers' Department has its own internal disciplinary procedures and any complaint about a legally qualified member of staff should be made to the Attorney General in the first instance.

The procedures described above are designed to provide for effective investigation when merited but at the same time preserve the independence of the office holders as the independence of the judiciary and the prosecuting authorities is vital to the maintenance of the rule of law.

- b) The management at the Law Officers Department conducts appraisals of legally qualified members of staff. The Law Officers and members of the Judiciary are not the subject of appraisals. The members of the Judiciary receive training on a regular basis. The Court's judgments are subject to public scrutiny and litigants are able to exercise any rights of appeal.

### **3.15 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING STUDIES ON INCIDENCES OF CANCER IN JERSEY:**

#### **Question**

Will the Minister explain to the Assembly what studies, if any, have been undertaken in Jersey to investigate the incidences of cancer (of all types) found in the Island, explaining:

- (a) how and when they were carried out and their findings;
- (b) the location of, and explanation for, any cancer 'hot spots';

- (c) what studies, if any, have been undertaken into the effects of pollutants from the Bellozanne Incinerator and their results;
- (d) details of any planned studies?

## Answer

- a) Since 1996 the South West Public Health Observatory (SWPHO) has produced an annual cancer registration report for Jersey and Guernsey summarising the local cancer incidence data over a three year period. Data comes from the hospital patient administration system and pathology laboratory. This is analysed and audited in line with the UK cancer registry service guidelines. The report provides numbers, rates, relative survival time and some trends for the main cancer groups, as well as comparisons with the South West and Guernsey. Public Health uses this data together with cancer deaths data to monitor the situation in Jersey.

The latest report (2007-09 data) is available on gov.je: Channel Island Cancer Registration Report 2012.

<http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20CI%20Cancer%20Registration%20Report%202012%20MC%2013012013.pdf>

The next cancer registration report (2008-2010 data) will be produced by SWPHO towards the end of this year.

Public Health's role is to monitor the health of the population and to identify risk factors for health. They routinely monitor cancer incidence and deaths data and will raise any valid concerns about risk to the health of the community.

Cancer Research UK have shown that a large number of cancer cases could be prevented by known lifestyle and environmental factors, like being a non-smoker, keeping a healthy weight, drinking less alcohol, eating a healthy balanced diet, and reducing or avoiding exposure to sunlight and occupational risk factors. Public Health advice continues to be that by living a healthy life people can reduce their risk of developing cancer.

- b) An initial look at the possible clustering of cancer incidence data has been undertaken, using the available cancer registration data, but did not allow for identification of any hot spots because of incomplete post code information (over 40% missing). Comprehensive post code data (2010 onwards) is now collected on the hospital IT system which should enable analysis in the future. **Nevertheless, the health data set only gives us a location at the time of diagnosis; there is no linked information on how long people have lived in an area, where they work or where they have lived in the past.** All of these factors are equally important to assess exposure to a potential cancer risk (e.g. a pollutant) for an individual. For example, someone who lived in an area of the UK for 35 years may have been exposed to a cancer risk while living and working there. If the individual then comes to live in Jersey and within 5 years is diagnosed with cancer, their cancer is linked to their Jersey post code, which may not be where they were exposed to the risk factor for that cancer.

See SWPHO Cancer Clusters Factsheet for further general information:

<http://www.swpho.nhs.uk/resource/item.aspx?RID=9108>

- c) No specific studies have been undertaken regarding Bellozanne. However, around ten years ago members of the public living around Bellozanne were invited to free health screening by their GP. This included blood screening for heavy metals. In addition staff at Bellozanne have had routine health surveillance and screening as part of T&TS health and safety requirements. This type of information is confidential and is not available for collation by the Health and Social Services Department.

The possibility of carrying out a study was discussed with analyst colleagues in SWPHO. Their expert advice was that it would be extremely hard to prove a link between an environmental effect and any health outcome, especially with the relatively small numbers of cancer cases in Jersey. SWPHO have been unable to show anything conclusive regarding suggested cancer clusters around Hinkley Point power station – (<http://www.swpho.nhs.uk/resource/item.aspx?RID=35764>) and for this reason were doubtful that we would be able to draw any conclusions one way or the other. Their considered advice was that even if we were to find a higher rate of cancer in the area, proving it was due to the emissions from Bellozanne would be extremely difficult.

- d) There is no study planned to look specifically at Bellozanne. As explained above, a full epidemiological study is unlikely to prove anything conclusively regarding emissions and cancer incidence locally.

A report from the SWPHO looking at the main risk factors behind the cancers with the higher incidence rates in Jersey is in its final draft and the MoH will report back on this study in the second quarter or this year. This was undertaken in response to a request from Deputy Paul Le Claire for an independent report into Jerseys' higher cancer incidence rates (P144/2011).

### **3.16 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE LEGAL RIGHTS OF PARENTS TO ACCESS RECORDS RELATING TO THEIR CHILDREN:**

#### **Question**

Further to the response given on 20th November 2012, will the Minister set out in detail the legal rights of parents to any records held by all branches and sections of the Health and Social Services Department relating to their children up to the age when they reached majority and explain the procedures to be followed citing the relevant laws?

#### **Answer**

**Under the Data Protection (Jersey) Law 2005**, individuals have a right to make a request in writing for a copy of information held about them, this will include both computerised and manual records and any type of personal information recorded. This is called a 'subject access request'.

The 'subject access request' can be made by

- The individual themselves
- Those who have parental responsibility (if requesting a child's records)
- A representative nominated by the individual

**Subject Access by a minor -**

Young people mature enough to understand the implications can make their own decisions regarding Subject Access Requests. Consideration is given as to whether the young person understands the implications of the Subject Access Request and the personal data provided as a result.

**Subject Access on behalf of a minor -**

A person with parental responsibility for the child can make a Subject Access Request on behalf of a minor. Consideration is given as to whether the Subject Access Request is made solely in the interests of the minor.

**3.17 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE PRICING STRUCTURE OF GIGABIT SERVICES:****Question**

Does the Minister, as the shareholder representative, consider that the pricing structure for the 'Gigabyte Jersey' service is deterring households from signing up and, if not, how does he explain the low take-up rate?

**Answer**

As the stakeholder representative, it would not normally be appropriate for the Minister to comment on the pricing policy of an incorporated entity. Pricing is a matter for the Board and, where appropriate, the involvement of the JCRA.

However, JT have advised that they consider the relatively low take-up is to a large extent due to the scheduling issues they have faced, which is now a focus of intensive efforts between JT and its suppliers. They do not believe that the current levels of take-up are an indication of low demand for fibre services. JT has also advised that it is carefully reviewing pricing based on customer feedback.

**3.18 THE DEPUTY OF GROUVILLE OF H.M. ATTORNEY GENERAL REGARDING THE REZONING OF 7 SITES FOR SHELTERED HOUSING:****Question**

Further to the re-zoning of 7 sites for sheltered housing in July 2008, and the referral of two constituents with their complaints to the States of Jersey Police that same year, could the Attorney General inform members whether he or the Solicitor General were asked to review papers referred to them by the States of Jersey Police with a view to instigating a prosecution and, if so, did these papers refer to all the sites? If not, how many sites were referred to in the papers considered?

**Answer**

Ordinarily, the Law Officers Department do not comment on particular details of a criminal investigation, advice that may or may not have been obtained by the police during the course of their investigation, or any prosecution decision.

The Chief Minister made a public statement on 16th October 2012 that confirmed that the police found no evidence of criminal wrongdoing. The Law Officers have nothing to add to that statement.

### **3.19 SENATOR S.C. FERGUSON OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE NUMBER OF HOUSEHOLDS IN RECEIPT OF SOCIAL SECURITY:**

#### **Question**

Would the Minister provide details of –

- (a) the total number of households in receipt of Income Support and total individuals (adult and child) supported including claimant/householder;
- (b) the number of over 65 year olds in receipt of Income Support but not in receipt of a Jersey pension;
- (c) the number of those in long term care establishments being funded by social security aged –
  - (i) under 65
  - (ii) over 65 in receipt of Jersey pension
  - (iii) over 65 not in receipt of Jersey pension
- (d) the number of persons in receipt of Income Support but not included in unemployed figures attending Highlands, Back to Work and other States initiatives by age band, nationality and length of residence (age bands are 16-18, 19-24, 25-34, 35-44, 45-54 and 55-65)

#### **Answer**

The data provided in this answer is based on a preliminary analysis of the 2012 Income Support information. Official statistics for 2012 will be published during 2013 and may differ from the results set out below.

As at 31st December 2012 there were 6,724 households, which comprised a total of 11,988 adults and children, in receipt of Income Support. This figure excludes individuals in long-term care.

Of the 11,988 individuals included in the Income Support claims;

- 9,974 individuals (adults and children) were under 65
- 1,962 individuals were over 65 and in receipt of a Jersey Social Security pension
- 52 individuals were over 65 and not in receipt of a Jersey Social Security pension.

As at 31st December 2012 there were an additional 572 individuals in long-term care establishments supported with funding from the Social Security Department, i.e. in receipt of Income Support Residential Care benefit. This figure includes 10 individuals receiving long-term care packages in their own home.

Of the 572 individuals receiving Income Support Residential Care;

- 129 individuals were under 65



- 399 individuals were over 65 and in receipt of a Jersey Social Security pension
- 44 individuals were over 65 and not in receipt of a Jersey Social Security pension
- Of the 44, 23 were in receipt of a Social Security pension from a different jurisdiction.

It should be noted that some individuals receiving long-term care will have needed care throughout their entire adult life and will never have had the opportunity to make Social Security contributions. These individuals will not receive a Jersey Social Security pension.

The figures published each month by the Statistics Unit in respect of Registered Unemployment includes all individuals who are receiving Income Support and are included in a Back to Work scheme or associated States initiative. There are therefore no persons who are in receipt of Income Support and on a Back to Work scheme, or similar States initiative, who are not included in the total of registered unemployment.

Students over compulsory school leaving age who attend Highlands or local sixth forms are normally exempt from actively seeking work conditions and they are not included in the registered unemployment figures.

The table below shows the number of individuals who are recorded as being exempt from actively seeking work conditions because they are in fulltime education, are over compulsory school leaving age and are part of an Income Support household. This includes students from Highlands as well as other schools and colleges. Individual claimant records would need to be checked manually to identify the name of the educational establishment attended.

This table does not include the total number of individuals receiving Income Support who are in full-time education. If an individual is exempt from working conditionality for a different reason (e.g. they are aged over 65 or have a serious long-term health condition), they will not appear in the table. The table also excludes a small number of job seekers who are currently attending courses at Highlands. These individuals are included in the Registered Unemployment figures.

Age Band	British	Portuguese	Other*
16** - 18	288	18	12
19 - 23	35	2	0
24 - 33	3	0	0
34 - 43	3	0	0
44+	0	0	0

\* All other nationalities

\*\* Only includes 16 year olds who are above compulsory school leaving age

### **3.20 SENATOR S.C. FERGUSON OF THE MINISTER FOR HEATH AND SOCIAL SERVICES REGARDING MODERN WORKING GUIDELINES AND THEIR RELATIONSHIP WITH THE MENTAL HEALTH (JERSEY) LAW 1969:**

#### **Question**

Given that the General Medical Council Guidelines for doctors working in mental health have been updated to take account of modern law and practices, will the Minister advise whether there are conflicts between them and the Mental Health (Jersey) Law 1969 and, if so, explain how these guidelines are then applied?

## **Answer**

Firstly, it is important to note that the last General Medical Council Guideline update was in 2006, and there is compliance across those doctors working in the field of mental health.

The Minister can confirm that there are conflicts between modern mental health law and practice, in regard to comparing mental health legislation in England and Wales to the Mental Health (Jersey) Law 1969.

There are two significant issues that the Department are aware of, and work hard to mitigate this conflict:

### **1. Community Treatment Orders.**

Community Treatment Orders were introduced in England and Wales in November 2008, by new sections [17A-G](#) in the UK Mental Health Act 2007. In the Code of Practice it is called Supervised Community Treatment; in the Act those subject to CTOs are called community patients.

In Jersey every effort is made to work to best practice, working with a person in the least restrictive way, which in itself means wherever possible in the community. Our present legislation does not allow our mental health services to direct work in the community under an Article, and, therefore, can only be achieved through working in collaboration and agreement with the person on a voluntary basis, when requiring continued treatment but not necessarily in a psychiatric ward.

### **2. Mentally Disorder Offenders Law**

Under the UK Mental Health Act 2007 the Crown Prosecution Service uses the term "mentally disordered offender" to describe a person who has a disability or disorder of the mind and has committed or is suspected of committing a criminal offence. This term covers a range of offences, disabilities and disorders. A mental disorder may be relevant to:

- The decision to prosecute or divert;
- Fitness to plead; and
- Sentencing/Disposal.

Each case must be considered on its merits, taking into account all available information about any mental health problem, and its relevance to the offence, in addition to the principles set out in the Code for Crown Prosecutors. The Code explains that there is a balance to be struck between the public interest in diverting a defendant with significant mental illness from the criminal justice system and other public interest factors in favour of prosecution including the need to safeguard the public.

Under the Mental Health (Jersey) Law 1969 there is no facility to send people from prison directly to a secure hospital under a Hospital Order or an Interim Hospital Order.

Presently, work is underway jointly between the Chief Ministers Department, H&SS and the Law Office to set out the work plan to update and amend the present mental health legislation in Jersey, to proactively include the options for including the use of Community Treatment Orders and the introduction of the Mentally Disordered Offenders Law

### **3.21 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING AN ACTION AID REPORT ON COMPANY TAX AVOIDANCE:**

#### **Question**

Has the Chief Minister examined the Action Aid (AA) report ‘Sweet Nothings’ on the structure of Associated British Foods (ABF) which avoids the payment of tax to the Zambian authorities through the widespread use of subsidiaries including some based in Jersey?

Does he accept that the structures outlined in this report and Jersey’s involvement, constitute “aggressive tax avoidance” and, if so, will he condemn such activities?

#### **Answer**

The Action Aid report “Sweet Nothings” on the structure of Associated British Foods includes a chart that identifies a number of companies of which one, Illovo Project Services, is a Jersey company. In the report it is stated that Action Aid had been told that the company ceased to be active some time ago and is in the process of being dissolved.

Associated British Foods have issued a statement strongly denying that it is engaged in aggressive tax planning. On the information presented, Jersey is not in a position to judge whether or not the structures outlined in the Action Aid report or Jersey’s limited involvement to-date constitute “aggressive tax avoidance”.

However, what is agreed is that jurisdictions such as Zambia need assistance in tackling the issues to which the Action Aid report has drawn attention and on this Jersey has sought to make a positive contribution. In February 2010 a conference was held in Jersey hosted by the Chief Minister’s Department which was attended by delegates from 26 developing countries of which Zambia was one. One of the conclusions drawn was that priority should be given to assisting developing countries to build up their capacity to deal with matters such as those covered by the Action Aid report. We have followed up on this with offers of assistance through meetings with representatives from the African Tax Administration Forum, the UK Department for International Development, the Norwegian Agency for Development Cooperation and the OECD who have indicated that we would be welcome to attend meetings of their Task Force on Tax and Development.

We believe that we can make a very positive contribution through offering assistance to jurisdictions such as Zambia to help them in building up their own defences against harmful tax measures, including aggressive tax avoidance, when these are identified by the international community. We also will continue to look to our financial community to reflect in their business activities our policy statement last year that Jersey has no wish or need to accommodate those business activities that threaten our reputation as a well regulated and reputable international finance centre.

### **3.22 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE AVOIDANCE OF TAXES:**

#### **Question**

Is the Chief Minister aware, as highlighted in the Action Aid report ‘Sweet Nothings’ on the structure of Associated British Foods, of the use of a ‘Coöperatief’ (a peculiar legal entity

previously used mainly by Dutch farmers' cooperatives) by tax-planning accountants and lawyers since 2007 to market a raft of tax schemes using Dutch 'co-ops' solely as a conduit to avoid taxes on dividends, and, if so, does he agree that such methods should have no part to play in Jersey's financial services offering to global companies seeking to structure their tax liabilities?

### **Answer**

There is no evidence that Jersey financial services are promoting schemes that involve the use of a Dutch 'Cooperatief'. There is also no evidence that in general the use of the 'Cooperatief' is not entirely legitimate and non-controversial. If however the vehicle is being abused it is to be expected that the Dutch authorities will take action to deal with this.

On the basis of the one case mentioned in the Action Aid report, with which it is said a Jersey subsidiary of Associated British Foods is linked, it is not considered possible to draw any objective conclusions as to what part it would be reasonable or unreasonable for Jersey financial services to play in schemes involving the use of the Dutch 'Cooperatief'. However, as has been said on numerous occasions, we would expect the financial community always to have regard for the effect on their, and the Island's reputation, when deciding on which financial services to offer their global corporate or individual customers.

### **3.23 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING A REVIEW OF PRIMARY HEALTH CARE:**

#### **Question**

Further to the response given by the Minister for Social Security on this issue on 15th January 2013 in which he stated that the Household Medical Account provision was part of the review of primary health care being carried out in conjunction with the Health and Social Services Department, will the Minister inform members whether she is aware of problems those on low incomes have in paying for GP consultations?

Will she further state what research she has commissioned or will commission to examine the extent of the problem?

Does she intend bring forward proposals to deal with this issue

- a) in the long term as part of her review of health service provision, and
- b) in the short term to ensure that access to GP services is affordable to all , and if so when will these proposals be lodged for debate?

#### **Answer**

As members will be aware, GP practices in Jersey are private businesses and charges are made for consultations. Once an individual has been living in Jersey for at least six months, they are eligible to receive a subsidy from the Health Insurance Fund in respect of the cost of the consultation. Currently this is set at £20.28. Households that have been in Jersey for at least five years and have a low income may be eligible for income support through the Social Security Department, which provides a range of financial support including general assistance with GP costs and extra help targeted at those with long term medical conditions. As the Minister for Social Security confirmed

to the Assembly on 15th January, the household medical account is a type of savings scheme which helps income support households budget for their medical bills.

1. As the Minister for Health and Social Services, I am aware of problems those on low incomes have in paying for GP consultations. This was noted a number of times during the consultation on the Green Paper and the White Paper. The Hospital also experiences a high volume of Emergency Department attendances which could have been seen by GPs. This is why P82/2012 specifically proposed that the Council of Ministers brings forward proposals for a sustainable model of Primary Care by September 2014.
2. I am currently in the process of commissioning work to examine the extent of the problem and to produce proposals for sustainable Primary Care. It should be noted that primary Care comprises General Practice, Dentists, Optometrists and High Street Pharmacists. The scope for this work is being agreed with the Ministerial Oversight Group.
3. (a) As part of the debate on P82/2012, the Council of Ministers has been tasked with bringing forwards proposals for sustainable Primary Care by September 2014. I am working with colleagues in other Departments, including Social Security, to progress this.  
  
(b) Social Security have no plans to change the ways in which Primary Care is funded in the short term, and have no plans to change the Household Medical Account in the short term.

**3.24 DEPUTY T.M. PITMAN OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING THE ELECTORAL COMMISSION'S REFORM PROPOSALS REGARDING CONNÉTABLES:**

**Question**

Given that the Electoral Commission had stated in its Final Report that its reform Option B to retain the Constables within a 42 Member Assembly would reduce the weight of the residents of St. Helier's vote significantly against individuals living in other parts of the Island, can H.M. Attorney General clarify at what point a States Member may petition the Privy Council on behalf of constituents in St. Helier and advise what process should be followed?

**Answer**

The process of the Electoral Commission preparing its final report, any decision of the States of Jersey to hold a referendum (and pass any necessary subordinate legislation) and the holding of the referendum itself are not matters that will concern the Privy Council.

Royal Assent will only be required in the event that the States of Jersey decide to pass new primary legislation to give effect to the outcome of any referendum. As regards primary legislation, an individual is entitled to petition the Committee for the Affairs of Jersey and Guernsey, praying that Her Majesty in Council be advised to refuse Royal Assent. The said Committee considers the Law and any petitions received, and then reports to Her Majesty in Council as to whether or not the Law should be given Royal Assent, and whether the petition should be dismissed. This is the procedure as set out in the Order in Council of 1952. The 1952 Order is now however subject to an Order of Council of 13<sup>th</sup> July 2011 which states that the Committee shall not postpone its consideration of a Law by reason of receiving a petition any later than 28 days after the States have adopted the Law.

Neither Order in Council sets out a specific process for submitting a petition. However, when considering a petition, the Committee will only recommend the refusal of Royal Assent if exceptional circumstances exist. In the past, the Committee has not entertained petitions which simply state personal opinions and political arguments, which will most likely have already been heard in the States Chamber when the law was adopted.

**3.25 DEPUTY T.M. PITMAN OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING THE CRITERIA FOR FINANCIAL ASSISTANCE TO PURSUE ACTIONS UNDER THE DATA PROTECTION (JERSEY) LAW 2005:**

**Question**

Will H.M Attorney General outline the criteria for individual members of the public to request and be afforded financial assistance from public funds to pursue actions under the Data Protection (Jersey) Law 2005 relating to the internet and will he further indicate whether this criteria is written down and available for perusal and, if so, where?

**Answer**

The relevant criteria are defined in Article 53 the Data Protection (Jersey) Law 2005 which is freely available on the internet.

The Data Protection Commissioner can provide assistance to a person who is an actual or prospective party to proceedings that concern data that has been processed for journalism, artistic or literary purposes. Such proceedings include actions to stop publication of material that causes distress or damage. The Data Protection Commissioner may only provide assistance if the Commissioner is of the opinion that the case in question involves a matter of substantial public importance.

The decision as to whether to provide assistance is a matter for the Data Protection Commissioner to determine in accordance with the relevant provisions of the Law.

**3.26 DEPUTY T.M. PITMAN OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING PARITY WITH THE UNITED KINGDOM ON ISSUES SUCH AS HATE CRIMES:**

**Question**

Does the Minister propose to introduce measures to bring Jersey into parity with the UK on issues that may be described as 'hate crimes'; and if not, why not?

**Answer**

Hate crime is defined by the UK Home Office as any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a personal characteristic.

In the UK in 2007, the police, Crown Prosecution Service (CPS), Prison Service (now the National Offender Management Service) and other agencies that make up the criminal justice system agreed

a common definition of monitored hate crime to cover five ‘strands,’ in particular – disability, gender-identity, race, religion/faith and sexual orientation. Primarily, this was to ensure a consistent working definition to allow accurate recording and monitoring.

In March 2012, the UK government launched a plan to tackle hate crime called ‘Challenge it, report it, stop it.’ The plan centred on three main areas; preventing hate crime, increasing reporting and access to support, and improving the response to hate crime.

Considering the above, it is clear that the UK has made great progress on the issue of hate crime, which is further supported by specific legislation, enhanced sentencing powers and a multi-agency approach ensuring that tackling hate crime is everybody’s responsibility.

Any effort to bring Jersey into parity with the UK on the issue of hate crime must follow the UK’s example of ensuring that it is a joined up approach, which includes areas such as education, the health service and the whole of the criminal justice system.

Presently, Jersey does not have any legislation in the area of discrimination. The States of Jersey Police has recognised that more could be done locally to tackle hate crime. Currently the States of Jersey Police is producing a strategy that will focus on creating single point of contacts (SPOCs) known as ‘community engagement officers’ for a number of diverse population groups. The intention is for these officers to have increased engagement with the most vulnerable and potentially isolated sections of the community, with a view to increasing public confidence in the police. It is anticipated that any increase in public confidence will lead to an increase in the reporting of incidents such as hate crimes.

**3.27 DEPUTY T.M. PITMAN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING CHARGES TO IMPORT ELECTRICITY FROM FRANCE:**

**Question**

Can the Minister, as the shareholder representative, clarify whether or not Jersey and Guernsey pay the same rates with regard to importing electricity from France; what these rates are, and if they differ, why?

**Answer**

The Minister is advised that the JEC and GEL receive different volumes of electricity but the core price is contractually the same for both Islands. GEL however pays a higher cost because they incur additional transmission losses when electricity moves through the subsea cable between both Islands. A confidentiality agreement exists between the CIEG and EDF and for that reason it is not possible to discuss specific pricing arrangements.

As background the Channel Islands Electricity Grid (CIEG), being a joint venture company owned by Jersey Electricity plc (JEC) and Guernsey Electricity Limited (GEL), has a framework agreement to purchase electricity with EDF in France.

**3.28 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE COST OF LANDSCAPING AT LA COLLETTE:**

## **Question**

Would the Minister advise whether the landscaping at La Collette was contracted to a private company and, if so, to whom and at what cost and, given the failure of the screening trees, is he satisfied that this represented good value for money?

Would he further state, in the event contractors were used, whether there was any obligation in the terms of the contract to ensure the work was completed to a satisfactory standard?

## **Answer**

The tree planting of the mound to the East of the Energy from Waste Plant was not carried out by a private contractor. It was instead, carried out by the Parks and Gardens section of the Transport and Technical Services department.

The Deputy may recall from the response to his question of the 15 January 2013 that due to the sites exposure to salt laden winds, this is an extremely hostile site in which to establish trees. As expected there have been some losses which will be replaced over the next few weeks. This loss of trees was estimated in the original scoping stage of the planting scheme and provision for replacement trees was included as part of the original planting works.

It is simply not possible to establish trees quickly on a site such as this and it will take several years before the full screening affect is achieved.

If the Deputy would like to visit the site with an officer from my department to look at the trees that are growing there I would be happy to make the arrangements.

### **3.29 DEPUTY M. TADIER OF ST. BRELADE OF THE CHIEF MINISTER REGARDING FUNDING FOR THE NURSES PAY PARITY AGREEMENT:**

## **Question**

Can the Chief Minister advise whether in 2003/2004, the Treasury withdrew £2.8 million away from the Nurses pay parity agreement and if so, will he give a full explanation as to why?

Does the Chief Minister consider that a satisfactory outcome will be achieved with regard to the current disputes with the Jersey Nursing Association and its related Union Members without this money being put back into a parity agreement?

## **Answer**

Health and Social Services undertook a project to develop a unified pay and career structure to encompass all Nurses and Midwives. As part of this project a Hay evaluation of all the roles required within the proposed new nursing and midwife structure was undertaken. The original projected cost of full implementation of these proposals was £8 million. This was not affordable and Health and Social Services were asked to review the pay structure by Treasury.

After review the final agreed cost of implementation amounted to £6.7 million. In the 2004 Budget Health and Social Services received a total cash limit increase of £10.5 million for pay awards, as



well as £3.4 million of other growth. The Treasury advised of the maximum amount that was available for the settlement. It is incorrect to say the Treasury “withdrew” £2.8 million. Implementation was then carried out within that agreed maximum.

Detailed discussions have been undertaken with the entire Nursing Unions Negotiation group which includes the Royal College of Nursing, the Royal College of Midwives as well as the Jersey Nursing Association. These talks have been conducted since 2011 in close partnership with the employer and have identified that there are structural pay inequalities between Nursing roles and specified Allied Health Professionals.

As a result, the Employer has agreed that an integrated reward framework should be created which will resolve the structural inequality. The Nursing Unions have been fully involved and are fully aware of the intentions and plans of the Employer. The recent differential pay offer to Nurses in excess of the award made to the rest of the Public Sector is a recognition by the employer of the need to commence the movement towards the eventual resolution of the issue.

In the long term, the redesign of the Healthcare Reward structure is integral to the wider Healthcare reform and to the reform of The States.

**3.30 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING LICENCES TO ENTER THE JERSEY WORKFORCE:**

**Question**

Will the Minister state the number of individual workers who can enter the Jersey workforce on the basis of previously granted "bulk licences" and identify their distribution across different sectors of the economy?

Would he consider revoking these licences given the dramatically different economic situation?

**Answer**

The total number of licences for permanent non locally qualified persons to be engaged as at end 2012 are outlined below.

The Migration Advisory Group and Population Office has been removing capacity from existing licences in response to the economic climate, from 9,100 at the end of 2009 to 7,346 at the end of 2012, and will continue to do so.

It is anticipated that the new Law will be used to significantly reduce the number of non locally qualified licences to support local employment. This would be complimentary to the “Back to Work Programme”, which, for example, has initiatives in place to support the training of locally qualified people to undertake hospitality roles.

	<b>Non Locally Qualified Licences</b>
Agriculture and Fishing	271
Manufacturing	84
Electricity, Gas and Water	41

Construction and Quarrying	438
Wholesale and Retail Trades	1,201
Hotels, Restaurants and Bars	2,388
Transport, Storage and Communications	141
Financial and Legal Services	1,458
Computer and related activities	44
Miscellaneous Business Activities	621
Education, Health and Other Services	659
<b>Total Non Locally Qualified Licences</b>	<b>7,346</b>

### **3.31 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING REMOVING OR DELAYING ENTITLEMENT TO INCOME SUPPORT FOR THE UNEMPLOYED:**

#### **Question**

Will the Minister inform members on what basis entitlement to Income Support for those who are unemployed would be removed or delayed?

Will he also inform members of the powers he already has to withdraw components of Income Support from recipients?

Will he further inform members on what criteria such decisions will be made and by whom?

Will he also state what provisions he will put in place to allow those whose benefit is withdrawn to have access to an independent appeal body in order to make decisions human rights compliant?

#### **Answer**

One of the basic principles of the Income Support system is that working aged adults should support themselves as far as possible through their own earnings. That said, the Income Support Law provides exemptions from full time work requirements for certain groups, for example, a parent caring for a child under the age of 5.

Income support is available to those individuals who are able to work but are currently without employment, as long as they are available for and actively seeking work. Definitions of what it means to be "available for" and "actively seeking" work are set out in the Income Support regulations. If an individual fails to meet these requirements, they will be sent a written warning. If they continue to fail these tests, the Income Support benefit is effectively reduced for a period, according to rules set out in the Income Support regulations.

A reduction of 50% of the adult component (e.g. £46.06 for a single adult) is made for the first week. If the individual fulfils their job seeking activities in that week and the following week, their Income Support claim is restored to its full value at the end of the two weeks.

However, if the individual continues to fail the job seeking tests during the first week, the adult component is further reduced to zero. All other components (accommodation, children, household, etc.) remain in payment. The reduction is maintained until the individual has completed two consecutive weeks of job seeking activities.

Income Support components can also be withdrawn in other situations. For example, if an individual is out of the Island, in prison or in hospital the Income Support Law includes time limits after which various components are no longer payable.

All decisions taken under the Income Support Law in respect of the award or withdrawal of components are made by departmental officers and are subject to a formal review and appeal process. In the case of any query, the law provides for an internal review by a second officer. If this fails to resolve the issue, the matter can be referred to an independent, external Appeal Tribunal. This review and appeal process is a key part of the Income Support Law, and it is human rights compliant.

The timing of this question suggests that it may be linked to recent media coverage of possible changes to the rules in respect of entitlement to Income Support for jobseekers.

Work is under way to prepare additional regulations in this area. These regulations will be subject to States debate, and, if approved, will be included with the existing framework of Income Support legislation including the decision-making process and rights to appeal to an external, independent tribunal as described above.

### **3.32 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING TARGETS FOR THE GIGABIT PROJECT:**

#### **Question**

Can the Minister, as the shareholder representative, confirm whether the connection targets announced at the start of the Gigabyte Jersey project still stand and, if not, what revisions have occurred?

#### **Answer**

Priority is being given to broadband connections so that users will benefit from the faster broadband speeds over those who use voice-only services. The Board of JT has confirmed it will focus on the rollout of fibre to broadband users.

The response to Deputy Le Hérissier's oral question on 29th January 2013 was that the Board of JT is engaged in intensive discussions with its principal supplier. Those discussions are continuing. The commitment remains to communicate back to Members when the discussions with sub-contractors have been completed.

### **3.33 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING ENCOURAGING MORE COMPANIES TO REGISTER IN JERSEY:**

#### **Question**

In the light of the complaint made by a number of non Government organisations to the Organisation for Economic Cooperation and Development against Swiss-based Glencore International AG and Canadian mining company First Quantum Minerals for violation of the

Organisation for Economic Co-operation and Development guidelines for multinational enterprises, is the Minister content to encourage more companies in the extractive sector to register in Jersey?

**Answer**

My role as Minister for Economic Development is to support business and grow the economy. To do this we need to promote Jersey as a jurisdiction that is open for inward investment from a broad range of sectors. Diversification and job creation are two of the main components of the Economic Growth and Diversification Strategy agreed by the States Assembly.

As I have previously advised the Deputy, Glencore International is a Jersey registered company but has no operations in Jersey. This is distinct from companies in the extractive industries that Jersey has attracted to the island. These companies have established a physical presence and have created employment.

Extractive industries comprising the mining, oil and gas sectors represent an opportunity for Jersey to attract businesses to the island that create employment. In doing so, we meet our objectives to diversify the economy and create new jobs, particularly for Jersey graduates who have studied in related topics. These companies also contribute in many other ways to the Island's economy. Importantly they have corporate social responsibility and sustainability policies in place which benefit not only Jersey but also the jurisdictions in which they carry out their mining activities where they contribute significantly to local, regional and national economic well-being and growth.

As offered in my response to a question raised by the Deputy on Tuesday 26th June 2012, I would be happy to arrange a meeting to discuss the strategy, in particular issues relating to inward investment.

**3.34 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE CHAIRMAN OF THE ENVIRONMENT SCRUTINY PANEL REGARDING THE REVIEW OF PLANNING PROCESSES:**

**Question**

Would the Chairman advise, with regard to any review of planning process his Panel may be undertaking, whether a comprehensive review of Building Control Regulations will be included as well as whether tensions between that and historic requirements can be improved.

Would the Chairman advise whether such a review will be undertaken and, if so, when it is likely to be completed?

**Answer**

During the last year the Panel has become aware of concerns about the organisation and processes of our Planning Department, including those raised by the Deputy in a letter he sent to us as a member of the Planning Applications Panel. Our Scrutiny hearings have also highlighted major questions concerning the functioning of the Planning department in specific areas, including inter alia historic buildings.

The Panel met with the Chief Minister on 30th January 2013 to discuss these concerns. Part of the discussion concerned the need for a broad-based, independent review of the functioning and performance of the department. These are issues which would normally be outside the remit of

Scrutiny. We subsequently confirmed our views in a letter to the Chief Minister on 7th February, to which we await a response.

The Panel believes that a succession of previous reviews of planning (some carried out by Scrutiny) have failed to address serious underlying issues to do with the structures and functioning of the department. The Panel considers that such issues would be better dealt with by means of an independent study commissioned by the Chief Minister, with input from a range of sources including Scrutiny, local architectural and industry groups as well as potential commercial clients and members of the public.

The Panel would still carry out its own reviews of specific aspects of the planning process, such as historic buildings, and our conclusions could be taken into account in the Chief Minister's review. If for some reason the Chief Minister decides not to instigate a wider departmental review then we may have to consider how to progress this ourselves, although given the history Panel members do not think that this would be the best way forward or necessarily bring the desired results.

The Panel's proposed historic buildings review will consider the conflict which arises between building bye-law requirements and historic buildings decisions under Planning law. As part of our review of Radon we will also be reviewing the local building bye-law protection measures. However, we will not be attempting a comprehensive review of all building bye-law requirements as this would be a monumental task, local bye-laws being very substantially those adopted in the UK and EU with adaptations appropriate to the Jersey context.

### **3.35 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING PROGRESS ON BRINGING FORWARD 'DEATH BY CARELESS DRIVING' LEGISLATION:**

#### **Question**

Will the Minister advise Members what progress, if any, has been made in bring forward legislation relating to causing death by careless driving and when he anticipates lodging the matter for debate?

#### **Answer**

At present there are two offences in this category; careless driving, and causing death by careless driving when under the influence of drink or drugs. The first is often seen as too light for some examples of very bad driving and the second only applies in relation to driving under the influence of drink or drugs. A new offence of causing death or injury by careless driving would sit between the two of these and offer the police and courts the option of a more serious offence than careless driving and would be seen as a deterrent to bad driving.

While I as Minister for Transport and Technical Services am responsible for the administration of Road Traffic (Jersey) Law 1956 and introducing any changes, with regard to the maximum penalties for road traffic offences the Transport and Technical Services Department works closely with the Home Affairs Department which is responsible for policing and enforcement.

The Minister for Home Affairs wrote to me on this matter in October 2012 to advise me that he would be convening a group, with TTS's cooperation, including representatives of:

- The Magistrate

- Law Officers
- Honorary Police
- States Police
- TTS Traffic Engineers

This group will consider the maximum penalties applicable for road traffic offences the proposed new offence of causing death by careless driving, and bring forward recommendations for amendments to the Road Traffic (Jersey) Law 1956.

Once I receive recommendations from the Minister for Home Affairs, I shall bring the necessary amendments to the Road Traffic (Jersey) Law 1956 to the States for debate.

#### **4. Oral Questions**

##### **4.1 Connétable P.J. Rondel of St. John of the Minister for Transport and Technical Services regarding the road resurfacing programme:**

Despite my having highlighted over the 18 years that many roads across Jersey need resurfacing, would the Minister explain why the work appears to be undertaken on a sporadic basis and what action, if any, has he taken in addition to the £3 million promised from the Stimulus Fund to meet the cost of the £6 to £8 million annual programme of resurfacing that is required?

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

On a sporadic basis is being asked of you. Yes, Minister.

##### **Deputy K.C. Lewis of St. Saviour (The Minister for Transport and Technical Services):**

While I thank the Constable for his continued interest and support regarding the road resurfacing, I would disagree that the works are sporadic. The planning and managing of the highway resurfacing programme is well-planned and often delivered in a very difficult highly-trafficked area. Survey works are carried out of the entire T.T.S. (Transport and Technical Services) road network every 3 years, but survey works of the highest priority are roads which require repair or resurfacing. This programme is not solely prepared on road conditions, but will be influenced by a combination of other road networks being carried out at the time, at stakeholders' requests where possible, ensuring that the competitive tendering is maintained, the available budget and our own summer and December embargoes on certain roads.

##### **4.1.1 The Connétable of St. John:**

I will stand by the word "sporadic" given that history will prove or it can be found in the records that some years we have spent below £1 million on repairing our roads, well below, and other years it is £1 million to £2 million. So it is sporadic. Over and above that, given much is said about roads from all corners of this House, Minister, how much pressure are you bringing to bear on the Minister for Treasury and Resources to get annual additional funding or are you a team player and allowing funding to go to areas like E.D.D. (Economic Development Department) to support professional clubs coming to the Island? Will you fight hard on behalf of the suffering public and road users, whether you are a cyclist trying to pedal down a road which is full of repairs - or non-repairs in some cases - or motorcyclists like myself this morning coming in when there was a certain amount of ice around on the road, which makes it rather difficult when you hit some of these uneven surfaces, or even the car driver. Will the Minister please fight the corner somewhat harder on behalf of the suffering travelling public?

##### **Deputy K.C. Lewis:**

Excellent speech. On the contrary: balancing all of these factors, the Medium-Term Financial Plan provides £10.7 million for resurfacing works from 2013 to 2015, which is an average of £3 million to £4 million per annum. My department has previously, and continues to, work with Treasury officers on identifying a further £3 million per annum, which would bring us up to the required spend on road resurfacing and maintain the roads to a satisfactory condition. My officers have been liaising with Treasury and I myself have spoken to the Minister for Treasury and Resources to bring this forward.

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

Could the Minister give the Assembly an indication on the quality of the road resurfacing that is done as a result of trenching and digging and retrenching and resurfacing, whether his department exercises some degree of control over the quality of the resurfacing, because some streets like Gloucester Street are appalling?

#### **Deputy K.C. Lewis:**

I would agree, and all the trenching is guaranteed for a period of time. This will be tightened up in the not too distant future by the Street Works Law, which will make it mandatory to consult with Transport and Technical Services, acquire their permission, and we are going to raise the standards all the time for trenching works.

#### **4.1.3 Deputy M. Tadier of St. Brelade:**

The Minister said that the roads are guaranteed for a certain amount of time. What is that period of time for which they are guaranteed?

#### **Deputy K.C. Lewis:**

Trenching, I believe, is 6 months.

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

The Minister mentioned the long-awaited Street Works Law. Can he advise us what draft we are in and when it is likely to be lodged at this Assembly for debate?

#### **Deputy K.C. Lewis:**

I believe it is with the Law Officers, but I need to get back to Members on that.

#### **4.1.5 Deputy G.C.L. Baudains of St. Clement:**

Most of the roads that require repair, it appears to be because of poor reinstatement from the utility companies. It is a number of years now - probably about 15 years - that I have been concerned about this, when I first joined the States. I believe it is a year that the utility company has to guarantee the surface. When will his department be bringing in a proper standard, an enforceable standard, so that the utility company has to guarantee the work for a longer period, because otherwise if the department does not, it is the taxpayer that keeps picking up the tab for repairing shoddy trench work.

#### **Deputy K.C. Lewis:**

Absolutely. The trench work is closely monitored now and this will be covered by the Street Works Law.

#### **4.1.6 The Connétable of St. John:**

Out of interest, I have just turned a pad over and I have got a 1998 cartoon of road improvements that were guaranteed by the president of the day that they would all be done by 2004. We are now nearly in 2014. The Street Works Law was being spoken about in my time on the committee of the

day, back at the turn of the century, and the Minister is telling us that he cannot give us a real update of when it is coming to the House. He is blaming the Law Draftsmen's Office. Surely, Minister, you must be on top and be able to give us a date when the Street Works Law is coming to the House.

**The Deputy Bailiff:**

I did not understand him to be blaming the Law Draftsmen's Office. I understood the Minister to say the draft law was with the Attorney General's Department, but Minister?

**Deputy K.C. Lewis:**

Absolutely, Sir, I am not blaming anybody. In fact, we are very grateful to the Law Draftsmen's Office for progressing this. It will be with us as soon as possible.

**4.2 Deputy K.L. Moore of St. Peter of the Minister for Health and Social Services regarding the appointment of a 4th consultant in Trauma and Orthopaedics to help manage waiting lists:**

Would the Minister inform Members whether her department is to appoint a fourth consultant in trauma and orthopaedics to help manage waiting lists?

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

The department are giving consideration to appointing a fourth trauma consultant. There have been significant increases in orthopaedic referrals over the last 6 months, an increase of over 15 per cent, so Health and Social Services is therefore developing a business plan which aims to address growing waiting lists. The business plan is likely to recommend the appointment of a fourth consultant, but this must be considered alongside other factors as well, such as requirements for beds, the extra theatre time, nursing and therapy capacity, G.P. (general practitioner) referral rates, conversion rates from clinic appointments to surgical procedures. In the meantime, my team is working hard to maximise the number of patients being seen by adding extra clinics and increasing the numbers of new referrals seen in each clinic.

**4.2.1 The Deputy of St. Peter:**

Unfortunately we do not have today more up-to-date figures due to an administrative fault, but on 1st December through the Chair, Minister, your children's orthopaedic waiting list was 26 weeks, which is 6 months. Do you think that is acceptable?

**The Deputy Bailiff:**

Does the Minister think that is acceptable?

**The Deputy of Trinity:**

No, but there has been a significant increase in people wanting to see a trauma and orthopaedic consultant, and that is the whole purpose of putting a business plan together, but also alongside that we need to do a review of how we can improve the extra clinics and the clinics that we have at present.

**4.2.2 Senator S.C. Ferguson:**

Does the Minister not consider that it would be better to have a new consultant for an area where we are having problems rather than appointing this plethora of new non-clinical managers, which appears to be happening in the Health Department?

**The Deputy of Trinity:**



I know the Senator is always quick to moan that I have got too many managers, but let me assure you that she has talked to the managers and there are not as many as she seems to think. We are an ageing population and that in itself has consequences on waiting lists, but also as we are living longer, people who have had hips and knees replaced will need them replaced again, so there is a lot of pressure on the department, of which we are aware, and a lot of work is being done to try and improve things.

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

Could the Minister tell us whether details of the time that patients must wait before receiving treatment are published on a per consultant or speciality basis, and if so, how often?

#### **The Deputy of Trinity:**

That is a very good point, because I think it is something that the public would be interested. I have produced some as a result of a written question, I think the back end of 2012, but I take the Deputy's suggestion and will take it back.

#### **4.2.4 Deputy J.A. Hilton of St. Helier:**

The Minister was made aware of the problem 7 months ago particularly in the Orthopaedic Department, and I am a little bit dismayed that still 7 months later we have not made that much progress. The Minister referred in her previous answer to a business case being worked up. Can she tell Members when the business case is going to be decided by herself and when we are going to see another consultant in place?

#### **The Deputy of Trinity:**

I wish it was just as easy as that, but as I pointed out, not only is it putting a consultant in place, it is also the added requirements that go along with it. We do need extra theatre space to be able to cope with the work done by an extra consultant. That needs extra nurses alongside that and physiotherapists, *et cetera*. So it seems quite simple on the surface, but it is not, and we are trying to work it out. The business case hopefully will be finished before the middle of this year.

#### **4.2.5 Deputy G.P. Southern of St. Helier:**

Can the Minister inform Members whether there are other areas where the waiting list is 6 months or beyond?

#### **The Deputy of Trinity:**

If I understand, the trauma orthopaedics is one of the longest specialities along with the Pain Clinic and all surgery.

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

Would the Minister explain why there has always been a lack of enthusiasm about approaching France and using their facilities?

#### **The Deputy of Trinity:**

Prior to the White Paper, we have been looking at France and other European countries, but again, it is down to people, I think, would prefer to stay here on the Island if possible, but also the medical workings are slightly different as well as the language. But it is definitely not ruled out.

[10:00]

#### **4.2.7 Deputy J.H. Young of St. Brelade:**

The Minister explained the unacceptable increase in the waiting list for trauma and orthopaedics because there has been a 10 per cent increase in referrals. The Minister suggested that this was due

to ageing of the community. Can she tell us whether her managers have done any analysis of the causes for those referrals, to what extent they are attributable to accidents and injuries and to what extent they are underlying issues to do with ageing, which is not going to go away?

**The Deputy of Trinity:**

I hope we are going to be a very fit ageing society. A lot of work has been done; a lot of work was done for the White Paper to look at the ageing population and the effects that it has, and so that is why we need to put it in new services. But the hospital is an extremely busy place and we have over 180,000 outpatient appointments a year: that is 15,000 a month, that is just outpatients' appointments. So it is a busy place, but yes, I totally appreciate that the waiting list for some is unacceptably long.

**4.3 Deputy G.C.L. Baudains of the Minister for Planning and Environment regarding the monitoring of local bass stocks:**

Give the Minister's recent monitoring of wrasse and rays at Portelet, has there been a major decline in local bass stocks, and if so, how does he now intend to investigate this? If not, why not?

**Deputy R.C. Duhamel of St. Saviour (The Minister for Planning and Environment):**

I am committed to the sustainable fishing of fish and shellfish stocks in our waters, including bass, which is an important commercial and recreational stock. My department analyses data provided by fishermen to assess stocks, and while this process is not yet complete for 2012, at present there is no evidence for any major decline in bass stocks to date. My department is involved in a joint project with recreational fishermen tagging bass around Jersey, and I think Members will have received a report from one of those persons. One of the objectives of this project is to better understand stock numbers and movements of bass to assist in future management of the stocks. The stocks are important and they need to be protected, but there are international considerations in terms of limiting the sizes.

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

I wonder if the Minister would be kind enough to check the robustness of the information which he has just given, because I think if he asks certainly any recreational fishermen, they will say whereas you used to be able to catch perhaps half a dozen bass, now you are lucky if you can get one. Is the Minister aware that there is an area of Guernsey where huge amounts of spawning bass are caught? There is a thought within the industry that this is what is adversely affecting Jersey. So I ask the Minister, would he work with his counterparts in Guernsey to investigate this as soon as possible, because there does appear to be a major decline in bass stocks around Jersey.

**Deputy R.C. Duhamel:**

Absolutely. I am in favour generally of what is currently known in the trade as "no take" zones, which are basically areas of water, which could include spawning grounds for different species of fish, in order to enhance the fishing prospects of those who rely upon those fish. It is something that my department is working at, but as I said, there are international considerations in working not only with our Guernsey colleagues, but indeed with Defra (Department for Environment, Food and Rural Affairs) in the U.K. (United Kingdom) and indeed the French authorities for the wise management of fish stocks in our waters.

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

I thank the Minister for his response. I am not sure if he committed to working with his Guernsey counterparts. Could he confirm that?

**Deputy R.C. Duhamel:**

For the sake of clarity, I most definitely did.

**4.4 Deputy M.R. Higgins of St. Helier of the Attorney General regarding the co-operation of the Jersey authorities in the Hampshire Police enquiry:**

Further to the unauthorised publication of the Disciplinary Tribunal's judgment into the conduct of the 3 Jersey police officers involved in the Curtis Warren investigation, will the Attorney General comment on the allegations made in the judgment that the lack of complete co-operation by the Jersey authorities not only compromised the Hampshire Police inquiry but also limited the full facts available to the Presiding Officer making the decision?

**Mr. H. Sharp Q.C., H.M. Solicitor General (rapporteur):**

It would be wrong for me to comment in public on the outcome of a private and confidential disciplinary process, particularly when it is plain both from the nature of the proceedings and the question itself that any judgment should not have been published. However, what I can comment on is what I regard as the full co-operation provided by the Law Officers' Department to the Hampshire Police inquiry. The Law Officers' Department provided the Hampshire Police with all relevant documents that concerned events in 2007, as described by the Privy Council in their judgment in the criminal case. Those documents were identified not by us, but by an independent English Q.C. (Queen's Counsel). A written offer was sent to Hampshire Police on 7th July 2011 at 9.11 a.m. in the morning to repeat the same review and disclosure exercise with a second English Q.C. insofar as there could be any sensible concerns about the work done by the first Q.C. That written offer was never taken up.

**4.4.1 Deputy M.R. Higgins:**

Will the Solicitor General acknowledge that Mr. Barton asked questions of the Law Officers' Department and did not get answers or the information that he sought?

**The Solicitor General:**

Mr. Barton, as I understand it, led the Disciplinary Tribunal. The fact remains that we did not take part in the disciplinary process. We were not asked by Mr. Barton to give evidence; we were not asked to comment on any aspect of the disciplinary process. It was not the concern of the Law Officers' Department. As I understand it, the email dated 7th July 2011 that I have just referred to was not put before Mr. Barton.

**4.4.2 Deputy M.R. Higgins:**

Does the Solicitor General think that the Attorney General and the Law Officers' Department should be subject to scrutiny and that when serious concerns are raised about conduct, either giving information or giving advice and so on, that they should be answerable to someone, and if not this House, who does he think they should be answerable to?

**The Solicitor General:**

The Attorney General has provided a written answer to a written question this week on the subject of making complaints about the Law Officers, and I refer the Deputy to that answer.

**4.5 Deputy G.P. Southern of the Minister for Social Security regarding the basis for the cessation of Income Support payments to claimants:**

Will the Minister inform Members what powers he currently has to stop income support payments to claimants, on how many claims have these powers been used, and in proposing wider powers to limit claims, what criteria will be used to judge the validity of the reasons a claimant may give for leaving a job?

**Senator F. du H. Le Gresley (The Minister for Social Security):**

This question is very similar to the written question 7448 submitted by the Deputy, and I will not repeat in detail the information provided in that response, which Members have available on their desks. In brief, income support claimants who are unemployed and who are not exempt from actively seeking work, conditions are required to undertake certain activities to maintain the income support claim. These activities ensure that people claiming benefits are positively engaged in improving their employment prospects and are taking up work whenever possible. These activities are set out in the Income Support Regulations. The financial sanctions that can be applied are also specified within the income support legislation. During 2012, an average of 200 claims per month were subject to an initial warning letter and 23 claims per month received a financial sanction. I can confirm that I am proposing to strengthen the existing sanctions and that regulations are currently being drafted. Subject to advice from the law draftsmen, I will be publishing these draft regulations in the very near future. As set out in the written answer, decisions in this area are taken by departmental officers and are subject to an independent appeal process. The specific criteria to be used to judge the validity of the reasons the claimant may give for leaving a job will be set out in written guidelines.

**4.5.1 Deputy G.P. Southern:**

Supplementary, on the appeal mechanism. How many cases of withdrawal of income support components have been brought to appeal and what is the timescale for the formation of such appeal panels and is this sort of timescale appropriate for these sort of appeals?

**The Deputy Bailiff:**

That goes rather wider than this particular question but, Minister, are you able to help Deputy Southern?

**Senator F. du H. Le Gresley:**

I can try. In 2012, the department dealt with 16 appeals to the Social Security or Medical Appeals Tribunal: 3 were resolved without going to the full tribunal and the 11 were resolved in favour of the department; none in favour of the applicant. Insofar as the process and the timing, the running of the tribunals is now with the Judicial Greffe, who provide a very good service. I am not in a position to advise the Assembly today the exact timescales, but obviously where an appeal is being made, having already been redetermined, we endeavour to process it quickly as possible.

**4.5.2 Deputy G.P. Southern:**

Clarification, Sir. How many of those appeals concerned income support appeals where the timescale is fairly immediate?

**Senator F. du H. Le Gresley:**

That is the detail I do not have with me, but when a recipient of income support makes an appeal, in virtually every case, so far as I am aware, we will retain the current level of benefit until the outcome of the appeal.

**4.5.3 Deputy M. Tadier:**

Would the Minister explain what safeguards there are to prevent constructive dismissal, especially in the first 6 months of a job where, as far as I know, an employer can either get rid of someone by

firing them or someone can be forced to leave through constructive dismissal, and where will the burden of proof lie when trying to argue with officers from his department?

**The Deputy Bailiff:**

This is a question about income support rather than termination of employment, but still, Minister, are you able to answer that?

**Senator F. du H. Le Gresley:**

It is the detail that I do not have with me today, but clearly guidelines will be formulated to deal with leaving a job without just cause. These guidelines will be available from the determining officers, which I will have to approve, and in drawing up those guidelines, we will be working with the Jersey Advisory and Conciliation Service, and obviously constructive dismissal is something that we would obviously have to have a good thorough investigation before we decided that they had left the job without just cause.

**4.5.4 Deputy M. Tadier:**

Would the Minister confirm that this policy, which seems to be proposed to be enforced with extra vigour, is taking place in a backdrop where we do not have any discrimination law yet? Will he confirm maybe what problems of not having any kind of discrimination law while trying to enact this policy may have on his department and his officers when trying to determine the validity of those who do not work, because they say they may have been bullied, *et cetera*, and they are therefore leaving for a just cause, in their opinion.

**Senator F. du H. Le Gresley:**

I am not sure the discrimination law is particularly relevant in this situation. The fact is that the Department of Works and Pensions in the U.K. have had sanctions for people who leave jobs without just cause or misconduct for some years and we will be looking at their guidelines for determining officers and working, as I said, with the Jersey Advisory and Conciliation Service to come up with guidelines suitable for Jersey.

**4.5.5 Deputy G.P. Southern:**

Will the Minister agree to produce the information I have requested on the timescales and on the number of cases which are concerned with income support components in appeal?

**Senator F. du H. Le Gresley:**

I do not quite understand what the Deputy is seeking from me. Perhaps he could send me an email and clarify and then I will provide him with the information he requests.

[10:15]

**4.6 Deputy R.J. Rondel of St. Helier of the Minister for Treasury and Resources regarding the tender process for the States mobile telephone contract:**

Would the Minister advise the Assembly when the tender process for the States of Jersey mobile telephone contract last took place, when the contract is due for renewal and how many mobile phones are involved?

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

The States have separate contracts for mobile phones and BlackBerry devices. In 2008, an open tender for the supply of BlackBerry devices was undertaken. There are currently 237 BlackBerries within the States of Jersey. The contract for mobile phones has not been tendered recently. However, in 2007 involvement of States Procurement meant a reorganisation of tariffs. A further reorganisation was made in 2010 and I am pleased to inform the Deputy that annual costs have

more than halved to now £60,000 a year; since 2007 a total of £200,000 being saved. Monthly costs for some 1,086 devices across the States fall into £4.60 per month per device. I can also advise that the States I.S. (Information Services) Department is considering further changes as the result of changing technology, including the advent of tablet technology and bringing your own devices. I can advise the Deputy that the services will be tendered and this will be placed within the Channel Island e-portal and a tender for all services is going to be planned for the end of February 2013.

**Deputy R.J. Rondel:**

Just to thank the Minister for his detailed reply.

**4.6.1 The Connétable of St. John:**

Of the 230-odd BlackBerries held by the States departments and States Members, how many are held by States Members and are they paid for by the Members or by the Government?

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

I think the BlackBerry number is included with Ministers that have them. Certainly there is now a change in numbers of Ministers, because some of them have their own iPads and some of them have returned their BlackBerries, and I am one of them. That saves money. The Connétable knows full well that Ministers have their BlackBerry costs paid for by the department in order to discharge their Ministerial responsibilities, and no doubt as many others with tablets and BlackBerries, improving significantly their productivity means that they are on service answering emails 24 hours a day.

**4.6.2 Senator S.C. Ferguson:**

Will the tenders be offered purely to Island firms or will they be offered through the portal to all the U.K. firms as well?

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

I regard that as an implementation issue by my Procurement Department. I am not aware of that, but I am sure that all the tenders will be put on the Channel Islands e-portal and any interested party may be able to bid for the contracts.

**4.6.3 Senator S.C. Ferguson:**

The Minister has not answered the question. Will it therefore be open to all the U.K. and European companies?

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

I am not an expert in who can tender for that. I assume that that is exactly the arrangement. If it is anything different, then I will advise the Senator by email.

**4.6.4 Deputy R.J. Rondel:**

Just to clarify, did you say that it would be going out for tender during the next couple of weeks?

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

I am advised that it is going to be tendered at the end of February 2013. That is correct.

**4.7 Deputy S. Pitman of St. Helier of the Minister for Home Affairs regarding the co-operation of Senior Police Officers with a disciplinary investigation relating to the Curtis Warren case:**

Would the Minister inform Members whether senior police officers failed to co-operate with the disciplinary investigation relating to the Curtis Warren case which they themselves had initiated, and if so, what action, if any, will he be taking?

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

I do not want Deputy Shona Pitman to feel picked on by my opening remarks, but I am bound to say that this question and others which have been by asked by other Members should not have been asked - I am not criticising the Chair in relation to that - and they should not have been asked for a number of reasons. Not only was the hearing by law held in private, and therefore the judgment remained private, but also the Chief Constable expressly stated in his verbal decision that he did not expect to see his comments in the media and that he did not authorise the use of his comments other than for the hearing. In his written decision, he said that he did not authorise the publication of his written judgment other than for the purposes of the hearing. It is therefore, in my view, totally wrong for Members to have extracted parts and used it in this way. Although initially I was minded to decline to answer questions for the reasons given by the Solicitor General and by myself, the outrageous nature of some of the other questions - not this one - which imply serious misconduct on the part of senior police officers, has forced me into clarifying the position by answering a number of procedural questions. The answer to this question is that all Members of the States of Jersey Police co-operated fully with the investigation.

**Deputy M. Tadier:**

Can I raise a point of order? Does the suggestion that some of the questions are outrageous, which have also presumably been allowed by the Bailiff, does that impute improper motives on the Members who have lodged those questions?

**The Deputy Bailiff:**

Were you imputing an improper motive, Senator, or were you suggesting it was ...

**Senator B.I. Le Marquand:**

No, Sir. I think they are just outrageous questions - well, some of them - because they imply serious faults without any evidence to back it up.

**Deputy M. Tadier:**

Is it possible to have an outrageous question which is in order? I think Standing Order 4 part 2 says we must not impute improper motives directly or by innuendo to any Member of the States. Will the Minister retract or clarify which questions are outrageous?

**The Deputy Bailiff:**

Deputy, you raised it as a point of order. It was not, in my view, in breach of Standing Orders for the Minister to reply as he did. I have to say, it would not be the first time I have heard outrageous things said in this Assembly. A supplementary, Deputy Shona Pitman?

**4.7.1 Deputy S. Pitman:**

Just repeating some of what Deputy Tadier has just said, that this question has been approved by the Bailiff, and also what does he consider to be ... there is an issue of public interest and the information in relation to this question is now in the public eye, so does he not feel obliged to answer this question?

**The Deputy Bailiff:**

I understood the Minister had answered the question.

**Senator B.I. Le Marquand:**

I have answered the question ...

**Deputy S. Pitman:**

Not in full, not the specific question.

**Senator B.I. Le Marquand:**

I answered very clearly. I have very good reasons for saying that all Members of the States of Jersey Police co-operated fully with the investigation. My Deputy Chief Officer of the States of Jersey Police, at my request yesterday, not only listened through the transcript of the relevant witness, but also spoke by telephone to the presiding Chief Constable in order to check this and it was quite clear from both of those that there was nothing in the evidence which imputed any failure on the part of the States of Jersey Police to fully co-operate with the investigation.

**The Deputy Bailiff:**

Deputy Shona Pitman, your question asks whether senior police officers failed to co-operate, and if they failed to co-operate, what action will the Minister be taking. The Minister has answered that they did not fail to co-operate and therefore it would seem to follow that there is no action he should be taking. What is it that you are suggesting he has not answered? If that is the question you want to put, he has put that, then we will know what the question is.

**Deputy S. Pitman:**

Sorry, could you repeat that, Sir?

**The Deputy Bailiff:**

Yes. The question says: "Did senior police officers fail to co-operate, and if they failed to co-operate, what action will the Minister be taking?" The answer came back: "No, they did not fail to co-operate" so it would follow there is no action he was going to take. If there is some failure to co-operate which you wish to ask the Minister about which he says did not take place, you should put that to him and he can answer it.

**Deputy M.R. Higgins:**

The other statements made by ...

**The Deputy Bailiff:**

I am sorry, Deputy, I am putting it to Deputy Shona Pitman. I say that in the context of your question to the Minister, he has now answered your question. If you have got no further questions you wish to put to him, then I will call on Deputy ...

**4.7.2 Deputy S. Pitman:**

I have got a further question to put to the Minister. Does the Minister not appreciate that senior police being reported to effectively obstruct an investigation of this sort can only undermine confidence that all is above board and is as it should be?

**Senator B.I. Le Marquand:**

All is above board, as it should be, as I have stated. I got the Deputy Chief Officer of Police to check the facts. There is included in the decision - because I anticipate a question from Deputy Higgins - a statement which could be read as implying fault on the part of the police. That is a mistake, frankly, in the judgment. We have checked that with the Chief Constable and he accepts that there was absolutely no allegation against the States of Jersey Police for failing to co-operate.

**4.7.3 Deputy M.R. Higgins:**



I find it absolutely amazing that the judgment stated in black and white that States authorities failed to co-operate and co-operate fully, so therefore I really find the Minister for Home Affairs' statement extraordinary, especially we have to take it on trust a third party comment made to the Deputy Chief of Police, that we have to take as justification. However, what about this document, the opinion of Simon McKay, which states that the 3 States police officers were acting fully in accordance with the law? This was in the hands of the Senior Chief Officer before the hearing went ahead. Now, a copy of this is going to be distributed to every States Member, because it is very interesting reading. This is one of the documents that should have come out and we should never have had this thing. Can I ask first of all, Minister, when did you receive this document and why did you allow the disciplinary hearings to continue?

**Senator B.I. Le Marquand:**

That is a ridiculous question. It is perfectly well-known that I do not get involved with such matters. It would be grossly improper for me to get involved in such matters. It is implying that somehow I bring disciplinary charges against police officers. I do not. I have absolutely nothing to do with it. I have not seen that document. It is an opinion. If it was presented to the presiding judge, then no doubt he will have considered it, among other papers.

**4.7.4 Deputy M.R. Higgins:**

A supplementary. Can I just clarify, so the Minister for Home Affairs has not seen this document, the Simon McKay document? Will you confirm that neither you have seen it, and if you did not receive it, do you know if the Attorney General saw it?

**Senator B.I. Le Marquand:**

I have confirmed I have not seen it, either before or after. I was not aware of its existence.

**4.8 Deputy M. Tadier of the Minister for Home Affairs regarding the recommendations contained within the disciplinary tribunal's judgement relating to the 3 police officers involved in the Curtis Warren case:**

Following the unauthorised publication of the Disciplinary Tribunal's judgment relating to the 3 police officers involved in the Curtis Warren case, has the Minister acted upon the recommendation made at the tribunal that all 3 officers be formally commended for their hard work and professionalism and, if not, will he do so, and if so, will the commendation be extended to other officers involved in the case?

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

I do agree that the Presiding Officer recommended a formal commendation. A formal commendation is a matter which is discretionary for the Chief Police Officer of the force. If he had done so, then I would have very strongly disagreed with him. However, I can say this: it is apparent that a number of States of Jersey Police officers, including the 3 involved in this matter, worked very hard on this case and that the overall result of the case represented a major success for the States of Jersey Police. Curtis Warren and his associates represented a major threat to law and order in this Island. Unfortunately, the conduct of part of the investigation led to very serious criticism by senior judges and ultimately to the disciplinary process, and that has seriously detracted from what would otherwise have been recognised as a major success.

**4.8.1 Deputy M. Tadier:**

Thank you for the clarification. I think we can all share that sentiment. Does the Minister agree with the sentiment that says that the officers who protected the Island from one of the U.K.'s worst

criminals, they should continue to take professional and personal satisfaction? Does he think that that congratulation should also be extended to the Law Officers' Department, who are obviously working very closely with the 3 police officers in the whole operation, giving advice as to what was legal and what was not? Does he think that those congratulations should be extended to whoever it was at the Law Officers' Department - and one of them may be in the chair at the moment - and if so, would he do that?

**Senator B.I. Le Marquand:**

That question is as clear a trap as I have seen for a long time. The fact is, yes, good work was also done by the Law Officers' Department in relation to this matter. They had to work a great deal harder because of the issues which led to the disciplinary, because in fact that then led to all sorts of lines of argument and appeals and so on.

[10:30]

I am well aware that during the course of matters, during the course of the judgment, there was an issue of some advice given by a particular then member of the staff of the Law Officers' Department, who has subsequently, as I understand it, left that department. I think that that advice was wrong and that is quite clear.

**4.8.2 Deputy M.R. Higgins:**

Can the Minister for Home Affairs tell the House whether the original investigation by Hampshire Police was very similar to the one that was commissioned against the former Chief of Police, Mr. Power, which was to look at procedures that were involved, and later turned into a disciplinary hearing following a request or complaint from Advocate Simon Baker, who was the advocate for Curtis Warren?

**The Deputy Bailiff:**

Deputy, I am not going to allow that question. It does not arise out of whether or not the officer should be formally commended for hard work and professionalism.

**Deputy M.R. Higgins:**

In that case, Sir, can I ask the following question, and that is if the officer should be commended, or the question of whether he should be commended, why is it that 2 other police officers left the force under a cloud because of this investigation and also 3 officers went through the pain and suffering of a criminal investigation into their activities when it was known that they were acting within the powers that were there?

**Senator B.I. Le Marquand:**

I cannot agree with that. It has always been clear in this case, and it is clear from the judgment of the Privy Council, which remains the authoritative statement on this, that the officers acted unlawfully in other jurisdictions. That is clear. We cannot get away from that fact.

**4.8.3 Deputy M.R. Higgins:**

A supplementary. Is it not the case the Privy Council, when they considered the case, were only using second-hand evidence? They did not investigate themselves, they went by information that came from the Court of Appeal.

**Senator B.I. Le Marquand:**

Well, that would probably be right, because those facts would have been decided at a lower level. When you are talking about an appellate process, you do not have a retrial beyond the first trial.

The subsequent appeals are on points of law or by way of review of earlier decisions. They are not rehearings of evidence, but they will of course have had before them the evidence taken initially.

#### **4.8.4 Deputy J.A. Hilton:**

As we now know that none of the charges were proved and they were dismissed, is the Minister able to tell us what has happened to the 3 officers now? Are they back in post and, if not, why not? Thank you.

#### **Senator B.I. Le Marquand:**

I am always reluctant to talk about circumstances of individual officers because of privacy issues and so on. I can say that one officer is back at work and one officer is ill and one officer is not back at work for another reason.

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

Would the Minister not concede that the public interest is not necessarily the minutiae of the case, it is the vast amount of money spent now and previously on disciplinary inquiries that is part of it? Would he also not accept that inadvertently, he may be giving the impression that he is waiting for an occasion or a means by which the officers can be found guilty and that this is being strung out, whereas it would be much better if closure were brought to bear upon the issue and that the impression were not given that we are just sort of trawling around to find a means of finding them guilty?

#### **Senator B.I. Le Marquand:**

With respect, that is another ridiculous question. It is simply not true. I am completely neutral in relation to disciplinary matters. That is the role I have always taken. I do not get involved; I am completely neutral. My job is to ensure that the system is fair and reasonable, and I have already indicated in response to an excellent question on that occasion by the Deputy that we are reviewing the process, because I was not happy with the way in which the actual hearing ended up being conducted. There were not the necessary procedural safeguards and we are reviewing that. But to imply that somehow I have got it in for the officers is totally without foundation.

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

Will the Minister reaffirm that he thinks it is important, given the fact that the U.K. judgment when it was at appeal was very critical of the 3 officers, and it did find wrongdoing? Does he think that is important to emphasise the fact that the judgment which took place in Jersey, which was to remain secret, but which now has been leaked on to an internet blog site ... does he agree that the difference in outcome for those 2 should be highlighted, and perhaps the outrageous question which I might ask is which one does he think was the correct judgment?

#### **Senator B.I. Le Marquand:**

That is another trap. I am not going to fall into that one either. I have now forgotten the first half of the question, unfortunately. I am sorry, I focused on the second half and I have forgotten the first half. Could the Deputy just remind me, please?

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

It is just the fact that obviously the 2 judgments were at odds with each other. Does the Minister think it is even more important therefore to highlight the fact that this judgment was positive in favour of the officers?

#### **Senator B.I. Le Marquand:**

Yes, that issue, Deputy Higgins had asked me questions before as to how we could get to such apparently different outcomes, and I have said that of course they were different occasions with different evidence and different judges in relation to that, and that is perfectly possible. Indeed, although I do not want to refer people to that, and it should not have been put in the public domain, if people have read what is in his decision, it is quite clear he draws that distinction himself, but for the purposes of the disciplinary they have been exonerated. For other purposes and judicial matters, the judgment of the Privy Council will remain a definitive statement of fact.

#### **4.9 Senator S.C. Ferguson of the Minister for Home Affairs regarding the compulsory micro-chipping of all dogs in Jersey:**

Following reports that the United Kingdom proposes the compulsory micro-chipping of all dogs by January 2016 and failure to micro-chip a dog will constitute a criminal offence, will the Dogs (Jersey) Law 1961 be updated to bring Jersey into line with the U.K.?

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

In February 2011, my former Assistant Minister, Deputy Hilton, did a great deal of work in relation to this area after an approach from, I think, Deputy Power and from the J.S.P.C.A. (Jersey Society for the Prevention of Cruelty to Animals) and one of the ideas that came out was indeed precisely this, of micro-chipping individual dogs, presumably in conjunction with the licensing of dogs. We then referred that and other issues on to the Comité des Connétables for their view, because the Comité des Connétables clearly would have responsibilities in this area, particularly in the licensing. A very strong view came back from them that they were not in favour of us moving in this direction. Now, in the light of the fact that there has been substantial changes on the Comité des Connétables, I am perfectly happy and I promptly will ask my current Assistant Minister - although he does not know I was going to say this - to pick up the issue and run with it, go back to the J.S.P.C.A., see if the circumstances have changed and then go back to the Comité des Connétables again, the membership of which has substantially changed.

##### **4.9.1 Senator S.C. Ferguson:**

Now that the pet passport scheme has been rescinded, is the Minister aware that puppy farms have now moved to Eastern Europe, where the various often fatal diseases such as rabies and sundry zoonotic diseases - I can describe those to Members in the coffee room afterwards, Sir ...

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

I cannot even spell it as well.

##### **Senator S.C. Ferguson:**

It gets better. Yes, but these diseases are endemic and are entering the U.K. and hence will be able to enter Jersey on forged documents. Now, normal precautions would suggest that in order to help prevent this, micro-chipping of dogs will enable proper identification of the origin of the dogs and the ownership. Does the Minister not agree?

##### **Senator B.I. Le Marquand:**

I think this is a different question, if I may say so, because the original question is primarily about identification of stray dogs. This is more a question in relation to importation controls in relation to dogs and, frankly, I am not prepared or briefed in relation to that area, but it is a very different question. I did omit to say in answer to the previous question that one of the reasons why the Comité des Connétables were not in favour was because there was already a requirement by law

that any dog that is on the road or other public place has a collar with its name on it. So I reserve my opinion on the question, because I am simply not prepared to answer it.

**The Deputy Bailiff:**

Senator, I am wondering whether, in the light of the Minister's assurance that he is going to raise the matter again with the J.S.C.P.A. and the Comité des Connétables whether, that does not answer your questions adequately, and we can return to it later.

**Senator S.C. Ferguson:**

Yes, Sir. As I say, we have ...

**The Deputy Bailiff:**

We have a very full list of questions today. Very well, we come to ...

**Deputy S. Power:**

I was hoping to ask the Minister a question.

**The Deputy Bailiff:**

The Minister has said that he is going to be looking into the matter. He is going to ask his Assistant to look into it with the Comité des Connétables and I would have thought that that means we are not going to get anywhere today.

**4.10 Deputy R.G. Le Hérissier of the Assistant Minister for Economic Development regarding the responsibility for signing off the funding of projects:**

Who has responsibility for signing off the funding of projects such as the recent application for film financing and what controls, if any, are in place?

**Deputy C.F. Labey of Grouville (Assistant Minister for Economic Development - rapporteur):**

The majority of grants awarded through the Economic Development Department (E.D.D.) are via umbrella schemes such as the Rural Initiative Scheme, which had specific Government arrangements attached. Any grants made outside of these schemes are subject to a Ministerial Decision following officer advice. This advice is based on analysis of the business case against the department's objectives. All grants are subject to the controls set out in Financial Direction 5.5. Its predecessor, Financial Direction 5.4, was in effect at the time of the film grant referred to by the Deputy. The grant awarded was in compliance with this.

**4.10.1 Deputy R.G. Le Hérissier:**

I wonder if the Deputy could give us the name of the officeholder at the political level and then the officeholder at the executive level? The office name, not the personal name. Could she give the names of those 2 individuals who signed them off, and would she also acknowledge that in the film industry, it is not customary to give a grant upfront? It is customary to wait for the finished product to unfold to work out a funding method.

**The Deputy of Grouville:**

I am not entirely sure of the individuals who sign ... is it the Ministerial Decision? The Ministerial Decision was signed off by the current Minister for Economic Development on the advice of the department. With regards to his comment about the £200,000 grant, this was requested in order to research and investigate the potential of filming over in Jersey. The initial request was for £2 million out of a \$20 million budget. This was refused and 10 per cent of this was given by way of

grant to do the research into filming in Jersey, which has the potential of being very valuable as a marketing tourism tool.

**4.10.2 Deputy M. Tadier:**

Will the Assistant Minister undertake to discuss with her department the actual policy underlying the funding for films to make sure that more support is given to local film producers who already do a very good job, but struggle often financially and they have difficulty when approaching the department, have metaphorically the door slammed in their face, only to find out that £200,000 is given to a foreign filmmaker who is possibly not even going to make a film that relates to Jersey? Will the Minister look into that issue and resolve it to make sure that local filmmakers are supported more?

**The Deputy of Grouville:**

With regard to the last comment about the film is probably not going to be made, we have absolutely no evidence of that, and in actual fact the film is due to start filming in September. It is up to local filmmakers to make applications to either Jersey Enterprise, or as we will soon be debating, the Innovation Fund, and it is up to them to produce their business case, just like anybody else. E.D.D., I have to stress, will look at each business case in accordance with Financial Direction 5.5.

[10:45]

**4.10.3 Deputy M. Tadier:**

Does the Assistant Minister agree with the underlying sentiment that we should be doing more to support local artists and filmmakers to get their name out there, because if we produce home-grown artists who become famous throughout the world potentially, that has to be one of the best adverts for Jersey.

**The Deputy of Grouville:**

The Deputy is pushing against an open door here. As he may remember, I helped co-write the *Cultural Strategy for Jersey*, which is still a very good document, and I would love to see more creative endeavours carried out on-Island and local artists supported. The question, as ever - and always - is money.

**4.10.4 Senator L.J. Farnham:**

Because film finance is a complex issue, and because of the very good potential that developing a film and screen industry for Jersey could yield, would the Assistant Minister consider discussing with the Minister and her colleagues at the department the possibility of establishing a film commission and an associated film fund, because such a model will ensure all the checks and balances were in place and that we really could exploit opportunities like this perhaps more securely in the future.

**The Deputy of Grouville:**

I will most certainly discuss the possibility of a film commission or, as I have already alluded to, any other sort of creative endeavours. Nothing would please me more than to see this enhanced. I think I have forgotten the last part of his question, I am afraid.

**The Deputy Bailiff:**

I think that is the answer the Senator was looking for.

**Senator L.J. Farnham:**

That will be fine, Sir.

**4.10.5 Deputy T.M. Pitman of St. Helier:**

Could the Assistant Minister advise - I have been approached about getting involved in a film about democracy and the lack of justice in Jersey - is there a set format that I and my colleagues would have to complete to try and get funding?

**The Deputy of Grouville:**

Absolutely there is, and we would consider this just as this film was considered, with the independent due diligence, the meetings with the investors, a full business plan and budget received and assessed, copies of all the contractual agreements agreed by law firms and the Law Officers' Department. Yes, if the Deputy would like to comply with Financial Direction 5.5, we would most certainly consider his film.

**4.10.6 Deputy S.G. Luce of St. Martin:**

In her answer, the Assistant Minister implied, I believe, that the grant to this film was given under the Rural Initiatives Scheme. Could she just confirm that, please?

**The Deputy of Grouville:**

That is most certainly not what I said. What I said was that the majority of grants awarded through the Economic Development Department are via umbrella schemes such as the Rural Initiatives Scheme. This was just an example of umbrella schemes and how grants are operated.

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

Could I just ask which scheme it was given under then?

**The Deputy of Grouville:**

I am not sure which specific scheme it was under. I would have to come back to the Deputy.

**4.10.8 Deputy T.A. Vallois:**

Could I ask the Assistant Minister, she answered in one of the questions about numerous amounts of documentation that we use for due diligence. Could I ask the Assistant Minister when she goes back to the department to ask them to provide that information to the P.A.C. (Public Accounts Committee) as soon as possible, because it has been over a week now and we are still waiting for it.

**The Deputy of Grouville:**

Yes, it was my understanding that the vast majority of this information had been provided, but more was going to be forthcoming and it was going to be put in order and a sort of meaningful pile of papers for the P.A.C.

**4.10.9 Deputy R.G. Le Hérissier:**

I am aware that the Minister did want to answer it, but he has been unavoidably delayed, so I do thank the Deputy for stepping into the breach, which I am sure she is enjoying. I wonder, could the Deputy categorically state that all proper controls and investigations were undertaken and can she state that if there were any deviations from these proper controls and processes like due diligence, there will be people held to account? Thank you.

**The Deputy of Grouville:**

I think I have already made clear that the Financial Direction 5.4 that was in place at the time was complied with. I must confess, having worked in the finance industry, that I was quite surprised to discover that the same K.Y.C. (know your client) type requirements are not required of the public sector as they are in the private sector, and this may be something that I would hope P.A.C. would take on board and look at and possibly come back with some recommendations, but obviously if we

are going to start placing this burden on the public sector, which is going to cost time and money - and obviously that is what we do for the private sector - then this has got to be weighed up and all things considered in the round.

**4.10.10 Deputy R.G. Le Hérissier:**

Could the Assistant Minister clarify, if there is a deviation from the application of proper controls, will there be people held to account?

**The Deputy of Grouville:**

I am not aware that there has been any deviation from that set down by the States of Jersey Financial Directions.

**4.11 Deputy J.M. Le Bailly of St. Mary of the Minister for Planning and Environment regarding the rezoning of the Longueville and Samarès Nurseries sites:**

Given the limited availability of suitable building sites for first-time buyer and social rental properties, would the Minister consider bringing to the Assembly a rezoning proposition for the Longueville and Samarès Nursery sites in order to provide this much-needed housing and the creation of much-needed employment for the depressed building industry, and if not, why not?

**Deputy R.C. Duhamel (The Minister for Planning and Environment):**

The Deputy will be aware from the information contained within the report published by the department last year that over 500 homes are likely to be provided to meet first-time buyer and social rented needs over the next 5 years. It is also my intention to bring forward a proposed amendment to the Island Plan to review policy H3 of the plan in particular, which requires the development industry to contribute to the provision of affordable homes as part of private sector residential developments. In addition to this, planning permission currently exists for approximately 1,400 homes, which could be brought forward at any time by the development industry to assist the construction sector in the Island. The 2011 Island Plan requires the reconsideration of the use of former glasshouse sites such as Samarès and Longueville Nurseries in the event that planning permission for 150 Category A homes on States-owned sites is not in place by the end of June 2013. A planning application for the provision of over 150 Category A homes on the Summerland and Ambulance Station sites is presently being reviewed by my department, and another application, which will include the provision of Category A homes on the former J.C.G. (Jersey College for Girls) site, is anticipated very soon. In such circumstances, it is my intention to continue to meet the Island's development needs from within the existing built-up area in accordance with the approved spatial strategy of the Island Plan while continuing to monitor the situation with regard to housing supply.

**The Deputy of St. Mary:**

I thank the Minister for the answer. I think that that was quite well-covered, thank you.

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

Is the Minister aware of the regular flooding due to over-development in the Samarès Marsh area causing damage to people's homes and the local infrastructure, and would it not be more appropriate for future large-scale developments to be built on firmer, higher land as they have, for example, in St. Mary. [Laughter]

**Deputy R.C. Duhamel:**

The Minister is aware of the potential and prevalence of flooding problems within the Samarès area. The name "Samarès" does refer to a marshy area, so a lot of water is to be expected. In



relation to building homes in St. Mary, I would have thought the Constable of St. Clement might also consider building homes on stilts.

**4.11.2 Deputy R.G. Le Hérissier:**

Did the Minister say there would be 150 houses on Longueville, which seems to be quite remarkable? Would he indicate why he thinks these sites have now become viable when at the Island Plan debate time, they were not regarded as so? Has he run out of other brownfield sites? Has he already exhausted the sites he is provisioned to investigate? Why is he now playing around with sites that were put on one side?

**Deputy R.C. Duhamel:**

The Deputy is showing that his hearing aid is not necessarily working or he is not plugged into the audio loop. I did not say that there were 150 homes that could be built on Samarès or Longueville Nurseries. What I said was that in relation to the question asked of me that the release of those sites would only be contemplated if indeed all other policies for the regeneration of the town, as agreed by most Members, if not all Members - bar one - of this House agreed in 2011... If those policies fail, then further consideration of the release of not only those sites but other sites will be contemplated. Until we reach that point, part of my answer was that I consider we have not reached that point as yet. The end of June 2013 is the date that is in mind. Until we reach that date, the current policies apply.

**4.11.3 Deputy J.A. Hilton:**

At a previous States Assembly, the Minister for Planning and Environment, in answer to a question from Deputy Young, stated that he was bringing a paper to the Council of Ministers, I believe on 20th or 22nd February. This is in relation to policy H3, which the Assembly have been waiting for for over a year now. Can the Minister for Planning and Environment tell us whether he has pulled that paper together and presented it to the Council of Ministers yet?

**Deputy R.C. Duhamel:**

As I mentioned to the House on a previous occasion, it was my intention to bring the paper to the attention of the Council of Ministers on 20th, I think it was, February. Unfortunately, because of the amount of work that had to be considered on that date, the date has been put off to the 27th. The presentations have been done, preliminary meetings have been undertaken with other States Members, and indeed the discussions will take place on the 27th. I cannot give the Deputy a time, but if she asks the Chief Minister, maybe he will be able to enlighten her.

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

Last year, the Minister highlighted the point there was 1,400 homes already down with approval to be developed. Also, going back to the previous Minister, Senator Cohen, he made that same assertion. Those applications have been approved for in excess of 2 years. None of them are coming forward, quite clearly because the developers do not believe there is going to be sufficient yield in the current marketplace and also with the coupled problems of getting mortgages. So my question for the Minister would be would he consider time-limiting future applications to ensure that applications that were successful did come forward as developed sites, rather than being banked for the future, when the economic trends improve the yield for the developer?

**Deputy R.C. Duhamel:**

I think that was something that was considered within the Island Plan, if my memory serves me correctly. I thought we had taken a decision that building applications, particularly the major ones, had to be at least started inside a 3-year period after which they had been given permissions. That is the position I think that we are at at the moment. If it indeed is not what I am saying, then

obviously I think that the suggestion from the Constable would be a good one, but as far as I am aware, I think we have already got that situation.

**4.11.5 The Deputy of St. Peter:**

Does the Minister consider that the number of 150 units that he talks about will come forward by 2013 this year is adequate to solve our current housing supply issue?

**Deputy R.C. Duhamel:**

According to the projections, it is not just 150 which are going to be built.

[11:00]

It has been suggested that some 1,000 affordable homes out of the total of 4,400 homes to be built over the 10-year plan period will be affordable. Indeed, in relation to those policies, it was also stated that 500 homes or thereabouts would be likely to be provided over the next 5 years, and the intention of the plan was not to put on to the market 1,000 affordable homes in any one chunk, and to phase the development over the 10-year period, with the majority of the affordable homes happening in the late part of that period, rather than the earlier.

**4.11.6 Deputy J.A. Martin of St. Helier:**

Yes, I think the Minister said he had 2 sites that already had planning applications in. One was the old Girls College and the other was the Summerland site. I think the first site, I would like the Minister to confirm planning permission on the Girls College site, and is the Summerland planning application subject to any outcome of the debate on the police station. Could he say this one way or the other?

**The Deputy Bailiff:**

I do not think that arises out of the questions.

**4.11.7 Deputy M. Tadier:**

Will the Minister confirm whether the Council of Ministers have an agreed policy when it comes to the provision of affordable homes?

**Deputy R.C. Duhamel:**

I do not think we have at the moment. There are very different views and that is the reason of holding the meeting: to see if we can broker the consensus point of view and to move forward in a collective fashion, as the Island would expect.

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

With regard to the number of housing that the Minister is putting forward, it is certainly not enough to make an impact at the moment. I would like him to reconsider bringing forward things much sooner than he anticipates in order to help the building industry at this present time and also potential first-time buyers. Would he agree to do that?

**Deputy R.C. Duhamel:**

I am happy to take that on board but certainly in the context of the existing plans. I must also tell the House that I was told this morning that, of our 40,000-odd homes that we have built on the Island, some 10 per cent (4,300) are up for sale at the moment.

**4.12 Deputy J.H. Young of the Minister for Planning and Environment regarding the provision of pre-application Planning advice in respect of the 18th Century historic properties in Dumaresq Street:**

Will the Minister inform the Assembly whether he has given any pre-application planning advice in respect of the 18th century historic properties in Dumaresq Street to encourage their owners to seek approval for the demolition of these buildings for redevelopment and whether he has authorised or instructed planning officers to do so?

**Deputy R.C. Duhamel (The Minister for Planning and Environment):**

No, I have not instructed or authorised planning officers to provide pre-application advice to the owners of the 18th century properties in Dumaresq Street to encourage their demolition and redevelopment. However, a meeting was held with the applicants in November 2012 at which officers and myself were shown revised plans. Officers made it clear that, while the revised design addressed many of the previous likely reasons for refusal, the concerns in relation to heritage would be magnified. Following that meeting a request from the applicant was made to the department for those concerns and the department's position to be put into writing and letters have been exchanged.

**4.12.1 Deputy J.H. Young:**

I would like the Minister to clarify one aspect of this. Could he advise the Assembly whether or not the Island Plan policy for heritage buildings, which applies to these buildings, would in fact allow them to be allowed to deteriorate over many decades and would that be sufficient reason for demolition under the Island Plan policy?

**Deputy R.C. Duhamel:**

That is a difficult one, as the Deputy knows, and I am not really sure that I am entitled to answer it on the basis that there is a current application that is to be considered and the extent to which I might or might not be involved. All I can say is that there are perhaps conflicting policies in some people's eyes whereby historic buildings do not always have to be considered to be in a position where they will always be remaining built and that there are competing issues whereby a balance has to be sought and struck in order to balance, on the one hand, the retention of buildings against the commercial and other economic or other social and environment aspects. It is not a clear-case situation.

**4.12.2 Deputy R.G. Le Hérissier:**

A variation on Deputy Young's question. In terms of the general policy, would the Minister say under what conditions would his department expect heritage buildings to remain as opposed to allowing their demolition? What are the presumptions which would force an applicant to keep heritage buildings in place?

**Deputy R.C. Duhamel:**

The department have had in preparation for a number of months, in order to address these issues, a Supplementary Planning Guidance note on the demolition of buildings and we have produced a checklist, if you like, and a flowchart in order to help applicants through the process to determine whether or not there is in fact a realistic opportunity for heritage buildings that are deemed to be important by some - perhaps not by all - to be demolished. That S.P.G. (Supplementary Planning Guidance) is due to be placed in the public domain for consultation and I think will prove to be helpful in the determination of these issues.

**4.12.3 Deputy R.G. Le Hérissier:**

Can the Minister confirm that the deterioration of a building is not a reason for allowing its demolition?

**Deputy R.C. Duhamel:**

I think that is probably the right case but, equally, the application of the Planning Law in a straightjacketed form which would give me powers to go in and force everybody, for example, to repair their wooden windows or to take out their plastic windows and put back wood, certainly if I or indeed any other Minister for Planning and Environment were to suggest that, it might well be the case that I would be acting unreasonably and the number of court cases or appeals would go up exponentially, but I agree with the Deputy. It is a bit of a vexed question and guidance really needs to be sought in order to establish a fairer way through the system whereby not all but some buildings might be able to be demolished or not repaired according to the merits of the case.

**4.12.4 Deputy J.H. Young:**

The Minister has explained very well the difficulties he has in ensuring that our heritage is protected. Would he give an assurance to the Assembly that, in dealing with these particular matters, he will ensure that all available alternatives are explored before the demolition of such heritage structures is allowed and could he ensure that those alternatives do include, for example, the option of adding into the site by the vacant site in Dumaresq Street which has remained in States ownership for many decades?

**Deputy R.C. Duhamel:**

I am not sure which site the Deputy is referring to. Perhaps he could just enlighten me.

**Deputy J.H. Young:**

Yes, the one where all the rubbish bins are opposite the chip shop.

**Deputy R.C. Duhamel:**

I have forgotten what the question was now. [Laughter]

**Deputy J.H. Young:**

Would he ensure that all available alternatives are explored in such matters before he gives consent for demolition of valuable heritage properties and, in this particular case, would he include looking at options and opportunities to try and find ways of avoiding the demolition, including by adding in that site to such a scheme?

**Deputy R.C. Duhamel:**

I think the fair answer to that is just to say that I will do whatever I am allowed to do or capable of doing under the existing protocols and I do not think I should make any firm or hard kind of suggestion that I will act in a particular fashion in regard to any particular application which might lead me to make the wrong decision if I am called upon to deliver it. That is about as far as I can go.

**4.13 Deputy T.M. Pitman of the Minister for Home Affairs regarding the authenticity and accuracy of unsigned statements provided as part of the disciplinary investigation relating to the Curtis Warren case:**

Further to the unauthorised publication of the judgment relating to 3 police officers involved in the Curtis Warren case, has the Minister asked for a criminal investigation to be undertaken into the issue raised in paragraph 29, namely the authenticity and accuracy of unsigned statements, a matter that was called into question by a witness?

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

On the Ministerial scale for outrageousness this question is probably a 9 out of 10 because, on an entirely speculative basis, it implies criminal actions on the part of police officers. In fact, this is what happened: The Hampshire Police Force - the investigating force - loaded the relevant statements into the Holmes computer system as part of the investigation. Unfortunately, it was the printout of the statements rather than the original statements which were presented to the presiding officer as part of the agreed bundle. Therefore, that is what was presented to him and that is what he commented on. I am informed, however, that the original signed statements were available at the hearing but that the presiding Chief Constable did not refer to them. It would appear that one officer raised a question as to whether the Holmes version of his statement was accurate. That is the nub of the matter.

**4.13.1 Deputy T.M. Pitman:**

I thank the Minister for reading written question 13. Could the Minister just clarify for us, however, is it not a fact that the Holmes computer system needs someone to enter that manually? Does the Holmes computer system need a third party to type that question in or is it scanned? How did that inaccuracy happen? Surely the Minister agrees it is quite outrageous that someone in such a serious case should be confronted with a statement that he said was not what he said.

**Senator B.I. Le Marquand:**

I do not know the answer to the first part of the question as to whether things are retyped or scanned in. I do not know, but I suspect they are scanned. But I agree that a presentational mistake was made here. The original statement should have been in the bundle as opposed to the Holmes version.

**4.13.2 Deputy M.R. Higgins:**

I must say that I consider the Minister for Home Affairs written answer to question 13 and his answer today to be most unsatisfactory. The reason being that we are told that one officer questioned whether the Holmes version of his statement was accurate. Basically, I believe, from the information that I have, a number of things: (1) Mr. McCrae, the advocate who was acting for the police, was asked to produce the signed statements and could not do so; he could not find them (so they were asked for them and they were not produced); and (2) when it came to the statement and he questioned whether the Holmes version was correct, basically they were told that the statement had a number of question marks and dots and dots and dots and other things indicating missing words. When the particular person was questioned in the hearing as to why they were there, the answer was given: "Oh, the person who was transcribing it could not make out the writing." Well, the truth of the matter is that original written statement was typed and therefore there was no question of misinterpreting what was stated. I am afraid, Minister, it is time you went back and asked some further questions of the people who were involved in this action and get up to date because, I tell you, shortly there will be a motion of no confidence coming to you unless you can do so.

**The Deputy Bailiff:**

Is there a question?

**Deputy M.R. Higgins:**

Yes, the question is: does he agree with the statements I am making, that the signed statements that were asked for could not be produced by the advocate and, secondly, that the original statements made by the officers were typed not handwritten and therefore could not have been incorrectly transposed?

**Senator B.I. Le Marquand:**

It is perfectly possible that the version that Deputy Higgins has just put in relation to them being asked for but not being found is correct. The information that I had was that they were there. Now, whether they were there and the presenting advocate could not find them at the time, I cannot tell. But I have not inquired into that level of detail.

[11:15]

I have, as Members will note, in relation to other matters which I thought somewhat weightier from that point of view, said that it is good practice; the statements should have been in the bundle originally. It is not satisfactory that some other version was there. I accept that. It is a presentational mistake.

**4.13.3 Deputy M.R. Higgins:**

With what has been raised today, does the Minister for Home Affairs see that there are some genuine concerns about the whole process of the disciplinary hearing and the Hampshire police investigation and will the Minister go away and ascertain the facts and come back and give the House a definitive account and not just based on hearsay of conversations officers have had with the former presiding officer, Mr. Barton?

**Senator B.I. Le Marquand:**

No, I will not. I think this matter is a side issue upon a side issue. I think it is a tremendous waste of my own time, a waste of those who are questioning me and a waste of the time of this Assembly.

**4.13.4 Deputy T.M. Pitman:**

I think it is an absolutely outrageous statement that the Minister has just made: "A waste of time." Justice: what does that say? My information is exactly the same as Deputy Higgins. So could I ask the Minister not just to go away and come back with the actual facts but to go away and try and get an investigation implemented, because clearly there are completely conflicting versions? The Minister has admitted he does not know. He is just going on trust, which I accept to a degree. Would he not undertake to launch a proper investigation into this and, in line with that, does he not think Senator Farnham's proposal for a Justice Minister has just been made?

**Senator B.I. Le Marquand:**

I am not sure I can see the connection there. No, I am not going to spend any more time on this matter unless Members wish to ask me specific questions on specific details; in which case I will, of course, endeavour to do my best to answer those.

**4.14. The Deputy of St. Martin of the Minister for Health and Social Services regarding the current time that a new referral would normally expect to wait in order to see a consultant in Urology at the General Hospital:**

What is the current time that a new referral would normally expect to wait in order to see a consultant in Urology at the General Hospital?

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

All referrals received from G.P.s are graded for clinical urgency on receipt of the referral letter. If the referral is urgent, the patient will be seen in between 0 to 4 weeks. For routine referrals 71 per cent of patients are waiting less than 2 months, 88 per cent of patients are waiting less than 3 months and 96 per cent of patients are waiting less than 4 months.

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

I thank the Minister for her reply. She may be surprised to know that I have a constituent who has been waiting more than 6 months. Does she think that is acceptable?

**The Deputy of Trinity:**

No. I understand that there is a very small number of 4 that are waiting as long as 6 months, but I understand they have all been given a date.

**4.14.2 Deputy M. Tadier:**

Does the Minister think there is any direct correlation between the fact that waiting lists are longer than desirable and the fact that we have a tax policy that is low-tax/low-spend and that there may not be enough money in the pot for a wealthy Island to provide basic services for their own residents?

**The Deputy Bailiff:**

I do not think the Minister is responsible for tax policy.

**The Deputy of Trinity:**

Indeed I am not.

**4.14.3 Deputy R.G. Le Hérissier:**

I wonder if the Minister could comment on the statement often put forward by patients: "I was on a 6-month waiting list. As soon as I went private I was seen the week after." What is the interaction between private consultation and public work at the hospital? This has always been a mystery for people and people who are busy to the gills all of a sudden, for private work, become un-busy.

**The Deputy of Trinity:**

We do not have any control over private patients and how they run their waiting lists, but it is an important factor to attract consultants over here that a percentage of their time is for private patients. It is well regulated and made sure that they are set within their times.

**4.14.4 Deputy R.G. Le Hérissier:**

Could the Minister clarify whether the public salary paid includes a proportion for private work?

**The Deputy of Trinity:**

No, it is because they are working, but I can give the Deputy a more accurate amount of the percentages of times.

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

What efforts are being made to reduce waiting times to more acceptable levels?

**The Deputy of Trinity:**

Most of the waiting times are seen within a 3-month period, but there are specialities - and this is one, as well as trauma and orthopaedics - that are above an acceptable level. The new hospital managing director is doing a complete review. We are trying to increase clinic times but that, as I mentioned before, has a knock-on effect on theatre space, increasing number of nurses and physiotherapists, pathologists, *et cetera*, and all of those come at an extra cost.

**4.14.6 Senator S.C. Ferguson:**

Yes, but, with respect, we are talking about consultants not about physiotherapists and nurses. Surely the contract given to a consultant who comes to work at the hospital does in fact specify a percentage of private work and a percentage of public work and it is incumbent upon the Minister

and her department to maintain a proper balance between public and private work. What work has been done recently to ensure that there is a proper balance between public and private work? Has anybody checked with the consultants on the division? This is quite ridiculous. Will the Minister say what work is being done to ensure that a proper balance is being maintained between public and private work by consultants?

**The Deputy of Trinity:**

A lot of work is being done to make sure of that, but it is not just getting another visiting consultant. We have appointed 7 extra consultants over the last couple of years in different areas, E.D. (Emergency Department) being the main one. But along with a consultant has to come nurses and, especially with trauma and orthopaedics, physiotherapists, extra blood tests. You just do not have a consultant by him or herself. If it was an extra post, it needs to come with the allied professionals as well and that does come at a cost.

**4.14.7 Senator S.C. Ferguson:**

Yes, but we have plenty of time to start hiring commissioners and directors of change and so on and so forth when we should be looking at frontline staff, surely?

**The Deputy of Trinity:**

Frontline staff is important but there is extreme pressure in the hospital and that was the whole point of the White Paper, to bring more services out into the community, which will take some burden off the hospital by improving G.P.s to perhaps look after more diabetic patients to give an example.

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

Would the Minister agree that, for any number of reasons, a reduction in waiting lists across the whole hospital creates a win-win situation and will she commit herself fully to reduce these lists?

**The Deputy of Trinity:**

Yes. The hospital director is looking to see if we can improve by more clinics and more effective working, but also to stress that a certain percentage - and I think it is about 6 to 8 per cent - of patients who have booked an appointment do not turn up for one and, between trauma and orthopaedics, that can be as many as 20 appointments a month.

**4.15 Deputy T.M. Pitman of the Minister for Treasury and Resources regarding complaints received from residents in the Havre des Pas area about noise emanating from the La Collette power station:**

Further to complaints received from residents in the Havre des Pas area about greatly increased noise, both day and night and 7 days a week emanating from the La Collette power station, will the Minister, as the shareholder representative, advise what is causing this, why it is happening and when the noise will reduce or hopefully cease?

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

As I think the Deputy will be aware, the first submarine cable between Jersey and France, which was installed in 1984, failed in June of 2012 and cannot be repaired. Since that time electricity has been supplied from the second cable between Jersey and France, which was installed in 2000, and that is supplemented by local generation at La Collette. The capacity of the remaining submarine cable is insufficient to meet the demand for electricity in Jersey, particularly in the winter months. Therefore, local generation at La Collette is vital to supplement local capacity and maintain supply. The requirement for local generation will reduce over the coming months as demand obviously



falls within the summer period. Until the new submarine cable is installed between France and Jersey, which is estimated to be in late 2014 or early 2015, local generation will continue at La Collette. The J.E.C. (Jersey Electric Company) has advised that they would be more than happy to meet with the Deputy and investigate any questions that any of his constituents may have.

**4.15.1 Deputy T.M. Pitman:**

I thank the Minister for that answer. I appreciate the explanation. However, can the Minister give any indication as to when? We cannot control the weather and obviously we are at February now and the people who are complaining, it is winter, their windows are closed and the noise is still there. What sort of reassurance can he give us of a timescale basically? Are we talking May? Are we talking April? When he does hope that things might improve, if that is possible?

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

I do try and do my very best to answer the Deputy's and others' questions on the boards that the Treasury have shareholder responsibility, but I am not the managing director of the J.E.C. and I do not control whether or not La Collette is operational. The J.E.C. is very interactive with States Members. I think they have a good record in meeting Members to discuss particular concerns and they have expressed the offer to meet the Deputy to deal with individual concerns. Obviously on-Island generation is causing some difficulty in terms of noise in and around La Collette. That is unfortunate, but the offset of that is that we need continuing supply. We do not want to see power cuts and we need to see on-Island generation through the winter period. This is obviously going to abate in the summer. Investments in diesel plants and others have been made by the J.E.C. and I am sure that they will make their very best endeavours to reduce the amount of local generation, which is, of course, much more expensive than the importation of electricity from France. I encourage the Deputy to meet with the J.E.C. and any constituents.

**4.15.2 Deputy J.H. Young:**

In the Minister's discussion as shareholder representative with the J.E.C. could he not only address the issues of noise, would he also address the issue of fumes which are emanating from what was intended to be a short-use emission chimney? Since it appears that this is going to be a longer term use of this plant, could he make sure that the fumes are dealt with and the present black smoke and so on that pours out is dealt with?

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

I will transmit those concerns to the J.E.C.

**4.15.3 The Connétable of St. John:**

Can the Minister inform the House whether we have currently diesel generation or steam generation or both within the power station? Also, will he agree with me that the station was put in place in the mid-1960s and, therefore, it was anticipated then that there would be an awful lot of noise, hence its location away from where it was at Queens Road and the public and, therefore, there will be little, as long as we are producing our own electricity on-Island, that can be done?

**The Deputy Bailiff:**

Two questions are probably enough.

**The Connétable of St. John:**

Will he also see that additional insulation can be installed?

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

I agree the plant is old and it is the backup generation and it is the backup generation that is ensuring that we have continuous supply in Jersey, and the J.E.C. will use their best endeavours in order to limit the use of it. However, we all complain when there is a shortage of supply and so there is always a trade-off and an issue, but I will transmit the Connétables and others' views to the J.E.C. and I am sure that they will respond to Members.

**The Connétable of St. John:**

The Minister has not answered my question whether it is steam and/or diesel.

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

It is both as I understand.

**The Deputy Bailiff:**

I hurried Members along because the Minister is due to have questions without notice, so questions can be brought then as well.

**4.16 The Deputy of St. Peter of the Minister for Health and Social Services regarding budget cuts to the respite services based at Oakwell:**

Would the Minister inform Members whether respite services based at Oakwell are the subject of budget cuts?

**Deputy J.A. Martin (Assistant Minister for Health and Social Services - rapporteur):**

I thank the Deputy for her question and I am happy to confirm that Oakwell respite services are not subject to budget cuts.

[11:30]

**4.16.1 The Deputy of St. Peter:**

Could the Assistant Minister then inform us why some people are expecting a cut to the hours of respite offered to their children.

**Deputy J.A. Martin:**

I have checked this. In fact the facilities at Oakwell should be increased at the moment because over the last couple of years the Deputy, and the Deputy of St. Brelade behind me, will know that what was initially respite service had become a residential service, but that has now been solved and the respite services are exactly back to where they were a year ago and not subject to budget cuts. If the Deputy has been speaking to people who have told her that they have had their individual packets cut, that is not what I have been told and I would like to hear more.

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

Will the Assistant Minister advise this Assembly whether there will be any budget cuts to general respite services provided for all age groups?

**Deputy J.A. Martin:**

I will not categorically say that there will be no respite cuts to all age groups because I have not been briefed on that question. What I would say is that in the White Paper - and the Deputies on the panel produced an excellent report on our respite services - there are new monies. There are new ways to produce respite with sitters. It does happen with older respite now and will be introduced into children's services.

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

As the Assistant Minister and this Assembly well know, reports have been out for nearly 12 months now regarding respite services and necessary improvements. I would ask the Assistant Minister, what plans are in place to improve access to the appropriate services for those in need?

**Deputy J.A. Martin:**

We have responded to the Scrutiny report and we have taken on board the majority of their recommendations, which will improve planned access to everybody in the system going through from children to adults. The *Action for Children* report really just emphasises what their own Scrutiny report asked us to do over a year ago.

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

Words are great but actions are far more important. Would the Assistant Minister confirm exactly when the current users will see improvements?

**Deputy J.A. Martin:**

There are some monies this year and they are due to come into force this year, as I am sure the Deputy well knows.

**4.16.5 Deputy J.A. Hilton:**

I have been in email contact in recent days with somebody who tells me their respite has been cut for their child and the question I wanted to ask the Assistant Minister is: has the fact that an individual who was living at Oakwell and is now being accommodated with 24/7 care in another location impacted on the amount of resource that is now available at Oakwell to care for children who go in for occasional respite?

**Deputy J.A. Martin:**

No. It was an individual packet and I will not discuss it any further, but that has not impacted. In fact that is what I said in an earlier answer. We have now solved that problem and Oakwell is fully functional as a full-time respite service. There is nobody staying there at the moment on a residential basis. I tried to phone the manager this morning and yesterday afternoon and I could not get in touch, because I wondered where this question is coming from. Obviously Deputy Hilton and the Deputy of St. Peter may have more information than me on individual cases and I can only hope that they pass that across.

**4.16.6 Deputy J.A. Hilton:**

I am disappointed to hear that the Assistant Minister could not get clarification from the manager either yesterday afternoon or this morning because quite obviously, to me, there is a problem and I do not believe that this information has been imparted to the Assistant Minister. Can the Assistant Minister go back to the manager and question that a little bit further? I will pass on the detail that I have got.

**Deputy J.A. Martin:**

Yes, of course I will. We get given these questions and we receive the answers from the officers, but I always try - as I say, it was late yesterday and early this morning - to speak to the manager. Unfortunately I have not been able to do that. I will do that. I often visit Oakwell and the manager is also manager of another respite service. So if there are any individual problems I need to hear about them and I look forward to speaking to the Deputy after.

**4.16.7 Deputy R.G. Le Hérissier:**

The Assistant Minister stated that, rather than there being a cutback, there was indeed an expansion. Could she give us precise figures as to what the expansion is?

**Deputy J.A. Martin:**

The budget for Oakwell last year was just under £500,000. This year it is just over £500,000, but there are new monies for respite and new ways of doing the respite services, as I mentioned, with sitters and going into people's homes instead of people going into respite. But it is also taking the client, the people, and the parents with you, because people are used to receiving the respite in one certain way and we need to do it slowly and in consultation with everybody.

**4.16.8 Deputy R.G. Le Hérisier:**

Is there any way that the Assistant Minister can give those figures, e.g. *exempli gratia* numbers expected to be supported in the community and numbers remaining in residence at Oakwell?

**Deputy J.A. Martin:**

As I say, I have just given the ballpark figure of around £500,000 to just over £500,000. That is for Oakwell alone. If we keep that same budget but do it slightly different with people going out into the community, more people will be served with probably more hours. But, as I say - and not everybody wants this - you need to take the families with you.

**4.16.9 The Deputy of St. Peter:**

Could the Assistant Minister confirm that capital projects agreed under the Medium-Term Financial Plan will also carry on this year?

**Deputy J.A. Martin:**

Sorry to the Deputy. Oakwell is one of the top priorities to have a refurb, but we need to look into where the people will go at the time and with the least possible disruption of the services we provide there.

**4.17 Deputy M.R. Higgins of the Minister for Home Affairs regarding confidence in the States of Jersey Police's co-operation with the Hampshire Enquiry:**

Further to the unauthorised publication of the Disciplinary Tribunal's Judgment into the conduct of the 3 police officers involved in the Curtis Warren investigation, does the Minister stand by his written answer of 29th January 2013 that: "The public can be fully confident that the issues were properly investigated by an outside Police Force" when the Tribunal's judgment states that the lack of co-operation: "can only have compromised the Hampshire enquiry"?

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

The public can be fully confident that the issues were fully investigated by an outside police force. I have become aware, as a result of the latest set of questions, that there appears to have been some issue in relation to access to documents which were held by the Law Officers' Department and the Solicitor General has given a detailed answer in relation to that today. I am not going to seek to answer questions on a matter which is outside of my particular area. What I would say is that if there was some misunderstanding between those parties then it would be unfortunate because it may have led to a situation where there were some documents or some information, which may have been relevant to the matter, which were not in the hands of the investigating police. As I say, that would be unfortunate, but when one sets up an investigation - I did not, the investigation was requested by the Chief Officer of Police and an independent investigation - it is not really a matter then that one can interfere with. It is a matter for that organisation to proceed with the matter. Subject to that small caveat, I think I can maintain my previous position.

**4.17.1 Deputy M.R. Higgins:**

What I find extraordinary is the fact that the Minister is telling us that we can have confidence in the Hampshire inquiry when he had the judgment of Chief Officer Barton 2 weeks before he gave that answer and in the judgment it states quite explicitly that there was a lack of full co-operation on the part of the Jersey authorities which, I might add, hampered the Hampshire police investigation. So how can he come to this House and tell us that we should have confidence in it when even that judgment states there was a lack of full co-operation? Were you misleading the House at that time?

**Senator B.I. Le Marquand:**

No, I was not misleading the House. I had not seen the judgment. I saw no reason whatsoever for me to get involved in looking at the judgment at that stage. I did not look at the judgment until preparation for these matters; so, as I say, I was unaware of this particular issue. But I would repeat what the Solicitor General said today, which is that what was said by the presiding officer at that time was said solely based upon the evidence of one particular officer and without calling anybody from the Law Officers to answer questions as to what had happened. It now appears that there may have been some documents that were not received for the reasons which were described previously by the Solicitor General, but I did not know that. I did not even know there was a question on that because I had not looked at the judgment at that time.

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

I wonder if the Minister could tell us roughly how many hours his department has spent preparing answers for these technical questions that appear to be of little significance?

**Senator B.I. Le Marquand:**

I honestly do not know the answer to that question because obviously police time will have been spent on different matters. I have spent quite a lot of time myself. I do know that the Deputy Chief Officer did tell me that he had spent a great deal of time personally yesterday in listening through the transcript and in making contact, but I am afraid I cannot give an answer to that.

**4.17.3 Deputy M. Tadier:**

Following on from the statement that the Minister had previously said: "The public can be fully confident that the issues were properly investigated by an outside police force" does he think, in order to add greater perhaps credibility with some doubters among the public, that if the judgment were to be made public that would restore some faith, given the fact that the previous court ruling in the U.K. appeal was very public and was condemnatory of the police officers? Will the Minister look into how this judgment can be made officially public?

**Senator B.I. Le Marquand:**

It is my understanding that the document has been leaked and, notwithstanding that, I have been forced today to answer questions in order to defend my senior officers against outrageous allegations; allegations which have no basis in fact and I would not have answered otherwise but for that particular thing. But it is still not right for me to make public that which should be kept private.

**4.17.4 Deputy M.R. Higgins:**

I must say that I just cannot believe what is going in this Island. It looks like another cover-up in my view. Anyway, would the Minister for Home Affairs please just clarify who instigated the disciplinary inquiry? You have just stated that it was the Chief Officer. Previously in the States it was stated it was the Attorney General who instigated the disciplinary inquiry. Then we were told the Deputy Chief of Police said ... sorry, I will go through that again. The Deputy Chief of Police stated it was the Attorney General, who denied it. You just stated it was the Chief Office of Police.

Could you tell us who instigated the disciplinary hearing on the police officers and when and was it following the intervention of the advocate for Curtis Warren, Advocate Baker?

**Senator B.I. Le Marquand:**

I am sorry. I was asked the question in 2 different forms there, which has confused me. First of all, the Deputy asked a question about the disciplinary inquiry and then he asked a question about the disciplinary hearing. Could he please clarify which one he intended?

**Deputy M.R. Higgins:**

For the sake of clarification, could you explain who instigated both? First of all, was the Hampshire police inquiry originally a process inquiry looking to see what lessons could be learned and then was it turned into a disciplinary hearing? Secondly, who then instigated the disciplinary hearing?

**Senator B.I. Le Marquand:**

The Deputy is correct. I have answered questions on this before, of course, but he is correct. It was initially a process inquiry. That was also recommended by the Law Officers' Department and was taken on board by the Chief Officer. Subsequently, when it became clear that there were issues being raised which went beyond merely process both in the area of potential criminality and in the area of potential disciplinary matters, it then turned into a combined disciplinary and criminal investigation. I am not going to talk about the criminal aspect. Obviously there were no criminal matters that arose. Out of that came a recommendation for disciplinary proceedings and a decision on that was made by the Chief Officer of Police to accept that recommendation and to act on it.

**4.17.5 Deputy M.R. Higgins:**

Could the Minister for Home Affairs mention whether Advocate Baker's intervention on the part of Curtis Warren alleging perjury, alleging a miscarriage of justice, had any role in the disciplinary hearing and the investigation?

**Senator B.I. Le Marquand:**

I simply do not know the answer to that. If there was such an allegation that might add weight to certain issues for the need of an inquiry but I simply am unaware of that. As I say, I do not get involved in these matters. It is important constitutionally and politically that the Minister be neutral in such matters.

[11:45]

**4.18 Senator S.C. Ferguson of the Minister for Health and Social Services regarding the health implications for humans who import dogs and cats or who are injured by wild animals whilst travelling in Eastern Europe:**

Given that immigration from Eastern Europe is increasing, what measures are being put in place to impose requirements for the testing of imported dogs and to ensure clinicians are aware of the health implications for humans who import dogs and cats from, or who are injured by wild animals while travelling in, Eastern Europe where rabies and zoonotic diseases are endemic?

**The Deputy Bailiff:**

Assistant Minister, you have one minute and a half to answer the question.

**The Connétable of St. Peter (Assistant Minister for Health and Social Services - rapporteur):**

I will attempt to do it in that time, Sir. In answering the question, I have to say the arrangements for important and testing of animals are not part of the Minister for Health and Social Services' very wide remit and the question would better have been referred on this matter to the Minister for

Planning and Environment and the States vet. However, I can also go on to say that travellers are advised to seek medical advice about their destinations to ensure that they are safe and to have the necessary vaccinations before they leave. Appropriate advice is given to travellers if there are health risks, such as endemic zoonotic diseases like rabies. The Medical Officer of Health receives routine alerts from the U.K. on international diseases and emerging threats. These are forwarded to G.P. practices and relevant health professionals as necessary. Finally, I can reassure the good Senator that there was a recent animal health emergency exercise about rabies which tested local systems and procedures and the Medical Officer of Health took part in the exercise. So we are fully advised within Health and Social Services of the risk.

**The Deputy Bailiff:**

That brings the first part of question time to an end. We are not able to take any further questions.

**Deputy G.P. Southern:**

May I request Ministers involved to circulate to States Members their prepared answers to those questions?

**The Deputy Bailiff:**

No doubt Ministers will be aware of that for all the outstanding questions.

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

**The Deputy Bailiff:**

We come now to questions to Ministers without notice and the first period is to the Minister for Treasury and Resources.

**5.1 Deputy S. Power:**

The Minister for Treasury and Resources is the public representative as shareholder for public companies. Could he give an explanation as to why companies like Jersey Telecom and Jersey Water are able to accept payment by cheque but that the Jersey Electric Company has withdrawn payment by cheque and will only accept cash or debit cards?

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

I am not aware that the J.E.C. has stopped taking payments by cheque. I think that is J.T. (Jersey Telecom). I am aware of these issues and clearly these are matters for the boards. I have asked the respective companies to ensure that customers can continue to pay their bills, but this is a matter for the boards. I do not believe that there should be any direction from the Treasury in relation to those matters.

**5.2 The Deputy of St. Peter:**

Does the Minister agree that States-owned sites can cope with the chronic shortage of housing currently?

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

I think that is a very important question. I have before me the list of States-owned sites that can be delivered and the Property Holdings Department is working in order to deliver units on States-owned sites. However, because of the release of those sites, including for example South Hill, the ambulance station and others, these realistically will not be delivered before 2015 and 2016; although Bellevue has now been passed to the Minister for Housing to deal with and J.C.G. is now being well progressed by S.o.J.D.C. (States of Jersey Development Company). My own view is

that in these difficult economic times we need to be doing everything we can to stimulate housing demand and I stand ready to support either the Housing Department, housing trusts, Parishes or any other innovative schemes in order to boost supply, but we need the land and that is not within States ownership.

### **5.3 The Connétable of St. John:**

My question comes out of a reply number 7 in the written questions. As T.T.S. have been having major problems with various pumping stations across the Island, particularly in the high water table areas as those mentioned in question number 7, is the Minister aware of the work that is going to be required in remedial work over the next 12 to 18 months, which could run into millions of pounds, and is he also aware that one of these stations is at the head of a reservoir in the centre of the Island, which is causing great concern to myself and others that contamination may have got into that reservoir? As the representative for the utility companies, is he being kept informed of that?

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

I am aware of the issues in relation to liquid waste strategy by the Minister for Transport and Technical Services. As the Minister for Treasury and Resources, I meet with Ministers on a regular basis to discuss their capital programmes and indeed liquid waste has been the subject of discussions between ourselves. I am aware that T.T.S. has had additional sums which have been due because of the exceptional weather that has been experienced. They have met that within their own budgets. They have said that they are prepared to reallocate their standard capital allocation for any remedial works that will be required, but I am not aware that those are significant. I would also draw the Connétable's attention to the fact that Phillips Street shaft, costing some £5 million to £6 million, is now underway and that represents a substantial investment in the improvement of infrastructure and drainage. I stand ready to assist the Minister for further investments in liquid waste which is going to be forming part of our long-term capital programme and we are preparing to put the funding in place for those arrangements.

#### **5.3.1 The Connétable of St. John:**

The Phillips Street shaft was not part of the question. That is the lower part of the Island. I am talking about the northern parts of the Parishes and I mentioned particularly those questions that are put in question 7, but also the question about his responsibility as the representative of the Water Board. Is he aware that there may have been contamination in one of our reservoirs?

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

I am not advised of that, but I will investigate that matter and return to the Connétable if that is the case. Liquid waste remains a very high Ministerial priority and I am committed to finding the investment for that infrastructure investment during the term of this Assembly over the next 18 months.

### **5.4 Deputy J.A. Hilton:**

In a radio interview given yesterday by the Constable of St. Helier, when the Constable of St. Helier was discussing low turnout at Parish Assemblies, when the matter of the approximately £1 million to be spent on public toilets in Conway Street was being discussed, apparently the Minister for Treasury and Resources indicated to the Constable that had he been at the Parish Assembly he would have supported the spending of that sum of money for public loos. Well, I could say: "He would say that, would he not?" But my question is: does the Minister really believe - hand on heart - that it is fair that the ratepayers of St. Helier should be spending those sorts of sums of money when they receive no help from the centre? Currently St. Helier receives no rates from the States of Jersey for all the properties that it has in St. Helier. Does he really believe that is a fair state of affairs for St. Helier ratepayers?



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

As a former Parish Deputy representing the same constituency as Deputy Hilton, I think my track record in assisting St. Helier is well known, having sorted out a number of the issues of the unfair welfare burden. If I may say, the state of the St. Helier finances is significantly improved, partly because of the endeavours of this particular individual. There are ongoing issues with St. Helier which do need addressing. I engage regularly with the Connétable of St. Helier. I did not hear the interview on loos. I do not think that I have had any particular discussions with him about public toilets, but I am happy to engage with him and the other Deputies in relation to dealing with St. Helier matters as appropriate.

**5.4.1 Deputy J.A. Hilton:**

I do not believe the Minister answered the question. Does he believe it fair that St. Helier ratepayers foot the bill?

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

I think that there is a win and a loss for St. Helier. I think that St. Helier, as the Island's capital, does receive a significant amount of rates from properties both in the commercial and residential area and they will be serving the interests of their ratepayers, but the ongoing issues of the unfair burden that exists for St. Helier does need to continue to be looked at and I have given the commitment to the Connétable that I will continue to engage.

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

I also have a question about St. Helier. As the shareholder representative on the J.E.C. can the Minister tell the Assembly what pressure he is bringing to bear on the board given that the western part of St. Helier now is quite regularly struggling to find enough electricity?

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

I am advised by the J.E.C. that an investment in further infrastructure is required in and around the St. Aubin's area. I understand that the company have identified the only really suitable site within the ownership of the Parish of St. Helier and I have impressed upon the Connétable of St. Helier, and will continue to do so, the importance of ensuring that this vital infrastructure investment is made by the J.E.C. for not only the security of supply of the area of the residents of St. Helier 3 and 4, but is also an absolute prerequisite for the further investments that are available that are going to be made on the Waterfront and other areas of town. I hope the Parish authorities will be reasonable in the J.E.C.'s requests for that land as that vital infrastructure is required.

**5.6 Deputy M. Tadier:**

Again in his capacity as shareholder representative for the utilities, the Minister will be aware that tonight there is a union rally at Fort Regent at 6.00 p.m. and that will be attended by workers who feel that their standard of living is under attack because they see their wages effectively being diminished in the face of spiralling utility bills - often which are owned wholly or partly by the States - and they may see that as a type of stealth tax that the States is making money by increasing their bills but not giving them the wherewithal with which to pay those bills. Does the Minister for Treasury and Resources have any solution and does he suggest a way in which he, as the shareholder representative, could talk to the utility companies to make sure that they cut their costs accordingly and that they do not put above-cost-of-living increases when people are struggling across the board?

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

I have no further comments to those that I made 3 weeks ago in relation to particularly the J.E.C. costs we are seeing and it is not only States workers that are seeing an increase in electricity costs as a result of the difficulties that I also referred to earlier. These are issues that are faced by all Islanders and, let us be clear, we are dealing with difficult economic times. We do put appropriate pressure on the utility companies and that is obviously a function of SICRA (Singapore Credit Rating Agency), not the Treasury, but I have nothing further to the comments that I made 3 weeks ago and refer the Deputy to those comments.

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

Would the Minister agree to provide further funding on any schemes to introduce really affordable housing for first-time buyers and low-income applicants with regard to providing the sites and infrastructure necessary ...

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

I am looking forward to the discussion at the Council of Ministers ... sorry. **[Laughter]**

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

... and **[Laughter]** would he also agree that the Minister for Planning and Environment should be providing these sites now rather than waiting for developers to benefit from an anticipated rise in costs as we eventually move out of the current recession?

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

Sorry, I thought you were only allowed one question per answer, so I was ...

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

The second one is sometimes more interesting. **[Laughter]**

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

Okay. I have considerable sympathy to the Deputy's question. My view is that we should be doing everything we can and I fully support the Chief Minister's February statement that it should be dominated by Council of Ministers' discussion and delivery of homes during this month. I am looking forward to the Council of Ministers' discussion that we are going to have on releasing sites. I will do everything I possibly can within Property Holdings and to release funding for sites. Home ownership should be the aspiration of as many Islanders as possible and I think that I am working well and constructively with the Minister for Housing to deliver policies this month and will do everything I can to support that.

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

As the Minister with overall responsibility for our Competition Regulatory Authority, is there anything the Minister for Treasury and Resources can do to ensure high-octane fuel remains available to owners of high-performance cars and motorbikes? **[Members: Oh!]**

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

That is a matter which is being handled by the Minister for Economic Development. There was a meeting yesterday between SICRA and interested parties and I will circulate a note to Members or ask the Minister to circulate a note. It is not within my portfolio, but I will arrange a note to be sent to Ministers by the Economic Development Department.

#### **5.9 Senator S.C. Ferguson:**

The Minister has already stated that he wants to improve the supply of houses. Can he confirm that he sees this as a means of improving affordability of houses by lowering the price and thereby raising the possibility of negative equity for existing home owners?

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

No, I would refer the Senator to the comments that I made to the Corporate Services Scrutiny Panel last week where I made it absolutely clear that the issue of State intervention in prices should be carefully looked into. I am supporting the Minister for Housing's Deposit Loan Scheme. I believe that that is going to mean that there is going to be up to 100 Islanders which are going to get into home ownership that otherwise would not be the case. I agree with the Senator that it is important that any well-intentioned policy should not affect the price of homes. Our job is to ensure that, because of constrained credit situations that many Islanders are facing, they can get the credit in order to get on the housing ladder. That is a different issue from the issue of price, which politicians should not meddle with.

[12:00]

**Senator S.C. Ferguson:**

Sir, he has not answered the question.

**5.10 Deputy J.H. Young:**

In the Minister for Treasury and Resources' commitment to approving availability of affordable housing he would be likely to look at the list of States-owned sites, which he mentioned in his reply to the Deputy of St. Peter. Could he tell us whether, in addition to South Hill and the Ambulance Station, that site also includes the opportunities at Fort Regent and former d'Hautree sites where we have large States-owned sites with opportunities for development and will he tell us when we will see his property strategy to sell those assets of property in the future?

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

The property strategy is already clear and I am happy to circulate to the Deputy the list of States-owned sites. I can advise that my Assistant Minister and I, or indeed the chairman of the group that the Assistant Minister chairs, has investigated a further Fort Regent site and I am happy to update Members on that potential site although it is challenging. In relation to the other site that he mentioned, forgive me, d'Hautree. Yes, that, I am afraid, was earmarked by Property Holdings as a potential site. The former Assistant Minister is nodding. That unfortunately has been, well perhaps unfortunately for housing delivery, earmarked for future educational uses and despite our efforts to get it for housing sites is safeguarded for educational use.

## **6. Questions to Ministers without notice - The Chief Minister**

**The Deputy Bailiff:**

That brings the 15 minute period for the first question period to an end. We now come to questions of the Chief Minister. Deputy Power.

**6.1 Deputy S. Power:**

The Chief Minister may or may not be aware of the recent publication of the Housing Assessment Survey which stated that the Statistics Unit has estimated a shortage of 1,471 houses, 420 of them being H1. What role will his office have in meeting the demand to the proposed strategic housing unit?

**Senator I.J. Gorst (The Chief Minister):**

I am not sure whether the Deputy overlaid the affordability criteria on that number because I do not have that information with me but when one does overlay that criteria then the demand reduces considerably. The Deputy is absolutely right. This is one of the issues that we in the past have not necessarily considered in a strategic manner and that is exactly what the creation of the Strategic Housing Unit will allow for. The States will, very shortly I hope, after the Council of Ministers meeting on the 27th, be in a position to approve the creation of that unit and that unit will then be able to deliver on the issues that the Deputy is referring to which are absolutely critical.

## **6.2 Deputy R.G. Le Hérissier:**

In my answer to the question of granting of bulk licences for labour it is said that there are still 7,346 non-locally qualified licences out there, which is an enormous number. Would the Chief Minister, from a population perspective, tell us to what extent the withdrawal of licences - which appears to be going very slowly - is focused on the low paid end of the economy or to what extent does it spread throughout the economy?

### **Senator I.J. Gorst:**

I do not believe that the withdrawal of licences is going slowly at all. Licences come up for 3-year renewal and the Migration Advisory Group are considering them very carefully and making some very difficult decisions. Those Members that have had time to read the Scrutiny Panel's report on the regulations will obviously see that it is a similar theme that they are suggesting there that we must continue with that work, and perhaps slightly speed it up, but they are difficult decisions. But it is right that we make the decisions - as we have said and as I have said on a number of occasions before - to protect jobs in our community for those individuals who are already here and those individuals who are out of work. Currently, as I say, it is on the 3-year basis but with the new law it will allow speedier consideration of removal of those licences.

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

Clarification. Could the Chief Minister clarify, is his group or is he focusing at the lower paid end of the economy when one looks at the vast number of licences still around, for example, in wholesale and retail, hotels, restaurants and bars?

### **Senator I.J. Gorst:**

That is the difficulty of the population and migration issue. He is right. Those sectors are where the largest number of unqualified licences lie and therefore that is where there is most latitude and scope to deliver jobs for people who are already in our community. At the same time there are policies of this Assembly which wish to support the tourism, the agriculture and the retail sector and that is the difficult balancing act that my department and Senator Routier and his colleagues on the Migration Advisory Group have to make.

## **6.3 Deputy J.A. Hilton:**

The Chief Minister recently gave an interview to the *Jersey Evening Post* and in that interview he spoke about immigration matters. The Chief Minister said that the matter would be prioritised and a major public consultation would take place. Can the Chief Minister tell us when the consultation is going to take place and when he is going to bring a policy on population to the Assembly?

### **Senator I.J. Gorst:**

Yes, it was not that recent. Obviously I am just a filler of newspaper pages because it was a number of weeks ago that I undertook that interview. **[Laughter]** Having said that, the Deputy is absolutely right. The Strategic Plan commits us to bringing forward a population policy. I spoke with officers and Senator Routier last week - I think it was now - around a timescale for that public consultation. It will involve the difficult issues which Deputy Le Hérissier has just raised and we

need to get to grips with those and we need to broaden the conversation about the Island that we want to see in the future. I will provide the timescale to the Deputy and to Members once it has been finalised, which I do not believe it has yet.

### **6.3.1 Deputy J.A. Hilton:**

A supplementary. Does the Chief Minister accept that with the possibility of 20 million-plus Bulgarians - and I forgot the other nationality - joining the common market at the end of this year, that it is of utmost importance that a policy is brought to this House and that we can put measures in place that do limit the immigration that is taking place?

### **Senator I.J. Gorst:**

As I have already said in answers to questions this morning, we are already tightening up those licences, which is our best method of controlling immigration on the laws agreed by this Assembly so we are already doing that. I do recognise that those enlargement issues are coming up on us in the very near future and we are working to deliver the population policy and consultation in the shortest possible order. Having said that, of course, those countries where there will be the ability for residents to now move without any caps in place across Europe we understand that immigration tends to follow existing flows and therefore we might not expect to be further inundated from those areas.

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

As a supporter of closer working with our fellow Crown Dependencies will the Minister state why Guernsey and the Isle of Man, having signed up to automatic exchange of tax information with the U.K., he has not?

### **Senator I.J. Gorst:**

I am not sure what it is that he is referring to. Is he referring to the European Savings Directive?

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

No, he is referring to the fact that Guernsey and the Isle of Man have signed up with the U.K. to automatic exchange of tax information.

### **Senator I.J. Gorst:**

He is not clear under what process he is saying that they have agreed. Obviously if he is talking about a U.K. F.A.T.C.A. (Foreign Account Tax Compliance Act) agreement then we know because in December last year the Isle of Man said that it was their intention to sign. We have been working together with Guernsey, with the United Kingdom, as I have said on many other occasions, but it is not my understanding that Guernsey have yet said that they would agree to sign such an agreement.

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

The Minister will be aware of the joint union rally which is taking place at 6.00 p.m. at Fort Regent today. I will not ask the Minister if he is attending although I may see him there. I will ask him whether he would be willing - if there is something that could persuade him - to reopen the negotiations for a pay deal with States employees who up until now seem to have had a pay deal forced upon them in spite and trampling the process of negotiations. Could there be something that would persuade the Chief Minister to reopen those negotiations, sit round a table and come up with a better deal for our workers?

### **Senator I.J. Gorst:**

I have to be absolutely clear that my staff do continue to negotiate and have conversations with public sector unions with regard to modernisation so that flow of information and conversation continues. The Deputy is well aware of the difficult situation that the States Employment Board found itself in, built upon the difficult economic environment not only in Jersey but across Europe, and we had to perform a balance of providing pay restraint, protecting public sector jobs and we believe that the proposal that we put to our employees is fair and appropriate and manages that balance well. In December the States Employment Board took the decision, as the Deputy well knows, that the division between our position - which has been approved, the money has been approved by this Assembly on more than 2 occasions - and what the Union representatives wanted was so great that we had to implement the pay deal and that is exactly what we have done.

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

A supplementary. The Minister has talked about a willingness to sit around the table and discuss modernisation. The question is about the actual cost of living adjustment which should be seen as separate from modernisation. Does the Chief Minister agree that negotiations should continue on the actual cost of living adjustment that workers will receive and that modernisation, which I believe Unions are more than willing to discuss, should come subsequently?

#### **Senator I.J. Gorst:**

Obviously the Deputy and I have argued about this point before and I do not agree with him. The Deputy also refers to cost of living adjustments as though that were happening elsewhere in our community and elsewhere across Europe. We have got to understand the difficult economic situation that we find ourselves in and trying to protect our workforce together with this pay deal which we implemented. We also said that there would be no compulsory redundancies. We have been criticised for that. We have also been criticised for the 4 per cent that is on the table and been as part of this deal for 2014. What we are trying to do is provide a workforce which is fit for the future, which is modernised and will be able to provide the public services that this community wants, and that has been difficult, but what we believe we proposed and implemented is fair.

#### **6.6 Deputy M.R. Higgins:**

Can the Chief Minister confirm that there are in fact no powers to stop immigration into the Island even under the new law and will he be following David Cameron's Government in discouraging migration from Bulgaria and Romania into Jersey by placing adverts in those countries that it is not all milk and honey in Jersey for middle and low paid workers?

#### **Senator I.J. Gorst:**

I have no plans to be placing adverts in periodicals in those jurisdictions. The Deputy makes an interesting point but, as he well knows, we do control immigration indirectly by the control of jobs licences and the control of housing and they are decisions that this Assembly has agreed and they are appropriate ways to control flows of immigration. Of course, outside of the European Union then the responsibility for controlling immigration through work permits lies with Home Affairs.

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

In reply to questions this morning the Chief Minister's Minister for Planning and Environment said that he would not rezone greenhouse sites because he would be bringing forward, or he indicated that he would be passing, Category A homes on States-owned sites in places like Summerland. Given the urgent need for these types of homes and the obvious time delay in building anything in Summerland does the Chief Minister agree with that?

#### **Senator I.J. Gorst:**

Obviously everything is in the person's hearing because that is not quite what I heard the Minister for Planning and Environment say. He laid out what the position of the Island Plan was and, as I have said previously in this Assembly, and I believe the Minister for Planning and Environment supports that, we are going to need to bring forward the rezoning of sites. The Island Plan was premised on bringing forward an H3 proposal to deliver affordable homes in the medium and longer time. It was also premised on rezoning of sites. The States decided that those rezoning of sites, it was not going to approve. As we know the development of an H3 policy has been extremely difficult and those in the industry have said that it is not going to work exactly as they said when the Island Plan was debated. We have therefore been left with no reasonable amount of supply and therefore we have to go back and consider the rezoning of sites, difficult as that may be. I think that the Minister for Planning and Environment supports that approach.

[12:15]

**6.8 Deputy J.H. Young:**

In the reports of the food scandal in the U.K. one of the factors that seems to have emerged is that in the United Kingdom there is no one body for food standards regulation. Will the Chief Minister be looking at that with the Council of Ministers to ensure that Jersey does not become a target for all the various food items that nobody wants in the U.K.?

**Senator I.J. Gorst:**

I am not sure how that would be possible for us to become the target of food items not wanted in the United Kingdom because we have largely a United Kingdom supply chain when it comes to supermarket foods and therefore they will have a common approach across there. The Deputy makes an interesting point and I will ensure that we do continue to have a joined up approach to these issues. Obviously I have got reports from various providers of food across States and Government departments and I am satisfied with those. We have a strict demarcation and separate sites between the abattoir and the knackers yard - I am not sure if that is a parliamentary term but it is the one I have been provided with - and therefore I think that Members and the public can be satisfied that there is appropriate division between those operators and therefore you cannot have cross-contamination as it were.

**PUBLIC BUSINESS**

**7. Minister for Justice and Department of Justice: report (P.120/2012) – as amended**

**The Deputy Bailiff:**

That brings the 15 minutes to an end and question time now concludes. We have nothing under J or K. We now come to L, Public Business, and the first item is the Minister for Justice and Department of Justice Report P.120 lodged by Senator Farnham and I ask the Greffier to read the proposition. Senator, do you wish to propose this as amended?

**Senator L.J. Farnham:**

Yes, Sir.

**The Deputy Bailiff:**

The Members presumably agree to that. Yes, as amended please.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to request the Chief Minister to investigate the possibility of establishing a means of appropriate Ministerial oversight of the justice

system such as a new Ministerial office of Minister for Justice in Jersey with an associated Department of Justice and in consultation with the Council of Ministers to report to the States with recommendations or proposals no later than 31st July 2013.

### **7.1 Senator L.J. Farnham:**

This proposition seeks to introduce political accountability for justice in Jersey. The proposition requests that the Chief Minister investigates the possibility of establishing a means of appropriate Ministerial oversight of justice and the justice system. In this proposition I have asked the Chief Minister, in consultation with the Council of Ministers, to report to the States with recommendations or proposals no later than 31st July this year. With that in mind I am especially grateful for the supportive comments lodged by the Council of Ministers. I agree with the comments that while the proposition is suggestive of one possible solution, namely a new Ministerial office and associated department, a number of alternative solutions are possible as outlined in my amendment. I am also grateful for the Chief Minister's confirmation that he is content to investigate this issue should Members wish him to do so. I am sure that when considering the matter the Chief Minister will be mindful, as will all States Members, of the programme for public sector modernisation and also the need to operate within the spending limits set within the Medium-Term Financial Plan. It is therefore appropriate these factors are considered when evaluating the options. It is vital that the Judiciary are impartial and independent of all external pressures so that the public can have full confidence that cases will be decided fairly and in accordance with the law. It is also vital that there is independence for the prosecuting authorities. Therefore, while the proposition asked that the role of the Executive Government in justice matters is considered the proposition does not seek to interfere with or override the principle of impartiality and independence for the Judiciary and prosecuting authorities. Rather it seeks to preserve these important characteristics of the judicial system while improving our unique system of government by ensuring that there is democratic oversight of the justice system and that the Island's elected representatives take responsibility for justice matters. It is this fundamental principle that the proposition endeavours to establish. The report accompanying the proposition highlights the gap within the responsibilities of Ministers and their departments in relation to the justice system. In summary, within the current set up there is no Ministerial office or department in Jersey with formal responsibility for justice matters. As a result, Islanders and their elected representatives are not able to exercise proper democratic oversight of the justice system nor are they able to hold Ministers appropriately to account for matters relating to justice or justice policy. Equally, those working within our system of justice do not have clarity regarding which Minister they should turn to should their independence and impartiality be threatened or their resources be insufficient. It might be argued that some of this responsibility rests with the Attorney General although of course the position of Attorney General, as a Crown appointment, is outside the executive branch of Government and the elected representatives of the Islanders. Some may argue that this responsibility might rest with the Minister for Home Affairs although in reality any such responsibility is only limited to some aspects of criminal justice policy. There are those who may argue that responsibility already rests with the Chief Minister although again this responsibility is not clear and is probably limited to the Legislation Advisory Panel and some other pieces of the jigsaw. In short, there is a clear gap in our democracy and in our system of government which must now be addressed. The report also highlights this gap by contrast with the United Kingdom where the Ministry of Justice is responsible for policy of the justice system as a whole. This includes policy responsibility for the overall criminal, civil, family and administrative justice systems as well for the courts, tribunals and legal aid. In addition, the Ministry of Justice has policy responsibility for constitutional reform, strengthening democracy and safeguarding human rights. The Ministry of Justice also oversees a number of arm's length organisations including the Court Funds Office, the Judicial Appointments and Conduct Ombudsman, the Sentencing Council, the



Law Commission and the National Offender Management Service which includes the prison and probation services. It is also worth noting that the Ministerial office of Lord Chancellor and Secretary of State for Justice has a special responsibility to defend judicial independence, to consider the public interest in respect of matters relating to the Judiciary and to provide sufficient resources to support the business of the courts. This, of course, is not to say that the United Kingdom provides exactly the right model for Jersey or that the United Kingdom system is perfect. It is simply an illustration of how such matters might usually be arranged within an established democratic system together with all the appropriate and necessary checks and balances. There are plenty of other examples that could be considered. For example, the Scottish Government with arguably less autonomy than the Crown Dependencies has a post of Cabinet Secretary for Justice who has overall responsibility for the police, prisons, sentencing policy, reducing reoffending, youth justice, criminal law, legal aid and judicial appointments. While there are many examples elsewhere, which we can draw upon if we wish to do so, Jersey needs to find its own solution which is suited to our unique and cherished constitution and which works for us. Of course, none of this is to suggest any criticism of the way that Ministerial government was established in Jersey as I am sure Members accept all systems of government evolve over time as priorities change and we learn more about what works best at any given point in time for own societies. We must therefore ensure that our system continues to evolve in line with these guiding principles. I would also like to recognise that other Members of the Assembly are undertaking valuable work on the machinery of government and this proposition is not intended to second guess that work, which will doubtless offer some valuable insights into the overall way that government operates. I am also mindful of the changes that may or may not arise from the work of the Electoral Commission which we are due to start debating later today. However, the need to clarify democratic oversight, political accountability and Ministerial responsibility for justice in Jersey is an issue whose time has arrived and which needs to be progressed expeditiously. To conclude my opening remarks, I re-iterate the necessity for this standalone proposition in order to ensure that the matter can be investigated and I hope concluded in an appropriately prompt time frame.

### **The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? Deputy Hilton.

#### **7.1.1 Deputy J.A. Hilton:**

I think this proposition is long overdue and I think, as the speaker indicated, that possibly some clarity is needed. Something that has given me a little bit of bother in recent times - and I do not mean this in any way as a criticism of the court, it is just my observations - there have been a couple of cases recently that have been dealt with in the court and I have been quite surprised at the sentence that has been handed out. I would just like to give Members the background to a couple of these cases that I am going to refer to, both in recent weeks. The most recent one was of a young man who grabbed a woman around the throat and beat a man with a belt has been locked up for 18 months after admitting his third violent attack in 2 years. His deportation was recommended but the court decided that he would be given a term of imprisonment. The defendant came to the Island in 2009 so at the time of that offence he had only been here 3 years and had committed a grave and criminal assault in April 2010 and then an attempted robbery of the same year. When he committed the offences that he was then sentenced for he had only been out of the Young Offenders' Institute for 5 months. My understanding is that the decision not to deport this young person was because the court believed that his mental health would be better dealt with here than the E.U. (European Union) country that he had come from and my own personal belief is that I do not believe that that was the right sentence on this occasion. He had only been here 3 years and my understanding is or has been in the past that people who regularly offend, especially violent offending or drug offences, are recommended for deportation and in more cases than none are

deported. I understand the court has the ability to do this and do deport but I am not sure which Ministerial department, because I do not believe it is Home Affairs... but I think some guidelines need to be set down by this Assembly. As a Member who has been voted in for 4 consecutive terms on a very strong law and order platform I do believe my constituents look to me to raise these concerns in this Assembly, which is why I am speaking like this today. I believe as elected Members that we are the ones who should be setting down the policy around offending and the deportation of foreign nationals. That is one case that I refer to. There was one reported in the paper only a couple of days ago and I quote: "A serial sex offender has been spared jail despite being told that the court was seriously concerned by the threat he posed to women." This particular person fled back to the country of his origin and then came back again. He had been convicted before on various different occasions and again it was decided he would remain here in Jersey. I am struggling to understand why this is happening. I know the system of deportation is that it is recommended. It is recommended usually by the Attorney General. The judges sitting will consider the case and then it is the Lieutenant-Governor who decides whether than deportation is going to take place based on the facts put before him. I feel that I have to raise this matter today. It is the proper place for me to raise it.

[12:30]

I hope that the proposer of this proposition may be in a position to address this because I want to know how do we, as elected Members, influence the policy or direct the judges when we come to consider what we feel the Islanders are looking for us to do. I accept entirely that the Judiciary have to be independent but I feel as elected Members that we are the ones who should be setting the policy. It may be that there are people here who do not believe we should but as an elected Member who has been elected on a strong law and order mandate I feel that I have to say this today and that this is the right forum for us to have that discussion. Thank you.

**The Deputy Bailiff:**

Deputy, for the avoidance of doubt, it is entirely the right forum to have this discussion. Deputy Young.

**7.1.2 Deputy J.H. Young:**

I only want to speak briefly on one aspect of this which is the role of the stewardship of public resources within our justice system. At the moment I think there is a gap. There is a gap because quite a swathe of our court's machinery effectively I think are, under the current arrangement, left to very much regulate themselves and I am sure they do a good job but it cannot be seen. The current arrangements do not allow for value for money and financial performance to be explicitly demonstrated. When one looks at the States accounts and just by reference to the actual figures for 2011 our courts come under the heading of "Non-Ministerial departments". Just adding up the numbers if there were the Bailiff Chambers, the Law Officers' Department, Judicial Greffe, Viscounts and others, Probation and so on, about £19 million there is being spent where a number of people, I am sure, are already accounting officers which at the moment comes within our Chief Minister's Department. I think myself that that really is very difficult for a Chief Minister to exercise the kind of depth of accountancy and scrutiny that should be required over how we spend our money because at the end of the day we are under financial constraints. We have C.S.R. (Comprehensive Spending Review) policies and so on and I think there is an obligation across Government in all its areas of life to ensure that our financial and H.R. (Human Resources) resources are used as effectively as they can on policies of Government. I am not advocating, at all, interference. I like to think that it would be possible to have a Minister who would take responsibility for those matters and public policy without obviously interfering with the independence of the court because spending of £20 million a year is not insignificant; major chunks

of those are on the costs in the court and 173 full-time employees. The sort of things that I expect to come under such a Minister would be to look at policies, for example, on legal aid, policies of alternative dispute resolution and whether or not there are those policy base issues of ensuring how we use the resources we have got to ensure that we continue to have the high quality of justice. I certainly have long thought there is a gap, no one Minister exercising responsibility. I have listened carefully in the discussions with the Chief Minister because obviously that task falls to him at the moment and I feel that this is almost impossible for him to do directly and I think there is a case for having a political person and I do not draw distinction between whether that is an Assistant or Minister. This proposal is a Minister. Obviously there is a problem there because if we start to grow large numbers of Ministries this leads us into problems of organisation, Troy Rule and so on, but I think there are other solutions to that. But it does not depart from the issue. I think it is important to have a political voice at the top table responsible for those important matters, because of that I support the proposition for these ideas to be examined and to have a report back so we can decide then.

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

Perhaps Deputy Hilton's speech touched on the complexity of the question that is before us today when she talked about the Chief Minister's involvement, the role of this Assembly, the Attorney General, the Lieutenant-Governor is occasioned to make decisions in this area, Home Affairs obviously. We have just heard that there are accountability issues involved in this particular suggestion. We must beware, I think, while it seems like a good idea, yes we should have a Minister for Justice, of mission creep. As the previous speaker just briefly mentioned, how many Ministers do we have? A Minister for Justice, a Minister for Foreign Affairs, Minister for Children has been mooted, a Minister for the Elderly also I have heard, *et cetera*. We are about, later on, to debate a proposition which might end up with us reducing our numbers as far down as to 42. If we start doing that and we start increasing the number of Ministers we are going to be administratively in a serious place in this Chamber. Already Ministers have what I would call scrutiny light, effectively, because Scrutiny has limited resources and can only go in so many places. More Ministers, I am afraid, is likely to reveal even lighter version of scrutiny than the one we have already got. The report must, I think, pay equal attention to what it means within this Chamber and this possibility of mission creep as well as the principles of independent accountability for our justice system.

### **7.1.4 Senator I.J. Gorst:**

I am grateful to Senator Farnham for bringing forward this proposition and I note that in his proposition he does not seek to criticise any existing policy, practice or procedure but rather he brings it forward solely out of the interest of improving our Island's system of government and I thank the Senator for that constructive approach and I hope that the comments I am about to make will be taken in that same spirit. The Council of Ministers, as Members will see from our comments, considered this matter in January and I just want to simply re-iterate 3 important aspects of our comments and I will turn to those briefly now. Firstly, is the perceived gap in the responsibilities of Jersey Ministers and departments that this report highlights and Senator Farnham in his report illustrates that gap clearly by contrast with the responsibilities of the United Kingdom Government. The Council also considered that contrast with regard to a range of other European countries of varying sizes and with different constitutions: France, Germany, Malta, Switzerland, Liechtenstein and Andorra, all of whom include responsibility for the justice system within the executive branch of government. The Council of Ministers therefore supports the suggestion that options for addressing this perceived gap should be investigated further. Secondly, we come to considering a number of means of addressing this perceived gap, and hence Senator Farnham bringing forward his very helpful amendment, to make it clear that at this stage the Council of

Ministers are not necessarily supporting the establishment of a new office of Minister for Justice and associated department building - I suppose on the comments of Deputy Southern as well - but rather that we need to consider a number of means by which Ministerial oversight of the justice system might be addressed. Thirdly, impartiality and independence of the Judiciary and prosecuting authority and the Council of Ministers in its comments are very clear regarding the need to continue to uphold the necessity of impartiality and independence of the Judiciary and the prosecuting authorities. I note that Senator Farnham's report also places a clear emphasis on the principle of impartiality and independence for those 2 branches. In conclusion, therefore, the Council of Ministers supports the overall aim of this proposition that due consideration be given to how those elected into office and exercising executive functions can take appropriate responsibility for justice matters and so be held to account by Islanders and their representatives in the way that Deputy Hilton was suggesting that we should be. With that I will finish and I hope that Members do support Senator Farnham's proposition bearing in mind those 3 important points.

**The Deputy Bailiff:**

Does any other Member wish to speak? If so, then we would look for the adjournment. Can I ask for the adjournment to be proposed or do Members wish to continue?

**Senator P.F. Routier:**

I was just wondering if there were many more to speak.

**The Deputy Bailiff:**

I had no one, that is why I asked the question but I see Senator Le Marquand wishes to speak, Deputy Tadier, Deputy Trevor Pitman.

**Senator P.F. Routier:**

Yes, I propose the adjournment, Sir.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Deputy Bailiff:**

The adjournment is proposed. The States now stand adjourned until 2.15 p.m. this afternoon.

[12:41]

**LUNCHEON ADJOURNMENT**

[14:15]

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

Very well. Perhaps just before we do resume the debate I could remind Members that the Chief Minister has indicated before lunch that he is willing to accede to the request in Senator Farnham's proposition. I am sure Members will bear that in mind when making their contributions. Chief Minister, had you finished?

**7.1.5 Senator B.I. Le Marquand:**

I very much welcome this proposition as amended. I have for some years spoken quite frequently in this Assembly about the gap, which I sometimes describe as a black hole, between the Bailiff's Department, the Law Officers' Department, the Chief Minister's Department, the Legislation Advisory Panel, the Home Affairs Department and the Probation Department in exactly this area where it has not been clear as to who has responsibility for what. Although the position has definitely improved in recent years with the establishment of the Jersey Justice System Board and the Justice Working Group, and we are now starting to see the fruits of that partly because of the

additional resources which the Law Officers' Department have obtained which they can give for legislative reform, the gap still exists. It is important to affirm 2 things, 2 very important principles, firstly the principle of judicial independence. That is the freedom of the Judiciary to make decisions free of political pressure. That is a very important constitutional principle. The second important constitutional principle is the independence of the Criminal Prosecution Service from political or other interference or pressure. I mention those 2 important principles because I believe that this proposition - a lot will come out of this - will give an opportunity to strengthen the safeguards and the principles in relation to that and to seek to define them. In just the same way as this Assembly in the new police law has sought to define to a degree the independence of the police force in their investigations so we should seek to do that as part of this review. This proposition as amended is for there to be an investigation in relation to this area. It is not now a proposition for the setting up of a Minister for Justice, and that has to be said very firmly. What it is doing is it sets out the possibility of a Minister for Justice as a possibility among others. That is quite important because I think some Members of this Assembly have not picked up the effect of the amendment. The discussions initially in the Council of Ministers on this were such that we could not have supported the proposition unamended because of its being too closely tied in with the Justice Ministry and those who have read the comments of the Council of Ministers will see what we are now saying in relation to this. But with the amendment which just says this is one of the possibilities, we are really left here with an inquiry overdue into the whole area to decide how this is going to be best dealt with. I do not want to start prejudging this and start to enter into a debate where we are going to start to debate what is going to happen in the future but I do think I need to say a couple of things. Firstly I think I particularly need to say this because it is the Assistant Minister for Home Affairs who, in his personal capacity, brought this, I have said repeatedly that in my view the responsibility here should not lie with the Home Affairs Department. I have said that repeatedly. Indeed I have said it more times than I can recall that I am not a Minister for Justice, I am a Minister for Home Affairs because in the default with the black hole people somehow assume everything comes down to me. Home Affairs has oversight of the police force and it seems to me that it would be wrong for the same Minister that has oversight of the police force to also have oversight, as it were, within the appropriate limits of the prosecution and judicial functions. Secondly, it seems to me that if there is going to be an oversight element in relation to the judicial element then the seniority of the Bailiff and of his role, which I will call at the moment the Chief Justice aspect of the role, is such that it really ought to be by the Chief Minister's Department and not by a mere Minister for Home Affairs. Also I would mention in passing the expertise in relation to matters of dealing with constitutional issues and things of that nature rests in that department already and I think that is an important factor. I am going to deal very briefly, if I may, with Deputy Hilton's 2 points here. Deputy Hilton and I have had many conversations in relation to this area and she probably can guess what I am going to say in relation to this. She raised 2 individual cases and she is well known for her concern for law and order, and protection of the public and for that I duly applaud her but the criteria for recommendations in relation to deportation, that is the stage which is dealt with by the courts are set out and established by virtue of U.K. judgments. That is because we are part still, albeit with some degree of freedom of our own, of the Common Travel Area and the U.K. and the British Islands wider system and so for us to change those criteria will in my view be difficult. The final decision in such matters is always made by the Lieutenant Governor. Again he has to apply the criteria set out in the judgment and I think one can see it would be particularly difficult for the Lieutenant Governor to be asked to start to apply different criteria to those which exist elsewhere. What I would say is this: that in relation to Judicial decisions if there is a degree of unhappiness with them, then it is always open to this Assembly to ensure that those as appropriate have the right of appeal in relation to the matter. I do not think there would be a right of appeal at the moment, for instance, in relation to the refusal of the lower court to make a recommendation for deportation. I may be wrong about that but I do not think that

there is. Although theoretically there would be a right of appeal by judicial review against the refusal of the Lieutenant Governor to make a recommendation for deportation, I am not aware of that ever having occurred. Secondly sentencing policy, and this is really the nub and the difficulty of the matter because the principle of the independence of the Judiciary carries over in terms of sentencing policy. It is the Judiciary that sets in policy and that the line of authority in relation to such matters starts with the lower court which might be the Magistrates Court, then goes up to the Royal Court. If it starts at the Royal Court it goes up to the Court of Appeal and so in fact you get a situation where the courts themselves, the lower court and the Royal Court become bound by the decisions of the Court of Appeal in relation to such matters, and have to operate in accordance with those principles. The remedy it seems to me if this Assembly wishes to intervene because it thinks that sentencing policies have become too soft or too harsh or whatever is either by setting or changing the maximum sentences. At the moment we have maximum sentences for all statutory offences and that has set a guideline of how serious we see things. Curiously we have a mass of offences which are common law offences which can be down to quite minor things for which there is no maximum sentence. If we thought there was a particular issue in relation to common law offences we can seek to codify that offence, create a statutory offence and create a maximum offence in relation to that. Alternatively there is the possibility of setting minimum sentences. Again this is with the remit of this Assembly. In relation to this area, if I can give a classic example of that which has proved highly successful in terms of social policy, it was the drink driving minimum sentence of 12 months apart from where there are special reasons; 12 months disqualification I hasten to add, not 12 months imprisonment. If there are issues there that is the second way in which we can seek to influence but apart from that I am afraid that we might like to, as politicians, even as the Ministers for Home Affairs, we do not have the authority to tell the courts, nor will this this proposed arrangement have the authority tell the courts: "You must change your sentencing policy." That is the reality of the principle of the independence of the Judiciary and that is a principle which is accepted throughout democratic countries and an important one. I have sympathy for Deputy Hilton and her particular case. Of course there are cases where I look at judgments either of my successors as magistrates or indeed the Royal Court where I think: "My goodness, that was a bit hard", or conversely: "That was a bit soft", but I never say anything because it would be totally improper for me to do so. I think we are going to end up here with a better definition of the relationship between the Chief Minister's Department and these other organisations. I think it is a great opportunity. I have become aware during the process of meetings and discussions we have had on this that in fact there were some detailed proposals at the time of Ministerial government but for some reason they were not carried forward and I think that is a pity. I think a great opportunity was missed and now we have the opportunity to put that right.

**Deputy R.G. Le Hérisier:**

On a point of clarification, the Minister said there are criteria for deportation and that the States could change them. Could he outline what those criteria are?

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

I wonder if that is really a matter for today. I wonder if the Minister could circulate that.

**Senator B.I. Le Marquand:**

I could arrange to obtain copies of the judgments in relation to that, yes.

**7.1.6 Deputy S. Power:**

I first of all would like to commend Senator Farnham for bringing this report and proposition which is essentially to investigate the possibility. I think that is so important, that this is a commensurate stage in what will be a long journey to establish a Justice Department for Jersey. I just want to relate my own views on this briefly, perhaps more briefly than the Minister for Home Affairs

because I do not have his knowledge or degree of specialisation. I want to say he has already summed it up but I think it is absolutely essential that over the next months and years that we pull together these departments of the States of Jersey that can evolve over time, and in the future a policy which integrates the Bailiff's office, the Judiciary, Home Affairs, Chief Minister, Attorney General and importantly the Director of Population or of Policy with Customs and Excise and all of these people and I think it is important that this be integrated. We saw this week that Theresa May, the Minister for Justice in the U.K., expressed frustration...

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

I do not think she is the Minister for Justice.

**Deputy S. Power:**

The Home Secretary in the U.K. expressed frustration at the apparent difference between her views on deporting people who are residents of the U.K. on income support and being allegedly accused of certain things and the apparent difference between the judges who do not wish to deport these people at the same time. I have to relate to the States my own experience on visiting how deportation works in the Isle of Man and how the Isle of Man appears to interpret the European Convention on Human Rights slightly differently from Jersey. There is an integrated function within the Isle of Man that allows this. I was privileged to be allowed to sit in on a Magistrates Court hearing one morning as the guest of the then Economic Minister, who is now the Chief Minister, on a case where a gentleman from the Chester or I think it was the Liverpool area had been resident on the Isle of Man for 3 years. He had a girlfriend and he was living on the Isle of Man with her for 2 or 3 periods of time and had a baby boy and he had been involved in what was similar to what we would call a grave and criminal assault.

[14:30]

He had been arrested. There had been a provisional hearing and he was now before the Manx magistrate, I do not remember his exact title, and the defence counsel for this man argued that because he had now established a home in the Isle of Man with a Manx resident and with a baby a custodial sentence would suffice. The judge retired and then came back and issued his judgment. His judgment was, in his opinion, the Isle of Man was not this man's home and his home was the U.K. and he had not been sufficiently long in the Isle of Man to warrant a custodial and being allowed to serve that custodial in the Isle of Man and he was therefore deported. He was ordered to be deported that particular day. The point I am trying to make is that if we have a Justice Department in Jersey we may be in a situation where we can perhaps interpret these Conventions on Human Rights by a wider body of expertise other than perhaps our own highly esteemed judges in Jersey and in the Royal Court. I think it is important that while I have just given you one small example in the Isle of Man, if we have a Justice Department we can apply our own interpretation of justice and perhaps advise how this justice be administered with regard also to drugs, drugs importation, drug convictions, perhaps trafficking. I do not mean just human trafficking but there are other issues to do with trafficking, illegal trafficking in other goods and services and indeed live animals, and indeed the weighty issue of illegal net inward migration or the issues to do with migration where somebody has perhaps previous convictions in different countries or in different jurisdictions. I think it is important that a Justice Department can pull all these different facets together. I said at the start that I agree with this. I also support we must ensure judicial independence but I do believe that the States and this Assembly can have a role in giving direction to how some interpretation of very complex areas of law and of conventions can be interpreted. For that reason I think Senator Farnham's report and proposition is to be commended and I hope in his summing up that he will think about some of my comments.

**7.1.7 Deputy R.G. Le Hérissier:**

I was very interested in Deputy Power's comments because obviously one of the frustrations politically in the U.K. is that the findings of the judges trump the feelings of the politicians and, as we know, papers like the *Daily Mail* run a fairly continuous campaign. If you ever want to get depressed just read a few day's subsequent editions which will entirely convince you that the country is going down the pothole fast. I am a bit worried about, joking aside, what Deputy Power said because ultimately it is for us to set the law and it is then for the courts to interpret. I know there are real issues with the courts with the Human Rights legislation. People feel judges have moved like their U.S. counterparts, for example, into political areas. They have moved into vast areas of discretion and away from that British judicial tradition of looking at issues in a very narrow way, almost a technical way and that has been obviously quite unsettling for the politicians. The other thing is there is a bit of a conundrum with deportation from Jersey because the irony is in the cases where they are recommended by the courts it is to another E.U. country and I often wonder if anyone were to contest that what the outcome of that may be because we seem to be quite selective in the E.U. countries to which we do engage in deportation. I have not seen any, for example, to the United Kingdom, any deportation. We all know the binding over rule was a de facto kind, for example, and that had to be revised and made, as I understand it, a move by consent. I would be very chary of suggesting that we can express views of the kind that, quite rightly, Deputy Hilton expressed and that somehow they would be transmitted to the courts and they would react. In my view they can only react if the law has been changed and they are operating by a different law, and one, I am afraid, consistent with human rights. My second point is the Troy Rule. It is a bit unfortunate that we are getting these ad hoc requests. We have all been enjoined time after time, and of course the next debate is likely to be another example of how we ignore all good sensible advice, to come up with coherent plans to try and sing from the same hymn sheet, and a more discordant and inharmonious choir you could not beg to meet. I have to worry about these ad hoc moves. I think the principle is great. I have no problem with it but we must not jump to the conclusion that a Ministry of Justice is a Ministry to obtain justice as opposed to a Ministry to co-ordinate the agencies that deal with justice. I think some people feel it will be the former and it is not. It is the latter. I am worried about the Troy Rule and if we keep making ad hoc changes and as has been said there is another move, for example, for a Minister for Children depending on the findings of a Committee of Inquiry, and I really worry about that and no doubt that will be considered in the next debate. I am sure the Council of Ministers will soberly, slowly and sensibly look at this and not take any pre-emptive move to upset the Troy Rule because it is fundamental to the whole machinery of government debate which, as Deputy Baudains quite rightly said months ago, should be going in parallel with the debate on reform of this Assembly but for various reasons is not.

#### **7.1.8 Deputy T.M. Pitman:**

I thought it was Deputy Tadier first so I apologise for that. I do say that to begin I have to chuckle when we hear pleas that politicians should not interfere, and tell the law what to do and of course if we had a lawyer and a judge sitting there telling us what to do, it should be sent off to the dustbin of history very quickly, I hope. I would like to apologise in saying what I do to many of the people who have been in touch with me and are deeply concerned about this issue of justice in Jersey because I am not going to say everything that needs to be said. There is a reason for that, and that is because I think it needs to go to a much wider audience. When you consider the amount of people coming forward, and I am not the only States Member getting these, certainly a couple of colleagues, and we will be going public very soon, when you are seeing cases and the complaints and the evidence of complaints of what is either total incompetence or utter corruption within the justice system here then what do you do? I am not going to be silenced on it. I am not going to be silenced at all. I support Senator Farnham in bringing this because he is right, we do need a Justice Ministry but I have some concerns. Those real concerns are that I look around and I think who



would take this office, and like many others who get in touch with me and other Back-Benchers, probably sounding off at Back-Benchers, we cannot really see anyone who would likely get that job who would inspire any confidence. What did that achieve? Justice is meant to be for everyone. It is not meant to be dependent on how deep your pockets are. It is not meant to be dependent on how powerful you are but that is the reality in Jersey. It is quite ironic, is it not, this week we all received a nice invitation to go and discuss the cost of justice. I certainly had a little chuckle that it came to me. Let us look at some of the things that have been put to me. Of course they are allegations but they are allegations with evidence. What type of thing? Allegations which look to me clear evidence of perjury by lawyers. Is that not serious? Should we not be doing something about that? Is it something politicians should shut up about? You are not going to shut me up. Nobody is. Court transcripts being tampered with. I know that some people have already put this forward and their cases have not even been looked at. Is that good enough? What kind of confidence does that give anyone? Really it is just prosecution. I could say a word about that. If we have laws are we all meant to be held accountable to those laws or is just who you are? In Jersey it is just who you are. The evidence is there. The facts are there. Sentencing. Deputy Hilton touched on that because she is absolutely right but the example she gives are not the only ones, they are numerous. What concerns me, and I have not got time for abusers but when you see, for instance, a gentleman, and I will not name him, with a 15-year sentence completely out of sync with any other sentence for indulging in a relationship, I will call it that, with an underage young woman. I do not excuse that all: 15 years. What happens when you look at the transcripts, when you look at the papers as I have been able to and you find that there are 4 other individuals, a couple of them very high profile Jersey people, shocking evidence not even taken to court. The things that were said in court would make your hair curl - even mine if I had some. Is that good? Does that inspire confidence? Does that mean that politicians should shut up and not push for an improved justice system? Fifteen years. When for plying little boys with drink on school trips, abusing their position of trust, taking them out, filming yourself masturbating them, performing oral sex on them: 4 years. I do not understand that one. I am not a judge or a lawyer and I am quite pleased I am not, to be quite honest. Jurats not being vetted properly or monitored properly. Indeed a few years ago, a certain old politician and myself met with a lord who was visiting the Island. He had come to see the previous Chief Minister, not the present one. He went with us for lunch and he said: "Who on earth is monitoring these people?" That is the question I wanted to ask him. Who was monitoring these people? Who runs this Island? Is it the Government or is it the Law Office? No wonder people are calling that the snake's head. Nobody is monitoring them. That is the truth of it. Nobody is monitoring them. They are a law unto themselves and it is a very widely held view, I am afraid, that it should be called the Lawless Office. I will say no more on it than that. Should not Jurats be monitored? If someone's evidence comes to light in official reports, admittedly banned and suppressed reports by the Council of Ministers, that someone who is a Jurat refused to look at evidence against an abuser, do we just ignore that? Do we let that person sit there? The Jurat's job is to decide on the facts, on the evidence. How can someone say: "I am not going to look at that"? How can that be allowed? This will not be reported anywhere so I can say really pretty much what I like. I am not going to name anyone. How can we accept that, and it has gone on for 14 years. Fourteen years with a succession of Crown officers. You would laugh. You would cry. Instances such as an individual being jailed for drink driving yet the analyst had worked out she could not have been under the influence, over the limit when she drove. The Magistrates went: "I do not believe you." Is that justice? It might be justice in Zimbabwe or North Korea but it should not be what we are aspiring to in Jersey. Am I wrong? Am I being Mr. Angry? Well, I am angry. Should we not just let the Law Office sort this out? Not if they cannot do their job. What else do we have there?

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

Is this getting back to the proposition?

**Deputy T.M. Pitman:**

It is all about justice and so I am making the point of why we should go down this route.

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

The Minister for Home Affairs has explained this proposition is not about the sort of things that you are raising.

**Deputy T.M. Pitman:**

To be fair, Sir, you gave him quite a bit of leeway so I am nearly finished so I will speed up a bit. Jurats are allowed to sit on cases of close personal friends, go to dinner with a defendant. That is okay in Jersey. Who is monitoring that? I have no faith, I am afraid, in the Chief Minister doing anything about such things. I could go on and people have already talked about the problems with lack of appeals and the Attorney General's role. The fact is justice in Jersey is a joke and it is a very bad joke, and it is ruining a lot of people's lives. We are seeing a very diverse range of people coming to us with very diverse cases. Are they all making this up? I do not think so. I am going to fully support Senator Farnham but I have to say the proof of this really is going to be in the detail when it comes back and it is essential that whatever comes forward can be amended because I have absolutely no faith that what Senator Farnham wants and I want will happen without one of us doing so. Thank you.

[14:45]

**7.1.9 Deputy M. Tadier:**

I do not mind following Deputy Pitman. I think before lunch I did put my light on but I think many Members think we are interchangeable anyway so it is just the hair is slightly different, I accept that. It is interesting in many ways that if you believe in synchronicities, which I do not, but I understand the concept, is that we would normally have been debating this under normal circumstances on the same session, if not the same day, as the Committee of Inquiry into child abuse. Also we are reminded this week that there is a legal discussion going on which is being held and to which States Members have been invited to at a price. I think it is £25 and I may yet try and negotiate that down, for those of us who are not associated with a law firm to pay for our tickets. I think that is going to be a very interesting session, which I want to go to. These things are happening because clearly there are issues surrounding legal representation in Jersey and to do with the Judiciary. Let us pretty much leave it at that. There are questions which need to be asked and there are improvements which are being suggested, and I hope myself also to work with other Members and come forward with a review to look at the way we deal with legal aid, the way we fund it, who can qualify for it and whether those criteria need to be reviewed. Those are all, I think, legitimate questions and there is an element of consensus that we already have in this Assembly and wider society about that. In some ways when you come to Jersey you almost have to leave what you think or thought you knew at the doorstep. There should almost be a sign which says: "Welcome to Jersey" and then you get given a little vial of potion which says: "Drink me" on it and that transforms you into a being which can live quite happily in a non-maladapted way in the Island. In some ways this proposition we have before us is not revolutionary at all. I think it is good that it is being brought. The Senator has already been commended for that and I add my congratulations to that. It is not controversial insofar as we know that most jurisdictions have a Ministry for Justice. There is some form or other of, if not political oversight of the Judiciary, there is some mechanism by which they can be held to account but, more importantly, which previous speakers have said, is about feeding back into the Judiciary about something to do with the way societal changes may be happening, for example. It seems to me of course you do not want to

interfere with the Judiciary. In other places there are separations of powers and that is quite correct that they exist and maybe in Jersey we will also have that at some point. But there needs to be a way that politicians can legitimately feed back into those decisions. For example, of course it is completely for the Judiciary to judge and find out whether somebody has committed an offence. But it seems to me that an offence ... there is a big difference between giving somebody a one-year sentence and a 10-year sentence. If you happen to have a particularly liberal set of judges or if you happen to have a particularly draconian set of judges, that is going to have a big impact. It is not right, I would suggest, that there is no way that messages can be fed back in some kind of acceptable way, which does not infringe those separation of powers. Lastly, I would like to ask the Senator when he sums up, because it seems to me we like to do things pretty much not the same as everywhere else but we like to do them often, completely opposite of everywhere else insofar as ... we are talking today about having Ministerial oversight of the Judiciary but what we already have in Jersey is Judicial oversight of the Ministers. We saw that very clearly this morning. There has been a change of personnel at the moment about who is presiding, but this morning we had a judge who is sitting over a debate about the Judiciary. It was bizarre. I mean anyone who has been listening in the gallery, anybody who is not from Jersey would find that very bizarre, but of course again we have all drunk that little bottle of potion when we came to Jersey and we do not necessarily find that bizarre. I would like to ask the Senator, because it did not really feature in his report, there were a couple of mentions of the Bailiff. We know that we have the Carswell review, which is still fresh in many of our memories, with of course the Clothier review about the reform of composition of the Government, which is less fresh in some memories although it has been refreshed by perhaps the recent round of the Electoral Commissions. How does the Senator think that those 2 are going to interact, so when we go away and we do ... the Council of Ministers' come back with their findings, presumably if we have a Minister in this Assembly who is responsible for justice it will be very bizarre to have a judge then directing the Minister for Justice as to when he can speak, which questions we can ask of the Minister for Justice going through the judge or potentially Head or Deputy Judge. What scope is there for those 2 to run concurrently? Will the Chief Minister be coming back and saying in order to have a Minister for Justice we will also need to implement the Carswell recommendations. If I give a personal example. I am still in negotiation with the Council of Ministers and the Chief Minister about which amendments will be accepted in the Committee of Inquiry. I will have a meeting with the Attorney General to discuss whether or not we can have an amendment that allows us to look at his department. Again, the problem there is that the Attorney General is the legal adviser to the States but he is also the Chief Prosecutor and he is the one that my amendment wants to have a look at. So there are definitely topical issues that need to be looked at and I think where a Ministry for Justice would help establish that separation. But Members have to be aware of what they are asked to vote on today. We are asking the Chief Minister to go away, to form a Ministry for Justice and it will have implications on the separation of powers. By allowing the Chief Minister to go ahead and do a job and if it is done credibly we are setting in train and saying to him we believe that justice needs to have political oversight and by doing that we are saying to him, essentially: "Please you need to set in train the separation of powers whereby the senior judges and any judge has no place in the Legislature overseeing parliamentary questions, debates, *et cetera*." As long as we are all comfortable doing that, I am certainly very comfortable doing that, then Members should be happy to support this proposition today.

#### **7.1.10 Senator P.M. Bailhache:**

I do not wish to prolong this debate because I agree with the Chief Minister and I support the proposition of Senator Farnham, but I do not think the ignorant and intemperate comments of Deputy Pitman should be allowed to go unchallenged.

#### **Deputy T.M. Pitman:**

I am not going to be insulted, Sir.

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

I do not think you should call another Member ignorant, Senator. You have sat in this Chair long enough to know that.

**Deputy T.M. Pitman:**

Comments of an ignorant man.

**Senator P.M. Bailhache:**

I withdraw the word “ignorant”. I would say intemperate comments of Deputy Pitman should not be allowed to go unchallenged. Deputy Pitman says that justice is a joke in this Island. I must say that Deputy Pitman’s conception of justice is very different from mine and very different, I think, from most right-thinking members of the community. So far as the decisions of Centeniers are concerned in relation to the prosecution, they are subject to appeal. So far as the decisions of the Magistrate are concerned, they are subject to appeal. So far as the decisions of the Royal Court are concerned, they are subject to appeal. At every stage of the judicial process proceedings take place in public and are amenable to judgment by the public. So I regret and deplore the remarks of Deputy Pitman and wish to disassociate myself from them.

**Deputy T.M. Pitman:**

I was called “ignorant” so unless I get an apology I will have to respond in kind. I am sorry, I will not tolerate that.

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

Deputy, you may have missed it. I asked the Senator to withdraw the word “ignorant” and I understand he did. Could you clarify that, Senator?

**Senator P.M. Bailhache:**

I make it clear, I did withdraw the adjective “ignorant” at your request.

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

Which was inappropriate. Thank you. I call on Senator Farnham to reply.

**7.1.11 Senator L.J. Farnham:**

Firstly, can I thank all Members who spoke and contributed to this important debate. I will run through my notes briefly and start with Deputy Hilton who rightly acknowledged that this proposition is long overdue and raised some useful points for clarification, which I think the Minister for Home Affairs helped with, but I will come on to that shortly. Deputy Young also picked up on valid points about financial accountability to the court and made some good policy suggestions and observations. I am sure those thoughts will be developed and hopefully brought back into play when we have the next debate about this, which will hopefully be later this year. I note Deputy Southern’s points. I do not necessarily agree with him that this is quite as worrying as mission creep because we are not talking about appointing or creating a Minister for Justice and department just yet. I would also like to thank the Chief Minister as well for noting that this is to improve and protect the current system and seeks to do not a lot more than that. Senator Le Marquand - I thank him for his knowledgeable contribution - talked about strengthening and safeguarding the principles of the justice system. He highlighted the fact that it is not a proposition for a Minister for Justice. I want to make that absolutely clearly. Even before the amendment it was not really a proposition for a Minister for Justice and Ministry. It is simply to seek to embark on a journey, which I hope will lead to proper democratic oversight, political accountability and

Ministerial management of the justice system. I am grateful to him as well for touching on some of the technical aspects of sentencing policy and the U.K. common law area of which we are part. I hope that has been useful to Deputy Hilton following her very valid comments at the opening of the debate. Deputy Power made some very good points, and again I thank him for his support. He quite rightly pointed out that this is about the principle, and it is hopefully going to lead to proper political accountability for the justice system. Deputy Le Hérissier, in following Deputy Power's speech, was also absolutely right to say that the States should make the law in the courts and the Judiciary will interpret them. We cannot really ever want to change that. I would not want to see that changed, and I would not want this proposition to be misinterpreted for that. But there are also other benefits though to be seized, such as the opportunities to consolidate and provide a bit more of a one-stop shop for strengthening democracy and safeguarding human rights, for example. I did allude to that in my opening address when I said there were a number of pieces of this jigsaw that need to be put together to create a solid democratic system. Deputy Pitman raised concerns about the potential office holder but I think that is a debate for another day. He also raised a number of very sensitive issues, but I would like to reiterate the States is not and should not ever be a courthouse. However, there are, not necessarily just Deputy Pitman, obviously members of the public who rightly or wrongly, or for whatever their own reasons, do not have sufficient trust or confidence in our justice system. We cannot ignore that. As I said, whether these people are right or wrong, it is not for us to judge. But we do have an opportunity here to consolidate these areas into one place where at least these people feel they can be listened to and their issues can be resolved and they can feel trusted. Deputy Tadier asked a question, and I will not comment on the Carswell report and its recommendations right now, again that is a debate for another day, and whether or not the dual role of the Bailiff should be retained again. That is a debate for another day but the Bailiff, and perhaps somebody with more knowledge can correct me if I am wrong, does not preside over this Assembly, neither does the Deputy Bailiff in their capacity as judges. They preside over the Assembly in the office of Bailiff. I am about to give way to you, Sir, should you like to comment on that.

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

They preside as Bailiff and Deputy Bailiff, and have a number of roles in their life.

**Senator L.J. Farnham:**

So they are presiding over the States as President and not of the Chief Justice. Now for some that is acceptable and for some it is not but there has to be another debate on that. I need to do a lot more thinking before I am prepared to state my position on that particular circumstance.

[15:00]

Then finally Senator Bailhache underlined what he felt was the integrity - and I do believe our justice system has integrity - and he underlined that together with the current examples of the working judicial process. So thank you to everybody for their contributions. Members are asked to support this proposition so that further work can be undertaken on the options available to fill this important gap in our political responsibilities, and it is our political responsibility and it is our political duty now to seek to do something about this. I am confident that if Members support this proposition then the Chief Minister, in consultation with the Council of Ministers, will deliver to the States the best solution to suit the needs of Jersey, balancing the proper and necessary democratic oversight of the justice system with the important principle of impartiality and independence for the Judiciary and prosecuting authorities and, importantly, the people of Jersey whom we are so proud to represent here in this Assembly. I make the proposition and ask for the appel.

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

The appel is called for on the proposition of Senator Farnham as amended by his own amendment. If Members are in their designated seats I will ask the Greffier to open the voting.

<b>POUR: 49</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator P.F.C. Ozouf		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator A.J.H. Maclean		
Senator B.I. Le Marquand		
Senator F.du H. Le Gresley		
Senator I.J. Gorst		
Senator L.J. Farnham		
Senator P.M. Bailhache		
Connétable of St. Helier		
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. John		
Connétable of St. Ouen		
Connétable of St. Martin		
Deputy R.C. Duhamel (S)		
Deputy R.G. Le Hérisssier (S)		
Deputy J.A. Martin (H)		
Deputy G.P. Southern (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy J.A. Hilton (H)		
Deputy J.A.N. Le Fondré (L)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy T.M. Pitman (H)		
Deputy E.J. Noel (L)		
Deputy T.A. Vallois (S)		
Deputy M.R. Higgins (H)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		
Deputy G.C.L. Baudains (C)		
Deputy of St. John		
Deputy J.P.G. Baker (H)		
Deputy J.H. Young (B)		
Deputy S.J. Pinel (C)		
Deputy of St. Mary		
Deputy of St. Martin		
Deputy R.G. Bryans (H)		
Deputy of St. Peter		
Deputy R.J. Rondel (H)		

## **8. Draft Motor Traffic (Third Party Insurance) (Cost Recovery) (Jersey) Regulations 201-(P.135/2012)**

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

We come next to the Draft Motor Traffic (Third Party Insurance) (Cost Recovery) (Jersey) Regulations. I will ask the Greffier to read the citation.

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

Draft Motor Traffic (Third Party Insurance) (Cost Recovery) (Jersey) Regulations. The States, in pursuance of Article 3(4) of the Motor Traffic (Third Party Insurance) (Jersey) Law 1948, have made the following Regulation.

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

Under the Motor Traffic (Third Party) Insurance Law my department can recoup some of the costs incurred when treating patients injured in road traffic accidents if they make a successful claim through their motor insurers. However, under that law, as it stands today, we can only charge £2,000 towards the cost of treating an inpatient, £200 for an outpatient and nothing at all towards ambulance costs. These charges fall well below the costs incurred by my department and ultimately by the Jersey taxpayers. It is these same taxpayers whose car insurance premiums are already weighted to cover the significant higher charges imposed by U.K. hospitals. These U.K. charges are £750 per day for inpatients up to a cap of just over £45,000. £615 per day for outpatients and £185 per person per ambulance journey. This Assembly already recognised that changes are required and in November 2011 unanimously voted for P.134, a proposed amendment to the law that allowed cost recovery charges to be varied and procedures to be put in place to facilitate the recovery of these costs. The Regulations that are before us today enable us to add to that decision we took in November 2011 by setting out how we will recover the costs. As you will see from the explanatory note that accompanies this proposition those Regulations are extremely detailed because they set out the nuances of the process used to levy and recoup charges. In essence, however, this proposition does something that is very simple. It establishes that this is not a charge that will be levied on the individual but on the insurance company in the event of a successful insurance claim. No claim, no charge. Pedestrians, cyclists, horse riders and other non-insured road users who are injured or who cause injury will not be liable for these charges. Nor will any individual have to pay them out of their own pocket. Only insurance companies will pay. The charges levied as set out in Regulation 7, and the accompanying schedule, will be set by order and we will set them in line with U.K. charges. It is the U.K. charges that insurance providers already take into account when calculating our motor insurance premiums. That is as Jersey residents we are already paying premiums weighted to take into account the U.K. charges. The cost recovery process, as set out in the detail of these regulations, enables us to work through the U.K.'s Compensation Recovery Unit or C.R.U. The C.R.U., which is part of the Department of Works and Pensions, currently manages the process of liaising with insurance companies and recouping hospital expenses on behalf of all U.K. hospitals and trusts. Using this existing tried and tested system, which the motor insurance industry is familiar with, will help us keep our overheads to a minimum. It is estimated that it will cost around £2,400 per year to recoup charges in the region of £100,000 to £250,000. Obviously that depends on the number and severity of the insurance claims made. Voting for these Regulations enables us to enact a decision already taken by this Assembly. A decision which enables us to recover on behalf of our taxpayers monies that we already accounted for in our own insurance premiums. We notified insurance companies earlier this month that these Regulations are coming before this Assembly. Not one has raised objections or claims that premiums will rise. This is exactly the same response we got when we contacted them in 2011

at the onset of this work. They know about our plans and have accepted them. Therefore, I propose these principles to the Regulations.

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

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

**8.1.1 Deputy K.C. Lewis:**

Very briefly. This is the Motor Traffic (Third Party Insurance) (Cost Recovery) (Jersey) Regulation. This obviously goes to Health and Social Services. There was some consequential work by myself to cover foreign insurance companies but I just would like to reiterate it will not cost the car insurer and van insurer in Jersey one extra penny as this money has already been claimed, and it has my full support.

**8.1.2 Deputy J.H. Young:**

I hope I am not going to spoil the Minister's day, she is absolutely right. This is a very simple proposal and a very good idea. What I would like to raise is what the Minister referred to as the extremely detailed Regulations and I look back at the original report, it was a half-page report, and we have that it is expanded to 22 Regulations and 3-page schedule, the whole thing a 29-page report. My worry about that is bureaucracy and the cost of it. I am reassured by what the Minister told us partly by the fact that the costs of collection is not going to fall on Jersey because that was my first query: £2,400 seems very low but if we have an agreement that the U.K. are going to do this for us at that bargain price, great. But I do not think it ends there. In order to generate this extra income of £100,000 to £250,000 we have within here, yet again, a whole series of appeal provisions in Articles 12 to 14, which are presumably there to sort out arguments in the detail. Those of course, what does that do? That imposes on our Royal Court, yet again, costs of judicial processes. We seem to almost regard the court and the cost as a free good. Here we go, with these very Articles saying this income is appropriated, Article 22 says for Health and Social Services Department. Classic silo thinking. No reference to the fact that there is liability to costs. So I know I am going to be a lone voice in this but I think constantly I see this House treats these appeal processes and administrative procedures, dumping them on the Royal Court, loading layers of costs and processes, and arguments will occur. When you have 22 pages of Regulations and 3-page schedules these snags are going to occur and I like to think it is as simple as just saying: "Okay, approve this. We pay £2,400 a year and we get £100,000 to £250,000 back." I doubt that myself. I raise this point and I would very much like the Minister's comments about how that can be avoided. For example, I keep on asking about Tribunals. These are administrative processes. They are not appropriate for the court. They are simple administrative questions and I think there should be simple processes put in place.

**8.1.3 Senator L.J. Farnham:**

I know the Minister alluded to this briefly in her opening comment but I would just like her to reassure the Assembly that insurance premiums will not rise. We are looking at a financial implication that says the Health and Social Services Department expects to recuperate up to £250,000 per annum from this so surely something has to give. Is she absolutely sure? Could she seek confirmation from the insurers that premiums are not going to increase because of this?

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

Very briefly, the Minister mentioned about those who might not be liable to a charge. I have been looking at the Regulations and I would be grateful if the Minister could point to where in the Regulations it shows that those that would not be included in this particular mechanism, such as horse riders and pedestrians that she mentioned earlier.



### **8.1.5 The Connétable of St. John:**

No matter how good meaning this may be, we have seen it in the past whether it is charging for planning decisions, which were just coming in at the beginning at a small figure and now we have to wash its face in its entirety. I think Deputy Young, in fact, raised something in the back of my mind that are we going down the wrong road here because until now we have worked with goodwill, with the insurance companies and the like, and if we are going to have litigation and this type of thing that might come out of this. It could cost us considerably more than what we gain. Yet again, we see, and because of Deputy Young's background within, as a senior States employee in the past, as a C.E.O. (Chief Executive Officer) in the department, and he raised concerns about appeals and so on and so forth. He has me thinking that this may not be the right thing just to raise £250,000 in this way. It may only be £100,000. But it could cost considerably more through the Judiciary and the like to get that money. I am not convinced. It will be interesting to hear the Minister when she sums up to see if she is going to convince me or not to follow what she is proposing to do.

### **8.1.6 Senator B.I. Le Marquand:**

I rise to assist the Minister; I want to congratulate the Minister on this piece of work. I would point out to Members of the Assembly that if they read the first line of the report they will see that the Assembly in November 2011 voted unanimously for a proposition to bring the law in. A point raised by the Deputy of St. Ouen, I am pretty certain, but I do not have the law in front of me, is of course in the law. The law sets the parameters in relation to the matters for which a matter can be claimed. These Regulations are simply setting the process for that. You do not have the repetition in the Regulations of what you would have in the law. In relation to the comment of Deputy Young, if only life was so simple that we could create a charge but with no appellant's right. The reality is that of course if there is not an express right of appeal in this there will be judicial review and judicial review applications come back to the Royal Court. The only way that you can prevent judicial review in relation to matters of administrative type of appeal is if you expressly in the Statute say there shall not be judicial review and I do not think we would want to do that.

[15:15]

The difficulty, although I have some sympathy with Deputy Young, that we need to make sure that our appellant processes are simplified where we can by virtue of tribunals or whatever, but the difficulty is if you are going to set up yet another tribunal to deal with the matter rather than the Royal Court that in itself would be even more expensive. So I rise to make those comments and support the Minister in this, which undoubtedly will produce additional income for her department and ultimately for the States at no cost to anybody because, as she has said, the insurance companies apply no doubt the national criteria already have this factored in to their amount of premiums.

### **The Bailiff:**

Does any other Member wish to speak? Then I invite the Minister to reply.

### **8.1.7 The Deputy of Trinity:**

I hope I can convince the Constable of St. John because I think this is a very good way of recouping some of the costs associated with having an accident which Health and Social Services and taxpayers pick up. I thank Deputy Lewis for his support. Deputy Young with his bureaucracy, I agree with you. I do not want to put layers of bureaucracy into it. That is why we went through the Compensation Recovery Unit in the U.K. because that is their bread and butter. They do it day in and day out. I have been told that the cost of processing a claim will be approximately £10 per claim and we will probably get approximately 300 claims, it depends. Hopefully not too many.

Regarding the right of appeal, I think the Minister for Home Affairs has mentioned that. Going back to the U.K., the number of appeals that they have is extremely low because you are not talking about an appeal against a liability. This is about a sum of money that has been charged to you. Senator Farnham about the cost of premiums. Motor drivers have been paying for this service for a long time in our premiums and as part of the consultation we went out to the insurance companies and they assured us back in 2011 that they were not going to rise because of this. They might rise for other reasons but not because of this proposition. The Deputy of St. Ouen, I think the Minister for Home Affairs mentioned that. As regarding horse riders, cyclists, pedestrians, if they do get involved in an accident, if there is no claim there is no compensation for this. It is as simple as that. The Constable of St. John, it is a way of recouping money which the Constable has been paying through his motor insurance for many years and it is a way of getting that back. I think he should, instead of criticise, be congratulating. This has been sitting there which is money we could have had and used towards the income for Health and Social Services. I thank the Minister for Home Affairs for his support and I propose the Regulations.

**The Bailiff:**

All those in favour of adopting the principles of the Regulations kindly show. Those against. The principles are adopted. Deputy of St. Peter, this matter falls within your Scrutiny Panel, do you wish to have it referred to your panel?

**The Deputy of St. Peter (Chairman, Health, Social Security and Housing Scrutiny Panel):**

No, thank you, Sir.

**The Bailiff:**

Minister, do you wish to propose the Regulations *en bloc*?

**The Deputy of Trinity:**

Yes, please, Sir. I think they fit in *en bloc*.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on any of the individual Regulations? All those in favour of adopting Regulations 1 to 23 and the schedule kindly show. Those against. They are adopted. Do you propose the Regulations in Third Reading, Minister? Seconded? **[Seconded]** Does any Member wish to speak in Third Reading? The appel is called for in relation to the adoption of the Regulations in Third Reading. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 43</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier		Deputy J.P.G. Baker (H)		
Senator P.F.C. Ozouf				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F.du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of St. Clement				
Connétable of St. Peter				

Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
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 M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

## **9. Draft Referendum (Reform of States Assembly) (Jersey) Act 201- (P.5/2013)**

### **The Bailiff:**

We come next to the Draft Referendum (Reform of States Assembly) (Jersey) Act, Projet 5, lodged by the Privileges and Procedures Committee. I will ask the Greffier to read the Act.

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

Draft Referendum (Reform of States Assembly) (Jersey) Act. The States, in pursuance of Article 1 of the Referendum (Jersey) Law 2002, have made the following Act.

### **Connétable A.S. Crowcroft of St. Helier (Chairman Privileges and Procedures Committee)**

Can I ask that Senator Bailhache be the rapporteur for this item?

### **9.1 Senator P.M. Bailhache (Rapporteur)**

The road to constitutional reform has been long and torturous but I hope that by the end of this debate we shall have set in train a process which will lead to a slimmer, more efficient, and more democratic system of parliamentary government. It is worth reminding ourselves, I think briefly, how we got here. The Clothier panel presented their report in 2000 and recommended a total breach which we passed and the introduction of Ministerial government and the reconstitution of the States Assembly. They recommended an Assembly made up of between 42 to 44 Deputies without a large number of committees made up of 7 members, one did not need, they said, an

Assembly of 53. In the event in 2005 the States adopted part of the Clothier recommendations and introduced Ministerial government but did not accept the proposals for reform of the constitution of the Assembly. Since that time there have been innumerable attempts which have failed to decide how to complete the process of reform. They are summarised in the introductory chapter of the commission's final report. Eventually I think it is fair to say, that the States despaired of finding a solution and agreed in March 2011 to establish an Electoral Commission and to put the recommendations of the commission to the public in a referendum. In March 2012 that commission was established and almost a year later the States are asked to agree to put the recommendations of the commission to the public. Some Members will not agree with the recommendations of the commission but I hope that they will nonetheless respect the right of the public to have their say. If the public does not agree they can reject the recommendations for reform but they have the right to express that view. That is the promise that has been made to them and that is democracy. If we believe in democracy we ought not to be satisfied with the status quo. It is interesting that in the early years of the 20th century the States were constantly changing the number of Deputies and the shape of constituencies in order to reflect the growing population of St. Helier. Since 1948 when the post-war reforms came into effect the States have failed miserably to keep representation in the States aligned to the changing number of electors in different parts of the Island. Apart from allowing one extra seat in St. Brelade and moving 2 seats from St. Helier to St. Saviour in 1974 nothing has been done for the last 65 years. The population of the Island has nearly doubled but virtually nothing has changed in the system of parliamentary representation. St. Peter has one Deputy for 4,000 voters whereas St. Lawrence has 2. Where is the logic in that? There are countless other anomalies. The commission's research has shown that there is no possible way mathematically to even up representation under our current or indeed any system of small constituencies if one wants to respect Parish boundaries. What is the result of this failure to respect demographics? Too often there are no elections. The Deputies of St. Lawrence and Trinity, all splendid people, did not have to face an election in 2011. But that outcome is, objectively speaking, appalling. How many Members of the United Kingdom Parliament get nodded through without an election? Too often Members are elected on a few hundred votes. Voter turnout is worse, so far as I am aware, than in any other part of Europe, including Guernsey and the Isle of Man. There is widespread disillusionment with the political process. Some might say perhaps that this reflects the absence of party politics but it is also a reflection of the relatively complicated and unfair system whereby we elect our representatives. The single election day has rendered the practical distinction between a Senator and a Deputy non-existent. You can be elected by 15,000 votes or by 400 and in the Chamber it makes no difference. Some voters can elect one Deputy, while other voters can elect 2, 3 or even 4 Deputies. For newcomers it is all but incomprehensible. The Greffier gave us a very amusing sketch at the Christmas lunch, which I am sure we will remember well, which illustrated the muddle which now exists and which I think that some of us who have lived with the system for a long time fail to appreciate. In reality it is anything but amusing. If we have respect for our Assembly as a functioning democratic legislature we ought to be ashamed of the complexity and illogicality of the process whereby we are elected. That was the conclusion at an early stage of the Electoral Commission and the commission set about trying to find a solution. The solution of course is not easy to find and one can get impatient with views such as those expressed in the nihilistic editorial in the *Jersey Evening Post* last week. How easy it is to pontificate when one does not have to find an answer. The difficulty of finding a solution makes it all the more remarkable I think that the members of the Electoral Commission, all of whom are very independent characters, were unanimous in their recommendations to the committee. If I may, I should like to pay particular tribute at this stage to the non-States Members of the commission, Professor Ed Sallis, Mr. Colin Storm and Dr. Jonathan Renouf. **[Approbation]**

[15:30]

All of them gave many hundreds of hours of their time for no financial reward and, indeed, Dr. Renouf gave up a significant part of his annual leave to take part in the commission's work. I am glad that Mr. Storm, the vice-chairman of the commission, is able to be in the public gallery, and I am grateful to Members for acknowledging their contribution. The commission followed a process of continuous engagement with the public from the start and I would again like to pay tribute to the hundreds of members of the public who attended meetings and made written submissions, many of them very lengthy and thought-provoking. They all helped in the process of debate, even if some of the submissions were, of course, irreconcilable with others. For some, voter equity, that is having constituencies of more or less equal size was the most important consideration that would rule out having the Constables continue as members of the States because the Parishes are obviously not of equal size. For others the Island-wide vote was important, although this was, in many cases, linked to nostalgia for a system that has gone. For some the Parish link was of the greatest importance. The commission broke new ground in publishing an interim report and allowing the public to engage in its provisional conclusions. Then the summary of recommendations in the final report has been distributed to every household so that members of the public can understand the question which they recommend being put in the referendum. Those who have an interest in preserving the status quo or who wish to reshape the question to suit their own political ends or who have not bothered to think about the process have suggested that the question is too complicated for the public. For my part, I reject the suggestion, that the public is too ignorant to understand a single transferable vote. It is insulting to the intelligence of the electorate. If you can count up to 2 you will be able to express a first preference and a second preference by writing 1 and 2 opposite your first and second choices. Of course a yes/no referendum question is the simplest and the best but for reasons that will be explored in the amendment put forward by Deputy Southern the commission could not go down that road. In substance, the single transferable vote system is how we elect Ministers at present, where there are 3 or more candidates for office. In order to ensure that the winner has an absolute majority at the end of the day we have a number of votes. If there are 3 candidates the candidate who comes last in the first ballot drops out and there is a second vote to determine the winner. In the referendum it will be exactly the same principle, but it is a bit simpler than the way in which we do things in this Chamber. I ask Members to imagine the scene at the counting. The *Adjoint* or counters will count first of all only the first preferences on the ballot papers. They will put the ballot papers into 3 piles. In the first pile will be the papers where the voter's first preference is reform option A, in the second pile will be the papers where the voter's first preference is reform option B and in a third pile will be the papers where the voter's first preference is the status quo or option C. The counters will count up the votes in each pile and this will happen in each Parish Hall in the Island. The report of the Privileges and Procedures Committee makes it clear that the *Autorisé* in each Parish will report the totals to the Greffier, who will add them up. If one option has more than 50 per cent of the vote, an absolute majority, that is the end of the count. If none of the options has received an absolute majority the Greffier will ask the *Autorisé* to count the second preferences of the option that has come last. They will not count all the second preferences but only the second preferences of the option that has come last and dropped out of the race. The counters will therefore pick up the ballot papers in the smallest of the piles and they will distribute them between the other 2 piles in accordance with the second preferences expressed in those ballot papers. If there is no second preference expressed the papers will be discarded. So if, for example, and just for the sake of example, option C, the status quo, is the least popular and drops out after the first count the second preferences of those voting for option C will be added to option A or option B, as the case may be. It is very simple and very fair and I am told that the Greffier, who has consulted with all those who will be responsible for acting as *Adjoints* in the Parishes and that none of those persons have had the slightest problem or is in the slightest bit confused with the counting process. I do not think that the public will have any difficulty in understanding that if their first preference drops out of

contention after the first count they have a right to choose between the 2 remaining options and express a second view. If their first preference remains in contention after the first count, then of course their second preference is not considered. The commission therefore offers 2 reform options, both of which, in its view, would substantially improve the democratic process. Large Districts mean that it is very unlikely that any Deputy would in future be elected unopposed. The public would always have a choice. The reform options would hopefully increase voter interest and voter participation. Moreover, a candidate would have to obtain a significant number of votes to be elected. Not as many as a Senator but still a much more significant number than at present. We think that this will enhance the quality of debate at the hustings and ultimately in this Assembly, which would be in the public interest. Deputies would concentrate on the large and important issues facing the Island and leave parochial matters to the Constable or to the Parish authorities. If the public does not like either of the reform options then they can vote for the status quo. I do not personally think that they will but that is an option that is open to them. The Assembly established an Electoral Commission to listen to the public, to take expert advice, to consider all the conflicting aspirations and to come forward with recommendations that stood a chance of acceptance by the people. In making these recommendations all members of the commission have had to compromise. The recommendations of the commission are not precisely those that I personally would have put forward. I have had to compromise. If Members are ever to square this circle they too will have to compromise. I am confident that Members will give reform a chance and to approve this Referendum Act, and I accordingly move the proposition.

**The Bailiff:**

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

**9.2 Draft Referendum (Reform of States Assembly) (Jersey) Act 201- (P.5/2013): amendment (P.5/2013 Amd.)**

**The Bailiff:**

As Members know there are a number of amendments and the Greffier has circulated hopefully to all Members the proposed running order, so the first amendment to be considered is that lodged by Deputy Southern, the first amendment. With Members' permission I am not going to ask the Greffier to read out all of each amendment because each amendment has a number of detailed provisions to effect it, but what I am going to do is ask the Greffier to read out what would be in the box for each amendment in the questions sent out to Members. So I will ask the Greffier simply, if you agree, Deputy Southern, to read out that part of your amendment.

**Deputy G.P. Southern:**

Fine by me. Sounds like Pandora's Box.

**The Greffier of the States:**

Paragraph 9, page 19, schedule. For the ballot paper in the schedule substitute the following ballot paper. Heading: Ballot Paper. "The States Assembly currently has 51 Members elected in 3 different ways. This will be reduced to 49 Members in 2014. The Electoral Commission has put forward a way of changing this system. This reform option would reduce the number of States members to 42 and introduce 6 large electoral Districts, each choosing 7 Deputies. Parish Constables would no longer be Members of the States. Place a cross in one of the boxes below." Question: "Should the States Assembly be reformed so that it is comprised of 42 States Members known as Deputies, elected from 6 large Districts with each District choosing 7 Deputies." Two boxes marked Yes and No.

### 9.2.1 Deputy G.P. Southern:

That was an interesting speech from Senator Bailhache. He made reference to the way in which we elect Ministers in this Chamber when we have more than 2 candidates. Indeed he said clearly obviously a simple question with yes/no is the simplest and the best option. He made reference to those who say that single transferable vote is too complex for the public to understand, they are insulting the public. I agree, I could not agree more. I do not make the case that it is too hard to understand. It is very simple. The case I make is that numerically and statistically with the questions chosen the questions and the mechanism is biased and skewed. It will produce false results and I will take you through the argument why that is the case. In terms of a simple understandable question with a yes/no answer being the best I draw the analogy not with us selecting Ministers but the way in which we vote. Members look on their desks, they will see one row of buttons, one of which has a P for pour and one of which has a C for contre. The Greffe produces a proposition that is simple, straightforward to which we can respond yes or no, and every time we vote, unless we get a 25-all draw, we make a decision. Simplicity and a majority vote. There are not 2 rows of buttons there saying first vote, second choice. Because that is what this referendum, which should be the simplest and the most easily readily understandable proposition, has produced. The Electoral Commission set out indeed on the right road, how they arrived here quite frankly I do not understand, but they started with some principles and the principles were from Clothier, that there should be a single Member of the States and that we should have large constituencies so that, as Senator Bailhache has said, people do not get in, they get elected, they do not get elected by a couple of hundred people and proper elections take place.

[15:45]

So how did we arrive at a situation where we have a complex set of options, which we are asked to decide between. The answer must be, I think, that we made a number of errors along the way. The first of those I think was that I notice the Senator did not mention an independent commission, but that is what we set out to produce. It was supposed to not consist of politicians, and that was the first mistake they made. **[Approbation]** The principle of equal votes for all electors of equal weight is a sound one, but in doing that what we get is option A on the commission's proposal. Parish Constables will no longer be Members of the States. There will be 42 States Members known as Deputies. There will be 6 large Districts, each choosing 7 Deputies. That is very clear and I would suggest that is as clear as you are going to get. Why was that not the proposal? Already it is quite complicated because you might not be for only 42 Deputies. You might not be for 6 large constituencies. You might not be for removing the Constables. So it has 3 stages in there already in the first box. However, you can either go with that amendment, you can go with that proposition, or not. It is understandable: vote for change or against change. Whatever you do with that single box you will get a majority result. It might be 51/49 one way or the other. You might not like it. It does not matter. You get a decision, just like we do when we vote on a single proposition. But lo and behold, that takes the Constables out of the issue. Now, I do not know what your experience is of the debate for the last 10 years, but my experience says that the position and role of the Constables is the issue that divides the Island most widely. When we had a survey of opinions, it was 50/50, strongly against, strongly for. It was the most controversial decision and, lo and behold, second mistake, what did the commission do? It ducked that question. It then said: "We will put the question of the Constables to the electorate. We will not make a decision on it. We will now put in a second option and say: 'You make your mind up'." Of course, that wrecks the equal votes with equal weight principle and puts a spanner in the works. A simple, single proposal on which you say yes or no, that is the simplest and best way to make it work. We have now 2 options. Again, since we have 2 options, are you going to produce a majority? You might, but we then throw in a third option and we introduce the single transferable vote. Not hard to do, not hard to understand, it is not the argument, but one which because of 3 options then skews the

vote. Let us look at those options, A, B and C, in terms of 3 things. What does it do for the position of the Constables? Well, reform option A removes them, B keeps them, and C keeps them. Now, if like me you consider the issue of the Constables to be the central germane argument, what do you have? If I am “agin” the Constables being here, I have one option. The other 2 preserve them. My next-door neighbour, Hedley, he is very much for the Constables, so he is going to be quite happy. He can vote once and put his reserve in, his second vote. He gets 2 votes. I get one vote. Ditto if you consider the Senators are the most important issue. How do those 3 options pan out? The first one gets rid of them; the second one gets rid of them; the third one does not. Again, you have a 2:1 bias in the structure of the question. If you are for the Senators, then you only have one option to vote for there. The other 2 get rid of them. Ditto if I am for or against the change to 6 constituencies and 42 single Members. The first one introduces it; A introduces it. B also, C does not. Again, a 2:1. In doing that, in having a single transferable vote, 2 goes for some and not for others, you introduce bias and skew into the results. I have consulted all the maths teachers that I know. I have consulted the Statistics Department. Statistics said: “I will not put anything in writing because it might seem political” but agreed with me that just doing the numbers, the arithmetic, says you have introduced a skew. It is the wrong set of questions. That is the reality. Now, whether you like my amendment or not, or anybody else’s amendment or not, that 3 options with 2 choices for some, whatever the format, is statistically biased and skewed. It should not go forward. It is a mistake. It is an error. It is not political. It does not matter what those options are. If you get that 2:1 bias then your question is quite simply not politics, it is just a case of the numbers. It is quite simply wrong. My amendment reduces that to one straightforward question; for or against, yes or no, you will have a majority verdict on it. I remind Members what we should be doing with a referendum question. It says clearly, the guidelines of the U.K. Electoral Commission, that a question - a question, not 3 rolled into one, but never mind, my amendment does not do that - should be clear and simple. That is, easy to understand, to the point and not ambiguous. It should be neutral, which means it should not encourage voters to consider one response more favourably than another. Nor should it be statistically skewed. Later on, the U.K. Commission says the referendum result should be one that all voters and referendum campaigners can accept and have confidence in. The reality is no one can have confidence in the commission’s proposal because statistically, according to the numbers, it is wrong. You cannot have faith in it. As I say, whether you like my amendment or not, whether you like somebody else’s amendment or not, please do not go forward with this 3 options with 2 votes. It would be a mistake. It would be seriously wrong and lead to skewed answers. I do not know what the debate was and the argument was within the commission, and Senator Bailhache has said that everyone has had to make compromises. I think in making those compromises what they have done is they have made the issue too complex, 3 options into 2. I looked at the advice they took on the formulation of the question and it is not addressed by their adviser. It should have been. The adviser accepts the 3 options with the 2 votes, the single transferable vote, and does not question it at all. Now, I do not know where his advice is coming from but I suspect he is not a mathematician. At that point, I think I will stop and allow others to have their say and listen to whether my argument can be destroyed.

#### **The Bailiff:**

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

#### **9.2.2 Senator P.M. Bailhache:**

I am grateful to Deputy Southern for making it clear that the purpose of his amendment has nothing to do with the ability of the public to understand the single transferable vote. I think it is good to put that out of the way. The Deputy said that he did not know how the commission arrived at its conclusion. Perhaps I can deal with that first of all and then come to the thrust of the Deputy’s



amendment, which is really the question of alleged bias. Part of the problem with Deputy Southern's amendment, although he has not really admitted it, is that he does not want to trust the public. We do not know ...

**Deputy G.P. Southern:**

That is putting words into my mouth. I do not know where the Senator could have got that from.

**Senator P.M. Bailhache:**

Well, I am sorry, others can draw their own conclusions; that is the conclusion that I draw from the amendment. Deputy Southern does not want the public to vote on the question of whether the Constables should remain in the States. We do not know for certain what public opinion is on that issue, but we do know that the submissions to the Electoral Commission were almost equally divided, as indeed the Deputy himself said. There is no doubt that there is a very substantial divide in the Island on this crucial issue as to whether or not the Constables should remain. The commission's question gives the public the opportunity to decide this question once and for all. The amendment of Deputy Southern, which takes that possibility away from the public ...

**Deputy G.P. Southern:**

If I may, I think the Senator is in danger of accidentally misleading the House. My proposition does not take the decision away from the people. You cannot argue that because it says yes or no to the Constables being removed. Now, that is a decision of the people.

**Senator P.M. Bailhache:**

Well, I think with respect to the Deputy that that is a bit of sophistry.

**Deputy G.P. Southern:**

It is not sophistry. That is fact.

**The Bailiff:**

I think you will have a full opportunity in reply to deal with any arguments that Senator Bailhache has made.

**Senator P.M. Bailhache:**

The Deputy has made a decision that one option should be put to the public and he has made a decision that that option should be option A. The Deputy's approach seems to be that there is no voter equity in reform option B and, therefore, reform option B should go. But as the commission has made it clear in its report, the question of voter equity is not the only consideration. Option A offers the public voter equity, whereas option B offers something quite different. It offers voter equity in terms of the 30 Deputies, but it also offers a continuation of the direct constitutional link between the States and the Parishes, which many people believe to be of fundamental importance. Ironically, the commission during the course of its deliberations did consider exactly that which Deputy Southern has done: a yes/no question and should that be put to the electorate. If the commission had gone down that road it would, however, not have put option A to the electorate, it would have put option B. The commission rejected that approach for 2 reasons. First, it was not unanimous in preferring option B and there would, therefore, have been a minority report.

[16:00]

Secondly, and much more importantly, the commission knew that more than half of those who had made submissions to it had wanted the Constables out of the States. Now, it seemed to the commission much fairer to the public to give the public separate options, one with the Constables and one without. I wonder what Deputy Southern would have done if the commission had

recommended a single question around option B. That would have met the Deputy's requirement for a clear and simple yes/no question, but he would not have liked the question. Would he have sought, then, to amend it to include an option A, which is the commission's recommendation, or would he have voted against the Referendum Act and deprived the public of the right to vote in the referendum? Perhaps he would say when he replies, and perhaps he would answer another question, too. Suppose his amendment succeeds and the public later rejects option A. Would that mean that the Constables should remain in the States or would he still argue that the Constables should go on the basis that the public might have voted against large Districts? We would be no further forward. The Deputy complains of the single transferable vote, although as I have said it is essentially exactly the system that we use for electing Ministers and chairs of Scrutiny Panels. He says that the situation is biased in favour of the Constables because 2 of the options involve removing the Constables from the States. He goes on to say that it is also biased against those who want to keep the Senators in the States, a 2:1 bias, and it is also biased against those who might not want 42 Members and 6 large Districts. The Deputy is wrong, I am afraid, and he has not understood how the system works. It is a pity that his mathematical experts have not put something in writing which we could examine because we would then have shown that to our own expert on referenda and expert on voting systems, who has advised the commission that this is perfectly fair and unbiased. The reality of the situation is that at the end of the day if more than 50 per cent of the people want to remove the Constables from the States, they will vote for option A. Then option A is likely to succeed. **[Interruption]** Well, let me put it differently. Option A is likely to succeed. If more than 50 per cent of the people want the Constables to remain in the States, then either option B or option C is likely to succeed. That is democracy. Where the Deputy is wrong, and he said it again in his speech, that those who want to keep the Constables in the States - Hedley I think he said - had 2 votes, whereas he only had one vote. That is not correct. It is not correct. There are 2 preferences but there is one vote. Let us suppose that Hedley votes, first of all, for option B and his second preference for option C, and Deputy Southern votes for reform option A. Let us suppose that the status quo as in the example that I gave has the smallest number of votes and drops out of contention. Hedley's vote is for reform option B. One vote. His second preference is not going to be counted. It is only the second preferences of those who voted for option C, the status quo, which are going to be taken into account. Hedley did not vote for option C as his first preference. That was his second preference. His vote will not be taken into account. So each individual has one vote and one vote alone. Exactly the same argument applies for those who want to keep the Senators in the States. They will vote presumably for the status quo and they have exactly the same chance of succeeding as those who would prefer to see a system of larger Districts. It is not complicated. Perhaps I could draw Members' attention to the way in which Londoners vote for the Mayor of London. I have here the guidance for the London mayoral election. It says: "How to fill in your ballot papers, Mayor of London. This is your pink-coloured ballot paper. You can cast a first and second choice from the list of candidates who will either be part of a political party or standing as an independent candidate. This is for the person you would like to be Mayor of London. Vote for your first choice candidate by marking a cross in the first choice column and vote for your second choice candidate by marking a cross in the second choice column." We considered 2 columns and crosses. We preferred to have a single column and a one and a 2. Londoners seem to cope very well with electing the Mayor of London and I am quite sure that Jersey people will have no difficulty in coping, too. At root, this amendment asks the States to pre-empt the question of whether or not the Constables should remain in the States and to deprive the public of expressing a view once and for all on that question. That seems to me to be quite wrong and I ask Members to reject the amendment.

**Senator F. du H. Le Gresley:**

I am sorry to trouble the Assembly, but I just wanted to seek some clarification from Senator Bailhache on something he said. Because he did labour the point that what the referendum is asking is very similar to when we vote in Ministers and chairs of panels. But surely it is not the same because when we have a contested vote for a Minister we all get a chance to vote again, all of us. So we do not have only those who voted for the person who drops out looking at their second vote and apportioning it, we all start from scratch again with fewer candidates. So I do not see that the comparison is justified.

**The Bailiff:**

Sounds rather like a speech to me, Senator Le Gresley. **[Laughter]** Do you wish to reply, Senator?

**Senator P.M. Bailhache:**

I think the Senator is obviously right that it is not entirely the same. I think what I said was that the principle is exactly the same. Because what we do in this Chamber when we are voting in Ministers is to have a second vote, that is quite correct, but one assumes that those who voted for candidates one and 2 will continue to vote for candidates one and 2 in the second vote. It is only those who voted for the candidate who has dropped out who will come into the equation and give their votes for candidates one or 2. Now, that is what is going to happen in the referendum and if Members do not think it is the same then perhaps I have too simple a mind. I would have thought that if you wanted a particular person to be a Minister you would vote for that person all the way through, but if others have more subtle ways of approaching the matter then I bow to that. But the system in principle I maintain is exactly the same.

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

Minor point of correction. The Senator is incorrect because there is tactical voting that did take place in the last lot of Ministerial elections and it was clear that there was not consistency in how people voted during that process.

**9.2.3 Senator L.J. Farnham:**

I just wanted to say I wonder if the Greffier would mind repeating his Christmas sketch because I found that easier to understand. **[Laughter]**

**9.2.4 Deputy M. Tadier:**

If I can address some of those issues, firstly if the system is really that simple, the Senator has done a very good job of making it sound much more complicated than it actually is. I say that slightly tongue in cheek because S.T.V. (single transferable vote) is very simple and I agree that S.T.V. should be used. The Senator has made a very good case I think for it to be used, but the irony is it is not being proposed to be used in elections until 2018, whereas we are proposing that it should be used in the referendum to decide whether or not we have reform in 2014. Even though it is very simple, yet we will not let the public use it for voting for people, which is what we do in the States to elect Ministers and chair people, because on the one hand we can trust the public to be intelligent but we cannot trust them to be intelligent enough to use it straight away in an election. This is an interesting thought. That said, I firmly do believe that transferable voting systems do work. The difference is, of course, when we look at ... there are 2 main differences. When we are voting for Ministers or for a chairman, if you excuse the gender bias there - chair people does not seem to slip off the tongue quite as well - the first difference is that we are voting for discrete decisions. We are voting for one person and we are not voting for a package. In the referendum options, it is not simply that there are 2 options for keeping Constables, one option for not keeping them and everyone is coming out simply to vote for and against Constables. That is not how it works. People are voting for each of these packages on very different merits. Some people would be completely oblivious or apathetic to whether or not we have Constables, whether we have Deputies

or Senators. They may be more interested in the fact that: “I do not like super constituencies” or: “I do like them, but 5 is the optimum number that I feel comfortable voting for. I do not want to vote for 7 Deputies in a District because that is too many. Therefore, I will vote for option B”, which happens to have Constables. So they are not going out expressly voting for the Constables, but the by-product of them voting for option B, perhaps because they are voting for it for a different reason, is that they get a Constable anyway. So I do not subscribe to this argument. I do subscribe to S.T.V. being fair when it is applied to discrete decisions such as using it for electing Ministers or for voting for the Mayor of London or even for voting for what we will be doing in 2018, possibly before. The same analogy cannot be transferred when you are voting for packages because people do not go out with the intent to vote for and against Constables. It has to be said that there are 2 options which maintain Constables. There are 2 options which get rid of Senators, which is another key thing. So that has to be borne in mind. If option A, for example, falls at the first hurdle it is fair enough to say that those votes would get redistributed. They will get redistributed to options which will necessarily maintain the Constables, even if the majority of people have a more nuanced approach to that. I think that is the important thing to say. Simply saying that the transferable voting system makes it absolutely fair is complete nonsense. The second important point is, if we are using an analogy of voting for people in the States, we do not limit who can stand for Minister. We do not say: “Yes, we have a transferable voting system but we will only allow 3 candidates, 2 of whom have to be right wing, the other one who can be slightly less right wing. There you go, go ahead and vote for them.” What we say is that anybody who wants to be a Minister and is a States Member can stand for a Minister. That is what we do. We put all the options on the table and we let people choose. But what this Electoral Commission, despite their hard work, has said: “We are going to put 3 options on the table, one of which we do not want at all, which is no change, so we will put that on because we really are adamant that we cannot have the current system, it does not work. So we will put that as one of the options and hopefully people might not vote for that. We will put in option B, which does not follow on from any of our findings or principles, and we will put in one option A, which is the only sensible option on the table.” The second part of my argument today is that options B and C do not have any place being on the table in the first place. Why not? Well, let us look at why it should not be there in the first place. Incidentally, referendums are normally held because the Government wants to do something. They decide as a Government: “We want to do this, let us take it to the public to get endorsement or otherwise for our view and then we will proceed or not proceed on that basis” such as we are seeing in Scotland with their independence. If we look at the principles which we were given, this is the Electoral Commission’s own words, not mine. These are their principles and then we will look at their findings. They said: “Voter turnout is low, which suggests apathy and disillusionment.” Okay, that is tied in with the fact we have a system that is overly complicated, so A seeks to redress that balance, giving a simple system with one type of States Member. Option B, let us keep an element of complication in it, 2 types of States Members. We are told that too many Members are returned without having to contest an election. That was reinforced at the public meetings that I went to in St. Brelade and in town. One of the frustrations for the public is that you get people who live in what is sometimes called rotten boroughs, through no fault of their own, who do not have to face an election, and which position is it that most falls into that unfortunate category? It is the position of Constables because they are single seat constituencies. It is nothing to do with the Constables themselves. If someone is good enough to take them on, they will come out of the woodwork, but it is a tough task.

[16:15]

It is the same for incumbent Deputies who have single seats, and so it is recognised. “What do we recommend? Let us recommend option B where we keep those seats. Let us keep the option. Let us keep those seats where there are most uncontested elections and put that question to the public as

one of the options.” It is complete nonsense. That is why it should never have happened and it would not have happened, incidentally, if politicians had not been on the Electoral Commission. Because let us face it, although it is fairly complicated, any G.C.S.E. (General Certificate of Secondary Education) student with basic maths skills and also a politics student with basic principles of democracy and fairness could have come up with something quite easy and they have done. “Constituency sizes vary considerably.” So what shall we produce? We could have a simple option which says constituency sizes are the same and we elect the same amount of people, or we can introduce not 6 constituencies but 18 constituencies because in order to solve all these problems let us have 18 constituencies, 6 of which are the same sizes, 12 of which are different sizes, which vary perhaps between one constituency size being 20 times bigger than the other constituency size. Let us put that on the table because it is a sensible option and let us see if the public will vote for that option. “We have a system involving 3 types of States Member. It is unnecessarily confusing.” That is what they have said, so let us propose a system with 2 types of States Member because that is slightly less confusing. Rather than going the whole hog, let us propose something which does not completely work, which is neither fish nor fowl. Let us look at the findings now. “All electors should have the same number of votes.” This is the Electoral Commission who have said this, incidentally. That is going to happen. “Constituencies should as far as possible be of broadly equal size” apart from these things called Parishes, but that is all right, we do not have to worry about those. Parishes can be immune from it and we will put option B in there. “A candidate should generally require a significant number of votes in order to be elected to the Assembly”, unless you are a Constable from a small Parish, that is fine, we will have a carve-out for you. We will put in option B there as well. “The electoral system should be simple and fair and easy to understand”, apart from this other second tier of Government which also introduces voter inequity. The reason option B should not be there is because it is a complete nonsense, not to mention the fact that - he may be listening today - Sam Mézec did a very good blog on it and the statistics are there which show that under ... **[Interruption]**. I am sorry? Above me. I know we do not mention members of the public, but certainly he is the chair, I believe, of Reform Jersey. As a contributor, he sets out very clearly the fact that option A does as much as it can to redress voter equity. There is still one of the super constituencies which is slightly over represented. We can cope with that. It is the best thing on the table. Option B does completely the opposite where St. Helier is 400 per cent out from the average and the country Parishes are over-represented no matter which way you look at it, whether Constables are part of the super constituency, whether they are not. The countryside and, therefore, the more wealthy individuals, remain over-represented. That is why option B should not be anywhere near this ballot paper. It should not even be a recommendation from the Electoral Commission. I appreciate not everyone will share that view, but even apolitically looking at this statistically and from a neutral demographic position it has no business being on the paper. Option C has no business being on the paper, as I have already said, because we all agree, I think, those who want reform, that option C, we cannot stay as we are. That is why we asked the Electoral Commission to come forward in the first place. So, after all that, obviously I still appreciate the work that has gone on. I have been to the Electoral Commission myself with many other Members and I would say that option A is the one that we can all agree on. The reformers on both sides can live with option A. I do not think everybody or anybody could live with option B, and we certainly cannot live with option C. So let us put something on the table that we are all willing to go forward for, seek endorsement on it, and if the public do not like it they will have an option to vote against.

#### **9.2.5 Deputy J.M. Maçon:**

I did assist Deputy Southern in forming this today. I gave him a little advice on the formulation of the question itself, I am happy to admit that. So, in part, I am also responsible. Proudly so, I should say. When I looked at the original proposal of the Electoral Commission one of my biggest

issues is that even if anything goes through referendum the important thing for this Assembly, because we will have to take the final decision, is that we need an easily interpretable result. For me, that is incredibly important. We need to have something back which we understand and we can work with, so why then do I favour a yes/no question as opposed to a rank question? The reasons for this I will try to explain. Members will probe if they have not quite got it. I want to start with question C because it has been put forward that if people vote in the proposed system of one or 2 with options B or C then that shows that they want Constables in the States. If you vote for option C, it could be that you want Constables in the States, it could be that you want Senators in the States, it could be that you want to keep the Parish Districts, it could be that you want to keep the Parish Deputies, or it could be that you are against the large Districts or that you are against 42 Members. There are so many different things that fall to choosing option C. How as an Assembly do we interpret that result? That is without going into the issue of not having a minimum participation threshold as well, so that is going to be a fun one to deal with no matter what happens. I do not believe it can be argued if you say option C clearly shows X, Y and Z, which is why I do not favour it being there. As I tried to demonstrate 2 weeks ago in the Assembly, what is the importance of saying no? What is the relevance? Why is it important to be able to say no? The reason for that is if you choose option C, and again it comes back to being able to interpret the results, an endorsement of the current system ... well, it can be interpreted in different ways. It can be we do not like the options that you are proposing, which I think we can pretty much accept that overall one, but it is not the same as saying ... well, saying that we do not accept what you are proposing, but it can also be interpreted as an endorsement of the current system, which is different to saying ... and that is why we have different amendments from Deputy Pitman and Senator Farnham because there is a difference between endorsing the current system and not being happy with anything that is being proposed. That is why this, as proposed by the Electoral Commission, I find very difficult to accept because when we have to come to being able to interpret whatever comes back, it is going to be incredibly difficult with all the different permutations that are going to come through. I do not want an issue that Clothier has been through where we had all the different things, where things were cherry-picked because there were so many options on the table, and then we come into the situation of where we are now. For better or for worse, some would argue different things. Considering the amount of arguments about change and reform, perhaps I think we can say for worse. Some will agree with me, some will not. That is why I cannot be supportive of this particular format. I think also as well as this debate has rambled there have been a lot of different comparisons between apples and pears and peaches and bananas. Senator Le Gresley picked this up immediately that there is a difference between different transferable votes and voting rounds, and then Deputy Le Fondré pointed out that then within that if you have voting rounds you can also have tactical voting, which again when you are ranking different options it can skew the results. Again, when this comes to be being able to interpret those results, where does that leave us? This is why I favour a yes/no system because to be able to interpret that data for us it is much easier and much clearer and much more reliable and much more valid in order to do that in a yes/no question when you have different ranked options. Even if you get to the situation whereby say, for example, you had 30 per cent of the registered electorate turn out and vote and let us say, for example, they go with option C, 50 per cent. Let us say the next option comes incredibly close. Overall, option C has 15 per cent, because 30 per cent turned out, so 15 per cent of that result, and option B has 14 per cent of that overall result. Where does that leave us? How do we interpret that data? How do we make a judgment on that result? I feel that we can avoid a lot of these problems that produces itself if we do what Deputy Southern is proposing here by having a very clear, very simple yes/no vote. Now, there has been some criticism that option A does not allow people to make a decision on the Constables and whether they should be in the Assembly or not. In the preamble to the question it says quite clearly in black and white, or in our amended version white and red: "Parish Constables would no longer be Members of the States. Do you agree with this, yes

or no?" So I do not see how anyone can argue that there is not the ability for the public to make a judgment on whether the Constables should or should not be in the States under the option that is being proposed by Deputy Southern. I do not see how you can draw that conclusion because it is quite clearly stated there, black and white. A point that Senator Bailhache did make is when he talked about under this system if we have super constituencies it will force candidates to talk about Island-wide issues and it will somehow raise the debate. I think my response to that is the public will talk about what the public want to talk about, and if they want to talk about the lamps or they want to talk about traffic or they want to talk about something else in the area, that is what they are going to talk about. As politicians, we will have to appropriately respond to that. I do not see any system that is going to change that. Even at our senatorial hustings in St. Saviour we had a localised issue about the road traffic and the Traffic Law which was raised in our Parish during the senatorial hustings. So, again, I do not accept that argument and I think the electorate will talk about whatever the electorate wants to talk about. Whether that is a local issue or an Island-wide issue that is what they will do. I do have to make that point simply because as a Deputy you do get criticised for something as if you only talk about very local issues. Of course, many Deputies do not do that in their manifestos. They do talk about Island-wide issues. They do talk about the bigger things of health, the economy and tax, and I just put that in there just to dispel perhaps a myth which is labelled against us. I will leave it there and I thank Members for their attention.

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

I am only going to speak once in this debate despite what might end up being a number of different opportunities, depending on how the amendments go. I am quite clear that the Electoral Commission were instructed to do a job the results of which this Assembly agreed it would put to the public of the Island in a referendum. I, like many, am not happy with their proposals, but I do not now, after having had a number of opportunities to express my views to the commission, seek to change their conclusions, ones that they have arrived at after months of work and deliberation. If we are now going to seek to change their proposals, you have to ask yourself the question why we asked them to do this work in the first place. The reason we asked them to do this work is because we know that in this Assembly we will never all agree as to the way forward, and I think we are proving that this afternoon. Regardless of their views, I would urge Members to agree with me and reject all these amendments so we can move forward with the recommendations of the Electoral Commission as we have previously agreed to do.

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

Likewise, I was not going to speak but I feel compelled to after listening to some of the previous speeches. My reason is simply that I find the ballot paper put forward in Deputy Southern's proposition as being defective because it does not ask one question, it asks 2 questions on 2 different topics. It basically says: "Do you want to have the States made up of 42 Members or 49?" Then it says: "Do you want those Members to just be Deputies, not Members of the States at all?"

[16:30]

So it deliberately asks people to exclude. If they want a 42-Member States then it deliberately excludes them having an opportunity to comment on whether the Constables should be involved or not. I consider it to be defective and I cannot support it.

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

Where to start, as they say. Firstly, I think I want to start off and say we acknowledge that the Electoral Commission has obviously done an awful lot of work and that has to be acknowledged, it has to be recognised and it has to be applauded for what has been done. However, if this Assembly was just a rubber-stamping exercise, then why are we having this debate in the first place? **[Approbation]** I think the stance I am taking is that I would be delighted to have some proposals

in front of me that even if I did not agree with the questions I felt were reasoned and gave a rational ... rational is the wrong expression, a rational choice to the electorate. Unfortunately, I cannot. I do not think that is the position we are in today. What is happening is that obviously Members have the right to bring amendments. That is perfectly within their right; there should not be any criticism of that. However, I think the fact that we do have whatever it is, 4 or 5 amendments, is recognition that the proposal that has been brought to this Assembly for endorsement is not going to be universally met with acclaim, and that is putting it mildly. Where I am, I have the greatest respect for Senator Bailhache. I like hugely the Constable of St. Mary and they will no doubt be delighted that I am not going to be voting for this amendment. However, they will not be delighted as to the reasons why. The essential reasons are that I am not going to be voting for any of this because for me as a States Member to be endorsing this as acceptable to go to the public I have to be happy that the outcome, even if I disagree with it, is not flawed and is not worse than what we have at the moment. I hope I am not straying into the main debate, I do not want to, but I would like to just cover one area which is directly quoted in the actual amendment. It is obviously covered in the main debate as well. It is that of 42. To be fair to Deputy Southern, what he has done, he has stated that a referendum is what is on the tin; in other words, it should be a simple yes/no answer. I think that is laudable and is very clear. The problem I have is that I do not agree with the data that he has based his question on, which has obviously come from the Electoral Commission. Let us start with 42. Forty-two is a round number. That sounds really daft. It is an obvious comment, is it not? Let us go back to Plémont just before Christmas, a very, very close debate. Are we going to set up a system that has built into it a hung vote? Now, I am sorry, that is the reason. If it was an odd number or a number I agreed with that I felt was not flawed - and I will get further into that - I would probably support this because of the yes/no option, but I think 42 in itself is flawed. Again, we have had where has that 42 come from. Yes, if you go to the public and you say: "Do you want less politicians?" of course the public are going to say, probably: "Yes." It is a bit like saying: "Do you want to pay more or less tax?" type of scenario. That is a pretty predictable answer, but what are the consequences going to be? Now, Ministerial government is in the third term and as far as I am concerned it is clear that governance, accountability and scrutiny arrangements need beefing up. If I refer only to the latter on the list, there has been clear reference from the commission itself regarding the activity of scrutiny of legislation. That has been an area identified within the work being done as well on the machinery of government review which, as Members know, I am a part of. Hence we are talking about increasing work but reducing States Members. Now, 42 was previously proposed by Clothier, but that was in the context of 7 ministries.

**The Bailiff:**

Deputy, I am sorry to interrupt but is this relevant to this amendment?

**Deputy J.A.N. Le Fondré:**

It is relevant to this matter? I know, the argument is ...

**The Bailiff:**

The sort of points you are making, if I may say so, I can well understand you might wish to make when you get to the main debate.

**Deputy J.A.N. Le Fondré:**

The problem is I suppose my argument at this stage is the reason I am not supporting Deputy Southern's is because he has incorporated 42 into the amendment. It is not that long a speech. All I was going to say is that, as I have said, it is 42 with 7 ministries. We are at 10 and we have just effectively suggested that we might want to look at adding another one. In the past we have had other comments along those lines: Clothier, be clear; Troy Rule, very critical. Clothier itself recommended having the Executive in the minority. If you go to 42, that will become very



doubtful. The view I have is, if you like, we are designing a car engine without having worked out what that car should be doing. Is it a 2-seater sports car, a 2-seater smart car, or a 7-seater people carrier? Too small an engine, it will not be up to the job. My view is you have to get the internal mechanism sorted out first before we then decide how many people we want. To me, therefore, to leap in and simply cut the numbers, and depending on whether it is 7 or 9 whether it is from 51 or 49, down to 42 without having looked at the system it will be required to work under is not to me a responsible way to govern matters. I will try to round up. To round up, 42 is a great number. It was immortalised by Douglas Adams in *The Answer to the Ultimate Question of Life, the Universe and Everything*. But as identified in the story, once the answer was known, did the people seeking that answer know what the question was? I am resisting the temptation to compare the chairman of the commission to Benjy Mouse or the Connétable of St. Mary, who as I understand is a devotee of science fiction, to Frankie Mouse, who are characters in the story. Until we know what that question is or the functions of the car we want to build the engine for, then in my view we should not be asking the public for their view on that. What we need to be clear in our mind first is what the system should look like that we expect future States Members to deal with. As I have said, unfortunately Deputy Southern I believe has correctly identified that there are some issues around how we are putting those matters to the public and I have to say the yes/no I think would be preferable, but in my view I cannot support it because he has retained the inclusion of the 42, which in my view is flawed. That needs to be worked out. An even number as a starting point is not a good thing to have as a Parliament. It is too prone to having a hung vote. I will stop there.

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

Just very briefly, obviously I sat in on every single meeting of the Electoral Commission. I attended half of the Parish meetings because the commission was split obviously to cover them all. All I can say is although we have a comprehensive report of what happened and what evidence we took, although every submission is available on the website, it is not until you are sitting in that position that you feel the full force of the strength of feeling that people have about various different things. Of course, the trick of the commission was to try and come up with something that was the best fit. Not everything that people felt passionately about could possibly find its way into our final recommendations. There always were going to be winners and losers in that state. Deputy Tadier is quite right, we came up early on with the core principles that we felt were very important, and the only thing I would say about Deputy Tadier's dissection of option B is that we never, ever tried to say that it was not ... we were very specific on the weighting and equity balance. We never made any assertions other than the fact that it did not give the same level of voter equity that option A did. But then again we were faced with a considerable amount of public opinion that was very concerned about the Parish representation, which is where the initial rumblings for the governing of option B came from. As a commission, we argued long and hard over that issue. It is not, when you boil it down, an issue of whether the Constables are in the States or not. It is an issue of whether there is any direct Parish representation in the States or not. That is exactly how we came to have this problem with how can we put option A on its own when significant numbers of people were saying to the effect: "I understand your large constituencies." Some people were saying to us: "That is very good, I would only vote for that if I knew the Constables were not going to be in the States" and other people were saying: "That is very good, I would only vote for that if I knew the Constables were going to be in the States." The only way to see what the actual ratio is is to give some sort of mechanism for teasing out what it is that people wanted. That is how we came to the question. We were very concerned that we could not come up with one simple question, but we did take quite a lot of independent advice on how the question could be framed and what results we could expect to get. As has been pointed out by the chairman, and I will not go back into it, if there is a significant number of people who really, really, really want to have no Parish representation - and that is a perfectly legitimate outcome - then they have one simple answer and

that is to vote for Parish A ... **[Laughter]** sorry, for option A. I have travelled 72 hours to get here and I am at the end of my endurance on this, but this is such an important issue that I think we need to reflect on it maturely. Yes, the bus service from St. Mary is slow. **[Laughter]** In actual fact, to counter what Deputy Southern said at the beginning, if there is a significant, even 51 per cent of people who think the Constables should not be in the States, their choice is quite clear. As Deputy Southern I think said ... what did he say exactly? I think that was his single most germane point was that the Constables should not be in the States. That was the thing around which his argument pivoted, I think, which I do not have a problem with that at all. If a significant amount of people feel that way, they have one clear option. They do not have to choose: "Okay, well, I want Parish representation but do I want it through the Deputy and through the Constable or do I just want it through the Constable?" Statistically, you could say that the bias is towards option A. We believe that our option, our referendum question, as the commission have put it forward to P.P.C. (Privileges and Procedures Committee), which is the one you are considering here today, gives the best way of finding out more information by that second choice. I can only wholly endorse the fact that after I think about 8 months of consistent work on that and a great deal of advice taking ... and I think the framing of the referendum question itself was probably the single item on the agenda about which we spoke for the longest, quite possibly, to recommend that it is taken unamended because it will give us a certainty of whether people want one kind of reform or another, or if the 2 reform packages we have put through, which offer the reduction in numbers that was called for and the large constituencies, whether, in fact, people are more concerned about equity of voting. Do not forget we are already addressing with either of those the fact that up until now not every person in this Island has had the same number of votes and people have felt that very keenly. We address that in either option. Or whether, in fact, people really think that neither of those is better than what we have now. What we have now, let us make no bones about it, is not ideal and there will be problems long term possibly with it, but it will at least for the next elections work. We could form a Parliament on the basis of what is in line for 2014, but the reforms that we have put forward for the public to choose from we believe will give a better sustainable outcome. I think probably that is really all I can usefully say at this point. I would just ask Members to consider the work that the commission did and to understand that we came to a conclusion that was the result of a lot of different viewpoints. I think the chairman of the commission when he spoke as rapporteur said that there were diverse opinions on that commission, and there certainly were.

[16:45]

At the end of all of that, we have come up with something that we believe gives the public of this Island a real choice, and it is the stark choice to say whether they believe that the principles in isolation, in totality, are the single most important thing or whether they want to preserve some element of our heritage into a new system that refines things and hopefully we will end up with a more dynamic Parliament than we have had previously, and to understand that that is what we were aiming for, to understand that we believe and our advisers believe that that will be evident from our referendum question and to take it in the format which we have suggested to P.P.C. Thank you.

#### **9.2.10 Deputy J.A. Martin:**

I will be brief. It is interesting to follow the Constable of St. Mary and I do sympathise because I do know she has been on a long flight, but I absolutely disagree with a lot of what she has said. The Constable just said the work of the commission has tried to give many options and then she used the words: "And this will give us more information." I did not realise the referendum was out there to get more information. To me, and I have to speak for the public of St. Helier, when we say all electors - or this is the commission - should have the same number of votes and the constituents should be, as far as possible, of broadly equal size. It does not do it in option B in St. Helier. I am very interested to listen to Senator Bailhache when he said: "Deputy Southern does not have the

confidence of the electorate vote in the right way” but he said if he had had a yes/no choice it would be option B. It would be option B but it would be yes or no to option B. He said they did not go for this because it would have had a minority report. A division in the commission. So be it. That is what I call information that we needed. We do not need this out in the streets. We need to know. Yes, I will give way.

**Senator P.M. Bailhache:**

I said there were 2 reasons why we did not put that forward. The first reason was the one the Deputy gave. But I said the more important reason was that it would be fairer to the electorate to give them the choice between an Assembly with the Constables and an Assembly without the Constables. That was the main reason for not proceeding alone with option B.

**Deputy J.A. Martin:**

Out of respect for the Senator, I did give way but he added nothing. I was going to add on to that, he is saying that Deputy Southern does not give ... and Deputy Southern himself talked down his own straightforward ... Deputy Southern gives you an option. Do you want reform? I do agree with Deputy Le Fondré. You have nailed down to 42 but then again, somebody said, we have picked this magic number. We are where we are. But we go to the electorate and we asked them yes or no. If they say no, they want it to stay the same, you have got to presume, because it is only a presumption, and all of this would be presumption, that they are voting to keep the Constables. They love the Constables. They think the system is so good that we will keep it as it is, so you vote no. You vote no for the change. It is quite, quite simple. It is a compromise. I do not want a compromise. I wanted something brought forward. I wanted it brought forward at P.P.C. I want something the public ... and we are here. We have got ourselves in a complete mess with the amendments. The question is a complete mess. I respect Deputy Southern. I respect Senator Bailhache, who knows his law and I know Deputy Southern and a few people behind me know their math, and I am telling you now this is biased if we do not take Deputy Southern’s amendment. It has got to be a yes/no answer. Really, that is all I need to say at this point because there are other things I will say on the other amendments but it is quite straightforward and the commission did not have the leadership. They have come up with a compromise which is not acceptable to go out to the public for more information. So we have a way out here and that is to vote for Deputy Southern’s and there is an option for the public. They vote no. If they are all happy, they vote no and that is a yes/no campaign that can be fought. Not a reform. Not an A, a B and someone ... we said this around the Deputies meeting at lunchtime. Who is going to represent C, the status quo? It is absolutely ridiculous. This is the only way forward. Other than that, I think I am going to vote against, like Deputy Le Fondré, I will not support the main proposition. Thank you.

**9.2.11 Deputy M.R. Higgins:**

I am going to be brief as well. I am really disappointed with the whole of the work of the Electoral Commission. I know they put in a lot of time and they should be commended for it. However, they set out, as has been stated, the core principles and those core principles talked about having constituencies with similar numbers of electors, i.e. voter equity, and then they moved away from it. To my mind, the question that they have put forward is a fudge. A fudge that is going to do no credit to this House and is certainly going to reflect badly on us all, not just them. So first of all then, it is a fudge. They did not come back with a clear recommendation, which they should have done. They have moved away from their own principles and that, I just cannot accept. I also happen to agree with Deputy Southern. We need to have a clear question and a yes/no answer is what we do need. So I must say to hear that they had advisers who advised them on this question I find absolutely amazing. All we have to look at is the Scottish referendum vote and again the U.K.

electoral body that reviewed it and came down and said: "Clarity, simple" and that is what we should have done. Therefore, I shall be supporting Deputy Southern on this particular vote.

#### **9.2.12 Senator I.J. Gorst:**

I do not know if you like playing games. I do not particularly but you might have heard of the one I believe it is word association. If I suggest to you, and I do not expect you to indulge in this game, the word "Clothier" sadly, I believe that one of the first words that will spring to your mind is "cherry pick". Two words, indeed. **[Laughter]** I think that it is important that we just remind ourselves of that. I suspect that most Members of this Assembly with the 10 to 12 years' hindsight would approach Clothier in a very different manner from that which it was approached. And Members of the then Assembly felt that they did not quite want to deal with it in the way that Clothier suggested and they had other ideas that were better, in effect. I worry that today and tomorrow, hopefully not the day after but possibly, we are going to do the same. I would like to remind Members of Senator Bailhache's opening comments where he quite openly said that he himself, as chairman of the commission, had to accept compromise. I believe that that is probably one of the most difficult things that we as elected Members are going to be asked to accept over the course of today and tomorrow. If we do not, we end up potentially in a very difficult situation where we have asked a body to carry out a piece of work, and so far every speaker has congratulated them and thanked them for that piece of work but then, unfortunately, gone on to suggest why it is not quite right in their opinion. I believe that the commission have put in a lot of work. They have taken expert advice and they have quite openly commented that one of the, if not the most divisive point that everybody making submissions to the commission commented on was that of the role of the Connétable in this Assembly. They have come forward with a package of questions which many Members do not feel are ideal but I hope they feel encapsulate putting to the public that particular difficult issue. They have packaged it up with a workable solution in each case. The amendment before us - this particular amendment and I hesitate to say it now because I might be giving the same speech 5 or 6 times. I will try not to do that - does not allow that. Does not acknowledge that. Does not accept that and simply says that the bringer of the amendment puts to one side the work of the commission, the way that they have tried to balance that difficult issue and deal with that divisive issue and says that we should accept that. I really ask that Members do not accept this amendment but they accept what the commission is proposing and then we will have the public's opinion and then we will be able to act upon that. Otherwise I fear that we will be back to my game of word association. Thank you.

#### **9.2.13 Deputy T.A. Vallois:**

I am glad the Chief Minister just spoke, particularly about his word association game. I imagine he regularly uses a dictionary as well to play that game, and I will explain to him that today we are looking at the Referendum Act not a consultation act, and a definition for a referendum: "A general vote by the electorate on a single political question that has been referred to them for a direct decision." A consultation: "Seeking and giving of advice, information and/or opinion, usually involving a consideration." In my view, I think what Deputy Southern has done here today is correct because what it is giving the people in this Island is a direct question from this Assembly to state whether we want 42 Members of the States in 6 Districts as Deputies. That is what we are asking the electorate to do. I am not going to start arguing with people saying whether I want Constables or I want Senators or I want Deputies. At the end of the day, when we come into this Assembly and we vote on these amendments and legislation, we all have the same vote. But then look at how we are voted for by the electorate at election time. I have got just over 600 votes but Senator Bailhache had over 17,000. But yet we have equivalent voting rights in the States Assembly. I am sorry, but how do people out there understand the transfer of their vote meaning something in terms of the voting within this Assembly? So I am sorry, but in terms of the direct

question to the public, saying to them: “Yes or no, do you want 42 States Members who are Deputies in 6 Districts? Yes or no.” Then it comes back either they want it or they do not want it and that, to me, is a very clear decision from the public of Jersey, direct democracy as to what they want. I am fully supportive of Deputy Southern’s amendment and I would implore the rest of the Assembly to vote with it.

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

Very quick. I came here with a heavy heart because I in no way wanted to be involved in this debate and I wanted to take the implicit promise we had made seriously, and I did take advice and did not move amendments. But I have to say, having spoken to a lot of members of the public, they have taken at face value the principles laid down by the commission and they believe that the recommendations made will flow from that face value and they have now become very, very confused, I am afraid. Exactly as Deputy Vallois has outlined, they would have gone for a very clear yes or no, based on the enunciated principles that had been put forward by the commission. They were quite prepared to do that and they thought: “This is judgment day.” I was very interested to see the nuanced way in which the Constable of St. Mary, who is not as gaga from her flight as she suggested... I thought it was a very interesting point she made. But there was this issue. It was not an issue of the Constables, it was an issue to do with Parish representation. It strikes me, well, if that, indeed, was the hidden issue, well why was there not just a scheme put forward that, for example, the Deputies represented the Parishes? Back to Clothier. Why did we not simply go back to Clothier and we could have joined those 2 principles together and we would not have had the Constables there as the ghosts at the party all the time. It could have been dealt with as a clear separate issue. I wanted prime facie to take the commission’s principles at face value and I wanted to answer like Deputy Vallois, a clear yes or no.

[17:00]

#### **9.2.15 Senator F. du H. Le Gresley:**

I purposely never made a submission to the Electoral Commission because I thought **[Interruption]** ... because I thought this is for the public rather than for States Members because I have sat in debates here when we have tried to argue about constitutional reform and never got anywhere really. So I purposely did not do that and I was really hoping that the commission would come forward with a ballot paper for the referendum that everybody would understand and it would be quite simple and straightforward. I have to say that that is not what we have got. If I was a member of the public and I received the ballot paper, which is on page 19, the schedule, and I only wanted to vote for option A. I only want to see a reformed States with Deputies and 42 States Members and 6 large Districts. That is all I want. I am not interested in anything else. It says on the form: “You do not need to use your second choice, if you do not wish to do so.” So I think to myself: “Well, I do not want B and I certainly do not want C because it is time for change” so I vote for A. Now, if C falls out, as Senator Bailhache suggested it might, and I suspect it would be C, I have decided not to vote for C because I do not want C either. So I have got no second vote because I did not put a second preference. So the way that this has been constructed on the ballot paper proposed by the commission is in favour of retaining the Constables. Nobody can really doubt that because it is so obvious. B and C mean retaining the Constables. I personally have no problem with the Constables. I think they are great people but the point is if I was a member of the public and I only wanted A, and I do not use my second vote because there is nothing there for my second vote, where do I go? I know that later we are going to have a fourth option of none of the above but I want A. I do not want any of the above so where do I go? Now, that is my problem as a member of the public but let us repeat again what B does. B gives District 5 4 Constables, St. Lawrence, St. John, St. Mary and St. Ouen. That is what the commission are proposing in B. So we have 4 Constables and 5 Deputies and we have eligible voters, according to table 9 I think it is,

in the report, with 11,100 voters. So we end up with that area of having 9 people in the States that they can elect and yet in St. Helier No. 1, with 13,960, that is another nearly 3,000 voters, they have 5 Deputies that they can elect and really half of the Constable of St. Helier. And that is quite clearly, and the commission accept in there is contrary to the Venice Commission's code of good practice in electoral matters, something that they were adamant from the outset that they were trying to protect and yet we end up with B, which completely is in contrary to that commission's recommendations. So B is unacceptable. I am Mr. Joe Public. I want to vote for A. I do not want B because it is not going to increase democracy at all and I want the system changed. So I am only going to use one vote and I am going to lose out. That is the problem and that is why I would support Deputy Southern's proposition.

#### **9.2.16 Deputy T.M. Pitman:**

For once I can say very briefly and mean it, and I think what Senator Le Gresley has just said has been excellently put across. It is the points really that I was going to stand up now and make but I think the fact that he has put them, hopefully, a few more people on the commission supporting side of the Assembly will perhaps listen to him. I would like to highlight though that the Senator is not really telling the full picture of how horrible it is if we do not support Deputy Southern because number one, I believe that everyone is entitled to representation, I know it is a bit unfashionable in some parts but surely just because someone is not quite 16 ... we would want to represent them, would we not? St. Helier No. 1 will have 17,543 people. Only 5.5 representatives, as he said, and we discussed at lunchtime at the St. Helier Deputies meeting which part of the Constable we would fight over. Who would want his top and who would want his bottom, and we could not quite agree but it brings you ... public per representative, 3,189 and yet we have got this anomaly with our District 5 being massively over-represented. Deputy Southern has really taken us back to the core, the real heart of what a referenda question should be and of course what he is putting forward, although he is just going with one of the options that the commission came up with, it is something that is fair. It is going to be fair for people. I would be very disappointed if anyone in this Assembly, whether a Senator, Deputy or Constable put their position and their particular role over fairness because that has surely got to be right at the heart of a referenda question. So I have got my concerns about 42 because of the amount of Ministers we are hearing proposed. Perhaps the Deputy can sum up his thoughts that we can get around that by having 42. It is an option to say: "We are happy with one type of Member" or: "No, we want to keep the Constables in." It is quite clear. So I do not think that can be thrown at the Deputy and I would just end on saying it is very disappointing to hear Deputy Southern or anyone criticised for bringing an amendment. We are here because quite clearly, many, many people are not happy with what the commission have put forward. Remember, it was meant to be an Electoral Commission, as I think it was Senator Farnham said on the radio, we will probably likely end up where we have to some kind of independent commission. Where have I heard that before? So Deputy Southern is giving us a clear way forward. It is a straight yes or no answer, which everyone can express an opinion on. It is entirely workable. It is fair. So I will be supporting him and I would urge other Members to.

#### **9.2.17 Deputy J.A. Hilton:**

Just very briefly. I was not going to speak but I just wanted to echo the comment of Deputy Pitman about Senator Le Gresley's speech and I thank him for making it very clear for people to understand. I have come into this debate with an open mind and I have listened to the arguments. There have been some very good arguments put forward and I think people keep talking about fairness and I think if we are going to have a fair democratic system people have to support this amendment to make it fair for St. Helier at the end of the day. So I am going to support Deputy Southern.

#### **9.2.18 The Connétable of St. Helier:**

The job of the Privileges and Procedures Committee was to set up the Electoral Commission and to present the Referendum Act to the States for approval, and I say that because as committee president, clearly that is my job and that is why I have seconded the Electoral Commission's work. Indeed, I endorse the thanks that almost every Member has given to the commission for all their work. I thought the Deputy of St. Martin probably got to the nub of the question when he gave his fundamental objection to tinkering with the Electoral Commission's findings. He said that basically we gave them a job to do and we said we would put the question to the people and that is what I believe is going to happen. I sense the mood of the Assembly, notwithstanding grave concerns Members may have about the question and so on, is to let the process run its course to the referendum. What I would say, however, and I say this as much as Constable of St. Helier as a member of Privileges and Procedures is that I do not believe the States will feel equally bound to translate the outcome of that referendum into legislation because I think this process itself is very useful, the debate we are having, the amendments that Members have put a lot of work into and indeed the whole process of the referendum itself and the debates that are going to ensue from this day on to 23rd April, I think it is. I think that whole process is going to generate a great deal of debate and we are by no means at the end of the process. We are probably about halfway through it and I think once the referendum result is known, then the States will have a lot more information and I think they will have some tough decisions to make, but I certainly want to place on the record that I do have concerns, particularly about how the electorate of St. Helier could fare under certain outcomes of this process and I believe that all Members have that concern. Indeed, the Deputy of St. Martin, to whom I have already referred, said that he did not like what the commission had come up with. But he said he was going to vote for this Referendum Act because we gave the commission a job to do and we should let that job be done. Thank you.

#### **9.2.19 Senator A. Breckon:**

Just a few points. A number of years ago I was asked to look at the issue of Sunday trading and I say that because part of the process was a public attitude survey to find out what the public think. The simple question is should shops open on a Sunday? Some people said no. Next question is what about paper shops? What about a pint of milk? What about pharmacies? Then the answer was: "Yes, shops should open but what about betting shops?" "No." So it is a qualified answer and that is why I have some sympathy with what the Electoral Commission have tried to do. They have tried to build in the options for people to do but then, as others have mentioned, that becomes a little bit muddled in what do you make of the answer. I say what do you make of the answer because if Members look at what Deputy Southern is proposing, it asks: "Should the States Assembly be reformed so it is comprised of 42 States Members known as Deputies elected from 6 large Districts with each District choosing 7 Deputies." So if I vote no, am I saying that is because I do not like that particular thing or that I want to keep Constables or I want to keep Senators. That is not clear if I vote no, so if I vote no then it might be for a reason but the reason is not apparent by me just voting, no. So I am voting no for a reason. I can understand the numbers from St. Helier and the other things but I think the issue is complicated. The commission have tried to make sense of it but I think perhaps Deputy Southern is trying to give some clarification, and then perhaps there would need to be other issues with that because why is 42 a magical number? Some people might not agree with that so they might vote no because they do not agree with 42. So again, I have some sympathy with the Electoral Commission and others that have tried to amend it but it is, as other Members have said, confusing and whatever the outcome is, the public should have some clarity in what they are going to be voting on. I think the Electoral Commission were between a rock and hard place because were they not to give those options then they could have been criticised and again, have been criticised by giving them, but they were given a task to do by this House. They have gone away and done that and I should say with some enthusiasm and then we might be wrong to just ignore that. But then other Members do have the right to amend it as they see fit. I can see

the points that Deputy Southern and others have made but perhaps it is not quite as clear as that. Maybe the numbers should be agreed first, as perhaps others are suggesting, the Deputy St. Ouen, because there are still other reviews going on. So I still have not decided about how I am going to vote on this. I will see what Deputy Southern has to say in his summing up. Thank you.

**9.2.20 Senator P.F. Routier:**

Just very briefly, my enthusiasm for this topic of reform of the States, obviously I have been involved in many, many debates about reforming the States over the years and I was very pleased that the commission were going to do this piece of work on our behalf because I certainly was hoping, and I am pleased that they have come forward with what they have come forward with. They have done a piece of work for us. I just want to pick up on one issue about what some people are perceiving as unequal representation across some of the Parishes. I think it might have been Senator Le Gresley who said that some people might be electing 9 representatives. That is not quite the case really because you are electing your Deputies and a Constable for your own Parish. So you might feel a big constituency there are other Constables that are being included within representing you but the Parish Constables of the other Parishes which are in the larger District are not going to represent you. The only other area which I would comment on is that Deputy Southern's amendment, I think is too constrained, I am afraid, because as Senator Breckon has identified, it is closing down too many other options because there may be people who do want to have less Members but they do still want to retain Constables. So I would just struggle, I am afraid, to find any good reason for supporting this amendment and I would urge Members to reject it.

[17:15]

**The Bailiff:**

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

**9.2.21 Deputy G.P. Southern:**

Eleven minutes before the gate comes down. What can I say to convince Members that accepting what the commission has presented to us without altering it would be a mistake? First of all, I have to say to the Constable of St. Helier, my own Constable, and the Constable of St. Peter, the words of the terms of reference of the commission were: "At the conclusion of its investigation the Electoral Commission shall present a report with recommendations to the Privileges and Procedures Committee to enable the Committee to present the commission's proposals to the States for approval." Not to endorse them. Not to take them to the electorate but to bring them to the States for approval (and it is not there) or not. So this body to accept those with the reservations I put, I do not believe this body should approve these recommendations because they are flawed. So that is the terms of reference so to members of P.P.C., do not feel that in putting forward this proposition that you do not have the right to vote. I think this might be closer than many think and I certainly do not want members of P.P.C. saying: "We are not going to vote for this because effectively we endorsed it". That is not the case. We have just presented it to the States because the States decides what goes forward. Do not do that casually, please, Members. Senator Bailhache again repeated the accusation that I do not trust the public, that I do not want to let the people decide. Simply not true. What I do not want them to do is be misled by a 3 option with 2 votes system which is skewed. He said himself that they discussed intensely presenting option B and what would I do if that was the case? I can answer those questions. I can say if they did produce a single question with a yes/no answer, option B, I would campaign and vote against it. But I would accept the result that was produced because I can trust the question. The question is simple, straightforward, yes/no. I can trust the question. I cannot trust 3 options with 2 votes because it is skewed. Senator Le Gresley hit the nail right on the head. He appears to be one of the few in the Assembly that has understood what I am saying and is showing how it is skewed. Now,



how is it skewed, because Senator Le Gresley said: “I have only got one vote.” There is not a second option I can go for or choose between and put 1, 2 either way. Now in terms of getting the vote, I think Deputy Le Fondré is the person in this room, in the electorate, who can produce a difference between 50 per cent and 50 per cent plus one. His vote, and I want his vote, and I know he has reservations about a part of option A with the result that he cannot possibly vote for it because it has got the number 42 in it. Where is the second option to persuade him that reform, which he is in favour of, can go forward? Where is the option that says 46 Members and all the rest? So he can go: “Hmm I want that moderate option and I will put my number 2 on option A.” That might be his choice and that could be the one vote that swings the majority. Any one of these options can produce a majority. Fifty one per cent of the people vote for option A or B or C. Or 51 per cent of the people vote for a proposition with a single option in it. That can work. What happens? This time I will use the words of the advisers to the Electoral Commission: “A note on referendum questions for the Jersey Electoral Commission by Professor Renwick.” Listen to this carefully because this is the reality: “Suppose that 40 per cent of voters have reform option A as their first preference and 40 per cent have reform option B as their first preference. Further, suppose that all of these voters have the status quo as their second preference. The remaining 20 per cent have C, the status quo, as their first preference and their second preference is split, 5 per cent for reform option A and 15 per cent for reform option B.” There is the rub. Whatever is in that third pile, whatever comes third will it have many from the reformers, like me, who want the maximum reform? No, it will not. Five per cent is even, I believe, an overestimate. I think it will be nearer 0 per cent. But would some people, because they have got 2 choices and 2 votes, have put option A. The ultra conservatives, no change at all as their first choice, with their reserve position, second choice, at least it keeps the Constables. And the answer, according to adviser might be of the order of 15 per cent. So when the piles are counted and the smallest pile is taken and redistributed, what happens? Second preferences of those who backed the status quo will then be redistributed among the 2 remaining options. The reform option B comes out first, 55 to reform option A, 45. That is the problem with these 3 boxes with 2 votes. Whatever you do with the numbers and it is not the politics. It is the numbers. That is what these numbers do because there is no second option for the: “Let us go for reform”. There is a second option for the conservative vote that do not want any reform and will accept a minimum reform. That is the reality. Two votes to one. Senator Le Gresley had it in one. That is the reality. Finally, just a brief reference to the definition from the online dictionary of a referendum: “A general vote by the electorate on a single political question that has been referred to them for a direct decision.” I put it to Members that the option of a single question answerable yes or no is the right way forward. The Electoral Commission, which has put forward its proposals for our acceptance or not, has put forward completely flawed questions. The rest of their work I give them praise for but they have put forward the wrong question. If we go forward with this question, we make a serious mistake. I maintain the proposition and call for the appel.

### **The Bailiff:**

The appel is called for then in relation to the amendment of Deputy Southern. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 19</b>		<b>CONTRE: 30</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F. Routier		
Senator F. du H. Le Gresley		Senator P.F.C. Ozouf		
Deputy R.C. Duhamel (S)		Senator S.C. Ferguson		
Deputy R.G. Le Hérisssier (S)		Senator A.J.H. Maclean		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Senator I.J. Gorst		
Deputy of Grouville		Senator L.J. Farnham		

Deputy J.A. Hilton (H)		Senator P.M. Bailhache		
Deputy S. Pitman (H)		Connétable of St. Helier		
Deputy K.C. Lewis (S)		Connétable of Trinity		
Deputy M. Tadier (B)		Connétable of Grouville		
Deputy T.M. Pitman (H)		Connétable of St. Clement		
Deputy T.A. Vallois (S)		Connétable of St. Peter		
Deputy M.R. Higgins (H)		Connétable of St. Lawrence		
Deputy A.K.F. Green (H)		Connétable of St. Mary		
Deputy J.M. Maçon (S)		Connétable of St. John		
Deputy G.C.L. Baudains (C)		Connétable of St. Ouen		
Deputy J.H. Young (B)		Connétable of St. Brelade		
Deputy R.J. Rondel (H)		Connétable of St. Martin		
		Deputy of St. Ouen		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		

**Deputy T.M. Pitman:**

Now that is over, I would like to propose the amendment as it is 5.30 p.m. Sorry, the adjournment.

[Laughter]

**The Bailiff:**

I thought you were so keen to move on to your next one, Deputy. It is the first thing tomorrow. Very well, the adjournment is proposed so the Assembly will adjourn and reconvene at 9.30 a.m. tomorrow morning.

**ADJOURNMENT**

[17:25]